

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS

Senator Sobel, Chair

Senator Hays, Vice Chair

MEETING DATE: Tuesday, March 18, 2014

TIME: 8:00 —9:30 a.m.

PLACE: *Mallory Horne Committee Room, 37 Senate Office Building*

MEMBERS: Senator Sobel, Chair; Senator Hays, Vice Chair; Senators Altman, Braynon, Clemens, Dean, Detert, Diaz de la Portilla, Grimsley, and Thompson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Presentation on Child Support Guidelines Study - Thomas McCaleb, Ph.D., Florida State University		Not Considered
Consideration of proposed committee bill:			
2	SPB 7088	Human Trafficking; Requiring the department to develop or adopt initial screening and assessment instruments; specifying the process for the department to develop or adopt initial screening and assessment instruments; authorizing the Department of Children and Families to certify safe houses and safe foster homes; providing for placement for evaluation in a secure safe house if certain criteria is met, etc.	Temporarily Postponed
3	CS/SB 268 Health Policy / Grimsley (Similar CS/CS/H 287)	Certificates of Need; Decreasing the subdistrict average occupancy rate that the Agency for Health Care Administration is required to maintain as a goal of its nursing-home-bed-need methodology; providing that, under certain circumstances, replacement of a nursing home and relocation of a portion of a nursing home's licensed beds to another facility, or to establish a new facility, is a health-care-related project subject to expedited review; repealing provisions relating to the moratorium on the approval of certificates of need for additional community nursing home beds, etc. HP 01/08/2014 Fav/CS CF 03/18/2014 Fav/CS AHS AP	Fav/CS Yeas 9 Nays 0

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Children, Families, and Elder Affairs

Tuesday, March 18, 2014, 8:00 —9:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 750 Abruzzo (Identical H 789)	Rights of Grandparents and Great-grandparents; Revising the definition of the term "next of kin" to include great-grandparents for purposes of various proceedings relating to children; providing great- grandparents the same visitation rights as grandparents; providing for a great-grandparent's right to notice of adoption; repealing provisions relating to actions by a grandparent for visitation rights; providing for application of the Uniform Child Custody Jurisdiction and Enforcement Act; encouraging the consolidation of certain concurrent actions; repealing provisions relating to the effect of adoption of a child by a stepparent on grandparent visitation rights, etc. CF 03/18/2014 Favorable JU RC	Favorable Yeas 9 Nays 0
5	SB 972 Galvano (Compare CS/H 561)	Attorneys for Dependent Children with Disabilities; Defining the term "dependent child with a suspected or known disability"; providing that the Legislature intends that an attorney be appointed for a child in a proceeding under ch. 39, F.S., if the child has a suspected or known disability; requiring that the appointment continue in effect until the attorney is allowed to withdraw or is discharged by the court or until the case is terminated, etc. CF 03/18/2014 Fav/CS JU AP	Fav/CS Yeas 9 Nays 0
6	SB 1082 Legg (Identical H 935)	Adult Day Care Centers; Revising exemptions from licensure and regulation; providing for operation of an adult day care center in a temporary location under certain conditions; revising a ground for agency action against the owner of a center or its operator or employee; authorizing the agency to issue a conditional license to a center that temporarily relocates; revising staff training requirements; requiring a center to notify the agency before proceeding with building alterations under certain circumstances, etc. CF 03/18/2014 Fav/CS AHS AP	Fav/CS Yeas 9 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1180 Sobel (Similar H 991)	Chemicals in Consumer Products; Requiring the Department of Health to publish a list of chemicals of high concern present in consumer products designed for use by pregnant women and children; providing criteria for inclusion on the list; authorizing the department to participate with other states and governmental entities in an interstate clearinghouse established for specified purposes, etc. CF 03/18/2014 Temporarily Postponed HP AHS AP	Temporarily Postponed
8	SB 1372 Montford (Similar CS/H 589)	Children and Youth Cabinet; Revising the membership of the cabinet, etc. CF 03/18/2014 Favorable ED GO	Favorable Yeas 9 Nays 0
9	SB 1388 Montford (Similar H 1041)	Registered Interns in Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling; Requiring an individual who has not satisfied specified requirements to register as an intern in clinical social work, marriage and family therapy, or mental health counseling; requiring an individual to remain under supervision while practicing under registered intern status; requiring a licensed health professional to be on the premises when clinical services are provided by a registered intern of clinical social work, marriage and family therapy, or mental health counseling in a private practice setting, etc. CF 03/18/2014 Not Considered HP AP	Not Considered
10	SB 1486 Garcia (Similar H 799)	Transitional Living Facilities; Providing requirements for transitional living facility policies and procedures governing client admission, transfer, and discharge; prohibiting a licensee or employee of a facility from serving notice upon a client to leave the premises or take other retaliatory action under certain circumstances; providing conditions for investigating and reporting incidents of abuse, neglect, mistreatment, or exploitation of clients; providing background screening requirements; requiring the agency, the Department of Health, the Agency for Persons with Disabilities, and the Department of Children and Families to develop electronic information systems for certain purposes, etc. CF 03/18/2014 Not Considered HP AP	Not Considered

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Other Related Meeting Documents

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 Children, Families, and Elder Affairs

BILL: SPB 7088

INTRODUCER: For consideration by the Children, Families, and Elder Affairs Committee

SUBJECT: Human Trafficking

DATE: March 14, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Crosier</u>	<u>Hendon</u>		Pre-meeting

I. Summary:

SPB 7088 changes statutory requirements for safe houses to establish standards for residential treatment of sexually exploited children and authorizes safe foster homes. Section 409.1678, F.S., governs safe homes. The bill creates a certification program for safe houses and safe foster homes at the Department of Children and Families (DCF), and requires certification in order for these facilities to accept state funds specifically allocated to care for sexually exploited children. The bill allows DCF to operate one secure safe house as a pilot program, sets requirements for that safe house, provides for judicial oversight, and requires an evaluation of the pilot program.

The bill also makes administrative changes to the requirements for DCF and the community-based care agencies (CBCs) related to sexually exploited children. The bill requires DCF to create or adopt initial screening and assessment instruments for use in identifying and serving sexually exploited children, and allows a child to be placed in a safe house if the assessment instrument determines that is the most appropriate setting and a safe house is available.

The bill requires DCF and the CBCs to plan and to have response protocols in place regarding serving sexually exploited children. The bill also requires DCF, the CBCs, and DJJ to participate on any local task forces related to this population.

The bill requires the Office of Program Policy Analysis and Government Accountability to conduct a study on commercial sexual exploitation of children in Florida and specifies topics for inclusion in the study.

The bill has an effective date of July 1, 2014, and would have an indeterminate fiscal impact to DCF and DJJ.

II. Present Situation:

Florida law defines human trafficking as “soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.”¹ Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor.² Trafficking often subjects victims to force, fraud, and coercion.³

There are no definitive statistics on the extent of human trafficking. The U.S. Department of State estimates that as many as 27 million victims are being trafficked worldwide at any given time. They also estimate that there were approximately 40,000 victims being trafficked in the United States in 2012.⁴ Florida is estimated to have the third highest rate of human trafficking in the United States, following New York and California.⁵

Commercial Sex Trafficking of Minors

Human trafficking involving commercial sex is also known as commercial sexual exploitation or commercial sex trafficking. The United States Trafficking Victims Protection Act of 2000 defines sex trafficking as the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.⁶

In cases of commercial sex trafficking of minors, pimps often operate as the primary domestic sex traffickers and target particularly vulnerable youth, such as runaway and homeless youth.⁷ Pimps may engage in a “grooming” process where a child is showered with gifts, treats, and compliments in order to earn his or her trust.⁸ Often the children have low self-esteem and may come from broken families or have past childhood trauma which may include sexual or physical abuse.⁹ This makes the children easier targets because they are emotionally vulnerable, looking for someone to love and care for them. After the pimp earns the child’s trust the pimp may engage in physical, sexual, and/or emotional abuse of the child.¹⁰ The effect is to psychologically and emotionally break the child so that he or she becomes completely dependent on the pimp.¹¹ Psychologists and clinicians call this phenomenon “traumatic bonding.”¹² This occurs where a person has dysfunctional attachment that occurs in the presence of danger, shame, or exploitation. These situations often include seduction, deception or betrayal, and some form of danger or risk is always present.¹³ While this is a common way that commercial sexual

¹ Section 787.06(2)(d), F.S.

² Section 787.06(1)(a), F.S.

³ *Id.*

⁴ *Trafficking in Persons Report 2013*, U.S. Department of State, available at: <http://www.state.gov/j/tip/rls/tiprpt/2013/> (last visited March 14, 2014).

⁵ Healthy Families Subcommittee Presentation by Professor Terry Coonan, FSU Human Rights Center, (Jan. 14, 2014).

⁶ Trafficking Victims Protection Act of 2000, 22 USC 7101.

⁷ Sex Trafficking of Children in the United States, The Polaris Project, available at <http://www.polarisproject.org/what-we-do/policy-advocacy/prosecuting-traffickers/895-sex-trafficking-of-minors> (last visited March 14, 2014).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

exploitation occurs, some children are commercially sexually exploited by family members or organized networks.¹⁴

The Department of Homeland Security (DHS) reports that each year as many as 100,000 to 300,000 children in the United States are at risk of being trafficked for commercial sex in the United States.¹⁵

Commercial Sex Trafficking of Minors in Florida

The Department of Children and Families (DCF) verified 182 victims of commercial sex trafficking in FY 2012-13. Of these, nine victims were exploited by their caregiver, and 27 victims were removed from their caregivers. DCF also identified an additional 185 children who may be at risk of becoming commercial sexual exploitation victims.^{16, 17} According to DCF, there are likely many more victims in Florida than have been identified.

The Florida Safe Harbor Act of 2012 allows sexually exploited children to be treated as dependent children¹⁸ rather than delinquent children.¹⁹ The act amended Florida law to make child prostitution abuse of a child, rather than a criminal act by the child, and allows children who are victims of sexual exploitation to be adjudicated dependent.²⁰

¹⁴ *Id.*

¹⁵ *Human Trafficking 101 for School Administrators and Staff*, Blue Campaign, The Department of Homeland Security, available at:

<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&ved=0CCoQFjAA&url=http%3A%2F%2Fwww.dhs.gov%2Fsites%2Fdefault%2Ffiles%2Fpublications%2Fblue-campaign%2FBlue%2520Campaign%2520-%2520Human%2520Trafficking%2520101%2520for%2520School%2520Administrators%2520and%2520Staff.pdf&ei=4DvMU6oO4vrkQeAsYDoBg&usq=AFQjCNGLuEaOhuEVFzRuCTYISWLOrgTQ7w&sig2=AskcWjhjSuLHF6D7LHrg> (last visited March 14, 2014).

¹⁶ Florida Department of Children and Families *Annual Human Trafficking Report 2012-13 Federal Fiscal Year*.

¹⁷ To determine whether a child is at risk of becoming a commercial sexual exploitation victim, DCF looked at three additional data sets in their IT system for dependent children (FSFN). The three indicators in FSFN indicate that that the child possibly has involvement in sexual exploitation, is possibly involved in prostitution, or were previously verified as a victim of human trafficking.

¹⁸ A child who is found to be dependent is a child who pursuant to ch. 39, F.S., is found by the court:

- (a) To have been abandoned, abused, or neglected by the child's parent or parents or legal custodians;
- (b) To have been surrendered to the department, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency for purpose of adoption;
- (c) To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of this chapter, a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;
- (d) To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;
- (e) To have no parent or legal custodians capable of providing supervision and care;
- (f) To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians; or
- (g) To have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care.

¹⁹ Section 39.001(4)(b)(2), F.S.

²⁰ Section 39.01(67), F.S.; however, child prostitution is not considered sexual abuse of a child if the child is under arrest or being prosecuted in a delinquency or criminal proceed for a violation in ch. 796 (offenses related to prostitution) or forcing a child to solicit for or engage in prostitution, engage in a sexual performance, as defined by ch. 827, or participate in the trade of sex trafficking as provided in s. 796.035.

Law enforcement officers are required to deliver a minor taken into custody to the DCF when there is probable cause to believe he or she has been sexually exploited.²¹ Safe houses and short-term safe houses were created by the Safe Harbor Act, and DCF is authorized to place sexually exploited children in these facilities.²²

The Department of Juvenile Justice (DJJ) conducted a tri-county pilot project implementing a screening tool for commercial sexual exploitation of children in 2012-2013. In total, there were 353 individual youth screened. Of the 353 screenings, 42 youth were verified as victims of commercial sexual exploitation. This means that 11.9 percent of the youth that had a history of running away (the prerequisite for a screening), and were screened, were ultimately verified by DCF as a sexual exploitation victim.²³

DCF primarily becomes aware of minors who are sexually exploited due to a call to the child abuse hotline or because the child is in the dependency system. As with any allegation of abuse, when allegations of commercial sexual exploitation of a child are reported to DCF's child abuse hotline and the hotline employee believes that the report meets the statutory definition of abuse, abandonment or neglect, an investigation by a child protective investigator is triggered.²⁴ If the allegation is verified and the child has no known parent, legal custodian, or responsible adult relative who is capable of providing the necessary and appropriate supervision and care, DCF may petition to have the child adjudicated dependent.²⁵

Community-based care lead agencies (CBCs) in conjunction with the court, determine placements for children who have been adjudicated dependent. According to DCF, CBCs may also provide services to victims of human trafficking who are not adjudicated dependent as a means of preventing future involvement in the child welfare system. DCF has taken steps to strengthen the infrastructure for serving victims of human trafficking, such as training its child protective investigators and participating in regional task forces.

DJJ has also been working to identify and provide services to human trafficking victims. In addition to the pilot project cited above, the agency secretary chairs the Florida Children and Youth Cabinet's Human Trafficking Workgroup.²⁶ The workgroup focuses on identifying ways in which Florida can end child sex trafficking. The workgroup has representation from the Governor's Office of Adoption and Child Protection, DCF, DJJ, the Florida State University Center for the Advancement of Human Rights and other stakeholders. Workgroup members have begun researching best practices throughout the nation as well as monitoring proposed legislation addressing child sex trafficking.²⁷

Many programs for identifying and providing services for human trafficking victims have emerged through local efforts, which are unique to each community. Human trafficking task

²¹ Section 39.401(2)(b), F.S.

²² Section 409.1678, F.S.

²³ Sexual Exploitation of Youth, Department of Juvenile Justice, (January 23, 2014.)

²⁴ Section 39.201(2)(a), F.S.

²⁵ Section 39.01(15)(g), F.S.

²⁶ Florida Children and Youth Cabinet: *Human Trafficking Workgroup*, available at <http://www.flgov.com/childrens-cabinet-human-trafficking-workgroup/> (last visited Mar. 14, 2014).

²⁷ *Id.*

forces began as a way to raise awareness, coordinate responses, and share information regarding available services. There are nineteen regional task forces dedicated to fighting human trafficking developed throughout Florida.²⁸ The task forces consist of community members involved in human trafficking issues in that area of the state. This may include law enforcement, providers, schools, and faith based organizations. DCF is involved in the leadership in all task forces. The task forces meet at least monthly and operate according to the community's needs.

Services for Victims of Human Trafficking in Florida

Serving victims of human trafficking presents challenges for a variety of reasons.²⁹ These children often do not see themselves as exploited or victims and thus will not self-identify. Instead, they often develop a “trauma bond” with the traffickers, and see themselves as a companion to the trafficker.³⁰ These children often run away from their placements, including from safe houses.³¹ In a DJJ pilot program, DJJ found that of 64 percent of children who were confirmed victims of commercial exploitation had a history of over 5 instances of running away.³² Victims may also try to recruit other children from their placements to go work for the pimp.³³

Services are not consistently available across the state.³⁴ Availability depends on the local response which has emerged to meet the challenge in that area.³⁵ Children's family situations also vary.³⁶ Some children come from the dependency system, but others have a family which wants to remain involved with them and to help.³⁷ There is also not a standardized assessment tool for identifying victims,³⁸ and due to inconsistent training, the level of awareness of the signs of victimization and appropriate responses varies among personnel.³⁹

The Safe Harbor Act in 2012 provided for “safe houses.” Safe houses are homes for sexually exploited children who have been adjudicated dependent or delinquent and need to reside in a secure⁴⁰ residential facility.⁴¹ Safe houses must provide a living environment that has set aside gender-specific, separate, and distinct living quarters for sexually exploited children and must

²⁸ The task forces are in the following counties: Alachua, Bay, Broward, Collier, Duval, Escambia, Hernando, Lake, Leon, Manatee, Marion, Martin, Miami-Dade, Okaloosa, Orange, Palm Beach, Pinellas, Polk, and St. Johns.

²⁹ Testimony from the panel of providers for victims of human trafficking, House Healthy Families Subcommittee, (Feb. 19, 2014).

³⁰ Testimony from the Detective McBride, House Healthy Families Subcommittee, (Feb. 15, 2014).

³¹ Testimony from the panel of providers for victims of human trafficking, House Healthy Families Subcommittee, (Feb. 19, 2014).

³² Sexual Exploitation of Youth, Department of Juvenile Justice, (Jan. 23, 2014).

³³ Testimony from the panel of providers for victims of human trafficking, House Healthy Families Subcommittee, (Feb. 19, 2014).

³⁴ Testimony from the Detective McBride, House Healthy Families Subcommittee, (Feb. 15, 2014).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ E-mail correspondence with the Department of Children and Families, (Dec. 23, 2013), (on file with the Senate Committee on Children, Families, and Elder Affairs).

³⁹ Testimony from the Detective McBride, House Healthy Families Subcommittee, (Feb. 15, 2014).

⁴⁰ The term “secure” is defined as a facility which is supervised 24 hours a day by staff members who are awake while on duty.

⁴¹ Section 409.1678 (1)(b), F.S.

have awake staff members 24 hours a day. Safe houses must also hold a license as a family foster home or residential child-caring agency. Each facility must be appropriately licensed in this state as a family foster home or a residential child-caring agency as defined in s. 409.175, F.S., and must have applied for accreditation within 1 year after being licensed.⁴² A safe house serving children who have been sexually exploited must have available staff or contract personnel who have the clinical expertise, credentials, and training to provide:

- Security;
- Crisis intervention services;
- General counseling and victim-witness counseling;
- A comprehensive assessment;
- Residential care;
- Transportation;
- Access to behavioral health services;
- Recreational activities;
- Food;
- Clothing;
- Supplies;
- Infant care;
- Miscellaneous expenses associated with caring for these children;
- Provide necessary arrangement for or provision of educational services, including life skills services and planning services for the successful transition of residents back to the community; and
- Ensuring necessary and appropriate health care and dental care.⁴³

DCF is required to assess dependent children for placement in a safe house if the child is older than six years of age. The assessment is required to incorporate and address the following:

- Current and historical information from any law enforcement reports;
- Psychological testing or evaluation that has occurred;
- Current and historical information from the guardian ad litem, if one has been assigned;
- Current and historical information from any current therapist, teacher, or other professional who has knowledge of the child and has worked with the child; and
- Any other information concerning the availability and suitability of safe-house placement.

The child may be placed in a safe house if such placement is determined to be appropriate as a result of this assessment and if one is available, but placement is not required.⁴⁴ There are currently two safe houses in Florida, with a total of 11 beds statewide. A third safe house is projected to open in 2014 with 7 beds.⁴⁵

⁴² According to DCF, there are currently no entities that accredit safe houses and safe houses are not sure what type of accreditation they are required to have. No safe houses have applied for accreditation at this time.

⁴³ Section 409.1671, F.S.

⁴⁴ Section 39.524, F.S.

⁴⁵ E-mail correspondence with the Florida Department of Children and Families, (Dec. 20, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

The Citrus Health Network developed the Citrus Helping Adolescents Negatively Impacted by Commercial Exploitation (CHANCE) Program in South Florida.⁴⁶ The program uses therapeutic foster care and a community response team for victims of commercial sexual exploitations.⁴⁷ The program places children in a therapeutic foster home, where only one child is placed.⁴⁸ The parents receive specialized training for this population. Foster parents are required to be available 24 hours per day, 7 days per week, to respond to crises or the need for special therapeutic interventions.⁴⁹ The foster homes are also required to have an advanced alarm system to alert the foster parents of intruders and allow the parents to be aware if the child is leaving the home.⁵⁰ The CHANCE program also includes the following intensive clinical and support services:

- Assessment and evaluation of the child and the family;
- Individual therapy 2-5 times per week with a therapist trained in trauma focused-cognitive behavioral therapy and motivational interviewing;
- Family therapy available as necessary;
- Assignment of a life coach who is a survivor of commercial sexual exploitation for each child;
- Assignment of a peer mentor to provider peer support and encouragement;
- Clinical staff available 24/7 for crisis management or supportive intervention;
- Certified behavioral analyst services to address the behavioral needs of this population;
- Targeted case management to facilitate linkage to all appropriate support services;
- Regular monitoring by the treatment team to ensure all service and treatment plan goals are consistently pursued; and
- Group therapy with other survivors of commercial sex exploitation.

The University of South Florida is contracted to conduct an evaluation of the CHANCE program. The evaluation will be available in November 2014.⁵¹

Specialized group placements are also available to serve commercially sexually exploited children. These group placements do not meet the statutory criteria to be safe houses, but have specialized programs serving sexually exploited children. These facilities may also serve children who have not experienced sexual exploitation. OASIS offers group placements for children served by DCF and DJJ as well as children not involved in either system.⁵² To participate in its program for sex trafficking victims, the victims must be placed there by their caregivers. This program serves both boys and girls. The OASIS program was funded through a specific legislative line item.⁵³ Other providers with specialized programs that are not designated as safe houses include Chrysalis, Images of Glory, and Deveraux.⁵⁴

⁴⁶ Testimony from Human Trafficking Panel, House Healthy Families Subcommittee (Feb. 19, 2014.)

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² E-mail correspondence with the Department of Children and Families, (Feb. 24, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁵³ E-mail correspondence with the Department of Children and Families, (Jan 14, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs.)

⁵⁴ E-mail correspondence with the Department of Children and Families, (Feb. 24, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs.)

Other victims of human trafficking have been placed with parents or relatives, in mental health facilities, in substance abuse facilities, in therapeutic foster homes, in foster care, in DJJ detention centers, or remained in their current placement, after identification as a victim.⁵⁵

The CHANCE program serves 17 children not placed in safe houses with wraparound services. These services include assessment and evaluation, treatment and service plan development, 24/7 on-call clinical staff, individualized and family therapy, life coaching, peer mentorship, case management, certified behavioral analyst services, substance abuse treatment, and psychiatric services.⁵⁶ Victims of human trafficking may be offered other services generally available to children in need through the existing service array, such as substance abuse services, mental health services, and educational services.⁵⁷

Residential Programs in Other States

Limited research has been completed nationwide regarding best practices to serve and treat victims of human trafficking. However, there are some residential programs in other states which serve victims of human trafficking.

Wellspring Living (Wellspring) is a residential facility in Georgia, which serves girls from 12 to 17 years of age who are victims of human trafficking.⁵⁸ This program is licensed as a “maximum watchful oversight” child care facility.⁵⁹ The facility has security features such as locked doors, unbreakable Plexiglas windows, and a fence surrounding the facility. While this program is a locked facility, it has alarmed doors that the children can open. If the alarmed door is pushed there is a delay for the door to open and alarms inform the program staff that somebody has tried to leave the facility. While Wellspring considers themselves a locked facility, exit can occur without the involvement of facility staff. At Wellspring, girls receive trauma-informed therapies, life skills classes, education,⁶⁰ group therapies, family therapy, and other needed services.⁶¹ Following the program, most girls return to their families or to a foster-home or group home setting. The program is working to develop a study of its effectiveness.

In California, Children of the Night (COTN) is a private, non-profit program for children between the ages of 11 and 17 that receives referrals from across the country and only accepts those children whom it believes are willing to leave prostitution and participate in long-term, comprehensive treatment. COTN is a homelike environment with 24 beds.⁶² The children follow a highly structured program that includes attending an on-site school and a college placement program.⁶³ After children complete the comprehensive program of academic and life-skills education, caseworkers are available to provide ongoing case management to graduates.⁶⁴ COTN

⁵⁵ Florida Department of Children and Families *Annual Human Trafficking Report 2012-13 Federal Fiscal Year*.

⁵⁶ Testimony from Human Trafficking Panel, House Healthy Families Subcommittee (Feb. 19, 2014.)

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Provider Resource Results, State of Georgia Out-of-Home Care, available at https://www.gascore.com/resourceguide/search_results.cfm.*

⁶⁰ Testimony from Human Trafficking Panel, House Healthy Families Subcommittee (Feb. 19, 2014.)

⁶¹ *Wellspring Living for Girls*, Wellspring Living, available at <https://wellspringliving.org/wellspring-living-for-girls/>

⁶² Children of the Night, available at <https://www.childrenofthenight.org/index.html> (last visited March 14, 2014.)

⁶³ *Id.*

⁶⁴ *Id.*

has existed since its inception through the sole support of private contributions from individuals, corporations, and foundations.⁶⁵

Treatment for Victims of Human Trafficking

In the immediate as well as long-term aftermath of exposure to trauma, children are at risk of developing significant emotional and behavioral difficulties.⁶⁶ Trauma-focused cognitive behavioral therapy (TF-CBT) is an evidence-based treatment approach shown to help children, adolescents, and their caregivers overcome trauma-related difficulties.⁶⁷ It is designed to reduce negative emotional and behavioral responses following child sexual abuse, domestic violence, traumatic loss, and other traumatic events.⁶⁸ The treatment is based on learning and cognitive theories, and addresses distorted beliefs and attributions related to the abuse.⁶⁹ TF-CBT provides a supportive environment in which children are encouraged to talk about their traumatic experience.⁷⁰ TF-CBT combines elements drawn from:

- Cognitive therapy, which aims to change behavior by addressing a person's thoughts or perceptions, particularly those thinking patterns that create distorted or unhelpful views;
- Behavioral therapy, which focuses on modifying habitual responses (e.g., anger, fear) to identified situations or stimuli; and
- Family therapy, which examines patterns of interactions among family members to identify and alleviate problems.⁷¹

TF-CBT is a short-term treatment typically provided in 12 to 18 sessions of 50 to 90 minutes, depending on treatment needs.⁷² The intervention is usually provided in outpatient mental health facilities, but it has been used in hospital, group home, school, community, residential, and in-home settings.⁷³

Recent research findings suggest that TF-CBT is more effective than nondirective or client centered treatment approaches for children who have a history of multiple traumas (e.g., sexual abuse, exposure to domestic violence, physical abuse, as well as other traumas).⁷⁴ An individualized, strengths-based approach refers to policies, practice methods, and strategies that identify and draw upon the strengths of children, families, and communities.⁷⁵ Strengths-based practice involves a shift from a deficit approach, which emphasizes problems and

⁶⁵ *Id.*

⁶⁶ *Trauma-Focused Cognitive Behavioral Therapy for Children Affected by Sexual Abuse or Trauma*, The Administration for Children and Families, U.S. Department of Health and Human Services, (August 2012), available at <https://www.childwelfare.gov/pubs/trauma/>

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *An Individualized, Strengths-Based Approach in Public Child Welfare Driven Systems of Care*, Administration for Children and Families, US Department of Health and Human Services, available at <https://www.childwelfare.gov/pubs/acloserlook/strengthsbased/strengthsbased1.cfm> (last visited March 14, 2014).

pathology, to a positive partnership with the family.⁷⁶ The approach acknowledges each child and family's unique set of strengths and challenges, and engages the family as a partner in developing and implementing the service plan.⁷⁷

III. Effect of Proposed Changes

Section 1 creates s. 409.1754, F.S., related to administrative requirements for serving sexually exploited children. The bill deletes the current assessment process to determine whether a child should be placed in a safe house and requires DCF to develop or adopt one or more initial screening and assessment instruments to identify, determine the needs of, plan services for, and identify an appropriate residential environment for sexually exploited children. The bill requires that the assessment instruments include the ability to determine whether placement in a safe house is appropriate. The bill requires that the initial screening and assessment instruments used to determine appropriate residential placement of a sexually exploited child consider:

- Risk of the sexually exploited child running away;
- Risk of the sexually exploited child recruiting other children into the commercial sex trade;
- Level of the sexually exploited child's attachment to his or her exploiter;
- Level and type of trauma that the sexually exploited child has endured;
- Nature of the child's interactions with law enforcement;
- Length of time that the child was sexually exploited; and
- Extent of any substance abuse by the sexually exploited child.

The bill specifies that that if a safe house placement is determined to be the most appropriate setting using the assessment tool, the child may be placed in a safe house, as long as a placement is available. However, the bill specifies that a child may be placed in another setting if it is more appropriate to his or her needs and the child's behaviors can be managed in those settings in a manner that does not endanger other children, or if a safe house or safe foster home is not available.

The bill requires the initial screening and assessment instruments to be validated if possible and requires the instruments to be used by the DCF, juvenile assessment centers, CBCs, and providers serving sexually exploited children. The bill requires DCF to consult state and local agencies, organizations, and individuals involved in the identification and care of sexually exploited children to develop or adopt the initial screening and assessment instruments. The bill requires DCF to establish rules specifying the initial screening and assessment instruments to be used, the requirements for their use, and the reporting of data collected through them and specifies that entities are not precluded from using additional assessment instruments in the course of serving sexually exploited children.

The bill requires DCF and CBCs to assign cases where a child is alleged, suspected, or known to have been sexually exploited to child protective investigators (CPIs) and case managers who have received specialized intensive training in investigating cases involving a sexually exploited child. Similarly, the bill requires the Department of Juvenile Justice juvenile probation staff administering the detention risk assessment instrument to have specialized intensive training in

⁷⁶ *Id.*

⁷⁷ *Id.*

identifying and serving sexually exploited children. The bill specifies CPIs and case managers must receive this training prior to accepting any case involving sexually exploited children.

The bill requires DCF and CBCs to conduct regular multidisciplinary staffings for sexually exploited children to ensure that all relevant information is known to all parties and that services are coordinated across systems. The bill requires DCF or the CBC to coordinate these staffings and invite individuals involved in the child's care. The bill specifies that this may include, but is not limited to, staff from the juvenile justice system, the school district, service providers, and victim advocates.

The bill requires each CBC and DCF region to jointly identify the service needs of sexually exploited children and plan for developing sufficient capacity to meet them.

The bill requires each CBC and DCF circuit to establish local protocols and procedures that are responsive to the varying circumstances that sexually exploited children are in. The bill requires the protocols and procedures to address the full continuum of needs of sexually exploited children to the extent of available funding. The bill requires that the protocols and procedures be used by CMs and CPIs when working with a sexually exploited child.

The bill requires the local DCF circuit administrator or his or her designee, the local circuit director of the Department of Juvenile Justice or his or her designee, and the CBC chief operating officer, or his or her designee to participate in any task force, committee, council, advisory group, coalition, or other entity active in the circuit for coordinating responses to address human trafficking or sexual exploitation of children. If no such entity exists, the bill specifies that the local DCF circuit administrator must work to initiate one.

Section 2 amends the definition of "safe house" as a "group residential placement certified by DCF to care for sexually exploited children," and creates and defines "safe foster home" as "a foster home certified by DCF to care for sexually exploited children."

The bill also amends the definition of a sexually exploited child to include those children who have not been adjudicated dependent, which permits them to be served by safe houses and safe foster homes.

The bill specifies that safe houses and safe foster homes are required to provide a safe, separate, and therapeutic environment tailored to the needs of sexually exploited children who have endured significant trauma. The bill requires DCF to certify safe homes and safe foster homes.

The bill amends the current requirements for safe houses, and creates requirements for safe foster homes, in order to be certified by DCF. The bill requires that safe houses and safe foster homes be licensed as residential child-caring agencies or licensed family foster homes, respectively, and that safe houses have awake staff on duty 24 hours a day.

The bill requires that safe houses and safe foster homes house a single sex, group children with similar chronological ages or levels of maturity together, and treat and care for these children in a manner that separates them from children with other needs. The bill specifies that safe houses and safe foster homes may care for other populations, as long as those populations do not interact

with the sexually exploited children. The bill requires that safe houses and safe foster homes use trauma-informed and strength based approaches to care, to the extent possible and appropriate.

The bill requires that safe houses and safe foster homes provide appropriate security through facility design, hardware, technology, staffing, and siting, including but not limited to using external video monitoring or alarmed doors, or being situated in a remote location. The bill specifies that sexually exploited children must be allowed to exit the safe house or safe foster home if they choose.

The bill requires safe houses and safe foster homes to provide services tailored to the needs of sexually exploited children and to determine these needs on a case-by-case basis. The bill specifies that in addition to the services required for traditional foster homes and child caring facilities, safe houses and safe foster homes also coordinate the following services:

- A comprehensive assessment of the service needs of each resident;
- Victim-witness counseling;
- Family counseling;
- Behavioral health services;
- Treatment and intervention for sexual assault;
- Life skills services;
- Mentoring by a survivor of sexual exploitation, if available and appropriate;
- Substance abuse screening, and where necessary, access to treatment;
- Planning services for the successful transition of residents back to the community;
- Activities for sexually exploited children residing in the safe house, scheduled in a manner that provides them with a full schedule; and
- Any additional services determined by DCF.

The bill requires foster parents of safe foster homes to complete intensive training regarding the needs of sexually exploited children, the effects of trauma and sexual exploitation, and how to address those needs using strength-based and trauma-informed approaches. The bill requires DCF to specify this training by rule. The bill also allows DCF to establish additional criteria in rule for the certification of safe houses and safe foster homes.

The bill requires that safe houses and safe foster homes reapply for certification and be inspected annually. The bill allows DCF to place a moratorium on referrals and revoke the certification of a safe house or safe foster home if it does not meet the requirements of certification.

The bill specifies that in order to accept state funds specifically allocated to provide services to sexually exploited children, the residential facility must be certified as a safe house or safe foster home.

The bill authorizes DCF to facilitate the development of one secure safe house on a pilot basis in order to evaluate the therapeutic benefits of a secure residential setting within the broader array of residential and community-based services available to meet the needs of sexually exploited children. The bill specifies that the secure safe house is intended for those sexually exploited children with the greatest needs and for whom no less restrictive placement has been or will be effective in addressing the effects of severe abuse, violence, trauma, or exploiter control endured

by the child. The bill specifies that the setting is only available to sexually exploited children who have been, or are in the process of being, adjudicated dependent. The bill specifies that children can remain in the secure safe house from five days to up to 10 months.

The bill requires DCF to select the region where the secure safe house can be sited and to collaborate with the local CBC to design the pilot project. The bill specifies that the secure safe house must be a certified safe house, have no more than 15 beds, and have security features to prevent any entry into or exit from the facility or its grounds without the involvement of staff. The bill specifies that these features may include, but are not limited to, walls, fencing, gates, and locking doors.

The bill requires that the facility staff, the child, the child's parent or guardian, and the case manager develop a plan regarding how the child will be cared for at least thirty days prior to leaving the facility.

The bill specifies that sexually exploited dependent children may be placed in the secure safe house from any region of Florida and that DCF, in consultation with the CBCs serving the children, must approve all placements in the secure safe house. The bill also provides that a child may only be placed in the secure safe house if he or she has intensive needs, mental health issues, or other factors which prevent the child from being safely cared for in a less restrictive setting.

The bill specifies that in addition to the other criteria required to be used to determine whether safe house placement is appropriate for a child, a child's lack of willingness to participate in less intensive programs and lack of treatment progress in less restrictive placements must also be considered. The bill specifies that DCF may establish additional criteria for placement in the secure safe house.

The bill allows a dependent child to be taken to a secure safe house for evaluation of the appropriateness of placement for treatment if:

- There is probable cause that the child has been sexually exploited;
- The child meets the criteria to be placed in a safe house;
- The child recently engaged in behaviors that subject the child to victimization, violence, emotional harm, serious bodily harm, or health risks that endanger the child, posing a real and present threat of substantial harm to the child's well-being;
- There is a substantial likelihood that without care or treatment the child will endanger or cause serious bodily harm to others, as evidenced by previous behavior; and
- Less restrictive placement alternatives are unlikely to be effective in keeping the child from engaging in the behaviors specified above, as determined by a DCF or CBC employee.

The bill requires DCF to contract for an evaluation of the secure safe house. The bill specifies that the evaluation must address the effectiveness in facilitating the rehabilitation of sexually exploited children. The bill specifies that the evaluation must describe the program model and facility design, assess the effectiveness of the facility in meeting the treatment and security needs of sexually exploited children, analyze its cost-effectiveness, and provide recommendations regarding the continued operation of the pilot program and any changes or enhancements. The

bill specifies that the evaluation must be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2018.

Section 3 amends s. 39.524, F.S., to add a safe foster home as an appropriate placement for the child using the initial screening and assessment instrument provided in s. 409.1754(1), F.S.

Section 4 creates s. 39.4072, F.S., to allow a dependent child to be taken to a secure safe house for evaluation of the appropriateness of placement for treatment if:

- There is probable cause that the child has been sexually exploited;
- The child meets the criteria to be placed in a safe house;
- The child recently engaged in behaviors that subject the child to victimization, violence, emotional harm, serious bodily harm, or health risks that endanger the child, posing a real and present threat of substantial harm to the child's well-being;
- There is a substantial likelihood that without care or treatment the child will endanger or cause serious bodily harm to others, as evidenced by previous behavior; and
- Less restrictive placement alternatives are unlikely to be effective in keeping the child from engaging in the behaviors specified above, as determined by a DCF or CBC employee.

The bill allows a DCF official to initiate an evaluation of a child if the child is the subject of an open investigation or under the supervision of the court, as long as the child meets the criteria for evaluation specified above. The bill allows a CPI, law enforcement officer, case manager, or other qualified individual to transport the child to the secure safe house for assessment and stabilization.

The bill allows the secure safe house to admit the child for assessment and stabilization pending the filing and adjudication of a petition by DCF alleging the need for a change in placement. The bill requires the secure safe house to provide notice regarding the child's admittance for assessment to the child's parent or guardian, foster parent, case manager, and guardian ad litem (GAL). The bill specifies that if the child does not have a GAL and a lawyer, the court must appoint them.

The bill requires a psychiatrist, clinical psychologist, licensed mental health counselor, or licensed clinical social worker at the secure safe house to evaluate the child. The bill specifies that this professional must have experience working with sexually exploited children. The bill requires the evaluation be conducted as soon as it is appropriate to do so, given the child's emotional, mental, and physical condition and that facility staff continue evaluating the child throughout the placement for evaluation in the secure safe house. The bill permits the staff to access and request relevant information, including, the child's case file, and allows the child's parent or guardian, foster parent, case manager, and GAL to provide any information they believe is relevant to the evaluation. The bill requires that the evaluation be based on whether the child meets criteria for admission to the secure safe house.

If the evaluator determines that a secure safe house would not best meet the child's needs, DCF must place the child in the least restrictive setting which is appropriate for the child's needs. If the evaluator determines that placement in the secure safe house would best meet the child's needs, DCF must petition the court within 24 hours for placement, and the secure safe house must admit the child for placement pending a judicial determination. If the evaluator determines

that additional evaluation is required before a determination may be made, DCF must petition the court within 24 hours to extend the placement for evaluation purposes up to 30 days or until a determination may be made regarding the need for extended secure safe house placement for treatment, whichever comes first. The child shall remain in the secure safe house pending the court order.

The bill requires DCF to provide all evaluations to the child's parent or guardian, case manager, and GAL.

Section 5 creates s. 39.4074, F.S., to allow if the evaluation of the child results in a determination that placement for treatment in a secure safe house would best meet the child's needs, DCF may file a petition for placement in dependency court. The bill requires DCF to provide notice to the child's parents. The bill specifies that if the child's parents consent to the placement, the court must enter an order placing the child in the secure safe house for up to 45 days, pending review by the court. The bill also specifies that if the child's parents refuse or are unable to consent, within 24 hours of the filing of the petition, the court must hear all parties in person or by counsel, or both. The bill specifies that if the court concludes that the child meets the criteria for placement in the secure safe house, it must order that the child be placed in the secure safe house for a period of up to 45 days, pending review by the court.

The bill requires the secure safe house to review the child's progress toward the treatment goals and assess whether the child's needs can be met in a less restrictive treatment program. This review and assessment must be done every 20 days, commencing upon the beginning of treatment according to the treatment plan. The bill requires the secure safe house to submit a report of its findings to the child's parent or guardian, the GAL, the case manager, DCF, and the court. The bill specifies that DCF may not reimburse a secure safe house until the secure safe house has submitted every written report that is due.

The bill requires the court to conduct an initial review of the status of the child's treatment plan no later than 35 days after the child's placement in the secure safe house. The bill also requires the court to review the child's treatment plan 20 days after the initial review and then every 60 days thereafter, until the child no longer requires placement in the secure safe house, or until the child has resided in the secure safe house for 10 months. The bill specifies that if the child has resided in the secure safe house for 9 months, a court hearing must be held to determine an appropriate setting and appropriate services for the child after 10 months.

