

Tab 1	CS/SB 160 by CA, Gaetz ; (Similar to H 7023) Ad Valorem Tax Exemption for Deployed Servicemembers						
933216	A	S	RCS	FP, Bradley	Delete L.28 - 53:	01/21 07:57 AM	

Tab 2	CS/SB 286 by BI, Brandes ; (Similar to CS/H 0817) Merger and Acquisition Brokers						
729652	A	S	RCS	FP, Hays	Delete L.72:	01/20 08:20 PM	

Tab 3	SB 310 by Legg (CO-INTRODUCERS) Margolis ; (Similar to CS/H 0141) National Statuary Hall						
149704	A	S	RCS	FP, Legg	Delete L.38 - 49:	01/20 08:20 PM	

Tab 4	CS/SB 390 by JU, Simpson ; (Similar to CS/H 0273) Public Records/Public Agency Contract for Services						
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Tab 5	SB 460 by Bradley (CO-INTRODUCERS) Soto ; (Similar to CS/H 0307) Experimental Treatments for Terminal Conditions						
466428	D	S	PEND	FP, Bradley	Delete everything after	01/21 08:23 AM	
943584	AA	S		FP, Abruzzo	Delete L.466 - 533:	01/20 05:40 PM	
555404	A	S		FP, Abruzzo	Delete L.21 - 53:	01/20 05:41 PM	

Tab 6	CS/SB 504 by HP, Grimsley ; (Similar to H 0591) Laser Hair Removal						
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Tab 7	CS/SB 518 by TR, Soto (CO-INTRODUCERS) Hutson, Sachs, Abruzzo ; (Compare to CS/H 0511) Special License Plates						
879464	A	S	RCS	FP, Abruzzo	Delete L.100 - 214:	01/20 08:20 PM	

Tab 8	CS/SB 542 by HP, Stargel ; (Similar to CS/H 0127) Continuing Care Facilities						
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Tab 9	CS/CS/SB 590 by JU, CF, Detert (CO-INTRODUCERS) Gaetz ; (Similar to CS/H 0673) Adoption						
594684	A	S	WD	FP, Bradley	Before L.18:	01/20 02:03 PM	
958958	A	S	RCS	FP, Bradley	Before L.18:	01/20 08:20 PM	
674738	A	S	RCS	FP, Bradley	Delete L.85 - 99:	01/20 08:20 PM	

Tab 10	SB 7000 by CA ; (Compare to H 1361) Developments of Regional Impact						
697286	PCS	S	RCS	FP, ATD		01/20 08:20 PM	
633166	PCS:A	S	RCS	FP, Abruzzo	Before L.12:	01/20 08:20 PM	
286434	PCS:A	S	WD	FP, Abruzzo	Delete L.27 - 28:	01/20 08:16 AM	
168558	PCS:A	S	RCS	FP, Abruzzo	btw L.27 - 28:	01/20 08:20 PM	

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

FISCAL POLICY
Senator Flores, Chair
Senator Bradley, Vice Chair

MEETING DATE: Wednesday, January 20, 2016
TIME: 4:00—6:00 p.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Flores, Chair; Senator Bradley, Vice Chair; Senators Abruzzo, Bean, Clemens, Hays, Hukill, Legg, Margolis, Sachs, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 160 Community Affairs / Gaetz (Similar H 7023)	Ad Valorem Tax Exemption for Deployed Servicemembers; Expanding the military operations that qualify a servicemember deployed in support of such an operation in the previous calendar year for an additional ad valorem tax exemption; providing an extended deadline and specifying procedures for filing an application for such tax exemption for a qualifying deployment during the 2014 and 2015 calendar years; providing refund procedures for servicemembers who were on qualifying deployments for more than 365 days during the 2014 and 2015 calendar years, etc. CA 10/20/2015 Fav/CS FT 11/02/2015 Favorable FP 01/20/2016 Fav/CS	Fav/CS Yeas 10 Nays 0
2	CS/SB 286 Banking and Insurance / Brandes (Similar CS/H 817)	Merger and Acquisition Brokers; Providing an exemption from certain registration requirements with the Office of Financial Regulation for a specified offer or sale of securities; requiring a merger and acquisition broker to receive certain written assurances from a specified person prior to the completion of specified securities transactions; providing an exemption from certain registration requirements with the office for a merger and acquisition broker under certain circumstances; specifying disqualifying conditions for the exemption, etc. BI 12/01/2015 Fav/CS AGG 01/13/2016 Favorable FP 01/20/2016 Fav/CS	Fav/CS Yeas 10 Nays 0

With subcommittee recommendation – General Government

COMMITTEE MEETING EXPANDED AGENDA

Fiscal Policy

Wednesday, January 20, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 310 Legg (Similar CS/H 141)	National Statuary Hall; Providing for replacement of the statue of General Edmund Kirby Smith in the National Statuary Hall Collection at the United States Capitol; providing for the gathering of necessary funds to carry out replacement of the statue; providing for submission of the state's request to the United States Joint Committee on the Library of Congress for approval to replace the statue, etc. GO 11/17/2015 Favorable FP 01/20/2016 Fav/CS RC	Fav/CS Yeas 8 Nays 2
4	CS/SB 390 Judiciary / Simpson (Similar CS/H 273)	Public Records/Public Agency Contract for Services; Requiring that a public agency contract for services include a statement providing the contact information of the public agency's custodian of records; revising required provisions in a public agency contract for services regarding a contractor's compliance with public records laws, etc. GO 11/17/2015 Favorable JU 12/01/2015 Fav/CS FP 01/20/2016 Favorable	Favorable Yeas 10 Nays 0
5	SB 460 Bradley (Similar CS/H 307)	Experimental Treatments for Terminal Conditions; Revising the definition of the term "investigational drug, biological product, or device"; providing for eligible patients or their legal representatives to purchase and possess cannabis for medical use; authorizing certain licensed dispensing organizations to manufacture, possess, sell, deliver, distribute, dispense, and dispose of cannabis; exempting such organizations from specified laws, etc. HP 11/17/2015 Favorable ACJ 12/03/2015 Favorable FP 01/20/2016 Temporarily Postponed	Temporarily Postponed
With subcommittee recommendation – Criminal and Civil Justice			
6	CS/SB 504 Health Policy / Grimsley (Similar H 591)	Laser Hair Removal; Providing certification and training requirements for licensed electrologists who use laser or pulsed-light devices in hair removal, etc. HP 12/01/2015 Fav/CS AHS 01/13/2016 Favorable FP 01/20/2016 Favorable	Favorable Yeas 10 Nays 0
With subcommittee recommendation – Health and Human Services			