The bill requires the child's continued placement in a secure safe house to be a subject of judicial review at any time that a judicial review is held pursuant to s. 39.701, F.S. The bill specifies that if, at any time, the court determines that the child has not been sexually exploited or that the placement in the safe house is no longer appropriate, the court must order DCF to place the child in the least restrictive setting that is best suited to meet the child's needs. The bill requires DCF to place the child in another setting when continued placement in the secure safe house is no longer appropriate.

Section 6 requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study on commercial sexual exploitation of children in Florida. The bill requires the study to assess the extent of sexual exploitation of children in Florida, including the

prevalence in various regions of the state, estimates of the number of youth who have been sexually exploited, and service gaps for treating this population. The bill requires the study to analyze the operation of safe houses in Florida and address the effectiveness of safe houses and safe foster homes in addressing the safety, therapeutic, health, and emotional needs of sexually exploited children, including the nature and appropriateness of subsequent placements, extent of sexual exploitation post-placement, and educational attainment.

The bill requires OPPAGA to report its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2017.

The bill requires DCF to establish rules regarding the initial screening and assessment instruments and the training for staff of safe houses and foster parents in safe foster homes. The bill provides DCF rulemaking authority regarding additional criteria for certification of safe houses and safe foster homes.

Section 7 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Fourteenth Amendment to the United States Constitution guarantees that the government cannot take away a person's basic rights to "life, liberty or property, without due process of law." Under s. 394.463, F.S., also known as the Baker Act, children can be involuntarily confined in a hospital or crisis stabilization unit for mental health assessment. However, the criteria to place a sexually exploited child in a secure safe house is based on risk of running away, recruiting other children into the commercial sex trade, attachment to his or her exploiter, level of trauma endured and interactions with law enforcement. The Florida Legislature has previously stated that sexually exploited children are victims not criminals.

The following sections of the bill may be inconsistent with the state and federal constitution:

Section 2 - The department, in consultation with the community-based care lead agency serving the child, shall approve all placements of children in the secure safe house.

Section 39.402(8)(a), F.S., states that a child may not be held in a shelter for longer than 24 hours unless ordered by the court not the department after a shelter hearing.

Section 2 - A child may be placed in the secure safe house for a minimum of 5 days and a maximum of 10 months.

Section 4 - A child may be taken to a secure safe house for evaluation of the appropriateness of placement for treatment in a secure safe house if there is probable cause that the child has been sexually exploited and a less restrictive placement alternative is unlikely to be effective in keeping the child from engaging in certain behaviors as determined by a department or community-based care lead agency.

Section 4 - An official of the department may initiate an evaluation of a child who is the subject of an open investigation or under the supervision of the court if certain criteria are met.

Section 4 - Within five days after the child's admittance to the secure safe house for evaluation, the psychiatrist, clinical psychologist, licensed mental health counselor, or licensed clinical social worker shall determine whether the secure safe house would best meet the child's needs or whether additional evaluation is required before a conclusion can be reached.

Section 4 - If additional evaluation is required before a determination may be made about the child's needs for secure safe house placement for treatment, the department shall petition the court within 24 hours to extend the placement of the child for evaluation purposes up to 30 days or until a determination may be made regarding the need for secure safe house placement for treatment, whichever comes first. The child shall remain in the secure safe house pending the court order.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill specifies certain provisions to be implemented based on an appropriation. The bill allows the Department of Children and Families to create a Secure Safe House Pilot Program. Such a program would increase costs to the department by requiring assessments of potential children, placement of sexually exploited children in safe houses or specialized foster homes, case management services and treatment services. The bill requires the Department of Juvenile Justice to provide intensive training to probation officers and other staff on identifying and serving sexually exploited children. Other costs

to the state would be the appointment of an attorney to represent the child in court proceedings. The bill does not specify who would pay for such attorneys. The court has broad latitude to ensure that certain persons receive legal representation. In some cases, the court will appoint a pro-bono attorney, while in other cases, attorneys are paid through a contract with the Justice Administrative Commission. The cost the bill to state agencies, the state court system, and the community based care agencies cannot be determined without knowing how many children would be served and in what way in safe houses and in the Secure Safe House Pilot Program.

VI. Technical Deficiencies:

Line 128 states each region of the department and each community-based care lead agency shall establish local protocols and procedures for working with sexually exploited children. It should be clarified that each region of the department and community-based care lead agency shall work together to establish local protocols and procedures.

Lines 146, 148, 150, 155, and 162 refer to the local circuit administrator. It should be clarified if the local circuit administrator is a DCF employee or the administrator of the judicial circuit.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.524 and 409.1678.

This bill creates the following sections of the Florida Statutes: 39.4072, 39.4074, and 409.1754.

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.

FOR CONSIDERATION By the Committee on Children, Families, and Elder Affairs

586-02587-14

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1 A bill to be entitled
 2 An act relating to human trafficking; creating s.
 3 409.1754; requiring the department to develop or adopt
 4 initial screening and assessment instruments;
 5 specifying the process for the department to develop
 6 or adopt initial screening and assessment instruments;
 7 providing criteria for placement in safe houses or
 8 safe foster homes; allowing entities to use additional
 9 initial screening and assessment instruments;
 10 requiring the department, community-based care lead
 11 agencies, and staff administering the detention risk
 12 assessment instrument to receive specified training;
 13 requiring the department and lead agencies to hold
 14 multidisciplinary staffings under certain conditions;
 15 requiring the department and lead agencies to develop
 16 specific plans and protocols; directing the
 17 department, the Department of Juvenile Justice, and
 18 lead agencies to participate in coalitions, task
 19 forces, or similar organizations to coordinate local
 20 responses to human trafficking; requiring the
 21 department to attempt to initiate a task force if none
 22 is active in a local area; amending s. 409.1678;
 23 providing definitions; authorizing the Department of
 24 Children and Families to certify safe houses and safe
 25 foster homes; providing requirements for certification
 26 as safe houses and safe foster homes; allowing the
 27 department to certify a secure safe house to operate
 28 as a pilot program; providing requirements for the
 29 secure safe house pilot program; amending s. 39.524;

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30 providing for review of appropriateness of safe harbor
 31 placement in both safe houses and safe foster homes;
 32 amending criteria for placement; authorizing placement
 33 in settings other than safe houses and safe foster
 34 homes under certain conditions; requiring the Office
 35 of Program Policy Analysis and Government
 36 Accountability to conduct a study on commercial
 37 exploitation of children in Florida and related
 38 topics; creating s. 39.4072; providing for placement
 39 for evaluation in a secure safe house if certain
 40 criteria is met; specifying the process for evaluating
 41 whether a child meets criteria for placement for
 42 treatment in a secure safe house; creating s. 39.4074;
 43 authorizing the department to file a petition for
 44 placement in a secure safe house if the child is
 45 evaluated to meet criteria; providing for court
 46 determination; requiring reporting on a child's
 47 treatment progress in a secure safe house; providing
 48 for court review; providing an effective date.

49
 50 Be It Enacted by the Legislature of the State of Florida:

51
 52 Section 1. Section 409.1754, Florida Statutes, is created
 53 to read:

54 409.1754 Sexually Exploited Children; Screening and
 55 Assessment; Training; Case Management; Task Forces.—

56 (1) SCREENING AND ASSESSMENT.—

57 (a) The department shall develop or adopt one or more
 58 initial screening and assessment instruments to identify,

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59 determine the needs of, plan services for, and identify
 60 appropriate placement for sexually exploited children. The
 61 department shall consult state and local agencies,
 62 organizations, and individuals involved in the identification
 63 and care of sexually exploited children in developing or
 64 adopting the initial screening and assessment instruments. The
 65 initial screening and assessment instruments shall include
 66 assessment of appropriate placement, including whether placement
 67 in a safe house or safe foster home is appropriate, and shall
 68 consider, at a minimum, the following factors:

- 69 1. Risk of the sexually exploited child running away.
- 70 2. Risk of the sexually exploited child recruiting other
 71 children into the commercial sex trade.
- 72 3. Level of the sexually exploited child's attachment to
 73 his or her exploiter.
- 74 4. Level and type of trauma that the sexually exploited
 75 child has endured.
- 76 5. Nature of the sexually exploited child's interactions
 77 with law enforcement.
- 78 6. Length of time that the child was sexually exploited.
- 79 7. Extent of any substance abuse by the sexually exploited
 80 child.

81 (b) The initial screening and assessment instruments shall
 82 be validated if possible and must be used by the department,
 83 juvenile assessment centers as provided in s. 985.135, and
 84 community-based care lead agencies.

85 (c) The department shall establish rules specifying the
 86 initial screening and assessment instruments to be used, the
 87 requirements for their use, and the reporting of data collected

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88 through them.

89 (d) The department, the Department of Juvenile Justice, and
 90 community-based care lead agencies are not precluded from using
 91 additional assessment instruments in the course of serving
 92 sexually exploited children.

93 (2) TRAINING; CASE MANAGEMENT; TASK FORCES.-

94 (a)1. The department and community-based care lead agencies
 95 shall ensure that cases in which a child is alleged, suspected,
 96 or known to have been sexually exploited are assigned to child
 97 protective investigators and case managers who have specialized
 98 intensive training in handling cases involving a sexually
 99 exploited child. The department and lead agencies shall ensure
 100 that child protective investigators and case managers,
 101 respectively, receive this training prior to accepting any case
 102 involving a sexually exploited child.

103 2. The Department of Juvenile Justice shall ensure that
 104 juvenile probation staff or contractors administering the
 105 detention risk assessment instrument receive specialized
 106 intensive training in identifying and serving sexually exploited
 107 children.

108 (b) The department and community-based care lead agencies
 109 shall conduct regular multidisciplinary staffings for sexually
 110 exploited children to ensure that all relevant information is
 111 known to all parties and that services are coordinated across
 112 systems. The department or community-based care lead agency, as
 113 appropriate, shall coordinate these staffings and invite
 114 individuals involved in the child's care. This may include, but
 115 is not limited to, the child's guardian ad litem, juvenile
 116 justice system staff, school district staff, service providers,

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117 and victim advocates.

118 (c)1. Each region of the department and each community-
 119 based care lead agency shall jointly assess local service
 120 capacity to meet the specialized service needs of sexually
 121 exploited children and establish a plan to develop capacity.
 122 Each plan shall be developed in consultation with local law
 123 enforcement officials, local school officials, runaway and
 124 homeless youth program providers, local probation departments,
 125 children's advocacy centers, public defenders, state attorney's
 126 offices, safe houses, and child advocates and services providers
 127 who work directly with sexually exploited children.

128 2. Each region of the department and each community-based
 129 care lead agency shall establish local protocols and procedures
 130 for working with sexually exploited children which are
 131 responsive to the individual circumstances of each child. The
 132 protocols and procedures shall take into account the varying
 133 types and levels of trauma endured; whether the sexual
 134 exploitation is actively occurring, occurred in the past, or
 135 inactive but likely to reoccur; and the differing community
 136 resources and degrees of familial support that may be available.
 137 Child protective investigators and case managers must use the
 138 protocols and procedures when working with a sexually exploited
 139 child.

140 (3) (a) The local regional director may, to the extent that
 141 funds are available, provide training to local law enforcement
 142 officials who are likely to encounter sexually exploited
 143 children in the course of their law enforcement duties. Training
 144 shall address the provisions of this section and how to identify
 145 and obtain appropriate services for sexually exploited children.

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146 The local circuit administrator may contract with a not-for-
 147 profit agency having experience working with sexually exploited
 148 children to provide the training. Circuits may work
 149 cooperatively to provide training, which may be provided on a
 150 regional basis. The department shall assist circuits to obtain
 151 any available funds for the purposes of conducting law
 152 enforcement training from the Office of Juvenile Justice and
 153 Delinquency Prevention of the United States Department of
 154 Justice.

155 (b) Circuit administrators or their designees, chief
 156 probation officers of the Department of Juvenile Justice or
 157 their designees, and the chief operating officers of community
 158 based care lead agencies or their designees shall participate in
 159 any task force, committee, council, advisory group, coalition,
 160 or other entity active in their service area for coordinating
 161 responses to address human trafficking or sexual exploitation of
 162 children. If no such entity exists, the circuit administrator
 163 for the department shall work to initiate one.

164 Section 2. Section 409.1678, Florida Statutes, is amended
 165 to read:

166 (Substantial rewording of section. See
 167 s. 409.1678, F.S., for present text).

168 409.1678 Specialized residential options for children who
 169 are victims of sexual exploitation.—

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

171 (a) "Safe foster home" means a foster home certified by the
 172 department under this section to care for sexually exploited
 173 children.

174 (b) "Safe house" means a group residential placement

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175 certified by the department under this section to care for
 176 sexually exploited children.

177 (c) "Sexually exploited child" means a child who has
 178 suffered sexual exploitation as defined in s. 39.01(67) (g) and
 179 is ineligible for relief and benefits under the federal
 180 Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

181 (2) CERTIFICATION OF SAFE HOUSES AND SAFE FOSTER HOMES.—

182 (a) Safe houses and safe foster homes shall provide a safe,
 183 separate, and therapeutic environment tailored to the needs of
 184 sexually exploited children who have endured significant trauma.
 185 Safe houses and safe foster homes shall use a model of treatment
 186 that includes strength-based and trauma-informed approaches.

187 (b) The department shall certify safe houses and safe
 188 foster homes. A residential facility accepting state funds
 189 appropriated to provide services to sexually exploited children
 190 or child victims of sex trafficking must be certified by the
 191 department as a safe house or a safe foster home. No entity may
 192 use the designation "safe house" or "safe foster home" and hold
 193 themselves out as serving sexually exploited children unless the
 194 entity is certified under this section.

195 (c) To be certified, a safe house must hold a license as a
 196 residential child-caring agency, and a safe foster home must
 197 hold a license as a family foster home, pursuant to s. 409.175.
 198 A safe house or safe foster home must also:

- 199 1. Use trauma-informed and strength-based approaches to
 200 care, to the extent possible and appropriate.
 201 2. Serve exclusively one sex.
 202 3. Group sexually exploited children by age or maturity
 203 level.

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204 4. Care for sexually exploited children in a manner that
 205 separates these children from children with other needs. Safe
 206 houses and safe foster homes may care for other populations, if
 207 the children who have not experienced sexual exploitation do not
 208 interact with children who have experienced sexual exploitation.

209 5. Have awake staff members on duty 24 hours a day, if a
 210 safe house.

211 6. Provide appropriate security through facility design,
 212 hardware, technology, staffing, and siting, including but not
 213 limited to external video monitoring or alarmed doors, having a
 214 high staff-to-client ratio, or being situated in a remote
 215 location isolated from major transportation centers and common
 216 trafficking areas. However, such security must allow sexually
 217 exploited children to exit the safe house if they choose.

218 7. Meet other criteria established by the department in
 219 rule, which may include, but are not limited to, personnel
 220 qualifications, staffing ratios, and services content.

221 (d) Safe houses and safe foster homes shall provide
 222 services tailored to the needs of sexually exploited children
 223 and shall conduct a comprehensive assessment of the service
 224 needs of each resident. In addition to the services required to
 225 be provided by residential child caring agencies and family
 226 foster homes, safe houses and safe foster homes must provide,
 227 arrange for or coordinate, at a minimum, the following services:

- 228 1. Victim-witness counseling;
 229 2. Family counseling;
 230 3. Behavioral health care;
 231 4. Treatment and intervention for sexual assault;
 232 5. Education tailored to the child's individual needs,

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233 including remedial education if necessary;
 234 6. Life skills training;
 235 7. Mentoring by a survivor of sexual exploitation, if
 236 available and appropriate for the child;
 237 8. Substance abuse screening, and where necessary, access
 238 to treatment;
 239 9. Planning services for the successful transition of each
 240 child back to the community; and
 241 10. Activities, in a manner that provides sexually
 242 exploited children with a full schedule.

243 (e) The community-based care lead agencies shall ensure
 244 that foster parents of safe foster homes and staff of safe
 245 houses complete intensive training regarding, at a minimum, the
 246 needs of sexually exploited children, the effects of trauma and
 247 sexual exploitation, and how to address those needs using
 248 strength-based and trauma-informed approaches. The department
 249 shall specify this training by rule and may develop or contract
 250 for a standard curriculum. The department may establish in rule
 251 additional criteria for the certification of safe houses and
 252 safe foster homes. Criteria shall address the security,
 253 therapeutic, social, health, and educational needs of sexually
 254 exploited children.

255 (f) The department shall inspect safe houses and safe
 256 foster homes prior to certification and annually to ensure
 257 compliance with requirements of this section. The department may
 258 place a moratorium on referrals and may revoke the certification
 259 of a safe house or safe foster home which fails at any time to
 260 meet the requirements of this section or rules adopted pursuant
 261 to this section.

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262 (g) The certification period for safe houses and safe
 263 foster homes shall run concurrently with the terms of their
 264 licenses.

265 (3) SECURE SAFE HOUSE PILOT PROGRAM.—
 266 (a) The department may facilitate the development of one
 267 secure safe house on a pilot basis to evaluate the therapeutic
 268 benefits of a secure residential setting within the broader
 269 array of residential and community-based services available to
 270 meet the needs of sexually exploited children. The secure safe
 271 house is intended for those sexually exploited children with the
 272 greatest needs, for whom no less restrictive placement has been
 273 or will be effective in addressing the effects of severe abuse,
 274 violence, trauma, or exploiter control endured by the child. The
 275 setting is only available to a sexually exploited child:

276 1. Who is the subject of an open investigation due to an
 277 allegation of abuse, neglect, or exploitation, or has been
 278 adjudicated dependent;

279 2. Who has been placed in accordance with ss. 39.4072 and
 280 39.4074; and

281 3. Whose needs cannot be met in less restrictive
 282 placements.

283 (b) The secure safe house must be a certified safe house,
 284 and may have no more than 15 beds. The department shall select
 285 the region where the secure safe house shall be sited. The
 286 department shall collaborate with the local community-based care
 287 lead agency to design the pilot project, including, but not
 288 limited to, selection of the location, selection of the
 289 provider, the facility's security features, referral processes,
 290 and services provided within the secure safe house.

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291 (c) Children from any region of the state may be placed in
 292 the secure safe house pursuant to ss. 39.4072 and 39.4074. The
 293 department, in consultation with the community-based care lead
 294 agencies serving the children, shall approve all placements of
 295 children in the facility. In addition to the criteria in s.
 296 409.1754(1) and any other criteria determined by the department
 297 pursuant to that subsection, the following criteria at a minimum
 298 shall also be used to determine whether a child qualifies for
 299 placement in the secure safe house:

300 1. Lack of willingness to participate in less intensive
 301 programs; and

302 2. Lack of treatment progress in less restrictive
 303 placements, if the child has been placed elsewhere.

304 (d) The secure safe house shall include features which
 305 prevent any entry into or exit from the facility or its grounds
 306 without the involvement of staff, including, but not limited to,
 307 walls, fencing, gates, and locking doors.

308 (e) A child may be placed in the secure safe house for a
 309 minimum of 5 days and a maximum of 10 months. Pursuant to s.
 310 39.4074(4), the secure safe house shall regularly review and
 311 report on the child's progress, and during judicial reviews the
 312 court shall determine whether continued placement in the secure
 313 safe house is appropriate. The department shall place the child
 314 in another setting when continued placement in the secure safe
 315 house is no longer appropriate.

316 (f) The department shall contract for an evaluation of the
 317 effectiveness of the secure safe house in facilitating the
 318 rehabilitation of sexually exploited children. The evaluation
 319 report shall be provided to the Governor, the President of the

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320 Senate, and the Speaker of the House of Representatives by
 321 February 1, 2018. The evaluation shall, at a minimum, describe
 322 the program model and facility design, assess the effectiveness
 323 of the facility in meeting the treatment and security needs of
 324 sexually exploited children, analyze its cost-effectiveness, and
 325 provide recommendations regarding the continued operation of the
 326 pilot program and any changes or enhancements.

327 (4) (a) This section does not prohibit any provider of
 328 services for sexually exploited children from appropriately
 329 billing Medicaid for services rendered, from contracting with a
 330 local school district for educational services, or from
 331 obtaining federal or local funding for services provided, as
 332 long as two or more funding sources do not pay for the same
 333 specific service that has been provided to a child.

334 (b) The lead agency shall ensure that all children residing
 335 in safe houses or safe foster homes have a case manager and a
 336 case plan, whether or not the child is a dependent child.

337 (5) The services specified in this section may, to the
 338 extent possible provided by law and with funding authorized, be
 339 available to all sexually exploited children whether they are
 340 accessed voluntarily, as a condition of probation, through a
 341 diversion program, through a proceeding under chapter 39, or
 342 through a referral from a local community-based care or social
 343 service agency.

344 Section 3. Section 39.524, Florida Statutes, is amended to
 345 read:

346 39.524 Safe-harbor placement.—

347 (1) Except as provided in s. 39.407 or s. 985.801, a
 348 dependent child 6 years of age or older who has been found to be

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349 a victim of sexual exploitation as defined in s. 39.01(67)(g)
 350 must be assessed for placement in a safe house or safe foster
 351 home as provided in s. 409.1678 using the initial screening and
 352 assessment instruments provided in s. 409.1754(1). ~~The~~
 353 ~~assessment shall be conducted by the department or its agent and~~
 354 ~~shall incorporate and address current and historical information~~
 355 ~~from any law enforcement reports, psychological testing or~~
 356 ~~evaluation that has occurred; current and historical information~~
 357 ~~from the guardian ad litem, if one has been assigned; current~~
 358 ~~and historical information from any current therapist, teacher,~~
 359 ~~or other professional who has knowledge of the child and has~~
 360 ~~worked with the child; and any other information concerning the~~
 361 ~~availability and suitability of safe house placement. If such~~
 362 ~~placement is determined to be appropriate for the child as a~~
 363 ~~result of this assessment, the child may be placed in a safe~~
 364 ~~house or safe foster home, if one is available. However, the~~
 365 ~~child may be placed in another setting if it is more appropriate~~
 366 ~~to his or her needs and his or her behaviors can be managed in~~
 367 ~~those settings so that they do not endanger other children being~~
 368 ~~served in those settings, or if a safe house or safe foster home~~
 369 ~~is unavailable. As used in this section, the term "available" as~~
 370 ~~it relates to a placement means a placement that is located~~
 371 ~~within the circuit or otherwise reasonably accessible.~~

372 (2) The results of the assessment described in s.
 373 409.1754(1) subsection (1) and the actions taken as a result of
 374 the assessment must be included in the next judicial review of
 375 the child. At each subsequent judicial review, the court must be
 376 advised in writing of the status of the child's placement, with
 377 special reference regarding the stability of the placement and

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378 the permanency planning for the child.

379 (3) (a) By December 1 of each year, the department shall
 380 report to the Legislature on the placement of children in safe
 381 houses and safe foster homes during the year, including the
 382 criteria used to determine the placement of children, the number
 383 of children who were evaluated for placement, the number of
 384 children who were placed based upon the evaluation, and the
 385 number of children who were not placed.

386 (b) The department shall maintain data specifying the
 387 number of children who were referred to a safe house or safe
 388 foster home for whom placement was unavailable and the counties
 389 in which such placement was unavailable. The department shall
 390 include this data in its report under this subsection so that
 391 the Legislature may consider this information in developing the
 392 General Appropriations Act.

393 Section 4. Section 39.4072, Florida Statutes, is created to
 394 read:

395 39.4072 Evaluation for secure safe house placement.-

396 (1) The Legislature finds that victims of child sexual
 397 exploitation as defined in s. 39.01(67)(g) often exhibit
 398 behaviors that place themselves and others in danger. The
 399 Legislature finds that when sexually exploited children
 400 repeatedly run away from their home or residential placement to
 401 unsafe placements, engage in commercial sexual activity as
 402 defined in s. 787.06(2)(b), F.S., or seek to maintain a
 403 relationship with their exploiters, these children and other
 404 children are in danger of being sexually exploited and
 405 physically abused, which can lead to grave emotional and
 406 physical harm.

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407 (2) CRITERIA.—A child may be taken to a secure safe house
 408 for evaluation of the appropriateness of placement for treatment
 409 in a secure safe house as provided in this section if there is
 410 probable cause that the child has been sexually exploited as
 411 defined in s. 39.01(67)(g) and:

412 (a) The child meets the criteria in s. 409.1678(3) for safe
 413 house placement; and

414 (b) The child recently engaged in behaviors that subject
 415 the child to victimization, violence, emotional harm, serious
 416 bodily harm, or health risks that endanger the child, posing a
 417 real and present threat of substantial harm to the child's well-
 418 being. Such behaviors include, but are not limited to,
 419 repeatedly running away from home or residential placement to an
 420 unsafe situation, engaging in commercial sexual activity as
 421 defined in s. 787.06(2)(b), and seeking to maintain a
 422 relationship with the child's trafficker despite others'
 423 attempts to separate the child from the trafficker;

424 (c) There is a substantial likelihood that without care or
 425 treatment the child will endanger or cause serious bodily harm
 426 to others, as evidenced by previous behavior including
 427 recruiting other children into the commercial sex trade or using
 428 coercion such as violence, illegal substances, or other means to
 429 compel their participation in such trade; and

430 (d) Less restrictive placement alternatives are unlikely to
 431 be effective in keeping the child from engaging in behaviors
 432 provided in paragraphs (b) and (c), as determined by a
 433 department or community-based care lead agency.

434 (3) EVALUATION.—

435 (a) An official of the department may initiate an

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436 evaluation of a child who is the subject of an open
 437 investigation or under the supervision of the court if the
 438 criteria in subsection (2) are met. A child protective
 439 investigator, a law enforcement officer, case manager, or other
 440 qualified individual may transport the child to the secure safe
 441 house, which may admit the child for assessment and
 442 stabilization pending the filing and adjudication of a petition
 443 by the department as provided in s. 39.522(1) alleging a need
 444 for a change in placement. The secure safe house shall provide
 445 notice regarding the child's admittance for assessment for
 446 secure safe house placement, to the child's parent or guardian,
 447 foster parent, case manager, and guardian ad litem. If the child
 448 does not have a guardian ad litem and a lawyer, the court shall
 449 appoint them.

450 (b) A psychiatrist, clinical psychologist, licensed mental
 451 health counselor, or licensed clinical social worker at the
 452 secure safe house who has training in working with sexually
 453 exploited children shall conduct an initial evaluation of the
 454 child as soon as it is appropriate to do so given the child's
 455 emotional, mental, and physical condition. The child may be
 456 provided medical screening and treatment pursuant to s. 39.407.
 457 The secure safe house may initiate appropriate therapeutic
 458 services to stabilize and treat the child.

459 (c) Facility staff shall continue to evaluate the child
 460 throughout his or her placement for evaluation in the secure
 461 safe house and may access the child's case file and other
 462 relevant records and request information from other individuals
 463 involved in the child's life. The child's parent or guardian,
 464 foster parent, case manager, and guardian ad litem may provide

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465 any information they believe relevant to the evaluation. The
 466 evaluation of the child shall be based on whether the child
 467 meets the criteria established under s. 409.1678(3) for
 468 admission to the secure safe house, and the criteria in
 469 paragraphs (1) (a) and (b).

470 (d) Within five days after the child's admittance to the
 471 secure safe house for evaluation, the psychiatrist, clinical
 472 psychologist, licensed mental health counselor, or licensed
 473 clinical social worker shall determine, based on the evaluation,
 474 whether the secure safe house would best meet the child's needs,
 475 or whether additional evaluation is required before a conclusion
 476 can be reached.

477 1. If the secure safe house would not best meet the child's
 478 needs, the department shall place the child in the least
 479 restrictive setting which is appropriate for the child's needs.

480 2. If placement in the secure safe house for treatment
 481 would best meet the child's needs, the department shall petition
 482 the court within 24 hours for placement under s. 39.4074, and
 483 the secure safe house shall admit the child pending a judicial
 484 determination.

485 3. If additional evaluation is required before a
 486 determination may be made about the child's need for secure safe
 487 house placement for treatment, the department shall petition the
 488 court within 24 hours to extend the placement of the child for
 489 evaluation purposes up to 30 days or until a determination may
 490 be made regarding the need for secure safe house placement for
 491 treatment, whichever comes first. The child shall remain in the
 492 secure safe house pending the court order.

493 (f) The department shall provide all evaluations to the

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494 child's parent or guardian, case manager, and guardian ad litem.

495 Section 5. Section 39.4074, Florida Statutes, is created to
 496 read:

497 39.4074 Placement in a secure safe house.—

498 (1) PETITION FOR PLACEMENT.—If an evaluation pursuant to s.
 499 39.4072(3) results in a determination that placement for
 500 treatment in a secure safe house would best meet the child's
 501 needs, the department may file a petition for placement in
 502 dependency court. The department shall provide notice to the
 503 child's parents as required under s. 39.502(1). If the child's
 504 parents consent to such placement, the court shall enter an
 505 order placing the child in the secure safe house for up to 45
 506 days, pending review by the court as provided herein. If the
 507 child's parents refuse or are unable to consent, the court
 508 within 24 hours of the filing of the petition shall hear all
 509 parties in person or by counsel, or both. If the court concludes
 510 that the child meets the criteria for placement in the secure
 511 safe house in s. 39.4072(1), it shall order that the child be
 512 placed in the secure safe house for a period of up to 45 days,
 513 pending review by the court.

514 (2) TREATMENT PLAN AND JUDICIAL REVIEW.—

515 (a) Within 10 days after the placement of a child for
 516 treatment in a secure safe house, the secure safe house must
 517 prepare an individualized treatment plan which addresses both
 518 preliminary residential treatment and comprehensive discharge,
 519 identifying care appropriate for the child upon completion of
 520 residential treatment. The plan must be approved by the
 521 department. The child must be involved in the preparation of the
 522 plan to the maximum feasible extent consistent with the child's

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523 ability to do so. The child's parents, guardian, or foster
 524 parents, guardian ad litem, and staff from the child's home
 525 school district must be involved with the child's treatment and
 526 discharge planning. Other individuals may also participate in
 527 plan development as appropriate. A secure safe house shall
 528 provide a copy and an explanation of the plan to the child, the
 529 child's parent or guardian, the guardian ad litem, and case
 530 manager. The department shall also provide the plan to the
 531 court.

532 (b) At 20-day intervals, commencing upon the beginning of
 533 treatment according to the treatment plan, the secure safe house
 534 must review the child's progress toward the treatment goals and
 535 assess whether the child's needs could be met in a less
 536 restrictive treatment program. The secure safe house must submit
 537 a report of its findings to the child's parents or guardian,
 538 guardian ad litem, case manager, the department and the court.
 539 The department may not reimburse a secure safe house until the
 540 secure safe house has submitted every written report that is
 541 due.

542 (c) The court shall conduct an initial review of the status
 543 of the child's treatment plan no later than 35 days after the
 544 child's placement for treatment in the secure safe house. For
 545 any child in a secure safe house at the time a judicial review
 546 is held pursuant to s. 39.701, the child's continued placement
 547 in a secure safe house must be a subject of the judicial review.
 548 If, at any time, the court determines that the child has not
 549 been sexually exploited or that the child has been sexually
 550 exploited but is not appropriate for placement in a secure safe
 551 house, the court shall order the department to place the child

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552 in the least restrictive setting that is best suited to meet the
 553 child's needs.

554 (d) After the initial review, the court must review the
 555 child's treatment plan every 60 days until the child no longer
 556 requires placement in the secure safe house, or until the child
 557 has resided in the secure safe house for 10 months. If the child
 558 has resided in the secure safe house for 9 months, a court
 559 hearing shall be held to determine an appropriate setting and
 560 appropriate services for the child.

561 Section 6. The Office of Program Policy Analysis and
 562 Government Accountability (OPPAGA) shall conduct a study on
 563 commercial sexual exploitation of children in Florida. The study
 564 shall assess the extent of commercial sexual exploitation of
 565 children, including but not limited to its prevalence in various
 566 regions of the state. The study shall also identify specialized
 567 services needed by sexually exploited children and any gaps in
 568 the availability of such services by region, including but not
 569 limited to residential services and specialized therapies. The
 570 study shall analyze the effectiveness of safe houses, safe
 571 foster homes, and other residential options for serving sexually
 572 exploited children in addressing their safety, therapeutic,
 573 health, educational, and emotional needs, including but not
 574 limited to, the nature and appropriateness of subsequent
 575 placements, extent of sexual exploitation post-placement, and
 576 educational attainment. By July 1, 2017, OPPAGA shall report its
 577 findings to the Governor, the President of the Senate, and the
 578 Speaker of the House of Representatives.

579 Section 7. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/14

Meeting Date

Topic HUMAN TRAFFICKING

Bill Number 7088 (if applicable)

Name DR. LAWANDA RAYNOIRA

Amendment Barcode (if applicable)

Job Title PRESIDENT & CEO

Address 1022 PARK STREET #301

Phone

Street

JACKSONVILLE

FL

32204

E-mail

City

State

Zip

Speaking: For Against Information

Representing DELORES BARR WEAVER POLICY CENTER

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/14

Meeting Date

Topic SEX TRAFFICKING OF CHILDREN

Bill Number 7088 (if applicable)

Name ROY MILLER

Amendment Barcode (if applicable)

Job Title PRESIDENT

Address 502 N. MONROE STREET

Phone

Street

TALL

FL

32302

E-mail

City

State

Zip

Speaking: For Against Information

Representing THE CHILDREN'S CAMPAIGN

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/14
Meeting Date

Topic Human Trafficking

Bill Number _____
(if applicable)

Name Carl H. Galloway III

Amendment Barcode _____
(if applicable)

Job Title Parent

Address 1950 King Arthur Circle

Phone 407 376 9339

Maitland FL 32751
City State Zip

E-mail chgalloway@cfi.rnc

Speaking: For Against Information

Representing Autism

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-14
Meeting Date

Topic Human Trafficking

Bill Number 7088
(if applicable)

Name CHRISTINA SPUDEAS

Amendment Barcode _____
(if applicable)

Job Title Exec. Dir.

Address 1801 N. Univ. Drive, Ste. 35

Phone _____

Cord Springs FL 33071
City State Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA'S CHILDREN FIRST

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18

Meeting Date

Topic Human Trafficking

Bill Number 7088
(if applicable)

Name Linda Kearschner

Amendment Barcode _____
(if applicable)

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

Representing Florida Parent Teacher Assoc (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.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/2014

Meeting Date

Topic Human Trafficking

Bill Number 7088
(if applicable)

Name Stephen Pennypacker

Amendment Barcode _____
(if applicable)

Job Title Assistant Secretary

Address 1317 Winewood Blvd
Street

Phone 850 467 1111

Tallahassee FL 32399
City State Zip

E-mail stephen.pennypacker@dcf.state.fl.us

Speaking: For Against Information

Representing Florida Department of Children & Families

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 (10/20/11)

didn't speak

THE FLORIDA SENATE
APPEARANCE RECORD

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

3 / 18 / 2014
Meeting Date

Topic _____ Bill Number 7088
(if applicable)

Name BRIAN PITTS Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City State Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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 Children, Families, and Elder Affairs

BILL: CS/CS/SB 268

INTRODUCER: Children, Families, and Elder Affairs Committee; Health Policy Committee; and Senators Grimsley and Diaz de la Portilla

SUBJECT: Certificates of Need

DATE: March 18, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	Fav/CS
2.	Crosier	Hendon	CF	Fav/CS
3.			AHS	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 268 amends various sections of the Florida Statutes related to nursing home certificates of need (CON) in order to:

- Repeal the moratorium on CONs for new community nursing homes and for adding additional community nursing home beds to an existing nursing home.
- Establish a positive CON application factor for CON applications in subdistricts with bed need if the applicant relinquishes nursing home beds in one or more subdistricts without need.
- Decrease the statutorily set goal minimum average sub-district nursing home occupancy rate from 94 to 92 percent.
- Allow contiguous sub-districts that each have nursing-home-bed-need to aggregate their need for the construction of one nursing home.
- Allow for an expedited review of a CON application for the replacement of a nursing home:
 - Within a 30-mile radius of the existing nursing home regardless of healthcare planning districts or the geographic location of the majority of the current nursing home's residents.
 - Outside of a 30-mile radius of the existing nursing home if the new nursing home is within the same sub-district or a contiguous sub-district within the same district.
 - If the nursing home is moved to a contiguous sub-district with either provision, existing nursing homes in that sub-district must have at least an 85 percent occupancy rate.

- Allow an expedited CON review for a nursing home to relocate a portion of its beds to an existing facility or a new facility in the same district, or a contiguous district, if the total number of beds in the state does not increase.
- Create a new exemption to the CON process for a nursing home that is adding up to either 30 beds or 25 percent of its current beds, whichever is less, when replacing its facility.
- Amend several existing provisions granting exemptions to the nursing home CON process, without increasing the number of nursing home beds.
- Restrict the Agency for Healthcare Administration (AHCA or agency) from issuing any further CONs for nursing home beds once 3,750 total new beds have been approved. This provision expires on July 1, 2017.

II. Present Situation:

Certificates of Need

A CON is a written statement issued by the AHCA evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility, health service, or hospice.¹ Under this regulatory program, the agency must provide approval through the CON review and approval process prior to a provider establishing a new nursing home or adding nursing home beds.

The Florida CON program has three levels of review: full, expedited, and exempt.² The nursing home projects that require CONs are as follows:

Projects Subject to Full Comparative Review

- Adding beds in community nursing homes; and
- Constructing or establishing new health care facilities, which include skilled nursing facilities (SNF).³

Projects Subject to Expedited Review

- Replacing a nursing home within the same district;
- Relocating a portion of a nursing home's licensed beds to a facility within the same district; or
- The new construction of a nursing home in a retirement community if certain population and bed need criteria are met.⁴

¹ Section 408.032(3), F.S.

² Section 408.036, F.S.

³ Section 408.032(16), F.S., defines an SNF as an institution, or a distinct part of an institution, which is primarily engaged in providing, to inpatients, skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

⁴ These provisions, laid out in s. 408.036(2)(d), F.S., are excepted from the moratorium on CONs for new nursing homes in s. 408.0435, F.S.

Exemptions from CON Review

- Converting licensed acute care hospital beds to Medicare and Medicaid certified skilled nursing beds in a rural hospital;
- Adding nursing home beds at a SNF that is part of a retirement community which had been in operation for at least 65 years on or before July 1, 1994, for the exclusive use of the community residents;
- Combining licensed beds from two or more licensed nursing homes within a district into a single nursing home within that district if 50 percent of the beds are transferred from the only nursing home in a county and that nursing home had less than a 75 percent occupancy rate;⁵
- State veteran's nursing homes operated by or on behalf of the Florida Department of Veterans' Affairs;
- Combining the beds or services authorized by two or more CONs issued in the same planning sub-district into one nursing home;
- Separating the beds or services that are authorized by one CON into two or more nursing homes in the sub-district;
- Adding no more than 10 total beds or 10 percent of the licensed nursing home beds of that facility, whichever is greater; or if the nursing home is designated as a Gold Seal nursing home, no more than 20 total beds or 10 percent of the licensed nursing home beds of that facility for a facility with a prior 12-month occupancy rate of 96 percent or greater; and
- Replacing a licensed nursing home on the same site, or within three miles, if the number of licensed beds does not increase.

The CON program applies to all nursing home beds, regardless of the source of payment for the beds (private funds, insurance, Medicare, Medicaid, or other funding sources).

Determination of Need

Granting a CON is based on need. The future need for community nursing home beds is determined twice a year and published by the agency as a fixed bed need pool for the applicable planning horizon. The planning horizon for CON applications is 3 years. Need determinations are calculated for sub-districts within the agency's 11 service districts⁶ based on a formula⁷ and estimates of current and projected population as published by the Executive Office of the Governor.

Moratorium on Nursing Home CONs

Under the provisions of s. 408.0435, F.S., no CONs for additional community nursing home beds may be approved by the agency until the moratorium on nursing home CONs expires. The Legislature first enacted this moratorium in 2001 which was slated to last until July 1, 2006.⁸ The Legislature then reenacted the moratorium in 2006,⁹ and again in 2011.¹⁰ The current

⁵ This exemption is repealed upon the expiration of the moratorium by operation of s. 408.036(3)(f), F.S.

⁶ The nursing home subdistricts are set forth in Rule 59C-2.200, F.A.C. and generally consist of 1 to 2 counties. Duval County is divided between several subdistricts of district 4.

⁷ Rule 59C-1.036, F.A.C.

⁸ Chapter 2001-45, s. 52, Laws of Fla.

⁹ Chapter 2006-161, Laws of Fla.

¹⁰ Chapter 2011-135, Laws of Fla.

moratorium lasts until October 1, 2016, or until Medicaid managed care is implemented statewide. Full implementation of the statewide Medicaid managed care program is statutorily required to be completed by October 1, 2014.¹¹

The Legislature provided for additional exceptions to the moratorium to address occupancy needs that might arise including:

- Adding sheltered nursing home beds¹²;
- Beds may be added in a county that has no community nursing home beds and the lack of beds is the result of the closure of nursing homes that were licensed on July 1, 2001;¹³
- Adding the greater of no more than 10 total beds or 10 percent of the licensed nursing home beds of a nursing home located in a county having up to 50,000 residents, if:
 - The nursing home has not had any class I or class II deficiencies within the 30 months preceding the request for addition;
 - The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility has not had any class I or class II deficiencies since its initial licensure; or
 - For a facility that has been licensed for less than 24 months, the prior 6-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility has not had any class I or class II deficiencies since its initial licensure;
- Adding the greater of no more than 10 total beds or 10 percent of the number of licensed nursing home beds if:
 - The facility has not had any class I or class II deficiencies within the 30 months preceding the request for addition;
 - The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 96 percent;
 - The prior 12-month occupancy rate for the nursing home beds in the sub-district is 94 percent or greater;
 - Any beds authorized for the facility under this exception in a prior request have been licensed and operational for at least 12 months;¹⁴ and
- The new construction of a nursing home in a retirement community if certain population and bed need criteria are met.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 408.034, F.S., to reduce the average sub-district nursing home occupancy rate which AHCA must attempt to maintain by rule from 94 to 92 percent. Potentially, this could result in an increase in nursing home beds. However, statewide bed occupancy rates have remained around 88.5 percent since fiscal year 2004-05.¹⁵

The bill allows an applicant applying for a CON for the construction of a new community nursing home to aggregate bed need from two or more contiguous sub-districts if:

¹¹ ss. 409.971 and 409.978, F.S.

¹² Sheltered nursing home bed is defined in s. 651.118, F.S., as a nursing home bed within a continuing care facility.

¹³ The request to add beds under this exception to the moratorium is subject to the full competitive review process for CONs.

¹⁴ The request to add beds under the exception to the moratorium is subject to the procedures related to an exemption to the CON requirements.

¹⁵ *AHCA bill analysis for SB 268*, December 20, 2013, on file with the Senate Health Policy Committee.

- The proposed nursing home will be located in the sub-district with the greater need when only two sub-districts are aggregated, or
- The proposed nursing home will be located at a site that provides reasonable geographic access for residents in each sub-district respective of that sub-district's bed need when more than two sub-districts are aggregated.

Contiguous sub-districts where the nursing home is not built will continue to show bed need in subsequent batching cycles.

The bill allows for an additional positive CON application factor for an applicant applying for a CON in a subdistrict where nursing home bed need has been determined to exist if that applicant voluntarily relinquishes licensed nursing home beds in one or more subdistricts where there is no calculated bed need. The applicant must be able to demonstrate that it operates, controls, or has an agreement with another licensed nursing home to ensure that the beds are relinquished.

The bill deletes obsolete language related to pilot nursing home diversion projects.

Section 2 of the bill amends s. 408.036, F.S., to allow for an expedited review of a CON application for the replacement of a nursing home either:

- Within a 30-mile radius of the existing nursing home regardless of healthcare planning districts or the geographic location of the majority of the current nursing home's residents, or
- Outside of a 30-mile radius of the existing nursing home if the new nursing home will be within the same sub-district or a contiguous sub-district.

If the nursing home is moved to a contiguous sub-district, existing nursing homes in that sub-district must have at least an 85 percent occupancy rate.

The bill also allows for an expedited CON review for a nursing home that is relocating a portion of its beds, within the same district or a contiguous district, to an established facility or to a new facility. Such a relocation cannot cause the total number of nursing home beds in the state to increase.

The bill makes the following changes to the allowed CON exemptions:

- Creates a new CON exemption for a nursing home that is adding up to either 30 beds or 25 percent of its current beds, whichever is less, when replacing its facility;
- Reduces the required average occupancy rate from 96 to 94 percent for a facility to add a number of beds equal to the greater of no more than 10 beds or 10 percent of the facility's current licensed beds;
- Increases the distance a replacement nursing home may be located from the current nursing home to up to 5, rather than 3, miles and clarifies that such a move must remain within the same subdistrict; and
- Allows the consolidation of multiple licensed nursing homes with any shared controlled interest or the transfer of beds between such nursing homes if all of the nursing homes are within the same planning district, rather than sub-district. The site of relocation must be within 30 miles of the original sites and the total number of nursing home beds in the planning district may not increase.

The bill also makes technical and conforming changes to this section.

Section 3 of the bill repeals s. 408.0435, F.S., which establishes the moratorium on nursing home CONs.

Section 4 of the bill creates s. 408.0436, F.S., restricting AHCA from issuing any CONs for new nursing home beds following the batching cycle in which the total number of new nursing home beds approved between July 1, 2014, and June 30, 2017, meets or exceeds 3,750. The bill also defines “batching cycle” as the grouping for comparative review of CON applications submitted for beds, services, or programs having a like CON need methodology or licensing category in the same planning horizon and the same applicable district or subdistrict.

The bill provides a repeal date for this section of July 1, 2017.

Section 5 of the bill provides an effective date of July 1, 2014.

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:

CS/SB 268 repeals the moratorium preventing AHCA from issuing CONs for new community nursing home beds in most instances. Repealing this moratorium will allow AHCA to grant new CONs for the construction of new community nursing homes and the addition of community nursing home beds to existing nursing homes when need is determined. The bill also eases some of the guidelines that AHCA must follow when issuing new nursing home CONs. Most significantly, the bill allows for a reduced minimum occupancy rate for existing nursing homes and allows CON applicants to aggregate bed need between sub-districts to qualify for the CON.

When taken together, the provisions of the bill will allow for the construction of new nursing homes and the expansion of existing nursing homes where such construction or expansion would have been previously restricted. This new construction will likely have indeterminate positive effects on the parts of the private sector responsible for such construction, but may also have indeterminate negative effects on existing nursing homes in or around areas where such new construction is allowed.

C. Government Sector Impact:

According to the agency's bill analysis,¹⁶ AHCA will need to amend its CON rules and revise the bed need formula to comply with the reduced average sub-district nursing home occupancy rate. Rewriting these rules will produce a minor indeterminate fiscal impact for the agency.

The number of new nursing home beds created is unknown at this time; however, the construction of new nursing homes and the expansion of existing nursing homes will likely increase the number of Medicaid beds available which will have an impact on the state's Medicaid budget.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The term "reasonable geographic access for residents in the respective sub-districts" on line 46 may prove difficult to define by rule since several of the state's contiguous sub-districts cover large geographic areas. For example, District 3 has seven sub-districts and consists of 16 counties ranging from Hamilton County to Hernando County, District 8 has six sub-districts and includes seven counties, and District 4 has four sub-districts and includes seven counties.¹⁷

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 408.034 and 408.036.

This bill creates section 408.0436 of the Florida Statutes.

This bill repeals section 408.0435 of the Florida Statutes.

¹⁶ *Supra*, 14.

¹⁷ *Supra*, 14.

IX. Additional Information:

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

CS/CS by Children, Families, and Elder Affairs on March 18, 2014:

- The amendment reduces the newly created limit of approved nursing home beds from 5,000 to 3,750 and changes the period of the limit from five years to three years.

CS by Health Policy on January 8, 2014:

- Establish a positive CON application factor for CON applications in sub-districts with bed need if an applicant relinquishes nursing home beds in one or more sub-districts without need.
- Restrict a nursing home moving to a new location within 30 miles of the original nursing home from moving into a new sub-district unless that sub-district has had at least an 85 percent occupancy rate for the prior 6 months.
- Allow an expedited CON review for a nursing home to relocate a portion of its beds to an existing facility or a new facility in the same district, or a contiguous district, if the total number of beds in the state does not increase.
- Add language granting a CON exemption to a nursing home that is adding up to either 30 beds or 25 percent of its current beds, whichever is less, when replacing its facility.
- Create section 4 to restrict AHCA from issuing any further CONs for nursing home beds once 5,000 total new beds have been approved. This provision expires on June 30, 2019.
- Make other technical, clarifying, and conforming changes.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2014	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs
(Grimsley) recommended the following:

Senate Amendment

Delete lines 263 - 270
and insert:
nursing home beds approved from July 1, 2014 to June 30, 2017,
equals or exceeds 3,750. As used in this section, the term
"batching cycle" means the grouping for comparative review of
certificate-of-need applications submitted for beds, services,
or programs having a like certificate-of-need methodology or
licensing category in the same planning horizon and the same



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11 applicable district or subdistrict. This section is repealed
12 July 1, 2017.

By the Committee on Health Policy; and Senator Grimsley

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1 A bill to be entitled
 2 An act relating to certificates of need; amending s.
 3 408.034, F.S.; decreasing the subdistrict average
 4 occupancy rate that the Agency for Health Care
 5 Administration is required to maintain as a goal of
 6 its nursing-home-bed-need methodology; conforming a
 7 provision to changes made by the act; authorizing an
 8 applicant to aggregate the need of geographically
 9 contiguous subdistricts within a district for a
 10 proposed community nursing home under certain
 11 circumstances; requiring the proposed nursing home
 12 site to be located in the subdistrict with the greater
 13 need under certain circumstances; recognizing an
 14 additional positive application factor for an
 15 applicant who voluntarily relinquishes certain nursing
 16 home beds; requiring the applicant to demonstrate that
 17 it meets certain requirements; amending s. 408.036,
 18 F.S.; providing that, under certain circumstances,
 19 replacement of a nursing home and relocation of a
 20 portion of a nursing home's licensed beds to another
 21 facility, or to establish a new facility, is a health-
 22 care-related project subject to expedited review;
 23 conforming a cross-reference; revising the
 24 requirements for projects that are exempted from
 25 applying for a certificate of need; repealing s.
 26 408.0435, F.S., relating to the moratorium on the
 27 approval of certificates of need for additional
 28 community nursing home beds; creating s. 408.0436,
 29 F.S.; prohibiting the agency from approving a

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30 certificate-of-need application for new community
 31 nursing home beds under certain circumstances;
 32 defining the term "batching cycle"; providing a
 33 repeal; providing an effective date.
 34

35 Be It Enacted by the Legislature of the State of Florida:
 36

37 Section 1. Subsection (5) of section 408.034, Florida
 38 Statutes, is amended, present subsection (6) of that section is
 39 redesignated as subsection (8), and a new subsection (6) and
 40 subsection (7) are added to that section, to read:

41 408.034 Duties and responsibilities of agency; rules.—

42 (5) The agency shall establish by rule a nursing-home-bed-
 43 need methodology that has a goal of maintaining a subdistrict
 44 average occupancy rate of 92 94 percent ~~and that reduces the~~
 45 ~~community nursing home bed need for the areas of the state where~~
 46 ~~the agency establishes pilot community diversion programs~~
 47 ~~through the Title XIX aging waiver program.~~

48 (6) If nursing home bed need is determined to exist in
 49 geographically contiguous subdistricts within a district, an
 50 applicant may aggregate the subdistricts' need for a new
 51 community nursing home in one of the subdistricts. If need is
 52 aggregated from two subdistricts, the proposed nursing home site
 53 must be located in the subdistrict with the greater need as
 54 published by the agency in the Florida Administrative Register.
 55 However, if need is aggregated from more than two subdistricts,
 56 the location of the proposed nursing home site must provide
 57 reasonable geographic access for residents in the respective
 58 subdistricts given the relative bed need in each.

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59 (7) If nursing home bed need is determined to exist in a
 60 subdistrict, an additional positive application factor may be
 61 recognized in the application review process for an applicant
 62 who agrees to voluntarily relinquish licensed nursing home beds
 63 in one or more subdistricts where there is no calculated need.
 64 The applicant must demonstrate that it operates, controls, or
 65 has an agreement with another licensed community nursing home to
 66 ensure that beds are voluntarily relinquished if the application
 67 is approved and the applicant is licensed.

68 Section 2. Subsection (2) and paragraphs (f), (k), (p), and
 69 (q) of subsection (3) of section 408.036, Florida Statutes, are
 70 amended to read:

71 408.036 Projects subject to review; exemptions.—

72 (2) PROJECTS SUBJECT TO EXPEDITED REVIEW.—Unless exempt
 73 pursuant to subsection (3), the following projects are subject
 74 to an expedited review shall include, but not be limited to:

75 (a) A Transfer of a certificate of need, except that when
 76 an existing hospital is acquired by a purchaser, all
 77 certificates of need issued to the hospital which are not yet
 78 operational shall be acquired by the purchaser, without need for
 79 a transfer.

80 (b) Replacement of a nursing home ~~within the same district,~~
 81 ~~if the proposed project site is located within a geographic area~~
 82 ~~that contains at least 65 percent of the facility's current~~
 83 ~~residents and is within a 30-mile radius of the replaced nursing~~
 84 ~~home. If the proposed project site is outside the subdistrict~~
 85 ~~where the replaced nursing home is located, the prior 6-month~~
 86 ~~occupancy rate for licensed community nursing homes in the~~
 87 ~~proposed subdistrict must be at least 85 percent in accordance~~

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88 with the agency's most recently published inventory.

89 (c) Replacement of a nursing home within the same district,
 90 if the proposed project site is outside a 30-mile radius of the
 91 replaced nursing home but within the same subdistrict or a
 92 geographically contiguous subdistrict. If the proposed project
 93 site is in the geographically contiguous subdistrict, the prior
 94 6-month occupancy rate for licensed community nursing homes for
 95 that subdistrict must be at least 85 percent in accordance with
 96 the agency's most recently published inventory.

97 (d) (e) Relocation of a portion of a nursing home's licensed
 98 beds to another a facility or to establish a new facility within
 99 the same district or within a geographically contiguous
 100 district, if the relocation is within a 30-mile radius of the
 101 existing facility and the total number of nursing home beds in
 102 the state district does not increase.

103 (e) (d) The New construction of a community nursing home in
 104 a retirement community as further provided in this paragraph.

105 1. Expedited review under this paragraph is available if
 106 all of the following criteria are met:

107 a. The residential use area of the retirement community is
 108 deed-restricted as housing for older persons as defined in s.
 109 760.29(4)(b).

110 b. The retirement community is located in a county in which
 111 25 percent or more of its population is age 65 and older.

112 c. The retirement community is located in a county that has
 113 a rate of no more than 16.1 beds per 1,000 persons age 65 years
 114 or older. The rate shall be determined by using the current
 115 number of licensed and approved community nursing home beds in
 116 the county per the agency's most recent published inventory.

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117 d. The retirement community has a population of at least
118 8,000 residents within the county, based on a population data
119 source accepted by the agency.

120 e. The number of proposed community nursing home beds in an
121 application does not exceed the projected bed need after
122 applying the rate of 16.1 beds per 1,000 persons aged 65 years
123 and older projected for the county 3 years into the future using
124 the estimates adopted by the agency reduced by, after
125 subtracting the agency's most recently published inventory of
126 licensed and approved community nursing home beds in the county
127 per the agency's most recent published inventory.

128 2. No more than 120 community nursing home beds shall be
129 approved for a qualified retirement community under each request
130 for application for expedited review. Subsequent requests for
131 expedited review under this process may shall not be made until
132 2 years after construction of the facility has commenced or 1
133 year after the beds approved through the initial request are
134 licensed, whichever occurs first.

135 3. The total number of community nursing home beds which
136 may be approved for any single deed-restricted community
137 pursuant to this paragraph may shall not exceed 240, regardless
138 of whether the retirement community is located in more than one
139 qualifying county.

140 4. Each nursing home facility approved under this paragraph
141 must shall be dually certified for participation in the Medicare
142 and Medicaid programs.

143 5. Each nursing home facility approved under this paragraph
144 must shall be at least 1 mile, as measured over publicly owned
145 roadways, from an existing approved and licensed community

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146 nursing home, ~~measured over publicly owned roadways.~~

147 ~~6. Section 408.0435 does not apply to this paragraph.~~

148 ~~6.7.~~ A retirement community requesting expedited review
149 under this paragraph shall submit a written request to the
150 agency for ~~an~~ expedited review. The request must shall include
151 the number of beds to be added and provide evidence of
152 compliance with the criteria specified in subparagraph 1.

153 ~~7.8.~~ After verifying that the retirement community meets
154 the criteria for expedited review specified in subparagraph 1.,
155 the agency shall publicly notice in the Florida Administrative
156 Register that a request for an expedited review has been
157 submitted by a qualifying retirement community and that the
158 qualifying retirement community intends to make land available
159 for the construction and operation of a community nursing home.
160 The agency's notice must shall identify where potential
161 applicants can obtain information describing the sales price of,
162 or terms of the land lease for, the property on which the
163 project will be located and the requirements established by the
164 retirement community. The agency notice must shall also specify
165 the deadline for submission of the any certificate-of-need
166 application, which may shall not be earlier than the 91st day or
167 ~~and not be~~ later than the 125th day after the date the notice
168 appears in the Florida Administrative Register.

169 ~~8.9.~~ The qualified retirement community shall make land
170 available to applicants it deems to have met its requirements
171 for the construction and operation of a community nursing home
172 but may will sell or lease the land only to the applicant that
173 is issued a certificate of need by the agency under ~~the~~
174 ~~provisions of~~ this paragraph.

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175 a. A certificate-of-need ~~certificate of need~~ application
 176 submitted under ~~pursuant to~~ this paragraph must ~~shall~~ identify
 177 the intended site for the project within the retirement
 178 community and the anticipated costs for the project based on
 179 that site. The application must ~~shall~~ also include written
 180 evidence that the retirement community has determined that both
 181 the provider submitting the application and the project satisfy
 182 ~~proposed by that provider satisfies~~ its requirements for the
 183 project.

184 b. If the retirement community determines ~~community's~~
 185 ~~determination~~ that more than one provider satisfies its
 186 requirements for the project, it may notify ~~does not preclude~~
 187 ~~the retirement community from notifying~~ the agency of the
 188 provider it prefers.

189 9.10- The agency shall review each submitted application
 190 submitted shall be reviewed by the agency. If multiple
 191 applications are submitted for a ~~the~~ project ~~as~~ published
 192 pursuant to subparagraph 7. 9-, ~~then~~ the agency shall review the
 193 competing applications shall be reviewed by the agency.

194

195 The agency shall develop rules to implement the ~~provisions for~~
 196 expedited review process, including time schedule, application
 197 content that which may be reduced from the full requirements of
 198 s. 408.037(1), and application processing.

199 (3) EXEMPTIONS.—Upon request, the following projects are
 200 subject to exemption from the provisions of subsection (1):

201 (f) For the addition of nursing home beds licensed under
 202 chapter 400 in a number not exceeding 30 total beds or 25
 203 percent of the number of beds licensed in the facility being

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204 replaced under paragraph (2) (b), paragraph (2) (c), or paragraph
 205 (p), whichever is less ~~For the creation of a single nursing home~~
 206 ~~within a district by combining licensed beds from two or more~~
 207 ~~licensed nursing homes within such district, regardless of~~
 208 ~~subdistrict boundaries, if 50 percent of the beds in the created~~
 209 ~~nursing home are transferred from the only nursing home in a~~
 210 ~~county and its utilization data demonstrate that it had an~~
 211 ~~occupancy rate of less than 75 percent for the 12-month period~~
 212 ~~ending 90 days before the request for the exemption. This~~
 213 ~~paragraph is repealed upon the expiration of the moratorium~~
 214 ~~established in s. 408.0435(1).~~

215 (k) For the addition of nursing home beds licensed under
 216 chapter 400 in a number not exceeding 10 total beds or 10
 217 percent of the number of beds licensed in the facility being
 218 expanded, whichever is greater; or, for the addition of nursing
 219 home beds licensed under chapter 400 at a facility that has been
 220 designated as a Gold Seal nursing home under s. 400.235 in a
 221 number not exceeding 20 total beds or 10 percent of the number
 222 of licensed beds in the facility being expanded, whichever is
 223 greater.

224 1. In addition to any other documentation required by the
 225 agency, a request for exemption submitted under this paragraph
 226 must certify that:

227 a. ~~Certify that~~ The facility has not had any class I or
 228 class II deficiencies within the 30 months preceding the request
 229 ~~for addition.~~

230 b. ~~Certify that~~ The prior 12-month average occupancy rate
 231 for the nursing home beds at the facility meets or exceeds 94 ~~96~~
 232 percent.

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233 c. ~~Certify that~~ Any beds authorized for the facility under
 234 this paragraph before the date of the current request for an
 235 exemption have been licensed and operational for at least 12
 236 months.

237 2. The timeframes and monitoring process specified in s.
 238 408.040(2)(a)-(c) apply to any exemption issued under this
 239 paragraph.

240 3. The agency shall count beds authorized under this
 241 paragraph as approved beds in the published inventory of nursing
 242 home beds until the beds are licensed.

243 (p) For replacement of a licensed nursing home on the same
 244 site, or within 5 3 miles of the same site if within the same
 245 subdistrict, if the number of licensed beds does not increase
 246 except as allowed by paragraph (f).

247 (q) For consolidation or combination of licensed nursing
 248 homes or transfer of beds between licensed nursing homes within
 249 the same planning district subdistrict, by ~~providers that~~
 250 ~~operate multiple~~ nursing homes with any shared controlled
 251 interest within that planning district subdistrict, if there is
 252 no increase in the planning district subdistrict total number of
 253 nursing home beds and the site of the relocation is not more
 254 than 30 miles from the original location.

255 Section 3. Section 408.0435, Florida Statutes, is repealed.

256 Section 4. Section 408.0436, Florida Statutes, is created
 257 to read:

258 408.0436 Limitation on nursing home certificates of need.-
 259 Notwithstanding the establishment of need as provided in this
 260 chapter, the agency may not approve a certificate-of-need
 261 application for new community nursing home beds following the

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262 batching cycle in which the cumulative number of new community
 263 nursing home beds approved from July 1, 2014, to June 30, 2019,
 264 equals or exceeds 5,000. As used in this section, the term
 265 "batching cycle" means the grouping for comparative review of
 266 certificate-of-need applications submitted for beds, services,
 267 or programs having a like certificate-of-need need methodology
 268 or licensing category in the same planning horizon and the same
 269 applicable district or subdistrict. This section is repealed on
 270 July 1, 2019.

271 Section 5. This act shall take effect July 1, 2014.



The Florida Senate

Committee Agenda Request

To: Senator Eleanor Sobel, Chair
Committee on Children, Families, and Elder Affairs

Subject: Committee Agenda Request

Date: March 5, 2014

I respectfully request that **Senate Bill #268**, relating to Certificate of Need, 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 21

RECEIVED

MAR 05 2014

Senate Committee
Children and Families

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14

Meeting Date

Topic CON

Bill Number 268
(if applicable)

Name TOM MARSHALL

Amendment Barcode _____
(if applicable)

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Speaking: For Against Information

Representing FLORIDA HEALTH CARE 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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14
Meeting Date

Topic Cert of Need

Bill Number CS/SB 268
(if applicable)

Name Brewster Bevis

Amendment Barcode _____
(if applicable)

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Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

Topic SB 268 CON Bill Number 268
Name Harold W. Foster Amendment Barcode _____ (if applicable)
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Speaking: For Against Information

Representing North Bay Health Associates

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 3/18/14
Topic CON Bill Number 268
Name Doug Mannheimer Amendment Barcode _____ (if applicable)
Job Title Attny
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Tall. Fl. 32301 E-mail _____
City State Zip

Speaking: For Against Information

Representing Florida Health Care Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/14

Meeting Date

Topic Certificate of Need

Bill Number CS/HB 268 (if applicable)

Name Carol Berkowitz

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

Representing Leading Age Florida

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/14

Meeting Date

Topic Certificate of Need

Bill Number 268 (if applicable)

Name Laura Cantwell

Amendment Barcode (if applicable)

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Representing AARP

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

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

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

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S-001 (10/20/11)

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 Children, Families, and Elder Affairs

BILL: SB 750

INTRODUCER: Senator Abruzzo

SUBJECT: Rights of Grandparents and Great-grandparents

DATE: March 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Hendon	CF	Favorable
2.			JU	
3.			RC	

I. Summary:

SB 750 sets forth a procedure by which a grandparent of a minor child whose parent or parents are deceased, missing, or in a permanent vegetative state may petition for visitation with a grandchild, if the grandparent can demonstrate that the parent is unfit or that there has been significant harm to the grandchild. The bill provides a list of factors for the court to consider in assessing best interest of the child and material harm to the parent-child relationship. The bill provides for mediation as a first resort and the court may appoint a guardian ad litem for the child.

The bill places a limit on the number of times a grandparent can file an original action for visitation, absent a real, substantial, and unanticipated change of circumstances. The bill also amends additional statutes that govern child custody and visitation, and provides for attorney's fees and costs to be paid by the petitioner to the respondent if a petition for visitation is dismissed.

The bill adds great-grandparents to statutes defining next of kin, and to statutes which require notice of legal proceedings to grandparents.

The bill repeals s.752.01, F.S., which prescribes the current law on grandparent visitation rights and has been found largely unconstitutional by Florida courts. The bill also repeals s. 752.07, F.S., relating to grandparental rights after adoption of a child by a stepparent.

The bill is not expected to have a significant fiscal impact on state government and has an effective date of July 1, 2014.

II. Present Situation:

History of Grandparent Visitation Rights

Under common law, a grandparent who was forbidden by his or her grandchild's parent from visiting the child was normally without legal recourse.¹ Nonparent visitation statutes which did not exist before the late 1960s, now allow grandparents to petition courts for the right to visit their grandchildren. Before the passage of these statutes, grandparents – like all other nonparents – had no right to sue for court-ordered visitation with their grandchildren.²

The common law rule against visitation by nonparents sought to preserve parental autonomy, as a value in and of itself, as a means of protecting children and to serve broader social goals:

- Courts historically expressed reluctance to undermine parents' authority by overruling their decisions regarding visitation and by introducing outsiders into the nuclear family.³ This common law tradition received constitutional protection in the 1920s when the Supreme Court held that a parent's right to direct the upbringing of his or her children was a fundamental liberty interest.⁴
- Under common law, courts presumed that fit parents act in the child's best interests and recognized that conflicts regarding visitation are a source of potential harm to the children involved.⁵
- Common law tradition understood parental authority as the very foundation of social order. Courts generally relied on ties of nature to resolve family disagreements rather than imposing coercive court orders.⁶

In response, state legislatures began to enact statutes to permit grandparents and sometimes other nonparents to petition for visitation rights. State legislatures passed the first wave of grandparent visitation statutes between 1966 and 1986. By the early 1990s, all of the state legislatures had enacted grandparent visitation laws that expanded grandparents' visitation rights. Today, the statutes generally delineate who may petition the court and under what circumstances and then require the court to determine if visitation is in the child's best interests.⁷

The enactment of grandparent visitation statutes responded primarily to two trends: demographic changes in family composition and an increase in the number of older Americans and the concurrent growth of the senior lobby.⁸ Grandparent visitation resonated with the public as well, who responded to sentimental images of grandparents in the popular media and the conclusions

¹ Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Courts' Reluctance to Declare Grandparent Visitation Statutes Unconstitutional*, 41 FAM. CT. REV. 14, 16 (Jan. 2003). Also see Karen J. McMullen, *The Scarlet "N": Grandparent Visitation Statutes That Base Standing on Non-Intact Family Status Violate the Equal Protection Clause of the Fourteenth Amendment*, ST. JOHN'S LAW REVIEW, 83 (2009).

² *Id.*

³ *Id.*

⁴ See *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

⁵ Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Courts' Reluctance to Declare Grandparent Visitation Statutes Unconstitutional*, 41 FAM. CT. REV. 14, 16 (Jan. 2003).

⁶ *Id.*

⁷ *Id.*

⁸ Karen J. McMullen, *The Scarlet "N": Grandparent Visitation Statutes That Base Standing on Non-Intact Family Status Violate the Equal Protection Clause of the Fourteenth Amendment*, ST. JOHN'S LAW REVIEW, 83 (2009).

of social scientists who focused on the importance of intergenerational family ties. During the 1990s, many Americans also focused on drug abuse problems of parents, significant poverty levels, and increasing numbers of out-of-wedlock children. Also during this period, Americans looked less to traditional social institutions, such as churches, and more toward the legal system as a way to solve their family problems.⁹

Policy related to grandparent visitation enacted based on social science and politics soon led to constitutional concerns because grandparent visitation statutes implicate the Fourteenth Amendment in two ways:

- The substantive due process rights of parents to direct the upbringing of their children in as much as parents' decisions are challenged, and
- The right to equal protection because many grandparent visitation statutes differentiate among parents based upon family status.¹⁰

The pertinent clauses in the Fourteenth Amendment state that a state shall not “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”¹¹ As of 2007, 23 state supreme courts had ruled on the constitutionality of their grandparent visitation statutes, with the majority finding their statutes constitutional; however, courts in several large states, Florida included, have held their grandparent visitation statutes unconstitutional.¹²

Grandparent Visitation Rights in Florida

Until 1978, Florida grandparents did not have any statutory right to visit their grandchild. Currently, provisions relating to grandparents rights to visitation and custody are contained in chs. 752 and 39, F.S. Provisions previously in ch. 61, F.S., have been removed because they were ruled unconstitutional.

Chapter 752, Florida Statutes

The Legislature enacted ch. 752, F.S., titled “Grandparental Visitation Rights,” in 1984, giving grandparents standing to petition the court for visitation in certain situations. At its broadest, s. 752.01(1), F.S., required visitation to be granted when the court determined it to be in the best interests of the child and one of the following situations existed:

- One or both of the child's parents were deceased;
- The parents were divorced;
- One parent had deserted the child;
- The child was born out of wedlock; or

⁹ *Id.*

¹⁰ *Id.*

¹¹ U.S. CONST. amend. XIV, § 1.

¹² Senate Committee on Judiciary, *Grandparent Visitation Rights*, (Interim Report 2009-120) (Oct. 2008) available at http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-120ju.pdf. (last visited March 14, 2014).

- One or both parents, who were still married, had prohibited the formation of a relationship between the child and the grandparent(s).¹³

Florida courts have considered the constitutionality of s. 752.01, F.S., on several occasions and have “consistently held all statutes that have attempted to compel visitation or custody with a grandparent based solely on the best interest of the child standard . . . to be unconstitutional.”¹⁴ The courts’ rulings are premised on the fact that the fundamental right of parenting is a long-standing liberty interest recognized by both the United States and Florida constitutions.¹⁵

In 1996, the Florida Supreme Court addressed its first major analysis of s. 752.01, F.S., in *Beagle v. Beagle*, 678 So. 2d 1271 (Fla. 1996). In *Beagle*, the Court determined that s. 752.01(e), F.S., which allowed grandparents to seek visitation when the child’s family was intact, was facially unconstitutional. The Court announced the standard of review applicable when deciding whether a state’s intrusion into a citizen’s private life is constitutional:

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least restrictive means.¹⁶

The Court held that “[b]ased upon the privacy provision in the Florida Constitution, . . . the State may not intrude upon the parents’ fundamental right to raise their children except in cases where the child is threatened with harm.”¹⁷

To date, almost all of the provisions in s. 752.01, F.S., have been found to be unconstitutional,¹⁸ although these provisions are still found in the Florida Statutes because they have not been repealed by the Legislature.

Chapter 61, Florida Statutes

The courts have also struck down two grandparent rights provisions in ch. 61, F.S., which governs dissolution of marriage and parental responsibility for minor children. In 2000, the Florida Supreme Court struck down s. 61.13(7), F.S., which granted grandparents custodial rights in custody or dissolution of marriage proceedings.¹⁹ In *Richardson v. Richardson*, 766 So.

¹³ See ch. 93-279, Laws of Fla. (s. 752.01, F.S. (1993)). Subsequent amendments by the Legislature removed some of these criteria. See s. 752.01, F.S. (2008).

¹⁴ *Cranney v. Coronado*, 920 So. 2d 132, 134 (Fla. 2d DCA 2006) (quoting *Sullivan v. Sapp*, 866 So. 2d 28, 37 (Fla. 2004)).

¹⁵ In 1980, Florida’s citizens approved the addition of a privacy provision in the state constitution, which provides greater protection than the federal constitution. Specifically, Florida’s right to privacy provision states: “Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein.” FLA. CONST. art. I, s. 23.

¹⁶ *Beagle*, 678 So. 2d at 1276 (quoting *Winfield v. Division of Pari-Mutuel Wagering*, 477 So. 2d 544, 547 (Fla. 1985)).

¹⁷ *Id.*

¹⁸ See *Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998); *Lonon v. Ferrell*, 739 So. 2d 650 (Fla. 2d DCA 1999); *Saul v. Brunetti*, 753 So. 2d 26 (Fla. 2000).

¹⁹ The subsection read that “[i]n any case where the child is actually residing with a grandparent in a stable relationship, whether the court has awarded custody to the grandparent or not, the court may recognize the grandparents as having the

2d 1036 (Fla. 2000), the Court recognized that when a custody dispute is between two fit parents, it is proper to use the best interests of the child standard. However, when the dispute is between a fit parent and a third party, there must be a showing of detrimental harm to the child in order for custody to be denied to the parent.²⁰

In 2004, the Florida Supreme Court struck down the statutory provision that awarded reasonable grandparent visitation in a dissolution proceeding if the court found that the visitation would be in the child's best interest.²¹ Based on the rationale of earlier Florida cases, the Court declared the provision "unconstitutional as violative of Florida's right of privacy because it fails to require a showing of harm to the child prior to compelling and forcing the invasion of grandparent visitation into the parental privacy rights."²²

Chapter 39, Florida Statutes

When a child has been adjudicated dependent and is removed from the physical custody of his or her parents, the child's grandparents are entitled to reasonable visitation, unless visitation is not in the best interests of the child.²³ Section 39.509(4), F.S., provides that when the child is returned to the custody of his or her parent, the visitation rights granted to a grandparent must be terminated.

None of the court rulings that have dealt with grandparent visitation rights have affected a grandparent's right to petition for visitation and custody in proceedings under ch. 39, F.S., where the issue of the child's health and welfare and possibly the parents' fitness is already at issue before the court.²⁴

Troxel v. Granville

The U.S. Supreme Court ruled on the issue of grandparent visitation and custody rights in 2000 when the Court struck down a Washington state law as unconstitutional as applied. In *Troxel v. Granville*, 530 U.S. 57 (2000), the Court found the Washington law²⁵ to be "breathtakingly broad" within the context of a "best interest" determination.²⁶ The Court noted that no consideration had been given to the decision of the parent, the parent's fitness to make decisions had not been questioned, and no weight had been given to the fact that the mother had agreed to some visitation.²⁷ Based on these observations, the Court found the Washington statute

same standing as parents for evaluating what custody arrangements are in the best interest of the child." Section 61.13(7), F.S. (1997).

²⁰ *Richardson*, 766 So. 2d at 1039.

²¹ *Sullivan v. Sapp*, 866 So. 2d 28 (Fla. 2004). Specifically, s. 61.13(2)(b)2.c., F.S. (2001), provided: "The court may award the grandparents visitation rights with a minor child if it is in the child's best interest. Grandparents have legal standing to seek judicial enforcement of such an award. This section does not require that grandparents be made parties or given notice of dissolution pleadings or proceedings, nor do grandparents have legal standing as contestants. . ."

²² *Id.*

²³ Section 39.509, F.S.

²⁴ See *T.M. v. Department of Children and Families*, 927 So. 2d 1088 (1st DCA 2006).

²⁵ The Washington statute provided that "Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances." WA. REV. CODE s. 26.10.160(3).

²⁶ *Troxel v. Granville*, 530 U.S. at 67.

²⁷ *Id.*

unconstitutional as applied because “the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a better decision could be made.”²⁸

The grandparent visitation cases decided by state supreme courts after *Troxel* all seem to recognize that the legal landscape has changed. Although the *Troxel* Court may have endeavored to leave room for the states to resolve questions relating to grandparent visitation on a case-by-case basis, the plurality did provide guidance and clarification, as the state courts all acknowledge:²⁹

- When they consider grandparents' visitation petitions, courts must presume a fit parent's decisions regarding visitation to be in his or her child's best interests, and they must accord some weight to these decisions. Likewise, in crafting statutes, legislatures must incorporate this presumption in favor of parents.
- Courts can no longer (at least explicitly) employ the contrary presumption that visitation with their grandparents generally benefits grandchildren. Statutes that presume grandparent visitation to be in a child's best interests violate parents' constitutional rights.
- Although there appears to have been a movement among some state supreme courts to strike down statutes as unconstitutional because they failed to require a showing of harm, other courts disagreed with this view and instead upheld the statutes' constitutionality and the use of the best-interests standard to determine if visitation was appropriate. In *Troxel*, the plurality neither condemned nor endorsed the harm standard, and it found the use of the best-interests standard alone, without some deference to parents, insufficient.³⁰

The Effect of Court Ordered Visitation on Children and Their Families

Requests for visitation by third parties over parental objections raise a multitude of issues. Increasing attention appears to be focused on the effects of those requests for visitation on the children involved. In an analysis of *Troxel v. Granville*, one author stated:

I am not suggesting that relationships must be conflict free in order to be viewed as being emotionally beneficial to those participating in them; however, when the relationships between members of the extended family and members of the nuclear family are so strained and when the ability to resolve those disputes is so impaired that one side or the other feels compelled to seek judicial intervention, the possibility that children will benefit from a court-imposed solution is remote. Where, over parental objection, visitation with a third party has been court ordered, the conflict between the parent and the individual whose bid for visitation the court has honored exacts a toll on the child(ren)....³¹

Another legal scholar has stated that while grandparents can be wonderful resources for children, parents, not courts, should decide with whom their children should spend time and that a court reversal of a parent's decision raises problems.

²⁸ *Id.*

²⁹ Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Courts' Reluctance to Declare Grandparent Visitation Statutes Unconstitutional*, 41 FAM. CT. REV. 14, 16 (Jan. 2003)

³⁰ *Id.*

³¹ David A. Martindale, *Troxel v. Granville: A Nonjusticiable Dispute*, 41 FAM. CT. REV. 88 (Jan. 2003)

Allowing courts to overrule parents is not good for children. The best interest of the child standard may sound appealing but, as an untethered guide to deciding where parental autonomy ends and the state's authority begins, it is not, in fact, in the best interest of the child. The main point here is that parental autonomy is not the enemy of the child; it is the best way this society knows to protect the child's best interest.³²

One commentator recognizes that grandparent visitation is a highly sensitive issue, especially in Florida where the senior citizen population is so large. While there are some bad grandparents, the pervasiveness of the stereotype of loving grandparents makes it hard to envision a situation where a child would not benefit from contact with his or her grandparents. For that reason, many courts have succumbed to sentimentality when deciding whether or not to grant grandparents visitation rights.³³

A more objective view has been taken by the Florida Supreme Court. Both the Federal and Florida constitutions convey rights of privacy. Among those privacy rights lies the right of parents to raise their child as they see fit. Case law has long addressed this right and, while it may seem unfair or unwise to deny loving grandparents the right to visit their grandchild, based on a long line of federal and state precedent it is clear that the Florida Supreme Court is correct in deciding that, absent some showing of harm to the child, a court cannot override a fit parent's decision. Case law shows that, absent a grandparent proving harm to the child, visitation is rarely granted.³⁴

According to some experts, a statute which demands such a showing of harm, while technically correct because it adheres to judicial rulings, will do little to help grandparents attain visitation with their grandchildren. The better solution would be to shift the focus away from judicial intrusions upon families and instead help families resolve their disputes themselves through mediation and counseling.³⁵

Harm to a Child

As a result of court rulings that Florida's grandparent visitation statutes were unconstitutional because the state may not intrude upon the parents "fundamental right to raise their children except in cases where the child is threatened with harm", legislation filed for consideration during past legislative sessions seeking to grant grandparent visitation has required a showing of harm when a grandparent petitions the court for visitation.

Chapter 39, F.S., relating to proceedings relating to dependent children defines the term "abuse" as:

any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental,

³² Katharine T. Bartlett, *Grandparent Visitation: Best Interests Test in Not in Child's Best Interest*, WEST VIRGINIA LAW REVIEW. 102:723 (2000).

³³ Maegen E. Peek, *Grandparent Visitation Statutes: Do Legislatures Know The Way To Carry The Sleigh Through The Wide And Drifting Law?* FLORIDA LAW REVIEW (Apr. 2001)

³⁴ *Id.*

³⁵ *Id.*

or emotional health to be significantly impaired. Abuse of a child includes acts or omissions...³⁶

Chapter 39, F.S. defines provides that “harm” as:

to a child’s health or welfare can occur when any person inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to...³⁷

Chapter 39, F.S., also provides that:

Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare, as defined in this chapter... shall report such knowledge or suspicion... immediately to the department’s central abuse hotline... Personnel at the department’s central abuse hotline shall determine if the report received meets the statutory definition of child abuse, abandonment, or neglect. Any report meeting one of these definitions shall be accepted for the protective investigation...³⁸

III. Effect of Proposed Changes:

While Florida presently has a statute providing grandparents a means to petition for visitation with their minor grandchildren, much of that law has been declared unconstitutional by the Florida Supreme Court. There is only one unchallenged criterion in the present law, providing that a grandparent may petition for visitation when a parent has deserted the child.