COMMITTEE MEETING EXPANDED AGENDA

Fiscal Policy

Wednesday, January 20, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 518 Transportation / Soto (Compare H 511, S 588)	Special License Plates; Creating a special license plate for recipients of the Bronze Star medal; requiring any revenue generated from the sale of Woman Veteran license plates to be deposited into the Grants and Donations Trust Fund, instead of the Operations and Maintenance Trust Fund; requiring certain homes to deposit all moneys received from the sale of Woman Veteran license plates into the Grants and Donations Trust Fund, etc. TR 12/03/2015 Fav/CS MS 01/11/2016 Favorable FP 01/20/2016 Fav/CS	Fav/CS Yeas 10 Nays 0
8	CS/SB 542 Health Policy / Stargel (Similar CS/H 127)	Continuing Care Facilities; Providing financial requirements for certain nursing homes to be recognized as a Gold Seal Program facility, etc. HP 11/17/2015 Fav/CS CF 12/03/2015 Favorable FP 01/20/2016 Favorable	Favorable Yeas 10 Nays 0
9	CS/CS/SB 590 Judiciary / Children, Families, and Elder Affairs / Detert (Similar CS/H 673)	Adoption; Revising the circumstances under which an adoption consent is valid, binding, and enforceable; requiring a court to determine, under certain circumstances, whether a change of placement of a child is in the child's best interests, rather than whether the change of placement is appropriate; deleting a determination that a court must consider under certain circumstances; authorizing the court to establish certain requirements for the transfer of custody; revising circumstances under which a court must provide written notice to a parent of specified information, etc. CF 11/19/2015 Fav/CS JU 01/12/2016 Fav/CS FP 01/20/2016 Fav/CS	Fav/CS Yeas 9 Nays 0
A proposed committee substitute for the following bill (SB 7000) is available:			
10	SB 7000 Community Affairs (Compare H 1361, S 1190)	Developments of Regional Impact; Providing that a proposed development that is consistent with certain comprehensive plans is not required to undergo review pursuant to the state coordinated review process, etc. ATD 01/13/2016 Fav/CS FP 01/20/2016 Fav/CS	Fav/CS Yeas 10 Nays 0
With subcommittee recommendation – Transportation, Tourism, and Economic Development			

COMMITTEE MEETING EXPANDED AGENDA

Fiscal Policy

Wednesday, January 20, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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Other Related Meeting Documents

An electronic copy of the Appearance Request form is available to download from any Senate Committee page on the Senate's website, www.flSenate.gov.

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 Fiscal Policy

BILL: CS/CS/SB 160

INTRODUCER: Fiscal Policy Committee; Community Affairs Committee; and Senator Gaetz

SUBJECT: Ad Valorem Tax Exemption for Deployed Servicemembers

DATE: January 21, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<u>Favorable</u>
3.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 160 adds 11 new designated operations for which deployed servicemembers may qualify for an ad valorem tax exemption and removes one operation for which the time to qualify for the exemption has expired. A servicemember may receive an exemption on homestead property based on the portion of the preceding calendar year during which the servicemember was deployed on active duty outside the continental United States, Alaska, or Hawaii in support of a statutorily-identified military operation.

The bill extends the normal March 1 application deadline for the exemption application for qualifying deployments during the 2014 and 2015 calendar years to June 1, 2016, and allows the servicemember to include days deployed in both years in an application for exemption for the 2016 calendar year.

The bill also provides refund procedures for servicemembers who were on qualifying deployments for more than 365 days during the 2014 and 2015 calendar years.

The Revenue Estimating Conference (REC) estimated on October 16, 2015, that an earlier version of this bill would reduce local property tax revenues by \$1.6 million in Fiscal Year 2016-2017, with a recurring impact of \$800,000. The REC has not yet determined the fiscal impact of CS/CS/SB 160.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, cities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.¹ The property appraiser annually determines the “just value”² of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³ Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes,⁴ and limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.⁵

Ad Valorem Exemption for Deployed Servicemembers

The Florida Constitution grants an exemption for military servicemembers that have Florida homesteads and are deployed on active duty outside the United States, Alaska, or Hawaii in support of military operations designated by the Legislature.⁶ The exemption is equal to the taxable value of the qualifying servicemember’s homestead on January 1 of the year in which the exemption is sought multiplied by the number of days that the servicemember was on a qualifying deployment in the preceding calendar year and divided by the number of days in that year.⁷

Eligible Military Operations

The Legislature has designated the following military operations:

- Operation Noble Eagle, which began on September 15, 2001;
- Operation Enduring Freedom, which began on October 7, 2001;
- Operation Iraqi Freedom, which began on March 19, 2003, and ended on August 31, 2010;
- Operation New Dawn, which began September 1, 2010, and ended on December 15, 2011; or
- Operation Odyssey Dawn, which began on March 19, 2011, and ended on October 31, 2011.⁸

¹ Both real property and tangible personal property can be subject to the tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at “just value” for purposes of property taxation unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

³ See s. 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a)

⁵ See FLA. CONST. art. VII, s. 4.