The bill repeals the current statute and creates a new and more detailed provision for such a petition in light of Florida Supreme Court decisions. Some related provisions in the dependency statute, the dissolution statutes, and the adoption statutes are changed to conform to the legislation.

The bill also places great-grandparents in the same position as grandparents in regard to notices affecting adoption, dependency, and next of kin status.

Section 1 amends s. 39.01(45), F.S., to add great-grandparents to the relatives included as next of kin when a child is alleged to have been abused, neglected, or abandoned.

³⁶ Section 39.01(2), F.S.

³⁷ Section 39.01(32), F.S.

³⁸ Section 39.201(1) and (2), F.S.

Section 2 amends s. 39.509, F.S., to add great-grandparents to those entitled to reasonable visitation with a child who has been adjudicated dependent and removed from the custody of his or her parents.

Section 3 amends s. 39.801, F.S., to add great-grandparents to those entitled to notice of termination of parental rights proceedings if they are entitled to priority for adoption under s. 63.0425, F.S.

Section 4 amends s. 63.0435, F.S., to add great-grandparents to those entitled to notice of a hearing on the termination of parental rights of a child if the child has lived with the great-grandparents for a period of at least 6 of the preceding 24 months.

Section 5 repeals s. 752.01, F.S., relating to grandparents' rights. Most of this section of law has been found by the courts to be unconstitutional.

Section 6 creates s. 752.011, F.S., to describe the contents of a petition for visitation of a minor child, as follows:

- A grandparent of a minor child whose parents are deceased, missing, or in a permanent vegetative state, or whose one parent is deceased, missing, or in a permanent vegetative state and whose other parent has been convicted of a felony or an offense of violence, may petition the court for visitation with the child;
- The court must hold a preliminary hearing to determine whether the grandparent has made a *prima facie*³⁹ showing of parental unfitness or that the child has suffered significant harm;
- If the court finds that there is no *prima facie* evidence of parental unfitness or harm to the child, the court must dismiss the petition and award reasonable attorney fees and costs to be paid by the petitioner to the respondent;
- If the court finds that there is *prima facie* evidence of parental unfitness or that the child has suffered significant harm, the court may appoint a guardian ad litem and shall order the matter to mediation; and
- After conducting a final hearing, the court may award reasonable visitation to the grandparent, if the court finds by clear and convincing evidence that:
 - The parent is unfit or there is danger of significant harm to the child;
 - Visitation is in the best interest of the child; and
 - Visitation will not materially harm the parent-child relationship.

In assessing the best interest of the child, the court must consider the totality of the circumstances affecting the mental and emotional well-being of the child, including:

- The love, affection, and other emotional ties existing between the child and the grandparent;
- The length and quality of the prior relationship between the child and the grandparent;
- Whether the grandparent established, or attempted to establish, ongoing personal contact with the child before the death of the parent;
- The reasons the parent cited in ending contact or visitation between the child and the grandparent;

³⁹ The term *prima facie* means "(s)ufficient to establish a fact or raise a presumption unless disproved or rebutted," BLACK'S LAW DICTIONARY (8th ed. 2004)

- Whether there has been demonstrable significant mental or emotional harm to the child as a result of the disruption in the family unit from which the child derived support and stability from the grandparent, and whether the continuation of that support and stability is likely to prevent future harm;
- The existence or threat to the child of mental injury as defined in s. 39.01;⁴⁰
- The present mental, physical, and emotional health of the grandparent
- The recommendations of the child's guardian ad litem, if one is appointed;
- The results of any psychological evaluation of the child;
- The preference of the minor child if the child is determined to be of sufficient maturity to express a preference;
- A written testamentary statement by the deceased parent regarding visitation with the grandparent, although the absence of such statement is not deemed to provide evidence that the deceased parent would have objected to the requested visitation; and
- Any other factor the court considers necessary to making its determination.

In assessing material harm to the parent-child relationship, the court shall consider the totality of the circumstances affecting the parent-child relationship, including:

- Whether there have been previous disputes between the grandparent and the parent over childrearing or other matters related to the care and upbringing of the child;
- Whether visitation would materially interfere with or compromise parental authority;
- Whether visitation can be arranged in a manner that does not materially detract from the parent-child relationship, including the quantity of time available for enjoyment of the parent-child relationship and any other consideration related to disruption of the schedule and routines of the parent and the minor child;
- Whether visitation is being sought for the primary purpose of continuing or establishing a relationship with the minor child with the intent that the child benefit from the relationship;
- Whether the requested visitation would expose the child to conduct, moral standards, experiences, or other factors that are inconsistent with influences provided by the parent
- The nature of the relationship between the child's parent and the grandparent;
- The reasons that the parent cited in ending contact or visitation between the minor child and the grandparent which was previously allowed by the parent;
- The psychological toll of visitation disputes on the child; and
- Any other factor the court considers necessary in making its determination.

Other provision in section 6 of the bill include:

- Part II of ch. 61, the Uniform Child Custody Jurisdiction and Enforcement Act, applies to actions brought under s. 752.011, F.S., created by the bill;
- Courts are encouraged to consolidate grandparent visitation matters with separately but concurrently pending matters relating to child support and parenting plans in order to minimize the burden of litigation on the child and the parties;

⁴⁰ Section 39.01(42), F.S., defines "mental injury" as "an injury to the intellectual or psychological capacity of a child as evidence by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior."

- An order for grandparent visitation may be modified upon a showing by the person petitioning for modification that a substantial change in circumstances has occurred and that modification of visitation is in the best interest of the child;
- An original action requesting visitation under this section may be filed by a grandparent only once during any 2-year period, except on good cause shown that the minor child is suffering, or may suffer, demonstrable significant mental or emotional harm caused by a parental decision to deny visitation between a minor child and the grandparent which was not known to the grandparent at the time of filing an earlier action;
- Grandparent visitation cannot be granted subsequent to a final order of adoption, except as described in s. 752.071, F.S., which is created by the bill; and
- Venue is in the county where the child primarily resides, unless venue is otherwise governed by chs. 39, 61, or 63, F.S.

Section 7 repeals s. 752.07, F.S., relating to the effect of adoption of the child by a stepparent on the right of visitation (replaced by new s. 752.071, F.S., created in the bill).

Section 8 creates s. 752.071, F.S., to provide that after the adoption of a child by a stepparent or close relative, the stepparent or close relative may petition the court to terminate an order granting grandparent visitation which was entered before the adoption. The court may terminate the order granting visitation unless the grandparent can show that the criteria for authorizing the visitation continue to be satisfied.

Section 9 amends s. 39.6221, F.S., to require the court to consider the frequency and nature of visitation with great-grandparents in establishing a permanent guardianship for a dependent child.

Section 10 amends s. 39.6231, F.S., to require the court to consider the frequency and nature of visitation with great-grandparents in establishing the permanent placement of a dependent child with a fit and willing relative.

Section 11 amends s. 63.087, F.S., to require notice to great-grandparents when a petition to terminate parental rights is filed in an adoption case.

Section 12 amends s. 63.172, F.S., to add great-grandparents to the list of individuals considered to be “close relatives” and to add great-grandparents rights to those delineated under ch. 752.

Section 13 amends s. 752.015, F.S., to make technical and conforming changes.

Section 14 sets an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The fundamental right of parenting is a long-standing liberty interest recognized by both the United States and Florida constitutions. Because child-rearing, which is inherent in Florida's right to privacy and implicit in the United States Constitutional right to privacy, is a fundamental right, when determining whether an action unconstitutionally infringes on that right, the courts have used the highest standard of review available: the strict scrutiny standard. As described above, Florida courts have consistently held that all statutes that compel visitation or custody with a grandparent over the objections of a parent based solely on the best interest of the child to be unconstitutional. However, this bill does not compel visitation based on the best interest of the child standard, but appears to codify aspects of Florida opinions.

The United States Supreme Court has not held that all grandparent visitation statutes are unconstitutional, instead leaving such a determination to be made by the states on a case-by-case basis. Because Florida has a specific right to privacy, it has a higher hurdle to cross than many other state in enacting a valid grandparent visitation statute. Approximately 35 other states have valid grandparent visitation statutes.⁴¹ At least one other state, Montana, has an explicit right to privacy in its state constitution, and has a grandparent visitation statute which has survived constitutional challenge.⁴² This statute requires that, before a court may grant a petition for grandparent visitation over the objection of a parent whose parental rights have not been terminated, the court must determine whether the objecting parent is a fit parent. If the parent is fit, there must be clear and convincing evidence that visitation is in the child's best interest and that the presumption in favor of the parent has been rebutted by the petitioner before visitation may be ordered. Even if a parent is found to be unfit, there must still be a finding, by clear and convincing evidence, that visitation is in the child's best interest. Montana's statute also allows the court to appoint an attorney to represent the interests of the child. The Montana Supreme Court has upheld this statutory structure as being consistent with the *Troxel* decision discussed above.⁴³

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

None.

⁴¹ Comm. on Judiciary, The Florida Senate, *ibid*.

⁴² See MT. Code ANN s. 40-9-102.

⁴³ See *Polasek v. Omura*, 136 P.3d 519, 522-23 (Mont. 2006).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.01, 39.509, 39.801, 63.0425, 39.6221, 39.6231, 63.087, 63.172, and 752.015.

This bill creates the following sections of the Florida Statutes: 752.011, and 752.071.

This bill repeals the following sections of the Florida Statutes: 752.01 and 752.07.

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 Abruzzo

25-00418-14

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1 A bill to be entitled
 2 An act relating to the rights of grandparents and
 3 great-grandparents; amending s. 39.01, F.S.; revising
 4 the definition of the term "next of kin" to include
 5 great-grandparents for purposes of various proceedings
 6 relating to children; amending s. 39.509, F.S.;
 7 providing great-grandparents the same visitation
 8 rights as grandparents; amending ss. 39.801 and
 9 63.0425, F.S.; providing for a great-grandparent's
 10 right to notice of adoption; repealing s. 752.01,
 11 F.S., relating to actions by a grandparent for
 12 visitation rights; creating s. 752.011, F.S.;
 13 authorizing the grandparent of a minor child to
 14 petition a court for visitation under certain
 15 circumstances; requiring a preliminary hearing;
 16 providing for the payment of attorney fees and costs
 17 by a petitioner who fails to make a prima facie
 18 showing of harm; authorizing grandparent visitation if
 19 the court makes specified findings; providing factors
 20 for court consideration; providing for application of
 21 the Uniform Child Custody Jurisdiction and Enforcement
 22 Act; encouraging the consolidation of certain
 23 concurrent actions; providing for modification of an
 24 order awarding grandparent visitation; limiting the
 25 frequency of actions seeking visitation; limiting
 26 application to a minor child placed for adoption;
 27 providing for venue; repealing s. 752.07, F.S.,
 28 relating to the effect of adoption of a child by a
 29 stepparent on grandparent visitation rights; creating

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30 s. 752.071, F.S.; providing conditions under which a
 31 court may terminate a grandparent visitation order
 32 upon adoption of a minor child by a stepparent or
 33 close relative; amending ss. 39.6221, 39.6231, 63.087,
 34 63.172, and 752.015, F.S.; conforming provisions and
 35 cross-references to changes made by the act; providing
 36 an effective date.

37
 38 Be It Enacted by the Legislature of the State of Florida:

39
 40 Section 1. Subsection (45) of section 39.01, Florida
 41 Statutes, is amended to read:

42 39.01 Definitions.—When used in this chapter, unless the
 43 context otherwise requires:

44 (45) "Next of kin" means an adult relative of a child who
 45 is the child's brother, sister, grandparent, great-grandparent,
 46 aunt, uncle, or first cousin.

47 Section 2. Section 39.509, Florida Statutes, is amended to
 48 read:

49 39.509 Visitation rights of grandparents and great-
 50 grandparents ~~Grandparents rights.~~—Notwithstanding any other
 51 ~~provision of~~ law, a maternal or paternal grandparent or great-
 52 grandparent as well as a step-grandparent or step-great-
 53 grandparent ~~stepgrandparent~~ is entitled to reasonable visitation
 54 with his or her grandchild or great-grandchild who has been
 55 adjudicated a dependent child and taken from the physical
 56 custody of the parent unless the court finds that such
 57 visitation is not in the best interest of the child or that such
 58 visitation would interfere with the goals of the case plan.

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59 Reasonable visitation may be unsupervised and, where appropriate
60 and feasible, may be frequent and continuing. An ~~Any~~ order for
61 visitation or other contact must conform to ~~the provisions of~~ s.
62 39.0139.

63 (1) Grandparent or great-grandparent visitation may take
64 place in the home of the grandparent or great-grandparent unless
65 there is a compelling reason for denying such a visitation. The
66 department's caseworker shall arrange the visitation to which a
67 grandparent or great-grandparent is entitled pursuant to this
68 section. The state may ~~shall~~ not charge a fee for any costs
69 associated with arranging the visitation. However, the
70 grandparent or great-grandparent shall pay for the child's cost
71 of transportation if ~~when~~ the visitation is to take place in the
72 grandparent's or great-grandparent's home. The caseworker shall
73 document the reasons for any decision to restrict a
74 grandparent's or great-grandparent's visitation.

75 (2) A grandparent or great-grandparent entitled to
76 visitation pursuant to this section may ~~shall~~ not be restricted
77 from appropriate displays of affection to the child, such as
78 appropriately hugging or kissing his or her grandchild or great-
79 grandchild. Gifts, cards, and letters from the grandparent or
80 great-grandparent and other family members may ~~shall~~ not be
81 denied to a child who has been adjudicated a dependent child.

82 (3) Any attempt by a grandparent or great-grandparent to
83 facilitate a meeting between the child who has been adjudicated
84 a dependent child and the child's parent or legal custodian, or
85 any other person in violation of a court order shall
86 automatically terminate future visitation rights of the
87 grandparent or great-grandparent.

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88 (4) When the child has been returned to the physical
89 custody of his or her parent, the visitation rights granted
90 pursuant to this section ~~shall~~ terminate.

91 (5) The termination of parental rights does not affect the
92 rights of grandparents or great-grandparents unless the court
93 finds that such visitation is not in the best interest of the
94 child or that such visitation would interfere with the goals of
95 permanency planning for the child.

96 (6) In determining whether grandparental or great-
97 grandparental visitation is not in the child's best interest,
98 the court ~~consideration~~ may consider ~~be given to~~ the following:

99 (a) The finding of guilt, regardless of adjudication, or
100 entry or plea of guilty or nolo contendere to charges under the
101 following statutes, or similar statutes of other jurisdictions:

102 1. Section ~~§~~ 787.04, relating to removing a minor child
103 ~~minors~~ from the state or concealing a minor child ~~minors~~
104 contrary to court order;

105 2. Section ~~§~~ 794.011, relating to sexual battery;

106 3. Section ~~§~~ 798.02, relating to lewd and lascivious
107 behavior;

108 4. Chapter 800, relating to lewdness and indecent exposure;

109 5. Section ~~§~~ 826.04, relating to incest; or

110 6. Chapter 827, relating to the abuse of children.

111 (b) The designation by a court as a sexual predator as
112 defined in s. 775.21 or a substantially similar designation
113 under laws of another jurisdiction.

114 (c) A report of abuse, abandonment, or neglect under ss.
115 415.101-415.113 or this chapter and the outcome of the
116 investigation concerning such report.

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117 Section 3. Paragraph (a) of subsection (3) of section
 118 39.801, Florida Statutes, is amended to read:
 119 39.801 Procedures and jurisdiction; notice; service of
 120 process.-
 121 (3) Before the court may terminate parental rights, in
 122 addition to the other requirements set forth in this part, the
 123 following requirements must be met:
 124 (a) Notice of the date, time, and place of the advisory
 125 hearing for the petition to terminate parental rights and a copy
 126 of the petition must be personally served upon the following
 127 persons, specifically notifying them that a petition has been
 128 filed:
 129 1. The parents of the child.
 130 2. The legal custodians of the child.
 131 3. If the parents who would be entitled to notice are dead
 132 or unknown, a living relative of the child, unless upon diligent
 133 search and inquiry no such relative can be found.
 134 4. Any person who has physical custody of the child.
 135 5. Any grandparent or great-grandparent entitled to
 136 priority for adoption under s. 63.0425.
 137 6. Any prospective parent who has been identified under s.
 138 39.503 or s. 39.803.
 139 7. The guardian ad litem for the child or the
 140 representative of the guardian ad litem program, if the program
 141 has been appointed.
 142
 143 The document containing the notice to respond or appear must
 144 contain, in type at least as large as the type in the balance of
 145 the document, the following or substantially similar language:

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146 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING
 147 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
 148 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
 149 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
 150 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
 151 NOTICE."
 152 Section 4. Section 63.0425, Florida Statutes, is amended to
 153 read:
 154 63.0425 Grandparent's or great-grandparent's right to
 155 notice.-
 156 (1) If a child has lived with a grandparent or great-
 157 grandparent for at least 6 months within the 24-month period
 158 immediately preceding the filing of a petition for termination
 159 of parental rights pending adoption, the adoption entity shall
 160 provide notice to that grandparent or great-grandparent of the
 161 hearing on the petition.
 162 (2) This section does not apply if the placement for
 163 adoption is the result of the death of the child's parent and a
 164 different preference is stated in the parent's will.
 165 (3) This section does not apply in stepparent adoptions.
 166 (4) This section does not contravene the provisions of s.
 167 63.142(4).
 168 Section 5. Section 752.01, Florida Statutes, is repealed.
 169 Section 6. Section 752.011, Florida Statutes, is created to
 170 read:
 171 752.011 Petition for grandparent visitation of a minor
 172 child.-A grandparent of a minor child whose parents are
 173 deceased, missing, or in a permanent vegetative state, or whose
 174 one parent is deceased, missing, or in a permanent vegetative

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175 state and whose other parent has been convicted of a felony or
 176 an offense of violence, may petition the court for court-ordered
 177 visitation with the grandchild under this section.

178 (1) Upon the filing of a petition by a grandparent for
 179 visitation the court shall hold a preliminary hearing to
 180 determine whether the petitioner has made a prima facie showing
 181 of parental unfitness or significant harm to the child. Absent
 182 such a showing, the court shall dismiss the petition and shall
 183 award reasonable attorney fees and costs to be paid by the
 184 petitioner to the respondent.

185 (2) If the court finds that there is prima facie evidence
 186 that a parent is unfit or that there is a danger of significant
 187 harm to the child, the court shall proceed toward a final
 188 hearing, may appoint a guardian ad litem, and shall order the
 189 matter to family mediation as provided in s. 752.015.

190 (3) After conducting a final hearing on the issue of
 191 visitation, the court may award reasonable visitation to the
 192 grandparent with respect to the minor child if the court finds
 193 by clear and convincing evidence that a parent is unfit or that
 194 there is a danger of significant harm to the child, that
 195 visitation is in the best interest of the minor child, and that
 196 the visitation will not materially harm the parent-child
 197 relationship.

198 (4) In assessing the best interest of the child under
 199 subsection (3), the court shall consider the totality of the
 200 circumstances affecting the mental and emotional well-being of
 201 the minor child, including:

202 (a) The love, affection, and other emotional ties existing
 203 between the minor child and the grandparent, including those

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204 resulting from the relationship that had been previously allowed
 205 by the child's parent.

206 (b) The length and quality of the previous relationship
 207 between the minor child and the grandparent, including the
 208 extent to which the grandparent was involved in providing
 209 regular care and support for the child.

210 (c) Whether the grandparent established ongoing personal
 211 contact with the minor child before the death of the parent.

212 (d) The reasons that the surviving parent cited in ending
 213 contact or visitation between the minor child and the
 214 grandparent.

215 (e) Whether there has been demonstrable significant mental
 216 or emotional harm to the minor child as a result of the
 217 disruption in the family unit from which the child derived
 218 support and stability from the grandparent, and whether the
 219 continuation of that support and stability is likely to prevent
 220 further harm.

221 (f) The existence or threat to the minor child of mental
 222 injury as defined in s. 39.01.

223 (g) The present mental, physical, and emotional health of
 224 the minor child.

225 (h) The present mental, physical, and emotional health of
 226 the grandparent.

227 (i) The recommendations of the minor child's guardian ad
 228 litem, if one is appointed.

229 (j) The results of any psychological evaluation of the
 230 minor child.

231 (k) The preference of the minor child if the child is
 232 determined to be of sufficient maturity to express a preference.

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233 (l) A written testamentary statement by the deceased parent
 234 regarding visitation with the grandparent. The absence of a
 235 testamentary statement is not deemed to provide evidence that
 236 the deceased parent would have objected to the requested
 237 visitation.

238 (m) Other factors that the court considers necessary to
 239 making its determination.

240 (5) In assessing material harm to the parent-child
 241 relationship under subsection (3), the court shall consider the
 242 totality of the circumstances affecting the parent-child
 243 relationship, including:

244 (a) Whether there have been previous disputes between the
 245 grandparent and the parent over childrearing or other matters
 246 related to the care and upbringing of the minor child.

247 (b) Whether visitation would materially interfere with or
 248 compromise parental authority.

249 (c) Whether visitation can be arranged in a manner that
 250 does not materially detract from the parent-child relationship,
 251 including the quantity of time available for enjoyment of the
 252 parent-child relationship and any other consideration related to
 253 disruption of the schedule and routines of the parent and the
 254 minor child.

255 (d) Whether visitation is being sought for the primary
 256 purpose of continuing or establishing a relationship with the
 257 minor child with the intent that the child benefit from the
 258 relationship.

259 (e) Whether the requested visitation would expose the minor
 260 child to conduct, moral standards, experiences, or other factors
 261 that are inconsistent with influences provided by the parent.

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262 (f) The nature of the relationship between the child's
 263 parent and the grandparent.

264 (g) The reasons that the parent cited in ending contact or
 265 visitation between the minor child and the grandparent which was
 266 previously allowed by the parent.

267 (h) The psychological toll of visitation disputes on the
 268 minor child.

269 (i) Other factors that the court considers necessary to
 270 making its determination.

271 (6) Part II of chapter 61, the Uniform Child Custody
 272 Jurisdiction and Enforcement Act, applies to actions brought
 273 under this section.

274 (7) If separate actions under this section and s. 61.13 are
 275 pending concurrently, the courts are strongly encouraged to
 276 consolidate the actions in order to minimize the burden of
 277 litigation on the minor child and the other parties.

278 (8) An order for grandparent visitation may be modified
 279 upon a showing by the person petitioning for modification that a
 280 substantial change in circumstances has occurred and that
 281 modification of visitation is in the best interest of the minor
 282 child.

283 (9) An original action requesting visitation under this
 284 section may be filed by a grandparent only once during any 2-
 285 year period, except on good cause shown that the minor child is
 286 suffering, or may suffer, demonstrable significant mental or
 287 emotional harm caused by a parental decision to deny visitation
 288 between a minor child and the grandparent, which was not known
 289 to the grandparent at the time of filing an earlier action.

290 (10) This section does not provide for grandparent

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291 visitation with a minor child placed for adoption under chapter
 292 63 except as provided in s. 752.071 with respect to adoption by
 293 a stepparent or close relative.

294 (11) Venue shall be in the county where the minor child
 295 primarily resides, unless venue is otherwise governed by chapter
 296 39, chapter 61, or chapter 63.

297 Section 7. Section 752.07, Florida Statutes, is repealed.

298 Section 8. Section 752.071, Florida Statutes, is created to
 299 read:

300 752.071 Effect of adoption by stepparent or close
 301 relative.-After the adoption of a minor child by a stepparent or
 302 close relative, the stepparent or close relative may petition
 303 the court to terminate an order granting grandparent visitation
 304 under this chapter which was entered before the adoption. The
 305 court may terminate the order unless the grandparent is able to
 306 show that the criteria of s. 752.011 authorizing the visitation
 307 continue to be satisfied.

308 Section 9. Subsection (2) of section 39.6221, Florida
 309 Statutes, is amended to read:

310 39.6221 Permanent guardianship of a dependent child.-

311 (2) In its written order establishing a permanent
 312 guardianship, the court shall:

313 (a) List the circumstances or reasons why the child's
 314 parents are not fit to care for the child and why reunification
 315 is not possible by referring to specific findings of fact made
 316 in its order adjudicating the child dependent or by making
 317 separate findings of fact;

318 (b) State the reasons why a permanent guardianship is being
 319 established instead of adoption;

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320 (c) Specify the frequency and nature of visitation or
 321 contact between the child and his or her parents;

322 (d) Specify the frequency and nature of visitation or
 323 contact between the child and his or her grandparents or great-
 324 grandparents, under s. 39.509;

325 (e) Specify the frequency and nature of visitation or
 326 contact between the child and his or her siblings; and

327 (f) Require that the permanent guardian not return the
 328 child to the physical care and custody of the person from whom
 329 the child was removed without the approval of the court.

330 Section 10. Subsection (3) of section 39.6231, Florida
 331 Statutes, is amended to read:

332 39.6231 Permanent placement with a fit and willing
 333 relative.-

334 (3) In its written order placing the child with a fit and
 335 willing relative, the court shall:

336 (a) List the circumstances or reasons why reunification is
 337 not possible by referring to specific findings of fact made in
 338 its order adjudicating the child dependent or by making separate
 339 findings of fact;

340 (b) State the reasons why permanent placement with a fit
 341 and willing relative is being established instead of adoption;

342 (c) Specify the frequency and nature of visitation or
 343 contact between the child and his or her parents;

344 (d) Specify the frequency and nature of visitation or
 345 contact between the child and his or her grandparents or great-
 346 grandparents, under s. 39.509;

347 (e) Specify the frequency and nature of visitation or
 348 contact between the child and his or her siblings; and

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349 (f) Require that the relative not return the child to the
350 physical care and custody of the person from whom the child was
351 removed without the approval of the court.

352 Section 11. Paragraph (e) of subsection (4) of section
353 63.087, Florida Statutes, is amended to read:

354 63.087 Proceeding to terminate parental rights pending
355 adoption; general provisions.—

356 (4) PETITION.—

357 (e) The petition must include:

358 1. The minor's name, gender, date of birth, and place of
359 birth. The petition must contain all names by which the minor is
360 or has been known, excluding the minor's prospective adoptive
361 name but including the minor's legal name at the time of the
362 filing of the petition. In the case of an infant child whose
363 adoptive name appears on the original birth certificate, the
364 adoptive name may ~~shall~~ not be included in the petition or, not
365 ~~shall it be included~~ elsewhere in the termination of parental
366 rights proceeding.

367 2. All information required by the Uniform Child Custody
368 Jurisdiction and Enforcement Act and the Indian Child Welfare
369 Act.

370 3. A statement of the grounds under s. 63.089 upon which
371 the petition is based.

372 4. The name, address, and telephone number of any adoption
373 entity seeking to place the minor for adoption.

374 5. The name, address, and telephone number of the division
375 of the circuit court in which the petition is to be filed.

376 6. A certification of compliance with the requirements of
377 s. 63.0425 regarding notice to grandparents or great-

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378 grandparents of an impending adoption.

379 Section 12. Subsection (2) of section 63.172, Florida
380 Statutes, is amended to read:

381 63.172 Effect of judgment of adoption.—

382 (2) If one or both parents of a child die without the
383 relationship of parent and child having been previously
384 terminated and a spouse of the living parent or a close relative
385 of the child thereafter adopts the child, the child's right of
386 inheritance from or through the deceased parent is unaffected by
387 the adoption and, unless the court orders otherwise, the
388 adoption does will not terminate any grandparental or great-
389 grandparental rights delineated under chapter 752. For purposes
390 of this subsection, a close relative of a child is the child's
391 brother, sister, grandparent, great-grandparent, aunt, or uncle.

392 Section 13. Section 752.015, Florida Statutes, is amended
393 to read:

394 752.015 Mediation of visitation disputes.—It is ~~shall be~~
395 the public policy of this state that families resolve
396 differences over grandparent visitation within the family. It is
397 ~~shall be~~ the further public policy of this state that, when
398 families are unable to resolve differences relating to
399 grandparent visitation, ~~that~~ the family participate in any
400 formal or informal mediation services that may be available. If
401 ~~When~~ families are unable to resolve differences relating to
402 grandparent visitation and a petition is filed pursuant to s.
403 752.011 s. 752.04, the court shall, if such services are
404 available in the circuit, refer the case to family mediation in
405 accordance with the Florida Family Law Rules of Procedure rules
406 ~~promulgated by the Supreme Court.~~

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407

Section 14. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Vice Chair*
Environmental Preservation and
Conservation, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Finance and Tax
Communications, Energy, and Public Utilities
Military Affairs, Space, and Domestic Security

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Chair*

SENATOR JOSEPH ABRUZZO
25th District

March 11th, 2014

The Honorable Eleanor Sobel
The Florida Senate
520 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Madam Chair Sobel:

I respectfully request that Senate Bill 750, relating to Grandparent Visitation Rights, be placed on the Children, Families, and Elder Affairs Committee agenda. This legislation will provide the opportunity for grandparents to petition for visitation rights of their grandchildren.

Thank you for your consideration. Please let me know if I can provide further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Abruzzo".

Senator Joseph Abruzzo

cc: Claude Hendon, Staff Director

RECEIVED

MAR 11 2014

Senate Committee
Children and Families

REPLY TO:

- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-14

Meeting Date

Topic Grandparents RIGHTS Next of Kin Bill Number 750
(if applicable)

Name Yvonne Stewart Amendment Barcode _____
(if applicable)

Job Title _____

Address 557 Guy Ct Phone 402-116-9716
Street

Geneva FL 32732 E-mail ystrandzsalon@yahoo
City State Zip

Speaking: For Against Information

Representing Self

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14

Meeting Date

Topic Grandparent Rights Next of Kin Bill Number 750
(if applicable)

Name Erica Stewart Amendment Barcode _____
(if applicable)

Job Title Student

Address 2361 Waccassa St Phone 407 947 3687
Street

Geneva FL 32732 E-mail erstew1110@gmail.com
City State Zip

Speaking: For Against Information

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

3/18/2014
Meeting Date

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

Topic GRANDPARENTS RIGHTS

Bill Number 750 (if applicable)

Name JOANNE ECKER

Amendment Barcode (if applicable)

Job Title R.E. APPRAISER

Address 411 FLATWOOD DR

Phone 407 312-9907

Street WINTER SPRINGS FL 32708

E-mail ECKERJECKER@AOL.COM

Speaking: For Against Information

Representing SELF

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

3/18/14
Meeting Date

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

Topic Grandparents & Next of Kin

Bill Number 750 (if applicable)

Name Lauren Ericson

Amendment Barcode (if applicable)

Job Title Self Employed

Address 557 Guich

Phone 407 920 0016

Street Geneva FL 32732

E-mail L10F150@yahoo.com

Speaking: For Against Information

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/2014

Meeting Date

Topic _____ Bill Number 750
Name BRIAN PITTS (if applicable)
Job Title TRUSTEE Amendment Barcode _____ (if applicable)
Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street
SAINT PETERSBURG FLORIDA 33705
City State Zip
E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14

Meeting Date

Topic Rights of Grandparents Bill Number 750
Name Laura Cantwell (if applicable)
Job Title Associate State Director Amendment Barcode _____ (if applicable)
Address 400 Canton Pkwy, Suite 100 Phone 850-570-2110
Street
St. Pete FL 33716
City State Zip
E-mail lcantwell@aarp.org

Speaking: For Against Information

Representing AARP

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18

Meeting Date

Topic Rights of Grandparents

Bill Number 750
(if applicable)

Name Linda Kearschner

Amendment Barcode _____
(if applicable)

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

Representing Florida Parent Teacher Assoc. (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 Children, Families, and Elder Affairs

BILL: CS/SB 972

INTRODUCER: Children, Families, and Elder Affairs Committee; and Senators Galvano and Bradley

SUBJECT: Attorneys for Dependent Children with Disabilities

DATE: March 18, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Hendon	CF	Fav/CS
2.			JU	
3.			AP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 972 requires the appointment of an attorney for any dependent child who has a disability.

The bill recognizes organizations and individuals that provide attorney representation to children in parts of the state, and expresses the legislative recognition that these organizations and individuals have proven effective in producing significantly improved outcomes for children.

The bill requires that orders appointing attorneys under this provision be in writing. It directs that the attorney representing the child provide the complete range of legal services from removal from the home or initial appointment through all available appellate proceedings. It authorizes the attorney, with court permission, to arrange for supplemental or separate counsel to handle appellate matters.

The bill requires that, except for attorneys working without compensation, attorneys appointed to represent dependent children with disabilities be adequately compensated and be provided with access to funding for expert witnesses, depositions, and other costs of litigation. It provides that payment of attorneys under this bill is subject to appropriations. Fees are capped at \$3,000 per child per year. The bill authorizes the Justice Administration Commission to contract with attorneys selected by the Guardian ad Litem program to fulfil this function.

The bill preserves the power of the court to appoint an attorney for any dependent child under ch. 39, F.S.

The bill will have a significant fiscal impact. The bill has an effective date of July 1, 2014.

II. Present Situation:

Dependent Children

Chapter 39, F.S., describes the Florida judicial system as designed to protect children about whom reports have been made to the Department of Children and Families (DCF or department) alleging abuse, neglect, or abandonment.

“Dependency,” “dependent child,” and “adjudication of dependency” are terms used throughout ch. 39, F.S., to describe the legal process whereby parental rights and responsibilities are partially or fully surrendered to the state. The statutes do not define “dependency,” but defines “dependent child.”¹

The dependency process in Florida begins with a call into the Florida Abuse Hotline (hotline).² If accepted by the hotline, the call is referred to a child protective investigator, who conducts an on-site investigation of the allegations of abuse, neglect, or abandonment.³ If warranted, a dependency petition is filed with the court by DCF.⁴ A child may be taken into custody and placed in a shelter without a prior hearing if there is probable cause of imminent danger or injury to the child.⁵ In that instance, a judicial hearing must be held within 24 hours after the removal of the child from the home.⁶ A Guardian ad Litem (GAL) must be appointed at the time of the shelter hearing.⁷ If needed, an Attorney ad Litem (AAL) may be appointed at this time as well.⁸

If a petition for dependency is filed, whether or not the child is taken into custody, the circuit court assigned to hear dependency cases (dependency court) will schedule an adjudicatory hearing to determine whether the child is dependent, based on a preponderance of the evidence.⁹ If the child is found to be dependent, a disposition hearing is held to determine the appropriate services and placement settings for the child.¹⁰ At this hearing, the court also reviews and approves a case plan outlining the services and the desired goals for the child.¹¹

The dependency court holds periodic judicial reviews, generally every six months, until supervision is terminated to determine the child’s status, the progress in following the case plan, and the status of the goals and objectives of the case plan.¹² If after 12 months, the case plan

¹ Section 39.01(15), F.S.

² Section 39.201, F.S.

³ Section 39.301, F.S.

⁴ Section 39.501(3)(c), F.S.

⁵ Section 39.402(1), F.S.

⁶ Section 39.402(8), F.S.

⁷ Section 39.822(1), F.S.

⁸ The term “ad Litem” means literally “for the suit.” In practice, it means a representative, either lay (guardian) or lawyer (attorney) appointed for the limited purposes of a particular lawsuit.

⁹ Section 39.507, F.S.

¹⁰ Section 39.521, F.S.

¹¹ Section 39.521(1), F.S.

¹² *Id.*

goals have not been met, the court holds a permanency hearing to determine the child's permanent placement goal.¹³

Lawyers for Children in the Dependency System

While all parents in dependency court are entitled to counsel, and indigent parents are entitled to appointed counsel,¹⁴ there is no provision in Florida law or rule requiring the appointment of counsel for dependent children, with a few exceptions, including children placed in a skilled nursing facility¹⁵ and children facing involuntary commitment for mental health treatment under The Baker Act.¹⁶

Unlike parents, children have been found to have no constitutional right to representation by counsel in dependency court.¹⁷

In general, the federal and state scheme for safeguarding the legal needs of children in the dependency system relies upon the appointment of GALs or AALs. The Federal Child Abuse Prevention and Treatment Act (CAPTA) requires states to document in their case plans provisions for appointing a GAL to represent the child's best interest in every case of child abuse or neglect that results in a judicial proceeding.¹⁸ The Florida GAL program funds programs supporting both lay volunteers to assist children in dependency proceedings and AALs. The GAL program has been successful in recruiting attorneys who wish to satisfy their *pro bono* expectations by representing children with various legal needs in dependency court.¹⁹ When there are insufficient *pro bono* lawyers available and there are sufficient resources to do so, the GAL program may contract with legal aid, other programs, or private attorneys for the provision of these services.²⁰

Florida law requires the appointment of a GAL for every child who is the subject of a dependency proceeding.²¹ While the GAL program has requested funds to allow it to meet this mandate, so far the goal has not been met. As of November 2013, there were 29,285 dependent children under court supervision, of whom 22,281 (76 percent) had been appointed a GAL. The GAL program also funds the current AAL Program. The GAL attorney is required by the program standards to request the appointment of an AAL in any case where doing so would further the best interests of the child. In addition, the court on its own motion or upon motion of any party, including the child, can appoint an AAL at any point in the dependency process.²²

¹³ Section 39.621(1), F.S.

¹⁴ Section 39.013, F.S.

¹⁵ Section 744, conference report on SB 1500 (2013 Reg. Session)

¹⁶ Section 394.467(4), F.S. requires the appointment of the Office of the Public Defender to represent any person for whom involuntary placement is sought pursuant to Chapter 394, known as The Baker Act (s. 394.451, F.S.)

¹⁷ *Lassiter v. Dept. of Social Services of Durham County, N.C.*, 452 U.S. 18, 101 S.Ct. 2153 (1981), *In the Interest of D.B.*, 385 So.2d. 83 (Fla. 1980), *In the Interest of C.T.*, 503 So.2d 972 (Fla. 4th DCA 1987).

¹⁸ 42 U.S.C. ss. 5101 *et seq.*

¹⁹ The Florida Bar has an expectation that its members perform *pro bono* services. This term literally means "for good," and is applied to services performed without compensation by lawyers.

²⁰ Office of the Florida Guardian ad Litem, informal communication, (March 13, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).

²¹ Section 39.402(8)(c)1, s. 39.807(2), s. 39.822, F.S.

²² Fla. R. Juv. P. 8.217(a).

Common reasons for seeking appointment of an AAL in dependency court include cases in which a child needs a legal guardianship or where special expertise is needed in areas such as immigration law, disability law, or administrative forums. There is no statewide tracking mechanism for the appointment of AALs for dependent children, since they are appointed at the state court circuit level. The budget for the GAL program in FY 2012-2013 was \$34.1 million dollars.²³ Last year, the GAL program spent approximately \$360,000 in contracts for AAL services.²⁴ Each AAL is typically paid \$500-\$1000 annually per child per year.²⁵

In addition to the services of the GAL-provided AALs, there are several pockets of legal services for children available across the state. The Florida Bar Foundation has provided grants to legal services providers, several law schools have established clinics which serve children, and several Children's Councils²⁶ fund lawyers for children. Notable among the efforts to provide legal services to children is the Foster Children's Project in Palm Beach County. This project, administered by the Legal Aid Society of Palm Beach County and funded by the Children's Services Council of Palm Beach County and the GAL, provides every child in the foster care system between birth and 12 years of age, and their siblings, with an attorney to represent them in all court matters and to advocate for them to achieve permanency within 12 months. The project has recently been authorized to expand its representation to children zero to five years of age in relative placements.

The department estimates that the number of children who would qualify for the appointment of attorneys under the provisions of this bill to be is 3,915.²⁷ This number is approximately 21 percent of all children in out-of-home care.²⁸

Dependent Children in Nursing Homes

The state is currently a party to a lawsuit related to the placement of medically complex children in more restrictive settings such as nursing homes. The United States Department of Justice joined the lawsuit that alleges that the state violated the Americans with Disabilities Act (ADA).²⁹ The Agency for Health Care Administration (AHCA) has worked with the families of over 200 children in nursing homes under the Medicaid program to ensure they are aware of and provided in home health services. In addition, the Department of Children and Families and the Agency for Persons with Disabilities have worked with medically complex children and their families that they serve to ensure the least restrictive placement.

²³ Office of the Florida Guardian ad Litem, *ibid*

²⁴ Proviso language in the budget last year included funds appropriated for contracts with AALs, to be selected and contracted with by the GAL.

²⁵ Office of Florida Guardian ad Litem, *ibid*

²⁶ Florida Children's Councils, or Children's Services Councils, are locally established special taxing districts designed to provide services to children and families. Chapter 125, F.S., governs their creation and operation. The first was approved in 1946 in Pinellas County. There are currently Councils (with slight variances in names) in Broward, Duval, Hillsborough, Martin, Miami-Dade, Palm Beach, and St. Lucie counties. *available at* <http://flchildrenscouncil.org/about-the-council/overview/> (last visited March 14, 2014).

²⁷ This number does not include those children where the disability is unknown, children in in-home placements, children in extended foster care, or children being considered for placement in a residential treatment center.

²⁸ Florida Department of Children and Families, *ibid.*, p. 3. The information is supplied as of January 27, 2014.

²⁹ *A.R. et al. v. Dudek et al, United States V. Florida*, Consolidated Case No. 0:12-cv-60460-RSR, U.S. District Court for the Southern District of Florida.

The department reports that currently there are 11 dependent children in nursing homes.³⁰ According to the GAL program, all these children are currently represented by counsel.

Dependent Children and Psychotropic Drugs

Florida law requires that DCF obtain consent from parents or a court order before administering any psychotropic drugs to a child, barring an emergency.³¹ The statute directs that, unless parental rights have been terminated, the parents should be involved in the decision-making regarding administration of these drugs. By rule, when “a child of sufficient age, understanding, and maturity declines to assent to the psychotropic medication, the dependency case manager or child protective investigator will request that Children’s Legal Services request an attorney be appointed for the child.”³²

Dependent Children who are Developmentally Disabled

There is no information on the number who are “suspected” of being developmentally disabled. There is no provision of law or rule that requires appointment of counsel for every child who is dependent and has a known or suspected diagnosis of a developmental disability.

Dependent Children and Residential Treatment Facilities

There is no information about the number of children being considered for placement in a residential treatment facility. Placement of a dependent child in a residential treatment facility is governed by the provisions of s. 409.407(6), F.S. This section provides that the placement must be the least restrictive alternative for the child. It requires the immediate appointment of GAL for the child if one is not already in place. In addition, the Florida Rules of Juvenile Procedure require that, if a child does not agree with placement in a residential treatment facility, the court appoint an attorney for the child, if one has not already been appointed.³³

Dependent Children who have been Victims of Human Trafficking

There is no statutory provision requiring the appointment of counsel for dependent children who are victims of human trafficking.

III. Effect of Proposed Changes:

Section 1 creates s. 39.01305, F.S., to require the appointment of a lawyer for every dependent child who has a disability and meets one or more of the following criteria:

- Resides in a skilled nursing facility or is being considered for placement in a skilled nursing home;
- Is prescribed a psychotropic medication but does not wish to take the medication;

³⁰ Department of Children and Families, Informal communication (March 13, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs.)

³¹ Section 39.407, F.S.

³² Rule 65C-35.005, F.A.C.

³³ Fla.R.Juv.P. 8.350(a)(7)

- Has a suspected or known diagnosis of developmental disability as defined in s. 393.063, F.S.;
- Is being placed in a residential treatment center or is being considered for placement in a residential treatment center; or
- Has been a victim of human trafficking.

This section also sets forth the legislative finding that, while all children in dependency proceedings have important interests at stake, dependent children who have known or suspected disabilities have a particular need for attorneys to represent them in dependency proceedings, as well as in fair hearings and appellate proceedings, so that the attorney may address the child's medical and related needs and the services and supports necessary for the child to live successfully in the community.

CS/SB 972 expresses the Legislature's recognition of the importance of organizations already providing legal services to children and the intention that this bill not supplant current efforts in this regard.

It requires that the appointments of lawyers be in writing and that they remain in effect until the attorney is allowed to withdraw or is discharged by the court, or the case is dismissed. Attorneys appointed under this section are to provide the complete range of legal services to the child from the time of removal from the home or initial appointment through all available appellate proceedings. With permission of the court, the attorney is authorized to arrange for supplemental or separate counsel to handle proceedings at appellate hearings.

Attorneys appointed under this section, except those serving *pro bono*, must be adequately compensated and provided with access to funding for expert witnesses, depositions, and other costs of litigation. Payment to an attorney is subject to appropriations, and is subject also to review by the Justice Administration Commission for reasonableness. The Justice Administration Commission is authorized to contract with attorneys selected by the GAL. Attorney fees are limited to \$3,000 per child per year.

This section explicitly does not limit the authority of the court otherwise to appoint attorneys for children in dependency proceedings.

Section 2 provides an effective date of July 1, 2014.

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:

According to the terms of the bill, the cost to the state will be limited to the amount specifically appropriated for this purpose. However, the state's experience with paying for court-appointed counsel in criminal cases, dependency cases, and for capital collateral counsel has shown that costs are difficult to control. While the Legislature may set rates to pay private attorneys and even require private attorneys to sign contracts agreeing to certain payment levels, the attorney can argue to the court that their individual case warrants higher reimbursement. The courts have in such instances awarded higher fees. The Florida Supreme Court has held that attorneys' fees and costs for court appointed counsel can exceed statutory limits in certain circumstances.³⁴

The number of children in the dependency system that would qualify for appointed attorneys under the bill is unknown. The department reports that there are currently 3,951 children in out-of-home care with a known disability. This number does not include children in in-home care, children with an unidentified disability, children in extended foster care, children being considered for placement in a residential treatment facility, or children who may suffer from mental illness as the result of human trafficking. If all 3,951 children in out-of-home care with a known disability are provided attorneys, the attorney fees would cost the state \$11.7 million each year. This does not include case-related costs such as transcripts, depositions, and expert witnesses.

The bill is not limited by its terms to dependent children in out-of-home care (i.e., in the custody of the department or in relative or non-relative care). If all dependent children, including those remaining in the custody of their parents, those in relative care, and those placed with non-relatives are included, the number of children eligible for attorney appointments will be substantially higher.

DCF reports that some expenditures may be required to modify the Florida Safe Families Network (FSFN) to accommodate the requirements for appointed counsel.

³⁴ *Mackemson v. Martin County*, 491 So.2d 1109 (Fla. 1986); *Bd. of County Comm'rs of Hillsborough County v. Scruggs*, 545 So2d 910 (Fla. 2nd DCA 1989) (expanding *Mackemson* to court-appointed attorneys in civil dependency hearings).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 39.01305 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 Children, Families, and Elder Affairs on March 18, 2014:

- Recognizes the contributions of organizations and individuals already providing legal representation to children in the dependency system and expresses the legislative intent that the efforts of these organizations and individuals not be supplanted by the provisions of this bill;
- Replaces legislative intent regarding the appointment of attorneys for children with a directive that such attorneys be appointed for identified groups of children;
- Revises the description of the groups of dependent children for whom attorneys must be appointed;
- Provides that attorney fees are subject to review by the Justice Administration Commission for reasonableness;
- Authorizes the Justice Administration Commission to contract with attorneys selected by the GAL program; and
- Limits attorney fees to \$3,000 per child per year.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2014	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs
(Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 39.01305, Florida Statutes, is created
to read:

39.01305 Appointment of an attorney for a dependent child
with disabilities.-

(1) (a) The Legislature finds that:

1. All children in proceedings under this chapter have



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11 important interests at stake, such as health, safety, and well-
12 being and the need to obtain permanency.

13 2. A dependent child who has a suspected or known
14 disability has a particular need for an attorney to represent
15 the dependent child in proceedings under this chapter, as well
16 as in fair hearings and appellate proceedings, so that the
17 attorney may address the child's medical and related needs and
18 the services and supports necessary for the child to live
19 successfully in the community.

20 (b) The Legislature recognizes the existence of
21 organizations that provide attorney representation to children
22 in certain jurisdictions throughout the state. The Legislature
23 finds that some of these organizations have proven effective,
24 through independent rigorous evaluation, in producing
25 significantly improved outcomes for children and that many have
26 been embraced by their local jurisdictions. The Legislature,
27 therefore, does not intend that funding provided for
28 representation under this section supplant proven and existing
29 organizations representing children. Instead, the Legislature
30 intends that funding provided for representation under this
31 section be an additional resource for the representation of more
32 children in these jurisdictions, to the extent necessary to meet
33 the requirements of this chapter, with the cooperation of
34 existing local organizations or through the expansion of such
35 organizations. The Legislature encourages the expansion of pro
36 bono representation for children. This section is not intended
37 to limit the ability of a pro bono attorney to appear on behalf
38 of a child.

39 (2) An attorney shall be appointed for a dependent child



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40 who has a disability and meets one or more of the following
41 criteria:

42 (a) A dependent child who resides in a skilled nursing
43 facility or is being considered for placement in a skilled
44 nursing home;

45 (b) A dependent child who is prescribed a psychotropic
46 medication but does not want to take the psychotropic
47 medication;

48 (c) A dependent child who has a suspected or known
49 diagnosis of developmental disability as defined in s. 393.063;

50 (d) A dependent child being placed in a residential
51 treatment center or being considered for placement in a
52 residential treatment center; or

53 (e) A dependent child who has been a victim of human
54 trafficking.

55 (3) A court order appointing an attorney under this section
56 must be in writing. The appointment continues in effect until
57 the attorney is allowed to withdraw or is discharged by the
58 court or until the case is dismissed. An attorney who is
59 appointed to represent the child shall provide the complete
60 range of legal services, from the removal from home or from the
61 initial appointment through all available appellate proceedings.
62 With the permission of the court, the attorney for the dependent
63 child may arrange for supplemental or separate counsel to handle
64 proceedings at an appellate hearing.

65 (4) Except if the attorney has agreed to provide pro bono
66 services, an appointed attorney must be adequately compensated
67 and provided with access to funding for expert witnesses,
68 depositions, and other costs of litigation. Payment to an



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69 attorney is subject to appropriations and subject to review by
70 the Justice Administrative Commission for reasonableness. The
71 Justice Administrative Commission may contract with attorneys
72 selected by the guardian ad litem program. Attorney fees may not
73 exceed \$3,000 per child per year.

74 (5) This section does not limit the authority of the court
75 to appoint an attorney for a dependent child in a proceeding
76 under this chapter.

77 (6) Implementation of this section is subject to
78 appropriations expressly made for that purpose.

79 Section 2. This act shall take effect July 1, 2014.

80

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

82 And the title is amended as follows:

83 Delete everything before the enacting clause
84 and insert:

85 A bill to be entitled
86 An act relating to attorneys for dependent children
87 with disabilities; creating s. 39.01305, F.S. ;
88 providing legislative findings and intent; requiring
89 appointment of an attorney to represent a dependent
90 child who meets one or more specified criteria;
91 requiring the appointment to be in writing; requiring
92 that the appointment continue in effect until the
93 attorney is allowed to withdraw or is discharged by
94 the court or until the case is dismissed; requiring
95 that an attorney not acting in a pro bono capacity be
96 adequately compensated for his or her services and
97 have access to funding for certain costs; providing



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98 for financial oversight by the Justice Administrative
99 Commission; providing a limit on attorney fees;
100 providing applicability; providing an effective date.

By Senator Galvano

26-01161-14

2014972__

1 A bill to be entitled
 2 An act relating to attorneys for dependent children
 3 with disabilities; creating s. 39.01305, F.S.;
 4 defining the term "dependent child with a suspected or
 5 known disability"; providing legislative findings;
 6 providing that the Legislature intends that an
 7 attorney be appointed for a child in a proceeding
 8 under ch. 39, F.S., if the child has a suspected or
 9 known disability; requiring the appointment to be in
 10 writing; requiring that the appointment continue in
 11 effect until the attorney is allowed to withdraw or is
 12 discharged by the court or until the case is
 13 terminated; requiring that the attorney be adequately
 14 compensated for his or her services; providing for
 15 applicability; providing an effective date.

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

18
 19 Section 1. Section 39.01305, Florida Statutes, is created
 20 to read:

21 39.01305 Appointment of an attorney for a dependent child
 22 with disabilities.-

23 (1) As used in this section, the term "dependent child with
 24 a suspected or known disability" means:

25 (a) A medically dependent or technologically dependent
 26 child who because of a medical condition requires continuous
 27 therapeutic interventions or skilled nursing supervision and
 28 resides in a skilled nursing facility or is being considered for
 29 placement in a skilled nursing facility;

Page 1 of 3

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

26-01161-14

2014972__

30 (b) A dependent child who has been prescribed a
 31 psychotropic medication;
 32 (c) A dependent child with a suspected diagnosis of
 33 developmental disability as defined in s. 393.063;
 34 (d) A dependent child being placed in a residential
 35 treatment center or being considered for placement in a
 36 residential treatment center; or
 37 (e) A dependent child who has been a victim or perpetrator
 38 of sexual abuse or human trafficking and who is suspected to be
 39 in need of mental health treatment.
 40 (2) (a) The Legislature finds that:
 41 1. All children in proceedings under this chapter have
 42 important interests at stake, such as health, safety, and well-
 43 being and the need to obtain permanency.
 44 2. A dependent child with a suspected or known disability
 45 has a particular need for an attorney to represent him or her in
 46 such proceedings, as well as in fair hearings and appellate
 47 proceedings, so that the attorney may address the medical and
 48 related needs and the services and supports necessary for the
 49 child to live successfully in the community.
 50 (b) It is the intent of the Legislature that the court
 51 appoint an attorney to represent each dependent child who has a
 52 suspected or known disability.
 53 (3) An order appointing an attorney for a dependent child
 54 who has a suspected or known disability must be in writing.
 55 (4) The appointment of an attorney for a dependent child
 56 with a suspected or known disability continues in effect until
 57 the attorney is allowed to withdraw or is discharged by the
 58 court, or until the case is dismissed. An attorney who is

Page 2 of 3

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

26-01161-14

2014972__

59 appointed to represent the child shall provide the complete
60 range of legal services from removal from the home or initial
61 appointment through all available appellate proceedings. With
62 the permission of the court, the attorney for the dependent
63 child may arrange for supplemental or separate counsel to handle
64 proceedings at an appellate hearing.

65 (5) The attorney must be adequately compensated and
66 provided with access to funding for expert witnesses,
67 depositions, and other costs of litigation.

68 (6) This section does not limit the authority of the court
69 to appoint an attorney for a dependent child in a proceeding
70 under this chapter.

71 (7) Implementation of this section is subject to
72 appropriations expressly made for that purpose.

73 Section 2. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO

26th District

February 18, 2014

Senator Eleanor Sobel
520 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Madam Chair Sobel:

I respectfully request that SB 972, Attorneys for Dependent Children with Disabilities, be scheduled for a hearing in the Committee on Children, Families, and Elder Affairs at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Bill Galvano

cc: Claude Hendon
Lynn Wells

RECEIVED

FEB 18 2014

**Senate Committee
Children and Families**

REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18

Meeting Date

Topic Attorneys for Dependent Children

Bill Number SB 972
(if applicable)

Name Aimee Diaz Lyon

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 South Monroe Street #505

Phone 850-205-9000

Street

Tallahassee FL 32301

City

State

Zip

E-mail aimee.diaz.lyon@medlaw.com

Speaking: For Against Information

Representing the Florida Bar

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/2014

Meeting Date

Topic _____

Bill Number 972
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-14
Meeting Date

Topic Counsel for Assisted Dependent Children Bill Number 972
(if applicable)

Name CHRISTINA SPUDEAS Amendment Barcode _____
(if applicable)

Job Title Exec. Dir.

Address 1801 N. MIU. DR., STE. 35 Phone _____
Street

CORD SPRING, FL. 33071 E-mail _____
City State Zip

Speaking: For Against Information

Representing FLORIDA'S CHILDREN FIRST & FLORIDA YOUTH SHINE

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18
Meeting Date

Topic Attorneys for Dep. Children Bill Number S972
(if applicable)

Name Eddie Hall Amendment Barcode _____
(if applicable)

Job Title _____

Address _____ Phone _____
Street

City State Zip E-mail _____

Speaking: For Against Information

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.

S-001 (10/20/11)

didn't speak

THE FLORIDA SENATE

APPEARANCE RECORD

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3/18/14
Meeting Date

Topic Attorneys for Dependent Children Bill Number 972
(if applicable)

Name Sylvia Smith Amendment Barcode _____
(if applicable)

Job Title Director of Legislative Affairs

Address 2728 Centurion Dr Phone 322-2258

Tallahassee FL 32301 E-mail Sylvia S@
City State Zip disabilityrightsflorida.org

Speaking: For Against Information

Representing Disability Rights Florida

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

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 Children, Families, and Elder Affairs

BILL: CS/SB 1082

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Legg

SUBJECT: Adult Day Care Centers

DATE: March 18, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Fav/CS
2.			AHS	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1082 creates a definition for adult day care services and allows for licensed centers or facilities to continue to operate in the event the facility needs to temporarily relocate as a result of an emergency or for the safety of participants. The bill requires employees that provide direct care to participants with Alzheimer’s disease or a dementia-related disorder be offered current training related to these diseases annually.

The bill’s effective date is July 1, 2014. The fiscal impact is unknown at this time.

II. Present Situation:

The Agency for Health Care Administration (AHCA or agency) is authorized by statute to regulate and develop, establish, and enforce basic standards for adult day care centers (centers). An adult day care center is defined as “any building, buildings, or part of a building, whether operated for profit or not, in which is provided through its ownership or management, for a part of a day, basic services to three or more persons who are 18 years of age or older, who are not related to the owner or operator by blood or marriage, and who require such services.”¹ Section 429.90, F.S., assures the implementation of a program that provides therapeutic social and health activities and services to adults in an adult day care center. A participant² in an adult

¹ Section 429.901(1), F.S.

² Section 429.901(8), F.S., defines a participant as “a recipient of basic services or of supportive and optional services provided by an adult day care center.”

day care center must have functional impairments and be in need of a protective environment where therapeutic social and health activities and services are provided. Centers are prohibited from accepting participants who require medication during the time spent at the center and who are incapable of self-administration of medications, unless there is a person licensed to administer medications at the center.³ Every adult day care center must offer a planned program of varied activities and services promoting and maintaining the health of participants and encouraging leisure activities, interaction, and communication among participants on a daily basis. Centers are required to make these activities and services available during at least 60 percent of the time the center is open.⁴ A center is required to have one staff member for every six participants, but at no time may a center have less than two staff members present, one of whom is certified in first aid and CPR.⁵

Section 429.907, F.S., provides that in order to operate an adult day care center in this state it must obtain a license issued by the Agency for Health Care Administration.⁶ Separate licenses are required for centers operated on separate premises even though operated under the same management. Separate licenses are not required for separate buildings on the same premises.⁷ If a licensed center becomes wholly or substantially unusable due to a disaster or emergency, the licensee may continue to operate under its current license in premises separate from that authorized under the license. The location of the premises must be specified in its comprehensive emergency management plan submitted to and approved by the applicable county emergency management authority. The center must notify the agency and county emergency management authority within 24 hours of operating in the separate premises.⁸ The licensee can continue to operate at the separate premises for up to 180 days, which may be extended by the agency beyond the initial 180 days.⁹ An applicant must pay a fee for each license application submitted and the fee amount cannot exceed \$150.¹⁰ County-operated or municipally operated centers applying for licenses are exempt from the payment of the license fee.¹¹

Section 429.917, F.S., provides specific requirements for centers that offer care to persons with Alzheimer's disease or other related disorders. These centers must provide staff with written information on interacting with participants with Alzheimer's disease or dementia-related disorders. Additionally, staff who provide direct care to participants who have Alzheimer's disease or a dementia-related disorder must complete an additional 3 hours of training within 9 months after beginning employment.¹²

III. Effect of Proposed Changes:

Section 1 amends s. 429.901, F.S., to define "adult day care services" as community-based group services designed to provide social, health, therapeutic, recreational, nutritional, or respite

³ Rule 58A-6.006, F.A.C.

⁴ Rule 58A-6.008, F.A.C.

⁵ Rule 58A-6.006, F.A.C.

⁶ Section 429.907(1), F.S.

⁷ Section 429.904(2)(a)

⁸ Section 429.907(2)(b)1.a and b, F.S.

⁹ Section 429.907(2)(b)2, F.S.

¹⁰ Section 429.907(3), F.S.

¹¹ Section 429.907(4), F.S.

¹² Section 429.917(1)(c), F.S.

services to adults who need supervised care in a safe environment during the day. The services should be designed to:

- Delay or prevent institutionalization.
- Improve the ability to function independently through the delivery of individualized care.
- Offer an alternative setting for adults who have chronic and long-term health care needs.
- Improve or stabilize cognitive functioning.
- Educate caregivers.
- Provide respite for caregivers.
- Increase access to resources and information.

This section also defines “respite” as short-term, temporary relief for a person who is caring for a family member who might otherwise require permanent placement in a facility outside the home.

Section 2 amends s. 429.907, F.S., to provide that if a licensed center becomes wholly or substantially unusable due to a disaster, an emergency or due to alterations to the building that may constitute a hazard to the safety of the participants, the facility may continue to operate under its current license in premises separate from the premises authorized under the license if the licensee notifies the agency and the county emergency management authority within 24 hours after beginning to operate in another premises. The facility may also continue to operate under its current license in premises separate from the premises authorized under the license if the facility notified the agency within 30 days after commencement of building alterations requiring temporary relocation to another premises for the safety of the participants.

Additionally, a center may be granted a conditional license if the center has been in operation for more than 1 year before moving to the new location. Within 6 months after the center relocates, the agency must inspect the new location. An application for a conditional license renewal must be submitted at least 60 days before the conditional license expires.

Section 3 amends s. 429.911, F.S., relating to the denial, suspension, or revocation of a license under certain conditions. The bill adds the existence of unsafe conditions at the center which materially affect the well-being, health, or safety of center participants as a condition for agency action.

Section 4 amends s. 429.915, F.S., to add the additional category of temporary relocation as a condition by which the agency may issue a conditional license.

Section 5 requires that the additional training required in s. 429.917(1)(c), F.S. for employees providing direct care to participants with Alzheimer’s disease or dementia-related disorders must contain the most current information regarding Alzheimer’s disease and dementia-related disorders and must be offered annually.

Section 6 amends s. 429.931, F.S., to provide that in addition to construction and renovation, repairs of a center must comply with the provisions of ch. 533, F.S., pertaining to building construction standards.

Section 7 amends s. 400.141, F.S., administration and management of nursing homes, to remove reference to providers of adult day services in s. 400.141(1)(f), F.S.

Section 8 provides an effective date of July 1, 2014.

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:

The bill requires staff providing direct care to participants receive the most current information regarding Alzheimer's and dementia-related disorders annually. There may be additional expenses incurred by the annual requirement. The bill removes the cap of \$150 for each application or license. The agency has the discretion to set the fee in rule.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 7, lines 205-233 should be removed as the language is no longer needed as a result of the amendment adopted (barcode 299966) by the Children, Families, and Elder Affairs committee on March 18, 2014.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 429.901, 429.907, 429.911, 429.915, 429.917, 429.931, and 400.141.

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 Children, Families, and Elder Affairs on March 18, 2014:

- The amendment deletes the strike through of lines 53 through 77 reinstating the exemptions from licensure and monitoring of a freestanding inpatient hospice facility that provides day care services to hospice patients only and adult day care center programs with licensed assisted living facilities or licensed nursing facilities.

- B. **Amendments:**

None.



299966

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2014	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs
(Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 53 - 77
and insert:
renumber subsequent sections

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

And the title is amended as follows:

Delete lines 4 - 5
and insert:



299966

11

and "respite"; amending s.

By Senator Legg

17-01493-14

20141082__

A bill to be entitled

An act relating to adult day care centers; amending s. 429.901, F.S.; defining the terms "adult day services" and "respite"; amending s. 429.905, F.S.; revising exemptions from licensure and regulation; amending s. 429.907, F.S.; providing for operation of an adult day care center in a temporary location under certain conditions; providing notification requirements when a center relocates; authorizing the Agency for Health Care Administration to grant a conditional license to certain centers that relocate; providing license renewal and inspection requirements; revising exemptions for licensure; amending s. 429.911, F.S.; revising a ground for agency action against the owner of a center or its operator or employee; amending s. 429.915, F.S.; authorizing the agency to issue a conditional license to a center that temporarily relocates; amending s. 429.917, F.S.; revising staff training requirements; requiring a center to provide certain disclosures; amending s. 429.931, F.S.; requiring a center to notify the agency before proceeding with building alterations under certain circumstances; amending s. 400.141, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present subsections (2) through (8) and (9) of section 429.901, Florida Statutes, are renumbered as subsections

Page 1 of 9

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

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(3) through (9) and (11), respectively, and a new subsection (2) and subsection (10) are added to that section, to read:

429.901 Definitions.—As used in this part, the term:

(2) "Adult day care services" means community-based group services designed to provide social, health, therapeutic, recreational, nutritional, or respite services to adults who need supervised care in a safe environment during the day. Adult day care services offer cost-effective care while supporting individual autonomy, allowing the participant to age in place, and enhancing the quality of life of the participant, the caregiver, and the community. These services are designed to:

(a) Delay or prevent institutionalization.

(b) Improve the ability to function independently through the delivery of individualized care.

(c) Offer an alternative setting for adults who have chronic and long-term health care needs.

(d) Improve or stabilize cognitive functioning.

(e) Educate caregivers.

(f) Provide respite for caregivers.

(g) Increase access to resources and information.

(10) "Respite" means short-term, temporary relief for a person who is caring for a family member who might otherwise require permanent placement in a facility outside the home.

Section 2. Section 429.905, Florida Statutes, is amended to read:

~~429.905 Exemptions; monitoring of adult day care center programs colocated with assisted living facilities or licensed nursing home facilities.—~~

~~(1) The following are exempt from this part:~~

Page 2 of 9

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59 ~~(a) Any A~~ facility, institution, or other place that is
60 operated by the Federal Government or any agency thereof is
61 exempt from this part.

62 ~~(b) Any freestanding inpatient hospice facility that is~~
63 ~~licensed by the state and which provides day care services to~~
64 ~~hospice patients only.~~

65 ~~(2) A licensed assisted living facility, a licensed~~
66 ~~hospital, or a licensed nursing home facility may provide~~
67 ~~services during the day which include, but are not limited to,~~
68 ~~social, health, therapeutic, recreational, nutritional, and~~
69 ~~respite services, to adults who are not residents. Such a~~
70 ~~facility need not be licensed as an adult day care center;~~
71 ~~however, the agency must monitor the facility during the regular~~
72 ~~inspection and at least biennially to ensure adequate space and~~
73 ~~sufficient staff. If an assisted living facility, a hospital, or~~
74 ~~a nursing home holds itself out to the public as an adult day~~
75 ~~care center, it must be licensed as such and meet all standards~~
76 ~~prescribed by statute and rule. For the purpose of this~~
77 ~~subsection, the term "day" means any portion of a 24-hour day.~~

78 Section 3. Section 429.907, Florida Statutes, is amended to
79 read:

80 429.907 License requirement; fee; exemption; display.-

81 (1) The requirements of part II of chapter 408 apply to the
82 provision of services that require licensure pursuant to this
83 part and part II of chapter 408 and to entities licensed by or
84 applying for such licensure from the Agency for Health Care
85 Administration pursuant to this part. A license issued by the
86 agency is required in order to operate an adult day care center
87 in this state.

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88 (2) (a) Except as otherwise provided in this subsection,
89 separate licenses are required for centers operated on separate
90 premises, even though operated under the same management.
91 Separate licenses are not required for separate buildings on the
92 same premises.

93 (b) If a licensed center becomes wholly or substantially
94 unusable due to a disaster or ~~due to~~ an emergency as those terms
95 are defined in s. 252.34 or due to alterations to the building
96 that may constitute a hazard to the safety of participants:

97 1. The licensee may continue to operate under its current
98 license in premises separate from that authorized under the
99 license if the licensee has:

100 a. Specified the location of the premises in its
101 comprehensive emergency management plan submitted to and
102 approved by the applicable county emergency management
103 authority; ~~and~~

104 b. Notified the agency and the county emergency management
105 authority within 24 hours after beginning to operate in another
106 of operating in the separate premises; or

107 c. Notified the agency within 30 days after commencement of
108 building alterations that require the licensee to temporarily
109 relocate to another premises for the safety of participants.

110 2. The licensee shall operate the separate premises only
111 while the licensed center's original location is substantially
112 unusable and for up to 180 days. The agency may extend use of
113 the alternate premises beyond the initial 180 days. The agency
114 may also review the operation of the ~~disaster~~ premises
115 quarterly.

116 3. A center may be granted a conditional license pursuant

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 117 to s. 429.915 if the center has been in operation for more than
 118 1 year before moving to a new location. The agency must inspect
 119 the new location within 6 months after the center relocates. The
 120 center must submit an application for conditional license
 121 renewal at least 60 days before the conditional license expires.

(3) In accordance with s. 408.805, an applicant or licensee
 shall pay a fee for each license application submitted under
 this part and part II of chapter 408. The amount of the fee
 shall be established by rule ~~and may not exceed \$150.~~

~~(4) County-operated or municipally-operated centers
 applying for licensure under this part are exempt from the
 payment of license fees.~~

Section 4. Paragraph (a) of subsection (2) of section
 429.911, Florida Statutes, is amended to read:

429.911 Denial, suspension, revocation of license;
 emergency action; administrative fines; investigations and
 inspections.—

(2) Each of the following actions by the owner of an adult
 day care center or by its operator or employee is a ground for
 action by the agency against the owner of the center or its
 operator or employee:

(a) An intentional or negligent act or the existence of
unsafe conditions at the center which materially affect
~~affecting~~ the well-being, health, or safety of center
 participants.

Section 5. Section 429.915, Florida Statutes, is amended to
 read:

429.915 Conditional license.—In addition to the license
 categories available in part II of chapter 408, the agency may

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 146 issue a conditional license to an applicant for license renewal,
 147 temporary relocation, or change of ownership if the applicant
 148 fails to meet all standards and requirements for licensure. A
 149 conditional license issued under this subsection must be limited
 150 to a specific period not exceeding 6 months, as determined by
 151 the agency, and must be accompanied by an approved plan of
 152 correction.

Section 6. Paragraph (c) of subsection (1) and subsection
 (2) of section 429.917, Florida Statutes, are amended to read:

429.917 Patients with Alzheimer's disease or other related
 disorders; staff training requirements; certain disclosures.—

(1) An adult day care center licensed under this part must
 provide the following staff training:

(c) In addition to the requirements of paragraphs (a) and
 (b), an employee who will be providing direct care to a
 participant who has Alzheimer's disease or a dementia-related
 disorder must complete an additional 3 hours of training within
 9 months after beginning employment. This training must include,
 but is not limited to, the management of problem behaviors,
 information about promoting the participant's independence in
 activities of daily living, and instruction in skills for
 working with families and caregivers, and the most current
information regarding Alzheimer's disease and dementia-related
disorders. This training must be offered annually and is
required for all employees providing direct care to
participants.

(2) A center licensed under this part which claims that it
 provides special care for persons who have Alzheimer's disease
 or other related disorders, but does not claim to be licensed or

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175 designated to provide specialized Alzheimer's disease services,
 176 must disclose and document how in its advertisements or in a
 177 separate document those services that distinguish the care as
 178 being especially applicable to, or suitable for, such persons.
 179 ~~The center must give a copy of all such advertisements or a copy~~
 180 ~~of the document to each person who requests information about~~
 181 ~~the center and must maintain a copy of all such advertisements~~
 182 ~~and documents in its records.~~ The agency shall examine all such
 183 documentation advertisements and documents in the center's
 184 ~~records~~ as part of the license renewal procedure. An adult day
 185 care center may not claim to be licensed or designated to
 186 provide specialized Alzheimer's services unless the adult day
 187 care center's license has been designated as such pursuant to s.
 188 429.918.

189 Section 7. Section 429.931, Florida Statutes, is amended to
 190 read:

191 429.931 Construction, repair, and renovation;
 192 requirements.—

193 (1) The requirements for the construction, repair, and the
 194 renovation of a center must comply with the provisions of
 195 chapter 553 which pertain to building construction standards,
 196 including plumbing, electrical code, glass, manufactured
 197 buildings, accessibility by physically handicapped persons, and
 198 the state minimum building codes.

199 (2) The center must notify the agency 30 days before
 200 commencement of building construction, repairs, or renovation to
 201 request a conditional license if the construction, repairs, or
 202 renovation will require the center to temporarily relocate.

203 Section 8. Paragraph (f) of subsection (1) of section

17-01493-14

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204 400.141, Florida Statutes, is amended to read:

205 400.141 Administration and management of nursing home
 206 facilities.—

207 (1) Every licensed facility shall comply with all
 208 applicable standards and rules of the agency and shall:

209 (f) Be allowed and encouraged by the agency to provide
 210 other needed services under certain conditions. If the facility
 211 has a standard licensure status, it may provide services,
 212 including, but not limited to, respite, therapeutic spa, and
 213 adult day services to nonresidents of the facility. A facility
 214 is not subject to any additional licensure requirements for
 215 providing these services. Respite care may be offered to persons
 216 in need of short-term or temporary nursing home services.
 217 Respite care must be provided in accordance with this part.
 218 ~~Providers of adult day services must comply with the~~
 219 ~~requirements of s. 429.905(2).~~ The agency shall allow for shared
 220 programming and staff in a facility which meets minimum
 221 standards and offers services pursuant to this paragraph, but,
 222 if the facility is cited for deficiencies in patient care, may
 223 require additional staff and programs appropriate to the needs
 224 of service recipients. A person who receives respite care may
 225 not be counted as a resident of the facility for purposes of the
 226 facility's licensed capacity unless that person receives 24-hour
 227 respite care. A person receiving either respite care for 24
 228 hours or longer or adult day services must be included when
 229 calculating minimum staffing for the facility. Any costs and
 230 revenues generated by a nursing home facility from
 231 nonresidential programs or services shall be excluded from the
 232 calculations of Medicaid per diems for nursing home

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233 institutional care reimbursement.

234 Section 9. This act shall take effect July 1, 2014.



The Florida Senate

Committee Agenda Request

To: Honorable Senator Eleanor Sobel, Chair
Children, Families, and Elder Affairs

CC: Claude Hendon, Staff Director

Subject: Committee Agenda Request

Date: February 22, 2014

RECEIVED

MAR 04 2014

Senate Committee
Children and Families

I respectfully request that **Senate Bill #1082**, relating to Adult Day Care Centers, be placed on the:

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

A handwritten signature in black ink, appearing to read "John Legg", written over a horizontal line.

Senator John Legg
Florida Senate, District 17
316 Senate Office Building
(850) 487-5017

THE FLORIDA SENATE
APPEARANCE RECORD

Opposition

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

3/18/14

Meeting Date

Topic Adult Day Care

Bill Number SB 1082
(if applicable)

Name Christine Powers

Amendment Barcode 299966
Grimsley Amendment
(if applicable)

Job Title Director Adult Day Services

Address 12417 Clock Tower Pkwy

Phone 727-862-9291 x2002

Street

Audson

FL

34667

E-mail cpowers@caresfl.org

Speaking: For Against Information

Representing Florida Adult Day Service Assoc.

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14

Meeting Date

Topic Adult Day Care

Bill Number 1082

Name Carol Berkowitz

Amendment Barcode 299966
(if applicable)

Job Title _____

Address 1812 Riggins Rd

Phone 850.671-3700

Street

Tallahassee

32308

E-mail eberkowitz@

City

State

Zip

Speaking: For Against Information

For amendment
For bill

LeadingAge Florida
org

Representing LeadingAge Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/2014
Meeting Date

Topic Adult Day Care Centers
Name Melody Selis
Job Title Gov't Affairs Manager
Address 307 West Park
City _____ State _____ Zip _____

Bill Number 1082 (if applicable)
Amendment Barcode ~~00000000~~ 299966 (if applicable)
Phone (386) 547-1197
E-mail mselisc@flca.org

Speaking: For Against Information

Representing Florida Health Care 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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-14
Meeting Date

Topic ADULT DAY CARE CTR'S
Name MARTHA DECASTRO
Job Title PROBATION VP FOR NURSING
Address 3010 E College Ave
City TUF R State _____ Zip _____

Bill Number 1082 (if applicable)
Amendment Barcode GRIMSEY AMENDMENT (if applicable)
Phone 222 9800
E-mail martha@flca.org

Speaking: For Against Information Amendment

Representing Florida Hospital 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 (10/20/11)

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 Children, Families, and Elder Affairs

BILL: SB 1180

INTRODUCER: Senator Sobel

SUBJECT: Chemicals in Consumer Products

DATE: March 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Pre-meeting
2.			HP	
3.			AHS	
4.			AP	

I. Summary:

SB 1180 creates s. 381.986, F.S., to require the Department of Health (department) to generate a list of at least 50, but no more than 100 chemicals of high concern present in consumer products and publish the list on its website by January 1, 2015. This list would allow public identification of such chemicals, encourage substitution with safer alternatives, and reduce the exposure of pregnant women and children to chemicals of high concern. The department is authorized to join in an interstate clearinghouse with other states and governmental entities to promise use of safer chemicals in consumer products.

The effective date of the bill is July 1, 2014, and there is a fiscal impact.

II. Present Situation:

The State of Florida does not currently maintain a chemicals of high concern in consumer products list. Maine, Minnesota, California, and Washington currently maintain Chemicals of High Concern Lists.

Minnesota passed legislation in 2009 to create a list to identify chemicals which could be harmful to human or environmental health and specifically chemicals which are suspected carcinogens, reproductive or developmental toxicants, or persistent, bioaccumulative and toxic or very persistent and very bioaccumulative.¹

Washington passed the Children's Safe Products Act (CSPA) in 2008, requiring its Department of Ecology, in consultation with the Department of Health, to develop a list of chemicals of high

¹ 2013 Minnesota Chemicals of High Concern Report, Executive Summary, *available at* http://www.maine.gov/dep/safechem/high_concern/

concern for children and to establish rules for manufacturers of children's products to report on their use of these chemicals.² Information reported under the CSPA can be used by policy makers to determine what, if any, further actions might be required to assure consumers that children's products on the shelves are safe. The CSPA marks a significant departure from other laws aimed at reducing the threats and impacts caused by the continued and increasing use of toxic chemicals.³ Washington State's law is considered to be stronger than any other chemical disclosure law in the United States.⁴

Washington's CSPA created a searchable, online database that includes 66 chemicals. These chemicals were chosen because studies have linked them to cancer or to reproductive, developmental, or neurological effects in animals or people.⁵ In most cases, no one knows what, if anything, exposure to small doses of these chemicals may do to people, especially babies and toddlers who tend to chew on items or rub them on their skin.⁶ For many of these compounds, there has been little or no research to investigate children's exposure to them.⁷ According to Dr. Sheela Sathyanarayana, a pediatric researcher at the University of Washington and the Seattle Children's Research Institute, who advised state officials when the disclosure rules were written, "Children are uniquely vulnerable to exposures given their hand-to-mouth behaviors, floor play and developing nervous and reproductive systems."⁸

Officials with CSPA agree with the Toy Industry Association that the presence of a substance on the Washington state list in a toy or game doesn't automatically mean there is a risk or cause for concern.⁹ However, the new law is already driving changes in products. Some companies, including Wal-Mart, Gap, Nike, and Johnson & Johnson have filed documents with the state stating they would eliminate some chemicals on the state's list.¹⁰

III. Effect of Proposed Changes:

Section 1 creates s. 381.986, F.S., which provides it is the policy of the state to reduce the exposure of pregnant women and children to chemicals of high concern through the public identification of such chemicals and encourage the use of safer alternatives whenever possible. This section also contains definitions of chemicals of high concern, consumer product, and credible scientific evidence.

This section directs the Department of Health (department) to publish an initial list of at least 50, but no more than 100, chemicals of high concern by January 1, 2015. The department may cite lists developed by other states if funds are not available to create the list. The list would be reviewed by the department every 3 years and revised as needed. The initial list of chemicals of

² Washington's Children's Safe Products Act, Executive Summary, available at <http://www.ecy.wa.gov/programs/safa/rules/pdf/CSPAexcum.pdf>

³ *Id.*

⁴ Jane Kay, *EHN Special Report: 'Chemicals of high concern' found in thousands of children's products* (May 6, 2013), available at <http://www.environmentalhealthnews.org/ehs/news/2013/childrens-products>

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

high concern would be published on the department's website and updated whenever the published list was revised. The criteria to designate a chemical of high concern is set out in this section. The department may include a chemical that has been formally identified by another state as a priority chemical or chemical of high concern if that state's criteria is substantially equivalent to the criteria set out in the proposed legislation.

The bill authorizes the department to join an interstate clearinghouse with other states and governmental entities to: promote use of safer chemicals in consumer products; organize chemical data; model policies related to safer alternatives to specific chemical uses; provide technical assistance to businesses and consumers regarding the use of safer chemicals; and initiate activities in support of state programs to promote the use of safer chemicals in consumer products.

Section 2 provides an effective date of July 1, 2014.

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:

The bill directs the department to create a list of at least 50, and no more than 100, chemicals of high concern by January 1, 2015. The Toy Industry Association has pointed out that the presence of a substance found in a toy or game doesn't automatically imply that it is a risk or cause for concern. Without additional information, consumers may make purchasing decisions based on the presence of a chemical in a product even though it might not be harmful to human health or a violation of any safety standard.