⁶ FLA. CONST. art. VII, s. 3(g).

⁷ Section 196.173(4), F.S. A “servicemember” is a member or former member of any branch of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard. Section 196.173(7), F.S.

⁸ Section 196.173(2), F.S.

Annual Report of All Known and Unclassified Military Operations

By January 15 of each year, the Department of Military Affairs must submit to the President of the Senate, the Speaker of the House of Representatives, and the tax committees of each house of the Legislature a report of all known and unclassified military operations outside the continental United States, Alaska, or Hawaii for which servicemembers based in the continental United States have been deployed during the previous calendar year.⁹

To the extent possible, the report must include:

- The official and common names of the military operations;
- The general location and purpose of each military operation;
- The date each military operation commenced; and
- The date each military operation terminated, unless the operation is ongoing.¹⁰

Exemption Application

A servicemember who seeks to claim the tax exemption must file an application for exemption with the property appraiser on or before March 1 of the year following the year of the qualifying deployment.¹¹ The servicemember's application must include:

- Proof of the qualifying deployment;
- The dates of the qualifying deployment; and
- Other information necessary to verify eligibility for and the amount of the exemption.

The property appraiser must consider a servicemember's application for the exemption within 30 days after receipt of the application or within 30 days after receiving notice of the designation of qualifying deployments by the Legislature, whichever is later.¹² If a servicemember's application is denied, the property appraiser must send a notice of disapproval no later than July 1, citing the reason for disapproval and advising the servicemember of the right to appeal the decision to the value adjustment board (VAB) along with the procedures for filing such appeal.¹³

III. Effect of Proposed Changes:

Section 1 amends s. 196.173, F.S., to add 12 unclassified military operations for which deployed servicemembers may qualify for the exemption. These 12 operations are identified in the statutorily-required report submitted to the Legislature by the Department of Military Affairs¹⁴ and include the following operations:

- Operation Joint Task Force Bravo, which began in 1995;
- Operation Joint Guardian, which began on June 12, 1999;
- Operations in the Balkans, which began in 2004;
- Operation Nomad Shadow, which began in 2007;

⁹ Section 196.173(3), F.S.

¹⁰ *Id.*

¹¹ Section 196.173(5)(a), F.S.

¹² Section 196.173(6), F.S.

¹³ Sections 194.015 and 194.011, F.S.

¹⁴ Department of Military Affairs, Office of the Adjutant General, *Named Operations Report* (Jan. 15, 2016).

- Operation U.S. Airstrikes Al Qaeda in Somalia, which began in January 2007;
- Operation Copper Dune, which began in 2009;
- Operation Georgia Deployment Program, which began in August 2009;
- Operation Spartan Shield, which began June 2011;
- Operation Observant Compass, which began in October 2011;
- Operation Inherent Resolve, which began on August 8, 2014;
- Operation Atlantic Resolve, which began in April 2014; and
- Operation Freedom's Sentinel, which began on January 1, 2015.

The bill removes Operation Iraqi Freedom from the list of qualifying operations because the time for claiming an exemption for the applicable tax rolls has expired.

Section 2 changes the application deadline for qualifying deployments during the 2014 and 2015 calendar years to June 1, 2016, for the military operations added by the bill. A servicemember may include in the application for the exemption for the 2016 calendar year the number of days that he or she was on a qualifying deployment during the 2014 and 2015 calendar years.

The bill specifies that a property appraiser may grant the exemption to an otherwise qualifying applicant who fails to meet the June 1, 2016, deadline, under the following conditions:

- The applicant files on or before the 25th day after the mailing of the assessment notice by the property appraiser during the 2016 calendar year;
- The applicant is qualified for the exemption; and
- The applicant produces sufficient evidence to demonstrate that he or she was unable to apply in a timely manner.

The bill provides an opportunity for review by a VAB, if the applicant files a petition on or before the 25th day following the mailing of the assessment notice by the property appraiser and demonstrates extenuating circumstances that warrant granting the exemption. Payment of the VAB filing fee is waived.

The bill also provides that if the number of days that a servicemember was on qualifying deployments in the 2014 and 2015 calendar years exceeds 365 days, the servicemember may receive a refund of taxes paid for the 2015 tax year. The amount of the 2015 tax year refund is equal to the number of days in excess of 365 that the servicemember was on qualifying deployments in the 2014 and 2015 calendar years divided by 365.

Section 3 provides that the bill is effective upon becoming law and first applies to ad valorem tax rolls for 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

The REC estimated on October 16, 2015, that an earlier version of this bill would reduce local property tax revenues by \$1.6 million in Fiscal Year 2016-2017, with a recurring impact of \$800,000.¹⁵ The REC has not yet estimated the impact of CS/CS/SB 160.

B. Private Sector Impact:

If the bill becomes law, servicemembers deployed overseas in support of the added military operations may receive property tax relief.

C. Government Sector Impact:

The bill provides additional duties to county property appraisers and VABs, which must consider servicemembers' applications for exemption that would otherwise not have met the filing deadline. The bill may also require tax collectors to issue refunds to servicemembers if the servicemembers were on qualifying deployment for more than 365 days during the 2014 and 2015 calendar years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 196.173 of the Florida Statutes:

This bill creates an undesignated section of the Florida law.

¹⁵ Revenue Estimating Conference, *Tax Exemption for Deployed Servicemembers, House proposed language*, Adopted: October 16, 2015, available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/_pdf/page46-52.pdf (last visited January 14, 2016).

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 Fiscal Policy on January 20, 2016:

The committee substitute updates the list of operations to reflect the unclassified operations listed in the Department of Military Affairs' annual report due January 15, 2016.

CS by Community Affairs on October 20, 2015:

Provides an extension of the application deadline for qualifying deployments during the 2014 and 2015 calendar years, rather than the 2014 calendar year only. Similarly, the bill extends the normal March 1 application deadline for the exemption application for qualifying deployments during the 2014 and 2015 calendar years to June 1, 2016. Furthermore, the bill provides refund procedures for servicemembers who were on qualifying deployments for more than 365 days during the 2014 and 2015 calendar years. The bill also provides that the bill first applies to ad valorem tax rolls for 2016.

- B. **Amendments:**

None.



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/21/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Bradley) recommended the following:

Senate Amendment

Delete lines 28 - 53
and insert:

- (a) Operation Joint Task Force Bravo, which began in 1995.
- (b) Operation Joint Guardian, which began on June 12, 1999.
- (c) ~~(a)~~ Operation Noble Eagle, which began on September 15, 2001. ~~+~~
- (d) ~~(b)~~ Operation Enduring Freedom, which began on October 7, 2001. ~~+~~



- ~~(e) Operation Iraqi Freedom, which began on March 19, 2003, and ended on August 31, 2010. ~~+~~~~
- (e) Operations in the Balkans, which began in 2004.
- (f) Operation Nomad Shadow, which began in 2007.
- (g) Operation U.S. Airstrikes Al Qaeda in Somalia, which began in January 2007.
- (h) Operation Copper Dune, which began in 2009.
- (i) Operation Georgia Deployment Program, which began in August 2009.
- ~~(j) ~~(d)~~ Operation New Dawn, which began on September 1, 2010, and ended on December 15, 2011. ~~+~~ ~~or~~~~
- ~~(k) ~~(e)~~ Operation Odyssey Dawn, which began on March 19, 2011, and ended on October 31, 2011.~~
- (l) Operation Spartan Shield, which began in June 2011.
- (m) Operation Observant Compass, which began in October 2011.
- (n) Operation Inherent Resolve, which began on August 8, 2014.
- (o) Operation Atlantic Resolve, which began in April 2014.
- (p) Operation Freedom's Sentinel, which began on January 1, 2015.

By the Committee on Community Affairs; and Senator Gaetz

578-00905A-16

2016160c1

A bill to be entitled

An act relating to an ad valorem tax exemption for deployed servicemembers; amending s. 196.173, F.S.; expanding the military operations that qualify a servicemember deployed in support of such an operation in the previous calendar year for an additional ad valorem tax exemption; providing an extended deadline and specifying procedures for filing an application for such tax exemption for a qualifying deployment during the 2014 and 2015 calendar years; providing procedures to appeal a denial by a property appraiser of an application for such tax exemption; providing refund procedures for servicemembers who were on qualifying deployments for more than 365 days during the 2014 and 2015 calendar years; providing for retroactive applicability; providing an effective date.

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

Section 1. Subsection (2) of section 196.173, Florida Statutes, is amended to read:

196.173 Exemption for deployed servicemembers.—

(2) The exemption is available to servicemembers who were deployed during the preceding calendar year on active duty outside the continental United States, Alaska, or Hawaii in support of any of the following operations:

(a) Operation Joint Guardian, which began on June 12, 1999.

(b) Operation Octave Shield, which began in 2000.

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

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(c)~~(a)~~ Operation Noble Eagle, which began on September 15, 2001.~~†~~

(d)~~(b)~~ Operation Enduring Freedom, which began on October 7, 2001.~~†~~

~~(e) Operation Iraqi Freedom, which began on March 19, 2003, and ended on August 31, 2010.†~~

(e) Operation Trans-Sahara Counterterrorism Partnership, which began in June 2005.

(f) Operation Nomad Shadow, which began in 2007.

(g) Operation U.S. Airstrikes Al Qaeda in Somalia, which began in January 2007.

(h) Operation Objective Voice, which began in 2009.

(i) Operation Georgia Deployment Program, which began in August 2009.

(j) Operation Copper Dune, which began in 2010.

(k)~~(d)~~ Operation New Dawn, which began on September 1, 2010, and ended on December 15, 2011.~~†~~~~††~~

(l)~~(e)~~ Operation Odyssey Dawn, which began on March 19, 2011, and ended on October 31, 2011.

(m) Operation Observant Compass, which began in October 2011.

(n) Operation Juniper Shield, which began in 2013.

(o) Operation Inherent Resolve, which began on August 8, 2014.

The Department of Revenue shall notify all property appraisers and tax collectors in this state of the designated military operations.

Section 2. (1) Notwithstanding provisions in s. 196.173,

Page 2 of 4

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2016160c1

59 Florida Statutes, to the contrary:

60 (a) The deadline for an applicant to file an application
 61 with the property appraiser for an additional ad valorem tax
 62 exemption under s. 196.173, Florida Statutes, for the 2016 year
 63 is June 1, 2016.

64 (b) For purposes of calculating the 2016 exemption for
 65 operations added by this act, a servicemember may include the
 66 number of days he or she was on qualifying deployments during
 67 the 2014 and 2015 calendar years as days he or she was on a
 68 qualifying deployment in the preceding calendar year.

69 (2) If an application is not timely filed under subsection
 70 (1), a property appraiser may grant the exemption if:

71 (a) The applicant files an application for the exemption on
 72 or before the 25th day after the mailing by the property
 73 appraiser during the 2016 calendar year of the notice required
 74 under s. 194.011(1), Florida Statutes;

75 (b) The applicant is qualified for the exemption; and

76 (c) The applicant produces sufficient evidence, as
 77 determined by the property appraiser, which demonstrates that
 78 the applicant was unable to apply for the exemption in a timely
 79 manner or otherwise demonstrates extenuating circumstances that
 80 warrant granting the exemption.