C. Government Sector Impact:

Fiscal Impact	Fiscal Year 2014-15			
Agency/program	FTE	GR	Trust	Total
Public Health Toxicology Section	2.5	\$117,402	\$0	\$117,402
Expenses		\$885	\$0	\$885
Total		\$118,287	\$0	\$118,287

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following section 381.986 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 Sobel

33-01062-14

20141180__

1 A bill to be entitled
 2 An act relating to chemicals in consumer products;
 3 creating s. 381.986, F.S.; providing legislative
 4 intent; defining terms; requiring the Department of
 5 Health to publish a list of chemicals of high concern
 6 present in consumer products designed for use by
 7 pregnant women and children; providing criteria for
 8 inclusion on the list; authorizing the department to
 9 participate with other states and governmental
 10 entities in an interstate clearinghouse established
 11 for specified purposes; providing an effective date.

12

13 WHEREAS, thousands of toxic chemicals intended for use by
 14 pregnant women and children are present in consumer products
 15 used in and around homes, daycares, and schools, and

16 WHEREAS, exposure to harmful chemicals found in products
 17 specifically designated for use by pregnant women and children
 18 has been linked to devastating health conditions such as
 19 childhood cancer, asthma, premature puberty, infertility, and
 20 learning and developmental disabilities, and

21 WHEREAS, consumers, including pregnant women, parents,
 22 teachers, and business owners, need reliable information on
 23 which they may base their purchasing decisions to ensure that
 24 they are able to make healthy choices about the products they
 25 buy, and

26 WHEREAS, abundant reliable, peer-reviewed scientific data
 27 currently exists regarding the health and safety concerns of
 28 toxic chemicals on pregnant women and children, and

29 WHEREAS, several states, including Maine, Washington, and

Page 1 of 5

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

33-01062-14

20141180__

30 Minnesota, have used available peer-reviewed scientific data to
 31 produce lists of "chemicals of high concern" to inform the
 32 public about important public safety information regarding toxic
 33 chemicals, NOW, THEREFORE,
 34

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

36

37 Section 1. Section 381.986, Florida Statutes, is created to
 38 read:

39 381.986 Chemicals of high concern in consumer products.-
 40 (1) It is the policy of this state, consistent with its
 41 duty to protect the health, safety, and welfare of its citizens,
 42 to reduce the exposure of pregnant women and children to
 43 chemicals of high concern by publicly identifying such chemicals
 44 and encouraging substitution with safer alternatives whenever
 45 feasible.

46 (2) As used in this section, the term:

47 (a) "Chemical" means any element, compound, or mixture of
 48 elements or compounds including breakdown products formed
 49 through decomposition, degradation, or metabolism.

50 (b) "Chemical of high concern" means a chemical identified
 51 by the department which meets the criteria established in
 52 subsection (4) or subsection (5).

53 (c) "Children" or "child" means a person younger than 18
 54 years of age.

55 (d) "Consumer product" means an item designed or primarily
 56 intended for use by pregnant women or children, including
 57 component parts and packaging, sold for indoor or outdoor use in
 58 or around a residence, child care facility, or school.

Page 2 of 5

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

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59 (e) "Credible scientific evidence" means the results of a
 60 study, the experimental design and conduct of which have
 61 undergone independent scientific peer review, which are
 62 published in a peer-reviewed journal, or in a publication of an
 63 authoritative federal or international governmental agency,
 64 including, but not limited to, the United States Department of
 65 Health and Human Services National Toxicology Program, the
 66 National Institute of Environmental Health Sciences, the United
 67 States Food and Drug Administration, the Centers for Disease
 68 Control and Prevention, the United States Environmental
 69 Protection Agency, the World Health Organization, and the
 70 European Chemicals Agency of the European Union.

71 (f) "Department" means the Department of Health.

72 (3) By January 1, 2015, the department, in consultation
 73 with other state agencies, shall publish an initial list of at
 74 least 50, but not more than 100, chemicals of high concern. If
 75 funds are not available to create the list, the department may
 76 cite lists developed by other states.

77 (a) The department shall review the list at least every 3
 78 years and revise it as needed.

79 (b) The department shall publish the initial list of
 80 chemicals of high concern on its website and update the website
 81 whenever the published list is revised.

82 (4) A chemical may be designated as a chemical of high
 83 concern if the department determines that:

84 (a) The chemical, based on credible scientific evidence, is
 85 identified by a governmental agency as being known or likely to:

86 1. Harm the normal development of a fetus or child or cause
 87 other developmental toxicity;

33-01062-14

20141180__

88 2. Cause cancer, genetic damage, or reproductive harm;

89 3. Damage the nervous system, immune system, hormone
 90 system, or organs or cause other systemic toxicity; or

91 4. Be persistent, bioaccumulative, and toxic; and

92 (b) There is credible scientific evidence that the chemical
 93 has been added to, or is present in, a consumer product used or
 94 stored in or around a residence, child care facility, or school.

95 (5) In lieu of meeting the requirements of subsection (4),
 96 a chemical may be designated as a chemical of high concern if
 97 the department determines that:

98 (a) Based upon criteria that are substantially equivalent
 99 to those in subsection (4), the chemical has been formally
 100 identified by another state as a priority chemical or a chemical
 101 of high concern; or

102 (b) One or more of the criteria in paragraph (4)(b) are met
 103 and the chemical has been formally identified by another state
 104 as being known to cause cancer, birth defects, or other
 105 reproductive harm.

106 (6) The department may participate with other states and
 107 governmental entities in an interstate clearinghouse in order
 108 to:

109 (a) Promote the use of safer chemicals in consumer
 110 products.

111 (b) Organize and manage available data on chemicals,
 112 including information on uses, hazards, disposal, and
 113 environmental concerns.

114 (c) Produce and inventory information on safer alternatives
 115 to specific uses of chemicals of high concern and model policies
 116 and programs related thereto.

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20141180__

117 (d) Provide technical assistance to businesses and
118 consumers related to the use of safer chemicals.
119 (e) Initiate other activities in support of state programs
120 to promote the use of safer chemicals in consumer products.
121 Section 2. This act shall take effect July 1, 2014.

didn't speak

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-14

Meeting Date

Topic Chemicals of High Concern

Bill Number SB 1180
(if applicable)

Name Stephanie Kunkel

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1143 Albinton DR

Phone 850-320-4208

Tallahassee FL 32301
Street City State Zip

E-mail Stef.Kunkel@gmail.com

Speaking: For Against Information

Representing Clean Water Action

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

didn't speak

THE FLORIDA SENATE
APPEARANCE RECORD

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3/18/14

Meeting Date

Topic Chemicals in Consumer Products

Bill Number SB 1180
(if applicable)

Name Michael Power

Amendment Barcode _____
(if applicable)

Job Title manager, State Government Affairs

Address 1995 N. Park Pl. Suite 240

Phone 770-421-2991

Atlanta, GA 30339
Street City State Zip

E-mail Michael Power @ American Chemistry Co

Speaking: For Against Information

Representing American Chemistry Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

didn't speak

THE FLORIDA SENATE
APPEARANCE RECORD

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3/18/14

Meeting Date

Topic CHEMICALS OF CONCERN

Bill Number 1180
(if applicable)

Name NANCY STEPHENS

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE DIRECTOR

Address 1625 SUMMIT LAKE DR, STE 300

Phone 402 2954

TALLAHASSEE FL 32317
City State Zip

E-mail nancy@mafmfg.com

Speaking: For Against Information

Representing MANUFACTURERS ASSOCIATION OF FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

didn't speak

THE FLORIDA SENATE
APPEARANCE RECORD

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3/18/14

Meeting Date

Topic CHEMICALS IN CONSUMER PRODUCTS

Bill Number SB 1180
(if applicable)

Name MIKE MCQUONE (MCCUE-ONE)

Amendment Barcode N/A
(if applicable)

Job Title CONSULTANT FOR HEALTH

Address 201 WEST PARK AVENUE

Phone 850-284-9130

TALLAHASSEE, FLORIDA 32308
City State Zip

E-mail mmcquone@flacatholic.org

Speaking: For Against Information

Representing FLORIDA CONFERENCE OF CATHOLIC BISHOPS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

didn't speak

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

March 18, 2014

Meeting Date

Topic Chemicals in Consumer Products

Bill Number 1180
(if applicable)

Name Heather Youmans

Amendment Barcode _____
(if applicable)

Job Title Director of Government Relations

Address 2616 Centennial Blvd, Suite 101

Phone 850-251-2111

Street

Tallahassee FL 32317

E-mail heather.youmans@cancer.org

City

State

Zip

Speaking: For Against Information

Representing American Cancer Society

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

didn't speak

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

March 18

Meeting Date

Topic ~~SB 972~~

Bill Number 1180
(if applicable)

Name Eddie Hall

Amendment Barcode _____
(if applicable)

Job Title _____

Address _____

Phone _____

Street

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing FLA 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.

S-001 (10/20/11)

didn't speak

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/14
Meeting Date

SB1180

Topic CHEMICALS OF HIGH CONCERN

Bill Number 1180 (if applicable)

Name DAVID COLLEN

Amendment Barcode (if applicable)

Job Title

Address 1674 UNIVERSITY PARK 29A

Phone 941-323-2404

Street SARASOTA FL 34223
City State Zip

E-mail dcolle@senate.fl.gov

Speaking: For Against Information

Representing SIERRA CLUB 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 (10/20/11)

didn't speak

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-18-2014
Meeting Date

Topic Chemicals of High Concern

Bill Number SB1180 (if applicable)

Name SHARON NESVIG

Amendment Barcode (if applicable)

Job Title Gov. Relations

Address 213 S ADAMS ST

Phone 850 224 2078

Street TALLAHASSEE FL 32301
City State Zip

E-mail SHARON.NESVIG@FLORIDAFA.ORG

Speaking: For Against Information

Representing FLORIDA EDUCATION ASSOC

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 (10/20/11)

didn't speak

THE FLORIDA SENATE

APPEARANCE RECORD

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

3 118 12014

Meeting Date

Topic _____ Bill Number 1180
(if applicable)

Name BRIAN PITTS Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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 Children, Families, and Elder Affairs

BILL: SB 1372

INTRODUCER: Senator Montford

SUBJECT: Children and Youth Cabinet

DATE: March 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Favorable
2.			ED	
3.			GO	

I. Summary:

SB 1372 adds a superintendent of schools to the Florida Children and Youth Cabinet to bring educational expertise to the work of the cabinet.

The bill is not expected to have a fiscal impact and is effective July 1, 2014.

II. Present Situation:

The Florida Children and Youth Cabinet (Cabinet) was created in 2007.¹ The Florida Legislature recognized the need to elevate child and youth issues by creating a high level body that would include all the relative agencies and stakeholders. The goal of the cabinet is to improve child and family outcomes in the state.² With multiple agency heads as members, the cabinet is expected to coordinate policy development and program implementation so services provided to children and youth are planned, managed, and delivered in an integrated manner.³

The cabinet is comprised of the Governor and 14 members. These members include the Secretary of Children and Family Services, the Secretary of Juvenile Justice, the director of the Agency for Persons with Disabilities, the director of the Office of Early Learning, the State Surgeon General, the Secretary of Health Care Administration, the Commissioner of Education, the director of the Statewide Guardian Ad Litem Office, the director of the Office of Child Abuse Prevention, and five members representing children and youth advocacy organizations, who are not service providers and who are appointed by the Governor.⁴

¹ The Florida Children and Youth Cabinet, *2013 Annual Report* (Jan. 31, 2014), available at http://www.flgov.com/wp-content/uploads/childadvocacy/florida_children_and_youth_cabinet_2013_annual_report.pdf.

² Section 402.56(2)(b), F.S.

³ Section 402.56(3)(a), F.S.

⁴ Section 402.56(4), F.S.

The cabinet met four times 2013 in different regions of the state including: Orlando, Tallahassee, Jacksonville, and Ft. Myers. The cabinet focused on child health, child education readiness, safe and nurturing families, and safe and supportive communities. The cabinet receives staff support from the Governor's Office of Adoption and Child Protection and produces an annual report with findings and recommendations.

III. Effect of Proposed Changes:

Section 1 amends s. 402.56, F.S., to expand the membership of the Children and Youth Cabinet to include a superintendent of schools appointed by the Governor. This change will better ensure that the educational issues relating to children and youth are considered by the cabinet.

Section 2 provides an effective date of July 1, 2014.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 402.56 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.

By Senator Montford

3-01376A-14

20141372__

1 A bill to be entitled
 2 An act relating to the Children and Youth Cabinet;
 3 amending s. 402.56, F.S.; revising the membership of
 4 the cabinet; providing an effective date.
 5
 6 Be It Enacted by the Legislature of the State of Florida:
 7
 8 Section 1. Paragraph (a) of subsection (4) of section
 9 402.56, Florida Statutes, is amended to read:
 10 402.56 Children's cabinet; organization; responsibilities;
 11 annual report.—
 12 (4) MEMBERS.—The cabinet shall consist of 15 ~~14~~ members
 13 including the Governor and the following persons:
 14 (a)1. The Secretary of Children and Family Services;
 15 2. The Secretary of Juvenile Justice;
 16 3. The director of the Agency for Persons with
 17 Disabilities;
 18 4. The director of the Office of Early Learning;
 19 5. The State Surgeon General;
 20 6. The Secretary of Health Care Administration;
 21 7. The Commissioner of Education;
 22 8. The director of the Statewide Guardian Ad Litem Office;
 23 9. The director of the Office of Child Abuse Prevention;
 24 ~~and~~
 25 10. A superintendent of schools, appointed by the Governor;
 26 and
 27 11.10. Five members representing children and youth
 28 advocacy organizations, who are not service providers and who
 29 are appointed by the Governor.

Page 1 of 2

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

3-01376A-14

20141372__

30 Section 2. This act shall take effect July 1, 2014.

Page 2 of 2

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Education, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Gaming
Governmental Oversight and Accountability
Rules

SELECT COMMITTEE:

Select Committee on Indian River Lagoon
and Lake Okeechobee Basin, *Vice Chair*

SENATOR BILL MONTFORD

Democratic Policy Chair
3rd District

March 11, 2014

Senator Eleanor Sobel, Chair
Senate Committee on Children & Families & Elder Affairs
520 Knott Building
Tallahassee, Florida 32399-1100

Dear Chairman Sobel;

I respectfully request that the following bill be scheduled for a hearing before the Senate Committee on Children & Families & Elder Affairs:

SB 1372 Florida Children and Youth Cabinet
SB 1388 Interns in Clinical Social Work

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford
State Senator, District 3

Cc: Claude Hendon, Staff Director

WM/md

RECEIVED

MAR 11 2014

**Senate Committee
Children and Families**

REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 58 Market Street, Apalachicola, Florida 32320 (850) 653-2656
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1388

INTRODUCER: Senator Montford

SUBJECT: Registered Interns in Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling

DATE: March 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanford</u>	<u>Hendon</u>	<u>CF</u>	<u>Pre-meeting</u>
2.	<u> </u>	<u> </u>	<u>HP</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

I. Summary:

SB 1388 updates and revises provisions in ch. 491, F.S., which regulate interns in the fields of clinical social work, marriage and family therapy, and mental health. Internship status is designed in these professions to allow candidates for licensure to meet the experience requirements of the license. In order to be registered as an intern, the individual must have completed the educational requirements for the licensure being sought. During the time that the person is completing this experience requirement, he or she must register as an intern. The bill:

- Requires registered interns to remain under supervision while registered as an intern;
- Limits intern registration to 5 years;
- Prohibits an individual who has held a provisional license from applying for an intern registration in the same profession;
- Requires that a licensed mental health professional be on the premises when clinical services are provided by a registered intern in a private practice setting; and
- Prohibits a registered intern from engaging in his or her own independent private practice.

The bill is not expected to have a significant fiscal impact. It has an effective date of July 1, 2014.

II. Present Situation:

Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling

The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (board) is located within the Department of Health (DOH) and is responsible for licensing and regulating the practice of clinical social work, marriage and family therapy, and mental health counseling pursuant to ch. 491, F.S.

The practice of clinical social work uses scientific and applied knowledge, theories, and methods for the purpose of describing, preventing, evaluating, and treating individual, couple, marital, family, or group behavior. The purpose of such services is the prevention and treatment of undesired behavior and enhancement of mental health. The practice of clinical social work includes methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. The practice of clinical social work includes, but is not limited to, psychotherapy, hypnotherapy, and sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.¹

The practice of marriage and family therapy is the use of scientific and applied marriage and family theories, methods, and procedures for the purpose of describing, evaluating, and modifying marital, family, and individual behavior, within the context of marital and family systems, including the context of marital formation and dissolution. The practice is based on marriage and family systems theory, marriage and family development, human development, normal and abnormal behavior, psychopathology, human sexuality, psychotherapeutic and marriage and family therapy theories and techniques. The practice of marriage and family therapy includes methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders or dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. The practice of marriage and family therapy includes, but is not limited to, marriage and family therapy, psychotherapy, including behavioral family therapy, hypnotherapy, and sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.²

The practice of mental health counseling is the use of scientific and applied behavioral science theories, methods, and techniques for the purpose of describing, preventing, and treating undesired behavior and enhancing mental health and human development and is based on the person-in-situation perspectives derived from research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation. The practice of mental health counseling includes methods of a psychological nature used to evaluate, assess, diagnose, and treat emotional and mental dysfunctions or disorders (whether cognitive, affective, or behavioral), behavioral disorders, interpersonal relationships, sexual dysfunction, alcoholism, and substance abuse. The practice of mental health counseling includes, but is not limited to, psychotherapy, hypnotherapy, sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.³

In order to practice any of these professions, an individual must be licensed by the board after having met a series of requirements. The two major requirements, other than payment of a fee,

¹ Section 491.003(7), F.S.

² Section 491.003(8), F.S.

³ Section 491.003(9), F.S.

and completion of education requirements, for licensure in any of the fields is completion of a supervised internship and the successful completion of a theory and practice examination.⁴

The terms “clinical social worker,” “marriage and family counselor,” and “mental health counselor” are defined in ch. 491, F.S.,⁵ but “mental health professional” is not.

Internships

In order to be licensed as a clinical social worker, a marriage and family counselor, or a mental health counselor, an individual must have completed designated educational requirements and at least two years of practice supervised by a licensed practitioner.⁶ During the time that the person is completing the experience requirement, he or she must register as an intern.⁷

To become an intern the applicant must complete the application form and submit a nonrefundable application fee not exceeding \$200 as set by the Board. The applicant must also have completed the necessary education requirements, submitted an acceptable supervision plan, and identified a qualified supervisor.⁸

An intern may renew his or her registration every biennium, with no time limit, by payment of a renewal fee of \$80 for the two-year period. No continuing education is required for interns. There are 3,239 clinical social work interns, 859 marriage and family therapy interns, and 4,237 mental health counseling interns. Of this total, more than 700 interns have been renewing their registered intern license for over 10 years, and 150 of them have been renewing since the inception of this law in 1998.⁹

Disciplinary cases have shown that those who have held intern registration for many years are no longer remaining under supervision as is required by law, and many are in private practice without meeting minimum competency standards. DOH has received increasing numbers of complaints against registered interns for various infractions including filing false reports, failing to meet minimum standards, boundary violations, sexual misconduct, Medicaid fraud, and false advertising. To date, DOH has received 134 formal complaints against clinical social work interns, 51 complaints against marriage and family interns, and 238 complaints against mental health counselor interns. 67 complaints have resulted in disciplinary actions, including two recent emergency restriction orders signed by the Surgeon General.¹⁰

Provisional License

A provisional license permits an individual applying by endorsement or examination, who has satisfied the clinical experience requirements, to practice under supervision while completing all

⁴ Section 491.005(1)(d), (3)(d), and (4)(d)

⁵ Section 491.003, F.S.

⁶ Section 491.005, F.S.

⁷ Section 491.0045, F.S.

⁸ *Id.*

⁹ Department of Health, *Senate Bill 1388 Fiscal Analysis* (March 4, 2014) (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁰ *Id.*

licensure requirements. Provisional licenses expire 24 months after the date issued and may not be renewed or reissued.¹¹ Currently there are 66 provisionally licensed clinical social workers, 11 provisionally licensed marriage and family therapists, and 107 provisionally licensed mental health counselors. The board has accepted applications for registered internships from practitioners whose provisional licenses have expired without their having met the requirements for licensure, as there is no prohibition against a provisional licensee applying for an intern registration.¹²

III. Effect of Proposed Changes:

In addition to substantive changes, revisions are made throughout the bill to remove obsolete language and to make grammatical and conforming changes.

Section 1 amends s. 491.0045, F.S., to provide that registration as a social worker, marriage and family counselor, or mental health counselor intern is, in general, valid for 5 years from the date of issue. Registrations issued on or before March 31, 2015, expire March 31, 2020, and may not re-renewed or reissued. Registrations issued after March 31, 2015, expire 60 months after the date of issue and may be renewed only if the candidate has passed the theory and practice examination required for full licensure.

The bill requires that persons registered as interns must remain under the supervision of a licensed practitioner while practicing under registered intern status. Individuals who fail to comply with statutory internship requirements shall not be granted a license, and that the experience accrued by such individuals shall not count toward satisfying the experience requirements for licensure. This section also prohibits persons who have held a provisional license from applying for an intern license in the same profession.

Section 2 amends s. 491.005, F.S., to require that a “licensed mental health professional” be on the premises when clinical services are provided by a registered intern in a private practice setting. The bill prohibits registered interns from engaging in their own independent private practice.

Section 3 provides for an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹¹ Section 491.0046, F.S.

¹² Department of Health, *ibid.*

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Interns will no longer be required to pay a biennial renewal fee but will be required to pay initial fees and renewal for full licensure after 5 years in order to continue to practice in these professions. Some interns may not be able to meet the requirements for full licensure and may not be able to continue to practice in these fields.

C. Government Sector Impact:

The Department of Health expects to experience an insignificant fiscal impact related to updating its Customer Oriented Medical Practitioner Administration System (COMPAS) licensure system to accommodate the changes in this bill.

VI. Technical Deficiencies:

The bill requires that a “licensed mental health professional” be on the premises when clinical services are provided by a registered intern in a private practice setting. Neither current ch. 491 nor the bill defines “licensed mental health professional,” and the term is placed in the bill under the clinical social worker licensure section of statute, the marriage and family counselor section, and the mental health counselor section. It is not clear whether any of the three professions, or even other professions generally considered mental health professionals, could provide the required presence for an intern in their field, or whether the intent is to have each profession present for its own interns.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 491.0045 and 491.005.

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.



251202

LEGISLATIVE ACTION

Senate

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House

The Committee on Children, Families, and Elder Affairs (Dean)
recommended the following:

Senate Amendment

Delete line 159
and insert:
mental health professional licensed under chapter 490 or chapter
491 must be on the premises when



852772

LEGISLATIVE ACTION

Senate

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House

The Committee on Children, Families, and Elder Affairs (Dean)
recommended the following:

Senate Amendment

Delete lines 295 - 296
and insert:
toward the clinical experience requirement. A mental health
professional licensed under chapter 490 or chapter 491 must be
on the premises when clinical



312694

LEGISLATIVE ACTION

Senate

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House

The Committee on Children, Families, and Elder Affairs (Dean)
recommended the following:

Senate Amendment

Delete lines 343 - 344
and insert:
clinical experience requirement. A mental health
professional licensed under chapter 490 or chapter 491 must be
on the premises when clinical services are

By Senator Montford

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A bill to be entitled

An act relating to registered interns in clinical social work, marriage and family therapy, and mental health counseling; amending s. 491.0045, F.S.; requiring an individual who has not satisfied specified requirements to register as an intern in clinical social work, marriage and family therapy, or mental health counseling; requiring an individual to remain under supervision while practicing under registered intern status; providing that an intern registration is valid for 5 years; providing expiration dates of registrations issued on, before, or after specified dates; prohibiting an individual who has held a provisional license from applying for an intern registration in the same profession; conforming provisions to changes made by the act; amending s. 491.005, F.S.; requiring a licensed health professional to be on the premises when clinical services are provided by a registered intern of clinical social work, marriage and family therapy, or mental health counseling in a private practice setting; prohibiting such registered interns from engaging in their own independent private practice; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 491.0045, Florida Statutes, is amended

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to read:

491.0045 Intern registration; requirements.—

(1) ~~Effective January 1, 1998,~~ An individual who has not satisfied ~~intends to practice in Florida to satisfy~~ the postgraduate or post-master's level experience requirements, as specified in s. 491.005(1)(c), (3)(c), or (4)(c), ~~must register as an intern in the profession for which he or she is seeking licensure before~~ before ~~prior to~~ commencing the post-master's experience requirement. ~~or~~ An individual who intends to satisfy part of the required graduate-level practicum, internship, or field experience, ~~outside the academic arena for any profession,~~ must register as an intern in the profession for which he or she is seeking licensure before ~~prior to~~ commencing the practicum, internship, or field experience.

(2) The department shall register as a clinical social worker intern, marriage and family therapist intern, or mental health counselor intern each applicant who the board certifies has:

(a) Completed the application form and remitted a nonrefundable application fee of up to ~~not to exceed~~ \$200, as set by board rule;

(b)1. Completed the education requirements as specified in s. 491.005(1)(c), (3)(c), or (4)(c) for the profession for which he or she is applying for licensure, if needed; and

2. Submitted an acceptable supervision plan, as determined by the board, for meeting the practicum, internship, or field work required for licensure which ~~that~~ was not satisfied in his or her graduate program.

(c) Identified a qualified supervisor.

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59 (3) An individual registered under this section must remain
60 under supervision while practicing under registered intern
61 status until he or she is in receipt of a license or a letter
62 from the department stating that he or she is licensed to
63 practice the profession for which he or she applied.

64 (4) An individual who fails ~~has applied for intern~~
65 ~~registration on or before December 31, 2001, and has satisfied~~
66 ~~the education requirements of s. 491.005 that are in effect~~
67 ~~through December 31, 2000, will have met the educational~~
68 ~~requirements for licensure for the profession for which he or~~
69 ~~she has applied.~~

70 ~~(5) Individuals who have commenced the experience~~
71 ~~requirement as specified in s. 491.005(1)(c), (3)(c), or (4)(c)~~
72 ~~but failed to register as required by subsection (1) shall~~
73 ~~register with the department before January 1, 2000. Individuals~~
74 ~~who fail to comply with this section may subsection shall not be~~
75 ~~granted a license under this chapter, and any time spent by the~~
76 ~~individual completing the experience requirement as specified in~~
77 ~~s. 491.005(1)(c), (3)(c), or (4)(c) before prior to registering~~
78 ~~as an intern does shall not count toward completion of the such~~
79 ~~requirement.~~

80 (5) Except as provided in subsection (6), an intern
81 registration is valid for 5 years from the date of issue.

82 (6) An intern registration issued on or before March 31,
83 2015, expires March 31, 2020, and may not be renewed or
84 reissued. An intern registration issued after March 31, 2015,
85 expires 60 months after the date it is issued. A subsequent
86 intern registration may not be issued unless the candidate has
87 passed the theory and practice examination described in s.

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88 491.005(1)(d), (3)(d), and (4)(d).

89 (7) An individual who has held a provisional license issued
90 by the board may not apply for an intern registration in the
91 same profession.

92 Section 2. Subsection (1), subsection (3), paragraphs (a)
93 and (c) of subsection (4), and subsections (5) and (6) of
94 section 491.005, Florida Statutes, are amended to read:

95 491.005 Licensure by examination.—

96 (1) CLINICAL SOCIAL WORK.—Upon verification of
97 documentation and payment of a fee not to exceed \$200, as set by
98 board rule, plus the actual per applicant cost to the department
99 for purchase of the examination from the American Association of
100 State Social Work Worker's Boards or a similar national
101 organization, the department shall issue a license as a clinical
102 social worker to an applicant who the board certifies:

103 (a) Has submitted an made application ~~therefor~~ and paid the
104 appropriate fee.

105 (b)1. Has received a doctoral degree in social work from a
106 graduate school of social work which at the time the applicant
107 graduated was accredited by an accrediting agency recognized by
108 the United States Department of Education or has received a
109 master's degree in social work from a graduate school of social
110 work which at the time the applicant graduated:

111 a. Was accredited by the Council on Social Work Education;

112 b. Was accredited by the Canadian Association of Schools of
113 Social Work; or

114 c. Has been determined to have been a program equivalent to
115 programs approved by the Council on Social Work Education by the
116 Foreign Equivalency Determination Service of the Council on

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117 Social Work Education. An applicant who graduated from a program
118 at a university or college outside of the United States or
119 Canada must present documentation of the equivalency
120 determination from the council in order to qualify.

121 2. The applicant's graduate program must have emphasized
122 direct clinical patient or client health care services,
123 including, but not limited to, coursework in clinical social
124 work, psychiatric social work, medical social work, social
125 casework, psychotherapy, or group therapy. The applicant's
126 graduate program must have included all of the following
127 coursework:

128 a. A supervised field placement which was part of the
129 applicant's advanced concentration in direct practice, during
130 which the applicant provided clinical services directly to
131 clients.

132 b. Completion of 24 semester hours or 32 quarter hours in
133 theory of human behavior and practice methods as courses in
134 clinically oriented services, including a minimum of one course
135 in psychopathology, and no more than one course in research,
136 taken in a school of social work accredited or approved pursuant
137 to subparagraph 1.

138 3. If the course title which appears on the applicant's
139 transcript does not clearly identify the content of the
140 coursework, the applicant shall be required to provide
141 additional documentation, including, but not limited to, a
142 syllabus or catalog description published for the course.

143 (c) Has had at least ~~not less than~~ 2 years of clinical
144 social work experience, which took place subsequent to
145 completion of a graduate degree in social work at an institution

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146 meeting the accreditation requirements of this section, under
147 the supervision of a licensed clinical social worker or the
148 equivalent who is a qualified supervisor as determined by the
149 board. An individual who intends to practice in Florida to
150 satisfy clinical experience requirements must register pursuant
151 to s. 491.0045 ~~before~~ prior to commencing practice. If the
152 applicant's graduate program was not a program ~~that~~ which
153 emphasized direct clinical patient or client health care
154 services as described in subparagraph (b)2., the supervised
155 experience requirement must take place after the applicant has
156 completed a minimum of 15 semester hours or 22 quarter hours of
157 the coursework required. A doctoral internship may be applied
158 toward the clinical social work experience requirement. A
159 licensed mental health professional must be on the premises when
160 clinical services are provided by a registered intern in a
161 private practice setting. A registered intern may not engage in
162 his or her own independent private practice ~~The experience~~
163 ~~requirement may be met by work performed on or off the premises~~
164 ~~of the supervising clinical social worker or the equivalent,~~
165 ~~provided the off-premises work is not the independent private~~
166 ~~practice rendering of clinical social work that does not have a~~
167 ~~licensed mental health professional, as determined by the board,~~
168 ~~on the premises at the same time the intern is providing~~
169 ~~services.~~

170 (d) Has passed a theory and practice examination provided
171 by the department for this purpose.

172 (e) Has demonstrated, in a manner designated by rule of the
173 board, knowledge of the laws and rules governing the practice of
174 clinical social work, marriage and family therapy, and mental

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175 health counseling.

176 (3) MARRIAGE AND FAMILY THERAPY.—Upon verification of
177 documentation and payment of a fee not to exceed \$200, as set by
178 board rule, plus the actual cost to the department for the
179 purchase of the examination from the Association of Marital and
180 Family Therapy Regulatory Boards ~~Board~~, or similar national
181 organization, the department shall issue a license as a marriage
182 and family therapist to an applicant who the board certifies:

183 (a) Has submitted an ~~made~~ application ~~therefor~~ and paid the
184 appropriate fee.

185 (b)1. Has a minimum of a master's degree with major
186 emphasis in marriage and family therapy, or a closely related
187 field, and has completed all of the following requirements:

188 a. Thirty-six semester hours or 48 quarter hours of
189 graduate coursework, which must include a minimum of 3 semester
190 hours or 4 quarter hours of graduate-level course credits in
191 each of the following nine areas: dynamics of marriage and
192 family systems; marriage therapy and counseling theory and
193 techniques; family therapy and counseling theory and techniques;
194 individual human development theories throughout the life cycle;
195 personality theory or general counseling theory and techniques;
196 psychopathology; human sexuality theory and counseling
197 techniques; psychosocial theory; and substance abuse theory and
198 counseling techniques. Courses in research, evaluation,
199 appraisal, assessment, or testing theories and procedures;
200 thesis or dissertation work; or practicums, internships, or
201 fieldwork may not be applied toward this requirement.

202 b. A minimum of one graduate-level course of 3 semester
203 hours or 4 quarter hours in legal, ethical, and professional

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204 standards issues in the practice of marriage and family therapy
205 or a course determined by the board to be equivalent.

206 c. A minimum of one graduate-level course of 3 semester
207 hours or 4 quarter hours in diagnosis, appraisal, assessment,
208 and testing for individual or interpersonal disorder or
209 dysfunction; and a minimum of one 3-semester-hour or 4-quarter-
210 hour graduate-level course in behavioral research which focuses
211 on the interpretation and application of research data as it
212 applies to clinical practice. Credit for thesis or dissertation
213 work, practicums, internships, or fieldwork may not be applied
214 toward this requirement.

215 d. A minimum of one supervised clinical practicum,
216 internship, or field experience in a marriage and family
217 counseling setting, during which the student provided 180 direct
218 client contact hours of marriage and family therapy services
219 under the supervision of an individual who met the requirements
220 for supervision under paragraph (c). This requirement may be met
221 by a supervised practice experience which took place outside the
222 academic arena, but which is certified as equivalent to a
223 graduate-level practicum or internship program which required a
224 minimum of 180 direct client contact hours of marriage and
225 family therapy services currently offered within an academic
226 program of a college or university accredited by an accrediting
227 agency approved by the United States Department of Education, or
228 an institution which is publicly recognized as a member in good
229 standing with the Association of Universities and Colleges of
230 Canada or a training institution accredited by the Commission on
231 Accreditation for Marriage and Family Therapy Education
232 recognized by the United States Department of Education.

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233 Certification shall be required from an official of such
234 college, university, or training institution.

235 2. If the course title which appears on the applicant's
236 transcript does not clearly identify the content of the
237 coursework, the applicant shall be required to provide
238 additional documentation, including, but not limited to, a
239 syllabus or catalog description published for the course.

240
241 The required master's degree must have been received in an
242 institution of higher education which at the time the applicant
243 graduated was: fully accredited by a regional accrediting body
244 recognized by the Commission on Recognition of Postsecondary
245 Accreditation; publicly recognized as a member in good standing
246 with the Association of Universities and Colleges of Canada; or
247 an institution of higher education located outside the United
248 States and Canada, which at the time the applicant was enrolled
249 and at the time the applicant graduated maintained a standard of
250 training substantially equivalent to the standards of training
251 of those institutions in the United States which are accredited
252 by a regional accrediting body recognized by the Commission on
253 Recognition of Postsecondary Accreditation. Such foreign
254 education and training must have been received in an institution
255 or program of higher education officially recognized by the
256 government of the country in which it is located as an
257 institution or program to train students to practice as
258 professional marriage and family therapists or psychotherapists.
259 The burden of establishing that the requirements of this
260 provision have been met shall be upon the applicant, and the
261 board shall require documentation, such as, but not limited to,

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262 an evaluation by a foreign equivalency determination service, as
263 evidence that the applicant's graduate degree program and
264 education were equivalent to an accredited program in this
265 country. An applicant with a master's degree from a program
266 which did not emphasize marriage and family therapy may complete
267 the coursework requirement in a training institution fully
268 accredited by the Commission on Accreditation for Marriage and
269 Family Therapy Education recognized by the United States
270 Department of Education.

271 (c) Has had at least ~~not less than~~ 2 years of clinical
272 experience during which 50 percent of the applicant's clients
273 were receiving marriage and family therapy services, which must
274 be at the post-master's level under the supervision of a
275 licensed marriage and family therapist who has ~~with~~ at least 5
276 years of experience, or the equivalent, and who is a qualified
277 supervisor as determined by the board. An individual who intends
278 to practice in Florida to satisfy the clinical experience
279 requirements must register pursuant to s. 491.0045 before ~~prior~~
280 ~~to~~ commencing practice. If a graduate has a master's degree with
281 a major emphasis in marriage and family therapy or a closely
282 related field which ~~that~~ did not include all the coursework
283 required under sub-subparagraphs (b)1.a.-c., credit for the
284 post-master's level clinical experience may ~~shall~~ not commence
285 until the applicant has completed a minimum of 10 of the courses
286 required under sub-subparagraphs (b)1.a.-c., as determined by
287 the board, and at least 6 semester hours or 9 quarter hours of
288 the course credits must have been completed in the area of
289 marriage and family systems, theories, or techniques. Within the
290 3 years of required experience, the applicant shall provide

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291 direct individual, group, or family therapy and counseling, to
 292 include the following categories of cases: unmarried dyads,
 293 married couples, separating and divorcing couples, and family
 294 groups including children. A doctoral internship may be applied
 295 toward the clinical experience requirement. A licensed mental
 296 health professional must be on the premises when clinical
 297 services are provided by a registered intern in a private
 298 practice setting. A registered intern may not engage in his or
 299 her own independent private practice ~~The clinical experience~~
 300 ~~requirement may be met by work performed on or off the premises~~
 301 ~~of the supervising marriage and family therapist or the~~
 302 ~~equivalent, provided the off premises work is not the~~
 303 ~~independent private practice rendering of marriage and family~~
 304 ~~therapy services that does not have a licensed mental health~~
 305 ~~professional, as determined by the board, on the premises at the~~
 306 ~~same time the intern is providing services.~~

307 (d) Has passed a theory and practice examination provided
 308 by the department for this purpose.

309 (e) Has demonstrated, in a manner designated by rule of the
 310 board, knowledge of the laws and rules governing the practice of
 311 clinical social work, marriage and family therapy, and mental
 312 health counseling.

313 (f) For the purposes of dual licensure, the department
 314 shall license as a marriage and family therapist any person who
 315 meets the requirements of s. 491.0057. Fees for dual licensure
 316 shall not exceed those stated in this subsection.

317 (4) MENTAL HEALTH COUNSELING.—Upon verification of
 318 documentation and payment of a fee not to exceed \$200, as set by
 319 board rule, plus the actual per applicant cost to the department

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320 for purchase of the examination from the Professional
 321 Examination Service for the National Academy of Certified
 322 Clinical Mental Health Counselors or a similar national
 323 organization, the department shall issue a license as a mental
 324 health counselor to an applicant who the board certifies:

325 (a) Has submitted an ~~made~~ application ~~therefor~~ and paid the
 326 appropriate fee.

327 (c) Has had at least ~~not less than~~ 2 years of clinical
 328 experience in mental health counseling, which must be at the
 329 post-master's level under the supervision of a licensed mental
 330 health counselor or the equivalent who is a qualified supervisor
 331 as determined by the board. An individual who intends to
 332 practice in Florida to satisfy the clinical experience
 333 requirements must register pursuant to s. 491.0045 before ~~prior~~
 334 ~~to~~ commencing practice. If a graduate has a master's degree with
 335 a major related to the practice of mental health counseling
 336 which ~~that~~ did not include all the coursework required under
 337 sub-subparagraphs (b)1.a.-b., credit for the post-master's level
 338 clinical experience may ~~shall~~ not commence until the applicant
 339 has completed a minimum of seven of the courses required under
 340 sub-subparagraphs (b)1.a.-b., as determined by the board, one of
 341 which must be a course in psychopathology or abnormal
 342 psychology. A doctoral internship may be applied toward the
 343 clinical experience requirement. A licensed mental health
 344 professional must be on the premises when clinical services are
 345 provided by a registered intern in a private practice setting. A
 346 registered intern may not engage in his or her own independent
 347 private practice ~~The clinical experience requirement may be met~~
 348 ~~by work performed on or off the premises of the supervising~~

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349 ~~mental health counselor or the equivalent, provided the off-~~
350 ~~premises work is not the independent private practice rendering~~
351 ~~of services that does not have a licensed mental health~~
352 ~~professional, as determined by the board, on the premises at the~~
353 ~~same time the intern is providing services.~~

354 ~~(5) INTERNSHIP. An individual who is registered as an~~
355 ~~intern and has satisfied all of the educational requirements for~~
356 ~~the profession for which the applicant seeks licensure shall be~~
357 ~~certified as having met the educational requirements for~~
358 ~~licensure under this section.~~

359 ~~(5)(6) RULES.~~—The board may adopt rules necessary to
360 implement any education or experience requirement in ~~of~~ this
361 section for licensure as a clinical social worker, marriage and
362 family therapist, or mental health counselor.