81 (3) If the property appraiser denies an application under
 82 subsection (2), the applicant may file, pursuant to s.
 83 194.011(3), Florida Statutes, a petition with the value
 84 adjustment board which requests that the exemption be granted.
 85 Such petition must be filed on or before the 25th day after the
 86 mailing by the property appraiser during the 2016 calendar year
 87 of the notice required under s. 194.011(1), Florida Statutes.

Page 3 of 4

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2016160c1

88 Notwithstanding s. 194.013, Florida Statutes, the eligible
 89 servicemember is not required to pay a filing fee for such
 90 petition. Upon review of the petition, the value adjustment
 91 board may grant the exemption if the applicant is qualified for
 92 the exemption and demonstrates extenuating circumstances, as
 93 determined by the board, which warrant granting the exemption.

94 (4) A servicemember may receive a refund of taxes paid for
 95 the 2015 tax year if he or she was on qualifying deployments
 96 during the 2014 and 2015 calendar years for more than 365 days.
 97 The amount of the refund is equal to the taxes paid on the
 98 servicemember's homestead in 2015 multiplied by the number of
 99 days in excess of 365 that the servicemember was on qualifying
 100 deployments during the 2014 and 2015 calendar years, divided by
 101 365.

102 Section 3. This act shall take effect upon becoming a law,
 103 and first applies to ad valorem tax rolls for 2016.

Page 4 of 4

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/20/16
Meeting Date

CS/SB 160
Bill Number (if applicable)

Topic Ad Valorem Tax Exemption for Deployed servicemembers
Amendment Barcode (if applicable)

Name Martha W. Cleaver

Job Title Governmental Consultant

Address P.O. Box 11275
Street
Tallahassee, FL 32302-1275
City State Zip

Phone 850/491-1945

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Speaking: For Against Information

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

Representing Florida Association of Property Appraisers

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 Fiscal Policy

BILL: CS/CS/SB 286

INTRODUCER: Fiscal Policy Committee; Banking and Insurance Committee and Senator Brandes

SUBJECT: Merger and Acquisition Brokers

DATE: January 21, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<u>Recommend: Favorable</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 286 creates an exemption from registration with the Office of Financial Regulation for a merger and acquisition (M&A) broker facilitating the offer or sale of securities in connection with the transfer of ownership of an eligible privately held company. Generally, an M&A broker, acting as an intermediary, engages in the business of transferring the ownership and control of a privately-held company through the sale of the business, which may be structured as an asset or securities transaction. The bill also provides an exemption for securities transactions that are conducted through an M&A broker if certain conditions are met.

The bill has an indeterminate, insignificant fiscal impact.

The bill is effective July 1, 2016.

II. Present Situation:

Federal Regulation of Securities

Securities Act of 1933

The federal Securities Act of 1933 requires every offer or sale of securities using the means and instrumentalities of interstate commerce to be registered with the U.S. Securities and Exchange Commission (SEC), unless an exemption is available. The Securities Act of 1933 emphasizes that the disclosure of important financial information through the registration of securities

enables investors to make informed judgments about whether to purchase a company's securities. Investors who purchase securities and suffer losses have recovery rights if they can prove that there was incomplete or inaccurate disclosure of important information.¹

Securities Exchange Act of 1934

With the enactment of the Securities Exchange Act of 1934, Congress created the Securities and Exchange Commission (SEC). This act provides the SEC with broad authority over all aspects of the securities industry, including the power to register, regulate, and oversee brokerage firms, transfer agents, clearing agencies, and securities self-regulatory organizations (SROs).²

The Securities Exchange Act of 1934 also identifies and prohibits certain types of conduct in the markets and provides the SEC with disciplinary powers over regulated entities and persons associated with them. It also authorizes the SEC to require periodic reporting of information by companies with publicly traded securities.³ Generally, any person acting as a “broker” or “dealer” as defined by Section 3(4) or 3(a)(5) of the Securities Exchange Act of 1934, respectively, must be registered with the SEC and join a SRO, like the Financial Industry Regulatory Authority (FINRA) or a national securities exchange. Broker dealers must also comply with state laws relating to registration requirements.⁴

Florida Regulation of Securities

In addition to federal securities laws, “blue sky laws” are state laws that protect the investing public through registration requirements for both broker dealers and securities offerings, merit review of offerings, and various investor remedies for fraudulent sales practices and activities.⁵ In Florida, the Securities and Investor Protection Act, ch. 517, F.S., (act), regulates securities issued, offered, and sold in the state. The Office of Financial Regulation (OFR) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals associated with these firms in accordance with the act.⁶

The act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted.⁷ Additionally, all securities in Florida must be registered with the OFR unless they meet one of the exemptions in s. 517.051 or s. 517.061, F.S., or are federally covered (i.e., under the exclusive jurisdiction of the SEC).

¹ U.S. Securities and Exchange Commission, The Laws that Govern the Securities Industry, *Securities Act of 1933*, (October 2013), available at <https://www.sec.gov/about/laws.shtml> (last visited January 15, 2016).

² U.S. Securities and Exchange Commission, The Laws that Govern the Securities Industry, *Securities Exchange Act of 1934*, (October 2013), available at <https://www.sec.gov/about/laws.shtml> (last visited January 15, 2016).

³ *Id.*

⁴ U.S. Securities Exchange Commission, Investor Publications, Guide to Broker-Dealer Registration, (April 2008), available at <http://www.sec.gov/divisions/marketreg/bdguide.htm> (last visited January 15, 2016).

⁵ U.S. Securities and Exchange Commission, Fast Answers, *Blue Sky Laws*, available at <http://www.sec.gov/answers/bluesky.htm> (last visited January 15, 2016).

⁶ Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the OFR’s agency head for purposes of rulemaking and appoints the OFR’s commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR’s regulatory authority.

⁷ Section 517.12, F.S.

Mergers where two corporations have \$500,000 or more in assets and where the sale price is \$50,000 or more, are transactions that qualify for a securities registration exemption under s. 517.061(8), F.S. Similarly, mergers approved by the vote of the security holders are transactions that qualify for a securities registration exemption under s. 517.061(9), F.S. Brokers who facilitate transactions through one of these two exemptions are currently exempt from registration by s. 517.12(3), F.S.

Failure to meet the requirements of these exemptions can subject entities to civil, criminal, and administrative liability for the sale of unregistered securities. The criminal penalty for such a violation is a third degree felony.⁸ Civil remedies under the act include rescission and damages.⁹

Merger and Acquisition Brokers

A merger and acquisition (M&A) broker may introduce buyers and sellers, help value the business, recommend terms and structure of the sale, and assist with negotiations in the closing sales of privately held businesses. Smaller transactions may involve the sale of the assets of the business in exchange for cash. However, the ownership of a business may be transferred by means of the purchase, sale, exchange, issuance, merger, repurchase, or redemption of, or other business combinations involving securities. If a transaction involves securities, then state and federal securities laws may apply to the parties and the transactions. The costs of complying with SEC and FINRA broker-dealer regulatory requirements can be an estimated \$150,000 initially and more than \$75,000 annually. These regulatory costs are included in the final costs incurred by the business sellers and buyers using services of a M&A broker.¹⁰

In 2014, SEC staff issued a no-action letter stating that it would not recommend enforcement action to the SEC if an individual or firm meeting the definition of a “M&A Broker” were to effect transactions in connection with the transfer of ownership of a privately held company.¹¹ The no-action letter outlines the permissible activities and transactions that could be effected without requiring registration with the SEC as a broker dealer. In particular, the no-action letter permits a M&A broker to participate in the negotiations of the M&A transaction; advise the parties to issue securities or to effect the transfer of the business by means of securities; assess the value of any securities sold; and receive transaction-based or other compensation without registering as a dealer with the SEC. Prior to the release of this no-action letter, it was unclear when an M&A Broker had to be registered with the SEC. The SEC no-action letter is applicable to federal registration requirements.¹²

⁸ Section 517.302(1), F.S.

⁹ Section 517.211(3-5), F.S.

¹⁰ Alliance of Merger and Acquisition Advisors and International Business Brokers Associations, M&A White Paper (April 29, 2015).

¹¹ U.S. Securities and Exchange Commission, The Laws that Govern the Securities Industry, M&A Broker Letter, (January 31, 2014, revised February 4, 2014), available at <https://www.sec.gov/divisions/marketreg/mr-noaction/2014/ma-brokers-013114.pdf> (last visited January 15, 2016). For purposes of the letter, an “M&A Broker” is a person engaged in the business of effecting securities transactions solely in connection with the transfer of ownership and control of a privately-held company through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the company, to a buyer that will actively operate the company or the business conducted with the assets of the company. A no-action letter is limited to the facts presented in the request letter.

¹² *Id.*

The North American Securities Administrators Association, Inc., (NASAA) is a voluntary association whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. In September 2015, the NASAA adopted a model rule, which provides a uniform approach to state-level securities regulation and provides an exemption for M&A brokers if certain conditions are met.¹³

III. Effect of Proposed Changes:

The bill provides that the offer or sale of securities solely in connection with the transfer of ownership of an eligible privately held company through a M&A broker is an exempt transaction under ch. 517, F.S., if certain conditions are met. However, these exempt transactions are subject to the prohibited practices and remedies under ss. 517.301, 517.311, and 517.312, F.S. The bill also exempts the M&A broker from registration with the OFR as a dealer if certain conditions are met.

The bill provides that a “broker” has the same meaning as “dealer” as defined in s. 517.021(6), F.S. A “dealer” is defined to include:

- Any person, other than an associated person registered under this ch. 517, F.S., who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person; or
- Any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by the issuer.

An “eligible privately held company” is a company that meets the following requirements:

- The company does not have any class of securities which is registered or required to be registered with the SEC or the OFR, or for which the company files, or is required to file, summary and periodic information, documents, and reports with the SEC.
- In the fiscal year immediately preceding the fiscal year during which the M&A broker begins to provide services for the securities transaction, the company, in accordance with its historical financial accounting records, has earnings before interest, taxes, depreciation, and amortization of less than \$25 million or has gross revenues of less than \$250 million.¹⁴

The bill requires that prior to the completion of the securities transaction, the M&A broker must receive written assurances from the control person¹⁵ with the largest percentage of ownership for both the buyer and seller that:

- After the transaction is completed, any person who acquires securities or assets of the eligible privately held company will be a control person of the eligible privately held company or will be a control person for the business conducted with the assets of the eligible privately held company.

¹³ North American Securities Administrators Association, Regulatory & Legal Activities *Model Rule Exempting Certain Merger & Acquisition Brokers*, (Adopted September 29, 2015) available at <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/MA-Broker-Model-Rule-adopted-Sept.-29-2015.pdf> (last visited January 15, 2016).

¹⁴ The amounts are required to be reviewed periodically starting July 1, 2021.

¹⁵ The bill defines control person.

- Any person that is offered securities in exchange for securities or assets of the eligible privately held company will receive financial statements of the issuer of the securities offered in the exchange prior to becoming legally bound to complete the transaction.