363 Section 3. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Education, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Gaming
Governmental Oversight and Accountability
Rules

SELECT COMMITTEE:

Select Committee on Indian River Lagoon
and Lake Okeechobee Basin, *Vice Chair*

SENATOR BILL MONTFORD

Democratic Policy Chair
3rd District

March 11, 2014

Senator Eleanor Sobel, Chair
Senate Committee on Children & Families & Elder Affairs
520 Knott Building
Tallahassee, Florida 32399-1100

Dear Chairman Sobel;

I respectfully request that the following bill be scheduled for a hearing before the Senate Committee on Children & Families & Elder Affairs:

SB 1372 Florida Children and Youth Cabinet
SB 1388 Interns in Clinical Social Work

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford
State Senator, District 3

Cc: Claude Hendon, Staff Director

WM/md

RECEIVED

MAR 11 2014

Senate Committee
Children and Families

REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 58 Market Street, Apalachicola, Florida 32320 (850) 653-2656
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

didn't speak

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14
Meeting Date

Topic Mental Health Interns

Bill Number 1388
(if applicable)

Name Corinne Mixon

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 119 E. Park Ave
Street

Phone (850) 766-5795

Tally, FL 32301
City State Zip

E-mail CorinneMixon@gmail.com

Speaking: For Against Information

Representing Florida Mental Health Counselors 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 (10/20/11)

didn't speak

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/2014
Meeting Date

Topic _____

Bill Number 1388
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

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 Children, Families, and Elder Affairs

BILL: SB 1486

INTRODUCER: Senator Garcia

SUBJECT: Transitional Living Facilities

DATE: March 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Pre-meeting
2.			HP	
3.			AP	

I. Summary:

SB 1486 revises regulations for transitional living facilities. The purpose of these facilities is to provide rehabilitative care in a small residential setting. Such facilities primarily serve persons with brain or spinal injuries and who need significant care and services to regain their independence. There are currently thirteen such facilities in Florida. The bill provides admission criteria, client evaluations, and treatment plans. The bill establishes rights for clients in these facilities, screening requirements for facility employees, and penalties for violations.

This bill will have a minor fiscal impact on the state and has an effective date of July 1, 2014.

II. Present Situation:

Brain and Spinal Cord Injuries

The human spinal cord operates much like a telephone line, relaying messages from the brain to the rest of the body. Spinal cord injuries are caused by bruising, crushing, or tearing of the delicate cord tissue.¹ Swelling of the spinal cord after the injury can cause even more damage. After an injury, the “messages” sent between the brain and the other parts of the body no longer flow through the damaged area. Many times the functions of the body which are located above the injury point will continue to work properly without impairment. However, the area below the injury point will be impaired to some degree, which will include any combination of the

¹Florida Spinal Cord Injury Resource Center, *Family and Survivor’s Guide*, available at <http://fscirc.com/> (last visited March 13, 2014).

following: motor deficit, sensory deficit, initial breathing difficulty, and/or bowel and bladder dysfunction.

The Brain and Spinal Cord Injury Program (BSCIP) is administered by the Florida Department of Health (DOH).² The program is funded through a percentage of traffic related fines and surcharges for driving or boating under the influence, fees on temporary license tags, and a percentage of fees from the motorcycle specialty tag.

The BSCIP is operated through a statewide system of case managers and rehabilitation technicians. Children receive services from the Children's Medical Services nurse care coordinators and human services counselors. The program also employs regional managers who supervise staff in their region and who oversee locally the operation, development, and evaluation of the program's services and supports. Services include: case management, acute care, inpatient and outpatient rehabilitation, transitional living, assistive technology, home and vehicle modifications, nursing home transition facilitation; and long-term supports for survivors and families through contractual agreements with community-based agencies.

In addition to providing resource facilitation and funding for the services above, the program funds education, prevention, and research activities. It expands its services by funding a contract with the Brain Injury Association of Florida and the Florida Disabled Outdoors Association. Other services are provided through working relationships with the Florida Centers for Independent Living and the Florida Department of Education, Division of Vocational Rehabilitation.

Section 381.76, F.S., requires that an individual must be a legal Florida resident who has sustained a moderate-to-severe traumatic brain or spinal cord injury meeting the state's definition of such injuries; has been referred to the BSCIP Central Registry; and must be medically stable to be eligible for services. There must also be a reasonable expectation that with the provision of appropriate services and supports, the person can return to a community-based setting, rather than reside in a skilled nursing facility.

The state definition of a brain injury is an insult to the skull, brain or its covering, resulting from external trauma, which produces an altered state of consciousness or anatomic, motor, sensory, cognitive or behavioral deficit. The state definition of a spinal cord injury is a lesion to the spinal cord or cauda equina resulting from external trauma with evidence of significant involvement of two of the following-motor deficit, sensory deficit, or bowel and bladder dysfunction.

Transitional Living Facilities

Transitional living facilities provide specialized health care services, including, but not limited to: rehabilitative services, community reentry training, aids for independent living, and counseling to spinal-cord-injured persons and head-injured persons. There are currently thirteen facilities located in the state.³ Most of the facilities are small and have between 5 and 10 beds. One facility however is licensed for 116 beds (Florida Institute for Neurologic Rehabilitation in

² Florida Department of Health website, available at <http://www.doh.state.fl.us/> (last visited March 13, 2014).

³ Agency for Health Care Administration, Health Finder Website <http://www.floridahealthfinder.gov/index.html> (last visited March 13, 2014).

Wauchula). The facilities are located primarily in central Florida. The Agency for Health Care Administration (AHCA) is the licensing authority and one of the regulatory authorities which oversee transitional living facilities pursuant to Part II of ch. 408, and Part V of ch. 400, F. S., and ch. 59A-17 of the Florida Administrative Code. The current licensure fee is \$4,588, and \$90 per bed fee per biennium.

AHCA governs the physical plant and fiscal management of these facilities and adopts rules in conjunction with the DOH, which monitors services for persons with traumatic brain and spinal cord injuries. The Department of Children and Families investigates allegations of abuse and neglect of children and vulnerable adults.

Section 400.805, F.S., provides requirements for transitional living facilities. Section 400.805(2), F.S., sets licensure requirements and fees for operation of a transitional living facility as well as requiring all facility personnel submit to a level 2 background screening. Section 400.805(3)(a), F.S., requires AHCA, in consultation with the DOH, to adopt rules governing the physical plan and the fiscal management of transitional living facilities.

The Brain and Spinal Cord Injury Advisory Council has the right to entry and inspection of transitional living facilities granted under s. 400.805(4), F.S. In addition, designated representatives of AHCA, the local fire marshal, and other agencies have access to the facilities and clients.

According to a news report from Bloomberg, dated January 24, 2012, clients at the Florida Institute for Neurologic Rehabilitation in Wauchula, Florida were abused, neglected and confined. The news report was based on information from 20 current and former clients and their family members, criminal charging documents, civil complaints and advocates for the disabled.⁴ The report states that three former employees face criminal charges for abusing clients. News reports state the facility and three affiliated corporations filed Chapter 11 petitions in U.S. Bankruptcy Court in Tampa.⁵ As of March 13, 2014, the facility remains licensed.

III. Effect of Proposed Changes:

Section 1 designates ss. 400.997 through 400.9985, F.S., as part XI of ch. 400, entitled “Transitional Living Facilities”. Section 400.997 is created to provide intent that transitional living facilities are to assist persons with brain and spinal cord injuries to achieve independent living and a return to the community.

The bill creates s. 400.9971, F.S., to define terms. The bill defines a chemical restraint which is used for the client protection or safety and is not required for the treatment of medical conditions or symptoms. The definition of physical restraint means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual’s body so the

⁴ Bloomberg, *Abuse of Brain Injured Americans Scandalizes U.S.*, (Jan. 7, 2012) available at <http://www.bloomberg.com/news/2012-07-24/brain-injured-abuse-at-for-profit-center-scandalizes-u-s-.html>

⁵ Bloomberg, *Florida Brain-Injury Facility Files for Bankruptcy*, (Jan. 5, 2013) available at <http://www.bloomberg.com/news/2013-01-05/florida-brain-injury-facility-files-for-bankruptcy.html>

client cannot easily remove the restraint and restricts freedom of movement or normal access to one's body. The definition of a transitional living facility is moved from s. 381.475, F.S.

The bill creates s. 400.9972, F.S., to provide the licensure requirements and application fee for transitional living facilities. The bill codifies the current license fee of \$4,588 and the per bed fee of \$90.⁶ The bill requires certain information from the applicant, including the facility location, proof that local zoning requirements have been met, proof of liability insurance, documentation of a satisfactory fire safety inspection, and documentation of satisfactory sanitation inspection by the county health department. The bill also requires facilities to be accredited by an accrediting organization specializing in rehabilitation facilities. Such accreditation does not supplant the requirement for AHCA inspections.

Admission Criteria

The bill creates s. 400.9973, F.S., to set standards transitional living facilities must meet for client admission, transfer, and discharge from the facility. The facility is required to have admission, transfer, and discharge policies and procedures in writing.

Clients can only be admitted to the facility through a prescription by a licensed physician and must remain under the care of the physician for the duration of the client's stay in the facility. Clients admitted to the facility must have a brain and spinal cord injury, as defined in s. 381.745(2), F.S. Clients whose diagnosis does not positively identify a cause may be admitted for an evaluation period of up to 90 days.

A facility may not admit a client whose primary diagnosis is a mental illness or an intellectual or developmental disability. The facility may not admit clients who present significant risk of infection to other clients or personnel. Documentation indicating the person is free of apparent signs and symptoms of communicable disease is required. The facility may not admit clients who are a danger to themselves or others as determined by a physician or mental health practitioner. The facility may not admit clients requiring mental health treatment or nursing supervision on a 24-hour basis or who are bedridden.

Client Plans and Evaluation

The bill creates s. 400.9974, F.S., to require that the facility develop a comprehensive treatment plan for each client within 30 days of admission. An interdisciplinary team, including the client, as appropriate, must develop the plan. Each plan must be updated at least monthly and include the following:

- Physician's orders, diagnosis, medical history, physical exams and rehab needs;
- A nursing evaluation with physician orders for immediate care completed at admission; and
- A comprehensive assessment of the client's functional status and the services needed to become independent and return to the community.

⁶ Section 400.805(2)(b), F.S., authorizes a license fee of \$4,000 and a per bed fee of \$75.50. Pursuant to s. 408.805(2), F.S., AHCA can increase the fees each year by up to the increase in the consumer price index for that year. The current fee is \$4,588 and \$90 per bed and bill uses these amounts.

The facility must have qualified staff to carry out and monitor rehabilitation services in accordance with the stated goals of the treatment plan.

The bill creates s. 400.9975, F.S., to provide for certain rights of each client. Specifically, the facility must ensure that each client:

- Lives in a safe environment;
- Is treated with respect, recognition of personal dignity, and privacy;
- Retains use of his or her own clothes and personal property;
- Has unrestricted private communications, which includes mail, telephone, and visitors;
- Participates in community services and activities;
- Manages his or her own financial affairs, unless the client or the client's representative authorizes the administrator of the facility to provide safekeeping for funds;
- Has reasonable opportunity for regular exercise and to be outdoors several times a week;
- May exercise civil and religious liberties;
- Has adequate access to appropriate health care services; and
- Has the ability to present grievances and recommend changes in policies, procedures, and services.

The facility must:

- Promote participation of client's representative in the process of treatment for the client;
- Answer communications from a client's family and friends promptly;
- Promote visits by individuals with a relationship to the client at any reasonable hour;
- Allow residents to leave from the facility to visit or to take trips or vacations; and
- Promptly notify client representatives of any significant incidents or changes in condition.

The bill requires the administrator to post a written notice of provider responsibilities in a prominent place in the facility that includes the statewide toll-free telephone number for reporting complaints to AHCA and the statewide toll-free number of Disability Rights of Florida. The facility must ensure the client has access to a telephone to call AHCA, the central abuse hotline or Disabilities Rights of Florida. The facility cannot take retaliatory action against a client for filing a complaint or grievance. These are similar to protections provided to residents of nursing homes and assisted living facilities.

The bill creates s. 400.9976, F.S., to require the facility to record the client's medication administration, including self-administration, and each dose of medication. All drugs must be administered as ordered by the physician. The medication must be administered in compliance with the physician's orders. Drug administration errors and adverse drug reaction must be recorded and reported immediately to the physician. The interdisciplinary team that develops the client's treatment plan must determine whether a client is capable of self-administration of medications.

The bill creates s. 400.9977, F.S., to provide that unlicensed care staff may assist residents with repackaged medications. The bill requires that the facility must provide training, develop procedures, and maintain records in regards to assistance with medication by unlicensed staff.

The bill creates s. 400.9978, F.S., to state that the facility is responsible for developing and implementing policies and procedures for screening and training employees, protection of clients, and for the prevention, identification, investigation, and reporting of abuse, neglect, mistreatment, and exploitation. This includes the facility identifying clients whose history renders the client a risk for abusing other clients. The facility must implement procedures to:

- Screen potential employees for a history of abuse, neglect, or mistreatment of clients;
- Train employees through orientation and on-going sessions on abuse prohibition practices;
- Provide clients, families, and staff information on how and to whom they may report concerns, incidents and grievances without fear of retribution;
- Identify events, such as suspicious bruising of clients, that may constitute abuse to determine the direction of the investigation;
- Investigate different types of incidents and identify staff members responsible for the initial reporting, and reporting of results to the proper authorities;
- Protect clients from harm during an investigation; and
- Report all alleged violations and all substantiated incidents as required under chs. 39 and 415, F.S., to the appropriate licensing authorities.

The bill creates s. 400.9979, F.S., to require that physical and chemical restraints be ordered for clients before they are used by the facility. The bill requires that the order must be documented by the client's physician and provided with the consent of the client or client's representative. Chemical restraint is limited to the dosage of medications prescribed by the client's physician. Clients receiving medications that can serve as a restraint must be evaluated by their physician at least monthly to assess:

- Continued use of medication;
- Level of the medication in client's blood; and
- Adjustments in the prescription.

The facility must ensure clients are free from unnecessary drugs and physical restraints. All interventions to manage inappropriate client behaviors must be administered with sufficient safeguards and supervision.

The bill creates s. 400.998, F.S., to require all facility personnel to complete a level 2 background screening as required in s 408.809(1)(e), F.S., pursuant to ch. 435, F.S. The facility must maintain personnel records which contain the staff's background screening, job description, training requirements, compliance documentation, and a copy of all licenses or certification held by staff who perform services for which licensure or certification is required. The record must also include a copy of all job performance evaluations. In addition, the bill requires the facility to:

- Implement infection control policies and procedures.
- Maintain liability insurance, as defined by s. 624.605, F.S., at all times.
- Designate one person as administrator who is responsible for the overall management of the facility.
- Designate in writing a person responsible for the facility when the administrator is absent for 24 hours.
- Obtain approval of the comprehensive emergency management plan from the local emergency management agency.

- Maintain written records in a form and system in accordance with standard medical and business practices and be available for submission to AHCA upon request. The records must include:
 - A daily census record;
 - A report of all accident or unusual incidents involving clients or a staff member that caused or had the potential to cause injury or harm to any person or property within the facility;
 - Agreements with third party providers;
 - Agreements with consultants employed by the facility; and
 - Documentation of each consultant's visits and required written, dated reports.

The bill creates s. 400.9981, F.S., to allow clients the option of using their own personal belongings, and choosing a roommate whenever possible. The admission of a client to a facility and his or her presence therein shall not confer on a licensee, administrator, employee, or representative any authority to manage, use, or dispose of any property of the client. The licensee, administrator, employee, or representative may not act as the client's guardian, trustee, or payee for social security or other benefits. The licensee, administrator, employee, or representative may be granted power of attorney for a client if the licensee has filed a surety bond with AHCA in an amount equal to twice the average monthly income of the client. When the power of attorney is granted to the licensee, administrator, staff, or representative, he or she must notify the client on a monthly basis of any transactions made on their behalf and a copy of such statement given to the client and retained in the client's file and available for inspection by AHCA.

The bill states the facility, upon consent from the client, shall provide for the safekeeping in the facility of personal effects not in excess of \$1,000 and funds of the client not in excess of \$500 in cash, and shall keep complete and accurate records of all funds and personal effects received.

The bill provides for any funds or other property belonging to or due to a client, or expendable for his or her account, which is received by licensee, shall be trust funds which shall be kept separate from the funds and property of the licensee and other clients or shall be specifically credited to the client. At least once every month, unless upon order of a court of competent jurisdiction, the facility shall furnish the client and the client's representative a complete and verified statement of all funds and other property, detailing the amount and items received, together with their sources and disposition.

The bill mandates any licensee, administrator, or staff, or representative thereof, who is granted power of attorney for any client of the facility and who misuses or misappropriates funds obtained through this power commits a felony of the third degree.

In the event of the death of a client, the facility shall return all refunds, funds, and property held in trust to the client's personal representative. If the client has no spouse or adult next of kin or such person cannot be located, funds due the client shall be placed in an interest-bearing account, and all property held in trust by the licensee shall be safeguarded until such time as the funds and property are disbursed pursuant to the Florida Probate Code.

The bill allows AHCA, by rule, to clarify terms and specify procedures and documentation necessary to administer the provisions relating to the proper management of clients’ funds and personal property and the execution of surety bonds.

The bill creates s. 400.9982, F.S., to authorize AHCA to publish and enforce rules to include criteria to ensure reasonable and consistent quality of care and client safety. AHCA, in consultation with the DOH, may adopt and enforce rules.

The bill creates s. 400.9983, F.S., to revise penalties for violations. Current law requires AHCA to determine if violations in health care related facilities are isolated, patterned or widespread by AHCA.⁷ The penalties in the bill take into account the frequency of the problems within the facility. Violations are also separated into classes 1 through 4 based on severity in s. 408.813, F.S. Class 1 violations being the most serious and class 4 being the least serious. Class 1 violations put clients in imminent danger. Class 2 violations directly threaten the safety of clients. Class 3 violations indirectly threaten the safety of clients. Class 4 violations are primarily for paperwork violations that would not harm clients. The classifications must be included on the written notice of the violation provided to the facility.

The fines for violations are to be levied at the following amounts:

Class of Violation/Correction	Isolated	Patterned	Widespread
1 - Regardless of correction	\$5,000	\$7,500	\$10,000
2 - Regardless of correction	\$1,000	\$2,500	\$5,000
3 – If uncorrected	\$500	\$750	\$1,000
	Range		
4 – Regardless of correction	\$100		\$200

The bill creates s. 400.9984, F.S., to establish the right for AHCA to petition a court for the appointment of a receiver using the provisions of s. 429.22, F.S., when the following conditions exist:

- The facility is closing or has informed AHCA that it intends to close.
- AHCA determines the conditions exist in the facility that presents danger to the health, safety, or welfare of the clients of the facility.
- The facility cannot meet its financial obligation for providing food, shelter, care, and utilities.

The bill creates s. 400.9985, F.S., to require AHCA, the DOH, the Agency for Persons with Disabilities, and the Department of Children and Families to develop an electronic database to ensure relevant data pertaining to the regulation of transitional living facilities and clients is communicated timely among all agencies for the protection of clients. This system must include the Brain and Spinal Cord Registry and the abuse registries. A database containing information on facilities will assist the various state agencies that are involved in regulating the facilities and the treatment of their clients.

Section 2 repeals s. 400.805, F.S. This section of law contains the current regulations for transitional living facilities. These provisions are replaced by new provisions in the bill.

⁷ s. 408.813(2), F.S.

Section 3 renames the title of part V of chapter 400 as “Intermediate Care Facilities” to remove “Transitional Living Facilities” from the title as the bill creates a new part for such facilities.

Section 4 amends s. 381.745, F.S., to conform to changes in the definition of a transitional living facility.

Section 5 amends s. 381.75, F.S., to eliminate a reference to the responsibility of the Department of Health to develop rules with AHCA for the regulation of transitional living facilities. Provisions in this section are moved and revised in the newly-created sections 400.997-400.9984, F.S.

Section 6 amends s. 381.78, F.S., relating to the Brain and Spinal Cord Injury Advisory Council’s appointment of a committee to regulate transitional living facilities. These duties are duplicative of the regulation by AHCA under the bill and, as a result, are removed.

Section 7 amends s. 400.93, F.S., remove correct a reference to transitional living facilities.

Section 8 amends s. 408.802, F.S., to correct a reference to transitional living facilities.

Section 9 amends s. 408.820, F.S., to correct a reference to transitional living facilities.

Section 10 creates an unnumbered section of law that requires that transitional living facilities licensed before the effective date of the bill must be meet the new requirements of the bill by July 1, 2015.

Section 11 provides for an effective date of July 1, 2014.

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:

Transitional living facilities may incur increased costs based on the increased requirements under the bill. The amount is indeterminate.

C. Government Sector Impact:

AHCA currently regulates the 13 transitional living facilities in the state and is not expected to incur increased costs of regulation. AHCA will see increased costs however to develop a database to hold information on facilities that would be shared with other state agencies as required under the bill. The costs are estimated below.

Fiscal Impact	Fiscal Year 2014-15
AHCA	
Develop database	\$164,060
Total	\$164,060

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.745, 381.75, 381.78, 400.93, 408.802, and 408.820.

This bill creates the following sections of the Florida Statutes: 400.997, 400.9971, 400.9972, 400.9973, 400.9974, 400.9975, 400.9976, 400.9977, 400.9978, 400.9979, 400.998, 400.9981, 400.9982, 400.9983, 400.9984, and 400.9985.

This bill repeals section 400.805 of the Florida Statutes.

This bill creates an unnumbered section 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.

By Senator Garcia

38-00318A-14

20141486__

1 A bill to be entitled
 2 An act relating to transitional living
 3 facilities; creating part XI of ch. 400, F.S.;
 4 providing legislative intent; providing definitions;
 5 requiring the licensure of transitional living
 6 facilities; providing license fees and application
 7 requirements; requiring accreditation of licensed
 8 facilities; providing requirements for transitional
 9 living facility policies and procedures governing
 10 client admission, transfer, and discharge; requiring a
 11 comprehensive treatment plan to be developed for each
 12 client; providing plan and staffing requirements;
 13 requiring certain consent for continued treatment in a
 14 transitional living facility; providing licensee
 15 responsibilities; providing notice requirements;
 16 prohibiting a licensee or employee of a facility from
 17 serving notice upon a client to leave the premises or
 18 take other retaliatory action under certain
 19 circumstances; requiring the client and client's
 20 representative to be provided with certain
 21 information; requiring the licensee to develop and
 22 implement certain policies and procedures; providing
 23 licensee requirements relating to administration of
 24 medication; requiring maintenance of medication
 25 administration records; providing requirements for
 26 administration of medications by unlicensed staff;
 27 specifying who may conduct training of staff;
 28 requiring licensees to adopt policies and procedures
 29 for administration of medications by trained staff;

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

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30 requiring the Agency for Health Care Administration to
 31 adopt rules; providing requirements for the screening
 32 of potential employees and training and monitoring of
 33 employees for the protection of clients; requiring
 34 licensees to implement certain policies and procedures
 35 to protect clients; providing conditions for
 36 investigating and reporting incidents of abuse,
 37 neglect, mistreatment, or exploitation of clients;
 38 providing requirements and limitations for the use of
 39 physical restraints, seclusion, and chemical restraint
 40 medication on clients; providing a limitation on the
 41 duration of an emergency treatment order; requiring
 42 notification of certain persons when restraint or
 43 seclusion is imposed; authorizing the agency to adopt
 44 rules; providing background screening requirements;
 45 requiring the licensee to maintain certain personnel
 46 records; providing administrative responsibilities for
 47 licensees; providing recordkeeping requirements;
 48 providing licensee responsibilities with respect to
 49 the property and personal affairs of clients;
 50 providing requirements for a licensee with respect to
 51 obtaining surety bonds; providing recordkeeping
 52 requirements relating to the safekeeping of personal
 53 effects; providing requirements for trust funds or
 54 other property received by a licensee and credited to
 55 the client; providing a penalty for certain misuse of
 56 a client's personal funds, property, or personal needs
 57 allowance; providing criminal penalties for
 58 violations; providing for the disposition of property

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59 in the event of the death of a client; authorizing the
 60 agency to adopt rules; providing legislative intent;
 61 authorizing the agency to adopt and enforce rules
 62 establishing standards for transitional living
 63 facilities and personnel thereof; classifying
 64 violations and providing penalties therefor; providing
 65 administrative fines for specified classes of
 66 violations; authorizing the agency to apply certain
 67 provisions with regard to receivership proceedings;
 68 requiring the agency, the Department of Health, the
 69 Agency for Persons with Disabilities, and the
 70 Department of Children and Families to develop
 71 electronic information systems for certain purposes;
 72 repealing s. 400.805, F.S., relating to transitional
 73 living facilities; revising the title of part V of ch.
 74 400, F.S.; amending s. 381.745, F.S.; revising the
 75 definition of the term "transitional living facility,"
 76 to conform; amending s. 381.75, F.S.; revising the
 77 duties of the Department of Health and the agency
 78 relating to transitional living facilities; amending
 79 ss. 381.78, 400.93, 408.802, and 408.820, F.S.;

80 conforming provisions to changes made by the act;
 81 providing applicability with respect to transitional
 82 living facilities licensed before a specified date;
 83 providing effective dates.

84
 85 Be It Enacted by the Legislature of the State of Florida:
 86
 87 Section 1. Part XI of chapter 400, Florida Statutes,

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88 consisting of sections 400.997 through 400.9985, is created to
 89 read:

PART XI

TRANSITIONAL LIVING FACILITIES

92 400.997 Legislative intent.—It is the intent of the
 93 Legislature to provide for the licensure of transitional living
 94 facilities and require the development, establishment, and
 95 enforcement of basic standards by the Agency for Health Care
 96 Administration to ensure quality of care and services to clients
 97 in transitional living facilities. It is the policy of the state
 98 that the least restrictive appropriate available treatment be
 99 used based on the individual needs and best interest of the
 100 client, consistent with optimum improvement of the client's
 101 condition. The goal of a transitional living program for persons
 102 who have brain or spinal cord injuries is to assist each person
 103 who has such an injury to achieve a higher level of independent
 104 functioning and to enable the person to reenter the community.
 105 It is also the policy of the state that the restraint or
 106 seclusion of a client is justified only as an emergency safety
 107 measure used in response to danger to the client or others. It
 108 is therefore the intent of the Legislature to achieve an ongoing
 109 reduction in the use of restraint or seclusion in programs and
 110 facilities that serve persons who have brain or spinal cord
 111 injuries.

112 400.9971 Definitions.—As used in this part, the term:

113 (1) "Agency" means the Agency for Health Care

114 Administration.

115 (2) "Chemical restraint" means a pharmacologic drug that
 116 physically limits, restricts, or deprives a person of movement

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117 or mobility, is used for client protection or safety, and is not
 118 required for the treatment of medical conditions or symptoms.

119 (3) "Client's representative" means the parent of a child
 120 client or the client's guardian, designated representative,
 121 designee, surrogate, or attorney in fact.

122 (4) "Department" means the Department of Health.

123 (5) "Physical restraint" means a manual method to restrict
 124 freedom of movement of or normal access to a person's body, or a
 125 physical or mechanical device, material, or equipment attached
 126 or adjacent to the person's body that the person cannot easily
 127 remove and that restricts freedom of movement of or normal
 128 access to the person's body, including, but not limited to, a
 129 half-bed rail, a full-bed rail, a geriatric chair, or a Posey
 130 restraint. The term includes any device that is not specifically
 131 manufactured as a restraint but is altered, arranged, or
 132 otherwise used for this purpose. The term does not include
 133 bandage material used for the purpose of binding a wound or
 134 injury.

135 (6) "Seclusion" means the physical segregation of a person
 136 in any fashion or the involuntary isolation of a person in a
 137 room or area from which the person is prevented from leaving.
 138 Such prevention may be accomplished by imposition of a physical
 139 barrier or by action of a staff member to prevent the person
 140 from leaving the room or area. For purposes of this part, the
 141 term does not mean isolation due to a person's medical condition
 142 or symptoms.

143 (7) "Transitional living facility" means a site where
 144 specialized health care services are provided to persons who
 145 have brain or spinal cord injuries, including, but not limited

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146 to, rehabilitative services, behavior modification, community
 147 reentry training, aids for independent living, and counseling.

148 400.9972 License required; fee; application.-

149 (1) The requirements of part II of chapter 408 apply to the
 150 provision of services that require licensure pursuant to this
 151 part and part II of chapter 408 and to entities licensed by or
 152 applying for licensure from the agency pursuant to this part. A
 153 license issued by the agency is required for the operation of a
 154 transitional living facility in this state. However, this part
 155 does not require a provider licensed by the agency to obtain a
 156 separate transitional living facility license to serve persons
 157 who have brain or spinal cord injuries as long as the services
 158 provided are within the scope of the provider's license.

159 (2) In accordance with this part, an applicant or a
 160 licensee shall pay a fee for each license application submitted
 161 under this part. The license fee shall consist of a \$4,588
 162 license fee and a \$90 per-bed fee per biennium and shall conform
 163 to the annual adjustment authorized in s. 408.805.

164 (3) An applicant for licensure must provide:

165 (a) The location of the facility for which the license is
 166 sought and documentation, signed by the appropriate local
 167 government official, which states that the applicant has met
 168 local zoning requirements.

169 (b) Proof of liability insurance as defined in s.
 170 624.605(1)(b).

171 (c) Proof of compliance with local zoning requirements,
 172 including compliance with the requirements of chapter 419 if the
 173 proposed facility is a community residential home.

174 (d) Proof that the facility has received a satisfactory

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175 firesafety inspection.

176 (e) Documentation that the facility has received a
 177 satisfactory sanitation inspection by the county health
 178 department.

179 (4) The applicant's proposed facility must attain and
 180 continuously maintain accreditation by an accrediting
 181 organization that specializes in evaluating rehabilitation
 182 facilities whose standards incorporate licensure regulations
 183 comparable to those required by the state. An applicant for
 184 licensure as a transitional living facility must acquire
 185 accreditation within 12 months after issuance of an initial
 186 license. The agency shall accept the accreditation survey report
 187 of the accrediting organization in lieu of conducting a
 188 licensure inspection if the standards included in the survey
 189 report are determined by the agency to document that the
 190 facility substantially complies with state licensure
 191 requirements. Within 10 days after receiving the accreditation
 192 survey report, the applicant shall submit to the agency a copy
 193 of the report and evidence of the accreditation decision as a
 194 result of the report. The agency may conduct an inspection of a
 195 transitional living facility to ensure compliance with the
 196 licensure requirements of this part, to validate the inspection
 197 process of the accrediting organization, to respond to licensure
 198 complaints, or to protect the public health and safety.

199 400.9973 Client admission, transfer, and discharge.-

200 (1) A transitional living facility shall have written
 201 policies and procedures governing the admission, transfer, and
 202 discharge of clients.

203 (2) The admission of a client to a transitional living

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204 facility must be in accordance with the licensee's policies and
 205 procedures.

206 (3) A client admitted to a transitional living facility
 207 must have a brain or spinal cord injury, such as a lesion to the
 208 spinal cord or cauda equina syndrome, with evidence of
 209 significant involvement of at least two of the following
 210 deficits or dysfunctions:

211 (a) A motor deficit.

212 (b) A sensory deficit.

213 (c) Bowel and bladder dysfunction.

214 (d) An acquired internal or external injury to the skull,
 215 the brain, or the brain's covering, whether caused by a
 216 traumatic or nontraumatic event, which produces an altered state
 217 of consciousness or an anatomic motor, sensory, cognitive, or
 218 behavioral deficit.

219 (4) A client whose medical condition and diagnosis do not
 220 positively identify a cause of the client's condition, whose
 221 symptoms are inconsistent with the known cause of injury, or
 222 whose recovery is inconsistent with the known medical condition
 223 may be admitted to a transitional living facility for evaluation
 224 for a period not to exceed 90 days.

225 (5) A client admitted to a transitional living facility
 226 must be admitted upon prescription by a licensed physician,
 227 physician assistant, or advanced registered nurse practitioner
 228 and must remain under the care of a licensed physician,
 229 physician assistant, or advanced registered nurse practitioner
 230 for the duration of the client's stay in the facility.

231 (6) A transitional living facility may not admit a person
 232 whose primary admitting diagnosis is mental illness or an

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233 intellectual or developmental disability.

234 (7) A person may not be admitted to a transitional living
 235 facility if the person:

236 (a) Presents significant risk of infection to other clients
 237 or personnel. A health care practitioner must provide
 238 documentation that the person is free of apparent signs and
 239 symptoms of communicable disease;

240 (b) Is a danger to himself or herself or others as
 241 determined by a physician, physician assistant, or advanced
 242 registered nurse practitioner or a mental health practitioner
 243 licensed under chapter 490 or chapter 491, unless the facility
 244 provides adequate staffing and support to ensure patient safety;

245 (c) Is bedridden; or

246 (d) Requires 24-hour nursing supervision.

247 (8) If the client meets the admission criteria, the medical
 248 or nursing director of the facility must complete an initial
 249 evaluation of the client's functional skills, behavioral status,
 250 cognitive status, educational or vocational potential, medical
 251 status, psychosocial status, sensorimotor capacity, and other
 252 related skills and abilities within the first 72 hours after the
 253 client's admission to the facility. An initial comprehensive
 254 treatment plan that delineates services to be provided and
 255 appropriate sources for such services must be implemented within
 256 the first 4 days after admission.

257 (9) A transitional living facility shall develop a
 258 discharge plan for each client before or upon admission to the
 259 facility. The discharge plan must identify the intended
 260 discharge site and possible alternative discharge sites. For
 261 each discharge site identified, the discharge plan must identify

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262 the skills, behaviors, and other conditions that the client must
 263 achieve to be eligible for discharge. A discharge plan must be
 264 reviewed and updated as necessary but at least once monthly.

265 (10) A transitional living facility shall discharge a
 266 client as soon as practicable when the client no longer requires
 267 the specialized services described in s. 400.9971(7), when the
 268 client is not making measurable progress in accordance with the
 269 client's comprehensive treatment plan, or when the transitional
 270 living facility is no longer the most appropriate and least
 271 restrictive treatment option.

272 (11) A transitional living facility shall provide at least
 273 30 days' notice to a client of transfer or discharge plans,
 274 including the location of an acceptable transfer location if the
 275 client is unable to live independently. This subsection does not
 276 apply if a client voluntarily terminates residency.

277 400.9974 Client comprehensive treatment plans; client
 278 services.-

279 (1) A transitional living facility shall develop a
 280 comprehensive treatment plan for each client as soon as
 281 practicable but no later than 30 days after the initial
 282 comprehensive treatment plan is developed. The comprehensive
 283 treatment plan must be developed by an interdisciplinary team
 284 consisting of the case manager, the program director, the
 285 advanced registered nurse practitioner, and appropriate
 286 therapists. The client or, if appropriate, the client's
 287 representative must be included in developing the comprehensive
 288 treatment plan. The comprehensive treatment plan must be
 289 reviewed and updated if the client fails to meet projected
 290 improvements outlined in the plan or if a significant change in

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291 the client's condition occurs. The comprehensive treatment plan
 292 must be reviewed and updated at least once monthly.

293 (2) The comprehensive treatment plan must include:

294 (a) Orders obtained from the physician, physician
 295 assistant, or advanced registered nurse practitioner and the
 296 client's diagnosis, medical history, physical examination, and
 297 rehabilitative or restorative needs.

298 (b) A preliminary nursing evaluation, including orders for
 299 immediate care provided by the physician, physician assistant,
 300 or advanced registered nurse practitioner, which shall be
 301 completed when the client is admitted.

302 (c) A comprehensive, accurate, reproducible, and
 303 standardized assessment of the client's functional capability;
 304 the treatments designed to achieve skills, behaviors, and other
 305 conditions necessary for the client to return to the community;
 306 and specific measurable goals.

307 (d) Steps necessary for the client to achieve transition
 308 into the community and estimated length of time to achieve those
 309 goals.

310 (3) The client or, if appropriate, the client's
 311 representative must consent to the continued treatment at the
 312 transitional living facility. Consent may be for a period of up
 313 to 3 months. If such consent is not given, the transitional
 314 living facility shall discharge the client as soon as
 315 practicable.

316 (4) A client must receive the professional program services
 317 needed to implement the client's comprehensive treatment plan.

318 (5) The licensee must employ qualified professional staff
 319 to carry out and monitor the various professional interventions

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320 in accordance with the stated goals and objectives of the
 321 client's comprehensive treatment plan.

322 (6) A client must receive a continuous treatment program
 323 that includes appropriate, consistent implementation of
 324 specialized and general training, treatment, health services,
 325 and related services and that is directed toward:

326 (a) The acquisition of the behaviors and skills necessary
 327 for the client to function with as much self-determination and
 328 independence as possible.

329 (b) The prevention or deceleration of regression or loss of
 330 current optimal functional status.

331 (c) The management of behavioral issues that preclude
 332 independent functioning in the community.

333 400.9975 Licensee responsibilities.—

334 (1) The licensee shall ensure that each client:

335 (a) Lives in a safe environment free from abuse, neglect,
 336 and exploitation.

337 (b) Is treated with consideration and respect and with due
 338 recognition of personal dignity, individuality, and the need for
 339 privacy.

340 (c) Retains and uses his or her own clothes and other
 341 personal property in his or her immediate living quarters to
 342 maintain individuality and personal dignity, except when the
 343 licensee demonstrates that such retention and use would be
 344 unsafe, impractical, or an infringement upon the rights of other
 345 clients.

346 (d) Has unrestricted private communication, including
 347 receiving and sending unopened correspondence, access to a
 348 telephone, and visits with any person of his or her choice. Upon

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349 request, the licensee shall modify visiting hours for caregivers
 350 and guests. The facility shall restrict communication in
 351 accordance with any court order or written instruction of a
 352 client's representative. Any restriction on a client's
 353 communication for therapeutic reasons shall be documented and
 354 reviewed at least weekly and shall be removed as soon as no
 355 longer clinically indicated. The basis for the restriction shall
 356 be explained to the client and, if applicable, the client's
 357 representative. The client shall retain the right to call the
 358 central abuse hotline, the agency, and Disability Rights Florida
 359 at any time.

360 (e) Has the opportunity to participate in and benefit from
 361 community services and activities to achieve the highest
 362 possible level of independence, autonomy, and interaction within
 363 the community.

364 (f) Has the opportunity to manage his or her financial
 365 affairs unless the client or, if applicable, the client's
 366 representative authorizes the administrator of the facility to
 367 provide safekeeping for funds as provided under this part.

368 (g) Has reasonable opportunity for regular exercise more
 369 than once per week and to be outdoors at regular and frequent
 370 intervals except when prevented by inclement weather.

371 (h) Has the opportunity to exercise civil and religious
 372 liberties, including the right to independent personal
 373 decisions. However, a religious belief or practice, including
 374 attendance at religious services, may not be imposed upon any
 375 client.

376 (i) Has access to adequate and appropriate health care
 377 consistent with established and recognized community standards.

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378 (j) Has the opportunity to present grievances and recommend
 379 changes in policies, procedures, and services to the staff of
 380 the licensee, governing officials, or any other person without
 381 restraint, interference, coercion, discrimination, or reprisal.
 382 A licensee shall establish a grievance procedure to facilitate a
 383 client's ability to present grievances, including a system for
 384 investigating, tracking, managing, and responding to complaints
 385 by a client or, if applicable, the client's representative and
 386 an appeals process. The appeals process must include access to
 387 Disability Rights Florida and other advocates and the right to
 388 be a member of, be active in, and associate with advocacy or
 389 special interest groups.

390 (2) The licensee shall:

391 (a) Promote participation of the client's representative in
 392 the process of providing treatment to the client unless the
 393 representative's participation is unobtainable or inappropriate.

394 (b) Answer communications from the client's family,
 395 guardians, and friends promptly and appropriately.

396 (c) Promote visits by persons with a relationship to the
 397 client at any reasonable hour, without requiring prior notice,
 398 in any area of the facility that provides direct care services
 399 to the client, consistent with the client's and other clients'
 400 privacy, unless the interdisciplinary team determines that such
 401 a visit would not be appropriate.

402 (d) Promote opportunities for the client to leave the
 403 facility for visits, trips, or vacations.

404 (e) Promptly notify the client's representative of a
 405 significant incident or change in the client's condition,
 406 including, but not limited to, serious illness, accident, abuse,

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407 unauthorized absence, or death.

408 (3) The administrator of a facility shall ensure that a
 409 written notice of licensee responsibilities is posted in a
 410 prominent place in each building where clients reside and is
 411 read or explained to clients who cannot read. This notice shall
 412 be provided to clients in a manner that is clearly legible,
 413 shall include the statewide toll-free telephone number for
 414 reporting complaints to the agency, and shall include the words:
 415 "To report a complaint regarding the services you receive,
 416 please call toll-free ...[telephone number]... or Disability
 417 Rights Florida ...[telephone number]..." The statewide toll-
 418 free telephone number for the central abuse hotline shall be
 419 provided to clients in a manner that is clearly legible and
 420 shall include the words: "To report abuse, neglect, or
 421 exploitation, please call toll-free ...[telephone number]..."

422 The licensee shall ensure a client's access to a telephone where
 423 telephone numbers are posted as required by this subsection.

424 (4) A licensee or employee of a facility may not serve
 425 notice upon a client to leave the premises or take any other
 426 retaliatory action against another person solely because of the
 427 following:

428 (a) The client or other person files an internal or
 429 external complaint or grievance regarding the facility.

430 (b) The client or other person appears as a witness in a
 431 hearing inside or outside the facility.