An M&A broker is exempt from registration *unless* the M&A broker:

- Directly or indirectly, in connection with the transfer of ownership of eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties of the transaction;
- Engages on behalf of an issuer in a public offering of any class of securities which is registered, or which is required to be registered, with the SEC or the OFR;
- Engages on behalf of an issuer in a public offering of securities for which the issuer files or is required to file, periodic information, documents, and reports with the SEC;
- Engages on behalf of any party in a transaction involving a public shell company;¹⁶
- Is subject to a suspension or revocation of registration under 15 U.S.C. s. 78o(b)(4);
- Is subject to a disqualification under 15 U.S.C. s. 78c(a)(39);
- Is subject to a disqualification under 15 U.S.C. s. 230.506(d); or
- Is subject to a final order described under 15 U.S.C. s. 78o(b)(4)(H).

The bill is effective July 1, 2016.

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.

¹⁶ The bill defines a “public shell company” to mean a company that, at the time of a transaction with an eligible privately held company, has: any class of securities which is registered, or which is required to be registered, with the SEC or the OFR or for which the company files, or is required to file, summary and periodic information, documents, and reports with the SEC; nominal or no operations; and nominal assets or no assets, assets consisting solely of cash and cash equivalents, or assets consisting of any amount of cash and cash equivalents and nominal other assets.

B. Private Sector Impact:

The bill would exempt the sale of securities in connection with the transfer of ownership of a privately held eligible company and the registration of M&A brokers with the OFR if certain conditions are met. This would reduce the regulatory burden and the costs of such transactions incurred by the buyers and sellers of such businesses.

C. Government Sector Impact:

The fiscal impact on state funds is indeterminate. The registration fees are currently deposited into the General Revenue Fund. The OFR estimates that there are under ten broker dealers currently paying the fee, for a total of under \$2,000 annually.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 517.061 and 517.12.

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 Fiscal Policy on January 20, 2016:**

The CS changes the date that the net revenue threshold dollar amount must be adjusted to July 1, 2021.

CS by Banking and Insurance on December 1, 2015:

The CS provides technical, conforming changes to make the bill consistent with the provisions of the model rule of the North American Securities Administrators Association and ch. 517, F.S.

B. Amendments:

None.

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

¹⁷ Information provided via a telephone conversation between staff of the Appropriation Subcommittee on General Government and the OFR on December 11, 2015.



729652

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Hays) recommended the following:

- 1 **Senate Amendment**
- 2
- 3 Delete line 72
- 4 and insert:
- 5 million. On July 1, 2021, and every 5 years thereafter, each

By the Committee on Banking and Insurance; and Senator Brandes

597-01757-16

2016286c1

A bill to be entitled

An act relating to merger and acquisition brokers; amending s. 517.061, F.S.; providing an exemption from certain registration requirements with the Office of Financial Regulation for a specified offer or sale of securities; amending s. 517.12, F.S.; defining terms; requiring a merger and acquisition broker to receive certain written assurances from a specified person prior to the completion of specified securities transactions; providing an exemption from certain registration requirements with the office for a merger and acquisition broker under certain circumstances; specifying disqualifying conditions for the exemption; providing an effective date.

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

Section 1. Subsection (22) is added to section 517.061, Florida Statutes, to read:

517.061 Exempt transactions.—Except as otherwise provided in s. 517.0611 for a transaction listed in subsection (21), the exemption for each transaction listed below is self-executing and does not require any filing with the office before claiming the exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to the provisions of ss. 517.301, 517.311, and 517.312:

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

597-01757-16

2016286c1

(22) The offer or sale of securities, solely in connection with the transfer of ownership of an eligible privately held company, through a merger and acquisition broker in accordance with s. 517.12(22).

Section 2. Subsection (22) is added to section 517.12, Florida Statutes, to read:

517.12 Registration of dealers, associated persons, intermediaries, and investment advisers.—

(22) (a) As used in this subsection, the term:

1. "Broker" has the same meaning as "dealer" as defined in s. 517.021.

2. "Control person" means an individual or entity that possesses the power, directly or indirectly, to direct the management or policies of a company through ownership of securities, by contract, or otherwise. A person is presumed to be a control person of a company if, with respect to a particular company, the person:

a. Is a director, a general partner, a member, or a manager of a limited liability company, or is an officer who exercises executive responsibility or has a similar status or function;

b. Has the power to vote 20 percent or more of a class of voting securities or has the power to sell or direct the sale of 20 percent or more of a class of voting securities; or

c. In the case of a partnership or limited liability company, may receive upon dissolution, or has contributed, 20 percent or more of the capital.

3. "Eligible privately held company" means a company that meets all of the following conditions:

a. The company does not have any class of securities which

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2016286c1

59 is registered, or which is required to be registered, with the
 60 United States Securities and Exchange Commission under the
 61 Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or
 62 with the office under s. 517.07, or for which the company files,
 63 or is required to file, summary and periodic information,
 64 documents, and reports under Section 15(d) of the Securities
 65 Exchange Act of 1934, 15 U.S.C. s. 78o(d).

66 b. In the fiscal year immediately preceding the fiscal year
 67 during which the merger and acquisition broker begins to provide
 68 services for the securities transaction, the company, in
 69 accordance with its historical financial accounting records, has
 70 earnings before interest, taxes, depreciation, and amortization
 71 of less than \$25 million or has gross revenues of less than \$250
 72 million. On July 1, 2016, and every 5 years thereafter, each
 73 dollar amount in this sub-subparagraph shall be adjusted by
 74 dividing the annual value of the Employment Cost Index for wages
 75 and salaries for private industry workers, or any successor
 76 index, as published by the Bureau of Labor Statistics, for the
 77 calendar year preceding the calendar year in which the
 78 adjustment is being made, by the annual value of such index or
 79 successor index for the calendar year ending December 31, 2012,
 80 and multiplying such dollar amount by the quotient obtained.
 81 Each dollar amount determined under this sub-subparagraph shall
 82 be rounded to the nearest multiple of \$100,000.