432 (5) Before or at the time of admission, the client and, if
 433 applicable, the client's representative shall receive a copy of
 434 the licensee's responsibilities, including grievance procedures
 435 and telephone numbers, as provided in this section.

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436 (6) The licensee must develop and implement policies and
 437 procedures governing the release of client information,
 438 including consent necessary from the client or, if applicable,
 439 the client's representative.

440 400.9976 Administration of medication.—

441 (1) An individual medication administration record must be
 442 maintained for each client. A dose of medication, including a
 443 self-administered dose, shall be properly recorded in the
 444 client's record. A client who self-administers medication shall
 445 be given a pill organizer. Medication must be placed in the pill
 446 organizer by a nurse. A nurse shall document the date and time
 447 that medication is placed into each client's pill organizer. All
 448 medications must be administered in compliance with orders of a
 449 physician, physician assistant, or advanced registered nurse
 450 practitioner.

451 (2) If an interdisciplinary team determines that self-
 452 administration of medication is an appropriate objective, and if
 453 the physician, physician assistant, or advanced registered nurse
 454 practitioner does not specify otherwise, the client must be
 455 instructed by the physician, physician assistant, or advanced
 456 registered nurse practitioner to self-administer his or her
 457 medication without the assistance of a staff person. All forms
 458 of self-administration of medication, including administration
 459 orally, by injection, and by suppository, shall be included in
 460 the training. The client's physician, physician assistant, or
 461 advanced registered nurse practitioner must be informed of the
 462 interdisciplinary team's decision that self-administration of
 463 medication is an objective for the client. A client may not
 464 self-administer medication until he or she demonstrates the

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465 competency to take the correct medication in the correct dosage
 466 at the correct time, to respond to missed doses, and to contact
 467 the appropriate person with questions.

468 (3) Medication administration discrepancies and adverse
 469 drug reactions must be recorded and reported immediately to a
 470 physician, physician assistant, or advanced registered nurse
 471 practitioner.

472 400.9977 Assistance with medication.—

473 (1) Notwithstanding any provision of part I of chapter 464,
 474 the Nurse Practice Act, unlicensed direct care services staff
 475 who provide services to clients in a facility licensed under
 476 this chapter or chapter 429 may administer prescribed,
 477 prepackaged, and premeasured medications under the general
 478 supervision of a registered nurse as provided under this section
 479 and applicable rules.

480 (2) Training required by this section and applicable rules
 481 shall be conducted by a registered nurse licensed under chapter
 482 464, a physician licensed under chapter 458 or chapter 459, or a
 483 pharmacist licensed under chapter 465.

484 (3) A facility that allows unlicensed direct care service
 485 staff to administer medications pursuant to this section shall:

486 (a) Develop and implement policies and procedures that
 487 include a plan to ensure the safe handling, storage, and
 488 administration of prescription medications.

489 (b) Maintain written evidence of the expressed and informed
 490 consent for each client.

491 (c) Maintain a copy of the written prescription, including
 492 the name of the medication, the dosage, and the administration
 493 schedule and termination date.

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494 (d) Maintain documentation of compliance with required
 495 training.

496 (4) The agency shall adopt rules to implement this section.
 497 400.9978 Protection of clients from abuse, neglect,
 498 mistreatment, and exploitation.—The licensee shall develop and
 499 implement policies and procedures for the screening and training
 500 of employees; the protection of clients; and the prevention,
 501 identification, investigation, and reporting of abuse, neglect,
 502 mistreatment, and exploitation. The licensee shall identify
 503 clients whose personal histories render them at risk for abusing
 504 other clients, develop intervention strategies to prevent
 505 occurrences of abuse, monitor clients for changes that would
 506 trigger abusive behavior, and reassess the interventions on a
 507 regular basis. A licensee shall:

508 (1) Screen each potential employee for a history of abuse,
 509 neglect, mistreatment, or exploitation of clients. The screening
 510 shall include an attempt to obtain information from previous and
 511 current employers and verification of screening information by
 512 the appropriate licensing boards.

513 (2) Train employees through orientation and ongoing
 514 sessions regarding issues related to abuse prohibition
 515 practices, including identification of abuse, neglect,
 516 mistreatment, and exploitation; appropriate interventions to
 517 address aggressive or catastrophic reactions of clients; the
 518 process for reporting allegations without fear of reprisal; and
 519 recognition of signs of frustration and stress that may lead to
 520 abuse.

521 (3) Provide clients, families, and staff with information
 522 regarding how and to whom they may report concerns, incidents,

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523 and grievances without fear of retribution and provide feedback
 524 regarding the concerns that are expressed. A licensee shall
 525 identify, correct, and intervene in situations in which abuse,
 526 neglect, mistreatment, or exploitation is likely to occur,
 527 including:

528 (a) Evaluating the physical environment of the facility to
 529 identify characteristics that may make abuse or neglect more
 530 likely to occur, such as secluded areas.

531 (b) Providing sufficient staff on each shift to meet the
 532 needs of the clients and ensuring that the assigned staff have
 533 knowledge of each client's care needs.

534 (c) Identifying inappropriate staff behaviors, such as
 535 using derogatory language, rough handling of clients, ignoring
 536 clients while giving care, and directing clients who need
 537 toileting assistance to urinate or defecate in their beds.

538 (d) Assessing, monitoring, and planning care for clients
 539 with needs and behaviors that might lead to conflict or neglect,
 540 such as a history of aggressive behaviors including entering
 541 other clients' rooms without permission, exhibiting self-
 542 injurious behaviors or communication disorders, requiring
 543 intensive nursing care, or being totally dependent on staff.

544 (4) Identify events, such as suspicious bruising of
 545 clients, occurrences, patterns, and trends that may constitute
 546 abuse and determine the direction of the investigation.

547 (5) Investigate alleged violations and different types of
 548 incidents, identify the staff member responsible for initial
 549 reporting, and report results to the proper authorities. The
 550 licensee shall analyze the incidents to determine whether
 551 policies and procedures need to be changed to prevent further

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552 incidents and take necessary corrective actions.

553 (6) Protect clients from harm during an investigation.

554 (7) Report alleged violations and substantiated incidents,
 555 as required under chapters 39 and 415, to the licensing
 556 authorities and all other agencies, as required, and report any
 557 knowledge of actions by a court of law that would indicate an
 558 employee is unfit for service.

559 400.9979 Restraint and seclusion; client safety.—

560 (1) A facility shall provide a therapeutic milieu that
 561 supports a culture of individual empowerment and responsibility.
 562 The health and safety of the client shall be the facility's
 563 primary concern at all times.

564 (2) The use of physical restraints must be ordered and
 565 documented by a physician, physician assistant, or advanced
 566 registered nurse practitioner and must be consistent with the
 567 policies and procedures adopted by the facility. The client or,
 568 if applicable, the client's representative shall be informed of
 569 the facility's physical restraint policies and procedures when
 570 the client is admitted.

571 (3) The use of chemical restraints shall be limited to
 572 prescribed dosages of medications as ordered by a physician,
 573 physician assistant, or advanced registered nurse practitioner
 574 and must be consistent with the client's diagnosis and the
 575 policies and procedures adopted by the facility. The client and,
 576 if applicable, the client's representative shall be informed of
 577 the facility's chemical restraint policies and procedures when
 578 the client is admitted.

579 (4) Based on the assessment by a physician, physician
 580 assistant, or advanced registered nurse practitioner, if a

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581 client exhibits symptoms that present an immediate risk of
 582 injury or death to himself or herself or others, a physician,
 583 physician assistant, or advanced registered nurse practitioner
 584 may issue an emergency treatment order to immediately administer
 585 rapid-response psychotropic medications or other chemical
 586 restraints. Each emergency treatment order must be documented
 587 and maintained in the client's record.

588 (a) An emergency treatment order is not effective for more
 589 than 24 hours.

590 (b) Whenever a client is medicated under this subsection,
 591 the client's representative or a responsible party and the
 592 client's physician, physician assistant, or advanced registered
 593 nurse practitioner shall be notified as soon as practicable.

594 (5) A client who is prescribed and receives a medication
 595 that can serve as a chemical restraint for a purpose other than
 596 an emergency treatment order must be evaluated by his or her
 597 physician, physician assistant, or advanced registered nurse
 598 practitioner at least monthly to assess:

599 (a) The continued need for the medication.

600 (b) The level of the medication in the client's blood.

601 (c) The need for adjustments to the prescription.

602 (6) The licensee shall ensure that clients are free from
 603 unnecessary drugs and physical restraints and are provided
 604 treatment to reduce dependency on drugs and physical restraints.

605 (7) The licensee may only employ physical restraints and
 606 seclusion as authorized by the facility's written policies,
 607 which shall comply with this section and applicable rules.

608 (8) Interventions to manage dangerous client behavior shall
 609 be employed with sufficient safeguards and supervision to ensure

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610 that the safety, welfare, and civil and human rights of a client
 611 are adequately protected.

612 (9) A facility shall notify the parent, guardian, or, if
 613 applicable, the client's representative when restraint or
 614 seclusion is employed. The facility must provide the
 615 notification within 24 hours after the restraint or seclusion is
 616 employed. Reasonable efforts must be taken to notify the parent,
 617 guardian, or, if applicable, the client's representative by
 618 telephone or e-mail, or both, and these efforts must be
 619 documented.

620 (10) The agency may adopt rules that establish standards
 621 and procedures for the use of restraints, restraint positioning,
 622 seclusion, and emergency treatment orders for psychotropic
 623 medications, restraint, and seclusion. These rules must include
 624 duration of restraint, staff training, observation of the client
 625 during restraint, and documentation and reporting standards.

626 400.998 Personnel background screening; administration and
 627 management procedures.-

628 (1) The agency shall require level 2 background screening
 629 for licensee personnel as required in s. 408.809(1)(e) and
 630 pursuant to chapter 435 and s. 408.809.

631 (2) The licensee shall maintain personnel records for each
 632 staff member that contain, at a minimum, documentation of
 633 background screening, a job description, documentation of
 634 compliance with the training requirements of this part and
 635 applicable rules, the employment application, references, a copy
 636 of each job performance evaluation, and, for each staff member
 637 who performs services for which licensure or certification is
 638 required, a copy of all licenses or certification held by that

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639 staff member.

640 (3) The licensee must:

641 (a) Develop and implement infection control policies and

642 procedures and include the policies and procedures in the

643 licensee's policy manual.

644 (b) Maintain liability insurance as defined in s.

645 624.605(1)(b).

646 (c) Designate one person as an administrator to be

647 responsible and accountable for the overall management of the

648 facility.

649 (d) Designate in writing a person to be responsible for the

650 facility when the administrator is absent from the facility for

651 more than 24 hours.

652 (e) Designate in writing a program director to be

653 responsible for supervising the therapeutic and behavioral

654 staff, determining the levels of supervision, and determining

655 room placement for each client.

656 (f) Designate in writing a person to be responsible when

657 the program director is absent from the facility for more than

658 24 hours.

659 (g) Obtain approval of the comprehensive emergency

660 management plan, pursuant to s. 400.9982(2)(e), from the local

661 emergency management agency. Pending the approval of the plan,

662 the local emergency management agency shall ensure that the

663 following agencies, at a minimum, are given the opportunity to

664 review the plan: the Department of Health, the Agency for Health

665 Care Administration, and the Division of Emergency Management.

666 Appropriate volunteer organizations shall also be given the

667 opportunity to review the plan. The local emergency management

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668 agency shall complete its review within 60 days after receipt of

669 the plan and either approve the plan or advise the licensee of

670 necessary revisions.

671 (h) Maintain written records in a form and system that

672 comply with medical and business practices and make the records

673 available by the facility for review or submission to the agency

674 upon request. The records shall include:

675 1. A daily census record that indicates the number of

676 clients currently receiving services in the facility, including

677 information regarding any public funding of such clients.

678 2. A record of each accident or unusual incident involving

679 a client or staff member that caused, or had the potential to

680 cause, injury or harm to any person or property within the

681 facility. The record shall contain a clear description of each

682 accident or incident; the names of the persons involved; a

683 description of medical or other services provided to these

684 persons, including the provider of the services; and the steps

685 taken to prevent recurrence of such accident or incident.

686 3. A copy of current agreements with third-party providers.

687 4. A copy of current agreements with each consultant

688 employed by the licensee and documentation of a consultant's

689 visits and required written and dated reports.

690 400.9981 Property and personal affairs of clients.-

691 (1) A client shall be given the option of using his or her

692 own belongings, as space permits; choosing a roommate if

693 practical and not clinically contraindicated; and, whenever

694 possible, unless the client is adjudicated incompetent or

695 incapacitated under state law, managing his or her own affairs.

696 (2) The admission of a client to a facility and his or her

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 697 presence therein does not confer on a licensee or administrator,
 698 or an employee or representative thereof, any authority to
 699 manage, use, or dispose of the property of the client, and the
 700 admission or presence of a client does not confer on such person
 701 any authority or responsibility for the personal affairs of the
 702 client except that which may be necessary for the safe
 703 management of the facility or for the safety of the client.

704 (3) A licensee or administrator, or an employee or
 705 representative thereof, may:

706 (a) Not act as the guardian, trustee, or conservator for a
 707 client or a client's property.

708 (b) Act as a competent client's payee for social security,
 709 veteran's, or railroad benefits if the client provides consent
 710 and the licensee files a surety bond with the agency in an
 711 amount equal to twice the average monthly aggregate income or
 712 personal funds due to the client, or expendable for the client's
 713 account, that are received by a licensee.

714 (c) Act as the attorney in fact for a client if the
 715 licensee files a surety bond with the agency in an amount equal
 716 to twice the average monthly income of the client, plus the
 717 value of a client's property under the control of the attorney
 718 in fact.

719
 720 The surety bond required under paragraph (b) or paragraph (c)
 721 shall be executed by the licensee as principal and a licensed
 722 surety company. The bond shall be conditioned upon the faithful
 723 compliance of the licensee with the requirements of licensure
 724 and is payable to the agency for the benefit of a client who
 725 suffers a financial loss as a result of the misuse or

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 726 misappropriation of funds held pursuant to this subsection. A
 727 surety company that cancels or does not renew the bond of a
 728 licensee shall notify the agency in writing at least 30 days
 729 before the action, giving the reason for cancellation or
 730 nonrenewal. A licensee or administrator, or an employee or
 731 representative thereof, who is granted power of attorney for a
 732 client of the facility shall, on a monthly basis, notify the
 733 client in writing of any transaction made on behalf of the
 734 client pursuant to this subsection, and a copy of the
 735 notification given to the client shall be retained in the
 736 client's file and available for agency inspection.

737 (4) A licensee, with the consent of the client, shall
 738 provide for safekeeping in the facility of the client's personal
 739 effects of a value not in excess of \$1,000 and the client's
 740 funds not in excess of \$500 cash and shall keep complete and
 741 accurate records of the funds and personal effects received. If
 742 a client is absent from a facility for 24 hours or more, the
 743 licensee may provide for safekeeping of the client's personal
 744 effects of a value in excess of \$1,000.

745 (5) Funds or other property belonging to or due to a client
 746 or expendable for the client's account that are received by a
 747 licensee shall be regarded as funds held in trust and shall be
 748 kept separate from the funds and property of the licensee and
 749 other clients or shall be specifically credited to the client.
 750 The funds held in trust shall be used or otherwise expended only
 751 for the account of the client. At least once every month, except
 752 pursuant to an order of a court of competent jurisdiction, the
 753 licensee shall furnish the client and, if applicable, the
 754 client's representative with a complete and verified statement

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755 of all funds and other property to which this subsection
 756 applies, detailing the amount and items received, together with
 757 their sources and disposition. The licensee shall furnish the
 758 statement annually and upon discharge or transfer of a client. A
 759 governmental agency or private charitable agency contributing
 760 funds or other property to the account of a client is also
 761 entitled to receive a statement monthly and upon the discharge
 762 or transfer of the client.

763 (6) (a) In addition to any damages or civil penalties to
 764 which a person is subject, a person who:

765 1. Intentionally withholds a client's personal funds,
 766 personal property, or personal needs allowance;

767 2. Demands, beneficially receives, or contracts for payment
 768 of all or any part of a client's personal property or personal
 769 needs allowance in satisfaction of the facility rate for
 770 supplies and services; or

771 3. Borrows from or pledges any personal funds of a client,
 772 other than the amount agreed to by written contract under s.
 773 429.24,

774 commits a misdemeanor of the first degree, punishable as
 775 provided in s. 775.082 or s. 775.083.

776 (b) A licensee or administrator, or an employee, or
 777 representative thereof, who is granted power of attorney for a
 778 client and who misuses or misappropriates funds obtained through
 779 this power commits a felony of the third degree, punishable as
 780 provided in s. 775.082, s. 775.083, or s. 775.084.

781 (7) In the event of the death of a client, a licensee shall
 782 return all refunds, funds, and property held in trust to the
 783

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784 client's personal representative, if one has been appointed at
 785 the time the licensee disburses such funds, or, if not, to the
 786 client's spouse or adult next of kin named in a beneficiary
 787 designation form provided by the licensee to the client. If the
 788 client does not have a spouse or adult next of kin or such
 789 person cannot be located, funds due to be returned to the client
 790 shall be placed in an interest-bearing account, and all property
 791 held in trust by the licensee shall be safeguarded until such
 792 time as the funds and property are disbursed pursuant to the
 793 Florida Probate Code. The funds shall be kept separate from the
 794 funds and property of the licensee and other clients of the
 795 facility. If the funds of the deceased client are not disbursed
 796 pursuant to the Florida Probate Code within 2 years after the
 797 client's death, the funds shall be deposited in the Health Care
 798 Trust Fund administered by the agency.

799 (8) The agency, by rule, may clarify terms and specify
 800 procedures and documentation necessary to administer the
 801 provisions of this section relating to the proper management of
 802 clients' funds and personal property and the execution of surety
 803 bonds.

804 400.9982 Rules establishing standards.—

805 (1) It is the intent of the Legislature that rules adopted
 806 and enforced pursuant to this part and part II of chapter 408
 807 include criteria to ensure reasonable and consistent quality of
 808 care and client safety. The rules should make reasonable efforts
 809 to accommodate the needs and preferences of the client to
 810 enhance the client's quality of life while residing in a
 811 transitional living facility.

812 (2) The agency may adopt and enforce rules to implement

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813 this part and part II of chapter 408, which shall include
 814 reasonable and fair criteria with respect to:
 815 (a) The location of transitional living facilities.
 816 (b) The qualifications of personnel, including management,
 817 medical, nursing, and other professional personnel and nursing
 818 assistants and support staff, who are responsible for client
 819 care. The licensee must employ enough qualified professional
 820 staff to carry out and monitor interventions in accordance with
 821 the stated goals and objectives of each comprehensive treatment
 822 plan.
 823 (c) Requirements for personnel procedures, reporting
 824 procedures, and documentation necessary to implement this part.
 825 (d) Services provided to clients of transitional living
 826 facilities.
 827 (e) The preparation and annual update of a comprehensive
 828 emergency management plan in consultation with the Division of
 829 Emergency Management. At a minimum, the rules must provide for
 830 plan components that address emergency evacuation
 831 transportation; adequate sheltering arrangements; postdisaster
 832 activities, including provision of emergency power, food, and
 833 water; postdisaster transportation; supplies; staffing;
 834 emergency equipment; individual identification of clients and
 835 transfer of records; communication with families; and responses
 836 to family inquiries.
 837 400.9983 Violations; penalties.—A violation of this part or
 838 any rule adopted pursuant thereto shall be classified according
 839 to the nature of the violation and the gravity of its probable
 840 effect on facility clients. The agency shall indicate the
 841 classification on the written notice of the violation as

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842 follows:
 843 (1) Class "I" violations are defined in s. 408.813. The
 844 agency shall issue a citation regardless of correction and
 845 impose an administrative fine of \$5,000 for an isolated
 846 violation, \$7,500 for a patterned violation, or \$10,000 for a
 847 widespread violation. Violations may be identified, and a fine
 848 must be levied, notwithstanding the correction of the deficiency
 849 giving rise to the violation.
 850 (2) Class "II" violations are defined in s. 408.813. The
 851 agency shall impose an administrative fine of \$1,000 for an
 852 isolated violation, \$2,500 for a patterned violation, or \$5,000
 853 for a widespread violation. A fine must be levied
 854 notwithstanding the correction of the deficiency giving rise to
 855 the violation.
 856 (3) Class "III" violations are defined in s. 408.813. The
 857 agency shall impose an administrative fine of \$500 for an
 858 isolated violation, \$750 for a patterned violation, or \$1,000
 859 for a widespread violation. If a deficiency giving rise to a
 860 class III violation is corrected within the time specified by
 861 the agency, the fine may not be imposed.
 862 (4) Class "IV" violations are defined in s. 408.813. The
 863 agency shall impose for a cited class IV violation an
 864 administrative fine of at least \$100 but not exceeding \$200 for
 865 each violation. If a deficiency giving rise to a class IV
 866 violation is corrected within the time specified by the agency,
 867 the fine may not be imposed.
 868 400.9984 Receivership proceedings.—The agency may apply s.
 869 429.22 with regard to receivership proceedings for transitional
 870 living facilities.

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871 400.9985 Interagency communication.—The agency, the
 872 department, the Agency for Persons with Disabilities, and the
 873 Department of Children and Families shall develop electronic
 874 systems to ensure that relevant information pertaining to the
 875 regulation of transitional living facilities and clients is
 876 timely and effectively communicated among agencies in order to
 877 facilitate the protection of clients. Electronic sharing of
 878 information shall include, at a minimum, a brain and spinal cord
 879 injury registry and a client abuse registry.

880 Section 2. Section 400.805, Florida Statutes, is repealed.

881 Section 3. The title of part V of chapter 400, Florida
 882 Statutes, consisting of sections 400.701-400.801, is
 883 redesignated as "INTERMEDIATE CARE FACILITIES."

884 Section 4. Subsection (9) of section 381.745, Florida
 885 Statutes, is amended to read:

886 381.745 Definitions; ss. 381.739-381.79.—As used in ss.
 887 381.739-381.79, the term:

888 (9) "Transitional living facility" means a state-approved
 889 facility, ~~as defined and licensed under chapter 400 or chapter~~
 890 ~~429, or a facility approved by the brain and spinal cord injury~~
 891 ~~program in accordance with this chapter.~~

892 Section 5. Section 381.75, Florida Statutes, is amended to
 893 read:

894 381.75 Duties and responsibilities of the department, ~~of~~
 895 ~~transitional living facilities, and of residents.~~—Consistent
 896 with the mandate of s. 381.7395, the department shall develop
 897 and administer a multilevel treatment program for individuals
 898 who sustain brain or spinal cord injuries and who are referred
 899 to the brain and spinal cord injury program.

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900 (1) Within 15 days after any report of an individual who
 901 has sustained a brain or spinal cord injury, the department
 902 shall notify the individual or the most immediate available
 903 family members of their right to assistance from the state, the
 904 services available, and the eligibility requirements.

905 (2) The department shall refer individuals who have brain
 906 or spinal cord injuries to other state agencies to ~~ensure~~ assure
 907 that rehabilitative services, if desired, are obtained by that
 908 individual.

909 (3) The department, in consultation with emergency medical
 910 service, shall develop standards for an emergency medical
 911 evacuation system that will ensure that all individuals who
 912 sustain traumatic brain or spinal cord injuries are transported
 913 to a department-approved trauma center that meets the standards
 914 and criteria established by the emergency medical service and
 915 the acute-care standards of the brain and spinal cord injury
 916 program.

917 (4) The department shall develop standards for designation
 918 of rehabilitation centers to provide rehabilitation services for
 919 individuals who have brain or spinal cord injuries.

920 (5) The department shall determine the appropriate number
 921 of designated acute-care facilities, inpatient rehabilitation
 922 centers, and outpatient rehabilitation centers, ~~needed based on~~
 923 ~~incidence, volume of admissions, and other appropriate criteria.~~

924 (6) The department shall develop standards for designation
 925 of transitional living facilities to provide transitional living
 926 services for individuals who participate in the brain and spinal
 927 cord injury program ~~the opportunity to adjust to their~~
 928 ~~disabilities and to develop physical and functional skills in a~~

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929 supported living environment.

930 ~~(a) The Agency for Health Care Administration, in~~
 931 ~~consultation with the department, shall develop rules for the~~
 932 ~~licensure of transitional living facilities for individuals who~~
 933 ~~have brain or spinal cord injuries.~~

934 ~~(b) The goal of a transitional living program for~~
 935 ~~individuals who have brain or spinal cord injuries is to assist~~
 936 ~~each individual who has such a disability to achieve a higher~~
 937 ~~level of independent functioning and to enable that person to~~
 938 ~~reenter the community. The program shall be focused on preparing~~
 939 ~~participants to return to community living.~~

940 ~~(c) A transitional living facility for an individual who~~
 941 ~~has a brain or spinal cord injury shall provide to such~~
 942 ~~individual, in a residential setting, a goal-oriented treatment~~
 943 ~~program designed to improve the individual's physical,~~
 944 ~~cognitive, communicative, behavioral, psychological, and social~~
 945 ~~functioning, as well as to provide necessary support and~~
 946 ~~supervision. A transitional living facility shall offer at least~~
 947 ~~the following therapies: physical, occupational, speech,~~
 948 ~~neuropsychology, independent living skills training, behavior~~
 949 ~~analysis for programs serving brain-injured individuals, health~~
 950 ~~education, and recreation.~~

951 ~~(d) All residents shall use the transitional living~~
 952 ~~facility as a temporary measure and not as a permanent home or~~
 953 ~~domicile. The transitional living facility shall develop an~~
 954 ~~initial treatment plan for each resident within 3 days after the~~
 955 ~~resident's admission. The transitional living facility shall~~
 956 ~~develop a comprehensive plan of treatment and a discharge plan~~
 957 ~~for each resident as soon as practical, but no later than 30~~

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958 ~~days after the resident's admission. Each comprehensive~~
 959 ~~treatment plan and discharge plan must be reviewed and updated~~
 960 ~~as necessary, but no less often than quarterly. This subsection~~
 961 ~~does not require the discharge of an individual who continues to~~
 962 ~~require any of the specialized services described in paragraph~~
 963 ~~(e) or who is making measurable progress in accordance with that~~
 964 ~~individual's comprehensive treatment plan. The transitional~~
 965 ~~living facility shall discharge any individual who has an~~
 966 ~~appropriate discharge site and who has achieved the goals of his~~
 967 ~~or her discharge plan or who is no longer making progress toward~~
 968 ~~the goals established in the comprehensive treatment plan and~~
 969 ~~the discharge plan. The discharge location must be the least~~
 970 ~~restrictive environment in which an individual's health, well-~~
 971 ~~being, and safety is preserved.~~

972 ~~(7) Recipients of services, under this section, from any of~~
 973 ~~the facilities referred to in this section shall pay a fee based~~
 974 ~~on ability to pay.~~

975 Section 6. Subsection (4) of section 381.78, Florida
 976 Statutes, is amended to read:

977 381.78 Advisory council on brain and spinal cord injuries.-

978 (4) The council shall:

979 ~~(a)~~ provide advice and expertise to the department in the
 980 preparation, implementation, and periodic review of the brain
 981 and spinal cord injury program.

982 ~~(b) Annually appoint a five-member committee composed of~~
 983 ~~one individual who has a brain injury or has a family member~~
 984 ~~with a brain injury, one individual who has a spinal cord injury~~
 985 ~~or has a family member with a spinal cord injury, and three~~
 986 ~~members who shall be chosen from among these representative~~

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987 ~~groups: physicians, other allied health professionals,~~
 988 ~~administrators of brain and spinal cord injury programs, and~~
 989 ~~representatives from support groups with expertise in areas~~
 990 ~~related to the rehabilitation of individuals who have brain or~~
 991 ~~spinal cord injuries, except that one and only one member of the~~
 992 ~~committee shall be an administrator of a transitional living~~
 993 ~~facility. Membership on the council is not a prerequisite for~~
 994 ~~membership on this committee.~~

995 ~~1. The committee shall perform onsite visits to those~~
 996 ~~transitional living facilities identified by the Agency for~~
 997 ~~Health Care Administration as being in possible violation of the~~
 998 ~~statutes and rules regulating such facilities. The committee~~
 999 ~~members have the same rights of entry and inspection granted~~
 1000 ~~under s. 400.805(4) to designated representatives of the agency.~~

1001 ~~2. Factual findings of the committee resulting from an~~
 1002 ~~onsite investigation of a facility pursuant to subparagraph 1.~~
 1003 ~~shall be adopted by the agency in developing its administrative~~
 1004 ~~response regarding enforcement of statutes and rules regulating~~
 1005 ~~the operation of the facility.~~

1006 ~~3. Onsite investigations by the committee shall be funded~~
 1007 ~~by the Health Care Trust Fund.~~

1008 ~~4. Travel expenses for committee members shall be~~
 1009 ~~reimbursed in accordance with s. 112.061.~~

1010 ~~5. Members of the committee shall recuse themselves from~~
 1011 ~~participating in any investigation that would create a conflict~~
 1012 ~~of interest under state law, and the council shall replace the~~
 1013 ~~member, either temporarily or permanently.~~

1014 Section 7. Subsection (5) of section 400.93, Florida
 1015 Statutes, is amended to read:

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

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1016 400.93 Licensure required; exemptions; unlawful acts;
 1017 penalties.-

1018 (5) The following are exempt from home medical equipment
 1019 provider licensure, unless they have a separate company,
 1020 corporation, or division that is in the business of providing
 1021 home medical equipment and services for sale or rent to
 1022 consumers at their regular or temporary place of residence
 1023 pursuant to the provisions of this part:

1024 (a) Providers operated by the Department of Health or
 1025 Federal Government.

1026 (b) Nursing homes licensed under part II.

1027 (c) Assisted living facilities licensed under chapter 429,
 1028 when serving their residents.

1029 (d) Home health agencies licensed under part III.

1030 (e) Hospices licensed under part IV.

1031 (f) Intermediate care facilities and, homes for special
 1032 services, ~~and transitional living facilities~~ licensed under part
 1033 V.

1034 (g) Transitional living facilities licensed under part XI.

1035 (h)-(g) Hospitals and ambulatory surgical centers licensed
 1036 under chapter 395.

1037 (i)-(h) Manufacturers and wholesale distributors when not
 1038 selling directly to consumers.

1039 (j)-(i) Licensed health care practitioners who use utilize
 1040 home medical equipment in the course of their practice, but do
 1041 not sell or rent home medical equipment to their patients.

1042 (k)-(j) Pharmacies licensed under chapter 465.

1043 Section 8. Subsection (21) of section 408.802, Florida
 1044 Statutes, is amended to read:

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1045 408.802 Applicability.—The provisions of this part apply to
1046 the provision of services that require licensure as defined in
1047 this part and to the following entities licensed, registered, or
1048 certified by the agency, as described in chapters 112, 383, 390,
1049 394, 395, 400, 429, 440, 483, and 765:

1050 (21) Transitional living facilities, as provided under part
1051 XI ¶ of chapter 400.

1052 Section 9. Subsection (20) of section 408.820, Florida
1053 Statutes, is amended to read:

1054 408.820 Exemptions.—Except as prescribed in authorizing
1055 statutes, the following exemptions shall apply to specified
1056 requirements of this part:

1057 (20) Transitional living facilities, as provided under part
1058 XI ¶ of chapter 400, are exempt from s. 408.810(10).

1059 Section 10. Effective July 1, 2015, a transitional living
1060 facility licensed before the effective date of this act pursuant
1061 to s. 400.805, Florida Statutes, must be licensed under part XI
1062 of chapter 400, Florida Statutes, as created by this act.

1063 Section 11. Except as otherwise expressly provided in this
1064 act, this act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Communications, Energy, and Public Utilities, Vice
Chair
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and Human
Services
Transportation
Health Policy
Agriculture
Transportation

JOINT COMMITTEE:

Joint Committee on Administrative Procedures, Chair

SENATOR RENE GARCIA

38th District

March 10, 2014

The Honorable Eleanor Sobel
Chair, Children, Families, and Elder Affairs Committee
404 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Sobel:

This letter should serve as a request to have my bill *SB 1486 Transitional Living Facilities* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "René García".

State Senator René García
District 38
RG:jt

RECEIVED

MAR 10 2014

**Senate Committee
Children and Families**

CC: Claude Hendon, Staff Director

REPLY TO:

- 1490 West 68 St., Suite 201 Hialeah, FL 33014 (305) 364-3100
- 310 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5038

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

didn't speak

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/2014
Meeting Date

Topic _____ Bill Number 1486
Name BRIAN PITTS (if applicable)
Job Title TRUSTEE Amendment Barcode _____ (if applicable)
Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street
SAINT PETERSBURG FLORIDA 33705
City State Zip
Speaking: For Against Information
Representing JUSTICE-2-JESUS

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 (10/20/11)

didn't speak

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14
Meeting Date

Topic Transitional Living Facilities (Traumatic Brain Injury) Bill Number 1486
Name Sylvia Smith Amendment Barcode _____ (if applicable)
Job Title Director of Legislative Affairs (if applicable)
Address 2728 Centview Dr Phone 850 322 2258
Street
Tallahassee FL 32301 E-mail SylviaS@disabilityrightsflorida.org
City State Zip
Speaking: For Against Information
Representing Disability Rights Florida

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

CourtSmart Tag Report

Room: LL 37

Case:

Type:

Caption: Senate Children, Families, And Elder Affairs

Judge:

Started: 3/18/2014 8:08:12 AM

Ends: 3/18/2014 9:30:51 AM

Length: 01:22:40

8:13:01 AM Meeting Called to Order
8:14:01 AM Roll Call
8:14:17 AM Chair Sobel delivers opening remarks
8:14:30 AM (Tab 5) SB 972 - Attorneys for Dependent Children with Disabilities
8:15:00 AM Sen. Galvano explains strike-all amendment barcode 715646
8:16:56 AM Chair Sobel asks for questions
8:17:08 AM Show amendment adopted on the bill
8:17:48 AM Testimony by Brian Pitts, Justice-2-Jesus
8:21:00 AM Aimee Diaz Lyon, Florida Bar, waives in support
8:21:39 AM Christina Spudeas, Florida's Children First and Florida Youth SHINE, waives in support
8:21:40 AM Eddie Hall, Florida PTA, waives in support
8:21:43 AM Sen. Galvano closes on bill
8:22:28 AM Sen. Dean moves the bill as a committee substitute
8:22:31 AM Roll Call on SB 972
8:22:46 AM SB 972 passes
8:23:01 AM (Tab 4) SB 750 - Rights of Grandparents and Great-grandparents
8:23:20 AM Sen. Abruzzo explains the bill
8:23:29 AM Chair Sobel asks a question
8:23:42 AM Sen. Abruzzo responds
8:24:36 AM Testimony by Yvonne Stewart
8:30:21 AM Testimony by JoAnne Ecker
8:31:14 AM Testimony by Lauren Erickson
8:32:37 AM Brian Pitts, Justice-2-Jesus, waives in support
8:32:42 AM Linda Kearschner, Florida Parent Teacher Association, waives in support
8:32:50 AM Laura Cantwell, AARP, waives in support
8:33:27 AM Sen. Abruzzo closes on bill
8:34:02 AM Roll Call on SB 750
8:34:21 AM SB 750 passes
8:34:58 AM (Tab 2) SPB 7088 - Human Trafficking by Children, Families, and Elder Affairs Committee
8:35:08 AM Sen. Detert's motion to be recorded as affirmative on SB 972
8:35:27 AM Sen. Clemens' motion to be recorded as affirmative on SB 972
8:35:36 AM Barbara Crosier, Chief Attorney, Children, Families, and Elder Affairs Committee, explanation of SPB 7088
8:37:53 AM Chair Sobel asks for questions
8:37:59 AM Sen. Detert asks a question
8:38:27 AM Barbara Crosier responds
8:39:07 AM Sen. Detert asks follow-up question
8:39:36 AM Barbara Crosier responds
8:40:19 AM Sen. Detert asks question
8:40:23 AM Barbara Crosier responds
8:40:44 AM Sen. Detert asks follow-up question
8:40:54 AM Barbara Crosier responds
8:41:22 AM Sen. Thompson asks a question
8:41:31 AM Barbara Crosier responds
8:41:47 AM Sen. Thompson asks follow-up question
8:41:54 AM Barbara Crosier responds
8:42:11 AM Sen. Thompson asks a question
8:42:28 AM Barbara Crosier responds
8:42:46 AM Chair Sobel asks a question
8:43:15 AM Barbara Crosier responds
8:43:38 AM Chair Sobel asks follow-up question
8:43:46 AM Barbara Crosier responds

8:44:16 AM Chair Sobel asks question
8:44:46 AM Barbara Crosier responds
8:45:24 AM Testimony by Stephen Pennypacker, Florida Department of Children and Families
8:45:50 AM Chair Sobel asks question
8:45:56 AM Mr. Pennypacker responds
8:46:04 AM Sen. Detert asks question
8:46:14 AM Mr. Pennypacker responds
8:46:39 AM Testimony by Roy Miller, The Children's Campaign
8:58:06 AM Testimony by Dr. Ravoira, Delores Barr Werver Policy Center
9:02:13 AM Sen. Dean asks a question
9:02:37 AM Dr. Ravoira responds
9:04:10 AM Sen. Dean asks follow-up question
9:05:27 AM Dr. Ravoira responds
9:07:53 AM Sen. Dean asks follow-up question
9:08:00 AM Dr. Ravoira responds
9:08:17 AM Sen. Hays asks question
9:09:02 AM Dr. Ravoira responds
9:09:42 AM Chair Sobel comments
9:10:00 AM Sen. Hays asks a question
9:10:49 AM Dr. Ravoira responds
9:11:17 AM Sen. Thompson asks question
9:11:44 AM Dr. Ravoira responds
9:12:51 AM Chair Sobel comments
9:12:57 AM Testimony by Carl Galloway
9:14:12 AM Testimony by Christina Spudeas, Florida's Children First
9:16:32 AM Testimony by Linda Kearschner, Florida Parent Teacher Assoc.
9:18:27 AM Chair Sobel asks for debate
9:18:32 AM Sen. Detert comments
9:20:07 AM Chair Sobel comments
9:20:10 AM Sen. Clemens' comment and question
9:20:38 AM Chair Sobel responds
9:21:26 AM Sen. Detert asks follow-up question
9:21:39 AM Claude Hendon, Staff Director, responds
9:22:32 AM Sen. Clemens makes motion to TP SPB 7088
9:22:48 AM Chair Sobel TP'd bill
9:22:59 AM (Tab 3) CS/SB 268 - Certificates of Need
9:23:16 AM Sen. Grimsley explains the bill
9:23:53 AM Chair Sobel asks for questions/testimony
9:24:05 AM Tony Marshall, Florida Health Care Association, waives in support
9:24:08 AM Brewster Bevis, Associated Industries of Florida, waives in support
9:24:11 AM Harold Foster, North Bay Health Associates, waives in support
9:24:14 AM Doug Mannheimer, Florida Health Care Association, waives in support
9:24:16 AM Carol Berkowitz, Leading Age Florida, waives in support
9:24:19 AM Laura Cantwell, AARP, waives in support
9:24:26 AM Amendment barcode 256538 is explained by Sen. Grimsley
9:24:50 AM Chair Sobel asks for questions/testimony/debate
9:24:57 AM Grimsley amendment adopted
9:25:07 AM Sen. Grimsley waives close
9:25:09 AM Sen. Grimsley moves bill as committee substitute
9:25:15 AM Roll Call on CS/SB 268
9:25:27 AM CS/SB 268 passes
9:25:30 AM (Tab 6) SB 1082 - Adult Day Care Centers
9:25:52 AM Rich Reidy explains bill
9:26:42 AM Mr. Reidy waives close
9:26:47 AM Barcode 299966 by Sen. Grimsley is explained by Mr. Reidy
9:27:12 AM Chair Sobel asks for questions/testimony/debate
9:27:22 AM Amendment is adopted
9:27:30 AM Christine Powers, Florida Adult Day Services Assoc. waives in opposition
9:27:43 AM Carol Berkowitz, Leading Age Florida, waives in support
9:27:53 AM Martha Decastro, Florida Hospital Association, waives in support
9:28:02 AM Sen. Detert moves bill as committee substitute
9:28:09 AM Roll Call on SB 1082

9:28:18 AM SB 1082 passes
9:28:29 AM (Tab 8) SB 1372 - Children and Youth Cabinet
9:28:44 AM Marcia Mathis explains bill
9:29:10 AM Roll Call on SB 1372
9:29:18 AM SB 1372 passes
9:29:29 AM (Tab 7) SB 1180 - Chemicals in Consumer Products
9:29:57 AM Sen. Detert asks question
9:30:01 AM Chair Sobel responds
9:30:14 AM Sen. Detert asks follow-up question
9:30:35 AM Chair Sobel motion to TP SB 1180
9:30:40 AM Meeting adjourned