83 4. "Merger and acquisition broker" means any broker and any
 84 person associated with a broker engaged in the business of
 85 effecting securities transactions solely in connection with the
 86 transfer of ownership of an eligible privately held company,
 87 regardless of whether that broker acts on behalf of a seller or

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88 buyer, through the purchase, sale, exchange, issuance,
 89 repurchase, or redemption of, or a business combination
 90 involving, securities or assets of the eligible privately held
 91 company.

92 5. "Public shell company" means a company that at the time
 93 of a transaction with an eligible privately held company:

94 a. Has any class of securities which is registered, or
 95 which is required to be registered, with the United States
 96 Securities and Exchange Commission under the Securities Exchange
 97 Act of 1934, 15 U.S.C. ss. 78a et seq., or with the office under
 98 s. 517.07, or for which the company files, or is required to
 99 file, summary and periodic information, documents, and reports
 100 under Section 15(d) of the Securities Exchange Act of 1934, 15
 101 U.S.C. s. 78o(d);

102 b. Has nominal or no operations; and

103 c. Has nominal assets or no assets, assets consisting
 104 solely of cash and cash equivalents, or assets consisting of any
 105 amount of cash and cash equivalents and nominal other assets.

106 (b) Prior to the completion of any securities transaction
 107 described in s. 517.061(22), a merger and acquisition broker
 108 must receive written assurances from the control person with the
 109 largest percentage of ownership for both the buyer and seller
 110 engaged in the transaction that:

111 a. After the transaction is completed, any person who
 112 acquires securities or assets of the eligible privately held
 113 company, acting alone or in concert, will be a control person of
 114 the eligible privately held company or will be a control person
 115 for the business conducted with the assets of the eligible
 116 privately held company; and

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117 b. If any person is offered securities in exchange for
 118 securities or assets of the eligible privately held company,
 119 such person will, before becoming legally bound to complete the
 120 transaction, receive or be given reasonable access to the most
 121 recent year-end financial statements of the issuer of the
 122 securities offered in exchange. The most recent year-end
 123 financial statements shall be customarily prepared by the
 124 issuer's management in the normal course of operations. If the
 125 financial statements of the issuer are audited, reviewed, or
 126 compiled, the most recent year-end financial statements must
 127 include any related statement by the independent certified
 128 public accountant; a balance sheet dated not more than 120 days
 129 before the date of the exchange offer; and information
 130 pertaining to the management, business, results of operations
 131 for the period covered by the foregoing financial statements,
 132 and material loss contingencies of the issuer.

133 (c) A merger and acquisition broker engaged in a
 134 transaction exempt under s. 517.061(22) is exempt from
 135 registration under this section unless the merger and
 136 acquisition broker:

137 1. Directly or indirectly, in connection with the transfer
 138 of ownership of an eligible privately held company, receives,
 139 holds, transmits, or has custody of the funds or securities to
 140 be exchanged by the parties to the transaction;

141 2. Engages on behalf of an issuer in a public offering of
 142 any class of securities which is registered, or which is
 143 required to be registered, with the United States Securities and
 144 Exchange Commission under the Securities Exchange Act of 1934,
 145 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07;

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2016286c1

146 or for which the issuer files, or is required to file, periodic
 147 information, documents, and reports under Section 15(d) of the
 148 Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);

149 3. Engages on behalf of any party in a transaction
 150 involving a public shell company;

151 4. Is subject to a suspension or revocation of registration
 152 under Section 15(b)(4) of the Securities Exchange Act of 1934,
 153 15 U.S.C. s. 78o(b)(4);

154 5. Is subject to a statutory disqualification described in
 155 Section 3(a)(39) of the Securities Exchange Act of 1934, 15
 156 U.S.C. s. 78c(a)(39);

157 6. Is subject to a disqualification under U.S. Securities
 158 and Exchange Commission Rule 506(d), 17 C.F.R. s. 230.506(d); or

159 7. Is subject to a final order described in Section
 160 15(b)(4)(H) of the Securities Exchange Act of 1934, 15 U.S.C. s.
 161 78o(b)(4)(H).

162 Section 3. This act shall take effect July 1, 2016.

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The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: January 13, 2016

I respectfully request that **Senate Bill #286**, relating to **Merger and Acquisition Brokers**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 22

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/20/16

Meeting Date

SB 286

Bill Number (if applicable)

Topic Waiving in Support of SB 286

Amendment Barcode (if applicable)

Name Ms. Meredith Hinshelwood

Job Title Deputy Director, Government Affairs

Address Florida Office of Financial Regulation, 101 E Gaines Street

Phone 850-410-9601

Street

Tallahassee

FL

32399

Email meredith.hinshelwood@flofr.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Office of Financial Regulation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

January 20, 2016

Meeting Date

S 286

Bill Number (if applicable)

Topic M&A Brokers Bill

Amendment Barcode (if applicable)

Name J Michael Ertel

Job Title Managing Director, Broker, Legacy M&A Advisors, LLC

Address 970 Lake Carillon Drive, Suite 300

Phone 888-864-6610

Street

St Petersburg

FL

33716

Email mertel@lmaallc.com

City

State

Zip

Speaking: For Against Information

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

Representing Business Brokers 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.

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 310

INTRODUCER: Fiscal Policy Committee; and Senators Legg and Margolis

SUBJECT: National Statuary Hall

DATE: January 21, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 310 provides that the Great Floridians Program within the Department of State (DOS) must select a prominent Florida citizen to replace General Edmund Kirby Smith's statue and be commemorated in the National Statuary Hall Collection. The Florida Council on Arts and Culture (council) must select a sculptor.

The bill instructs the council and the DOS to estimate the costs associated with replacement of the statue, including the costs:

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

The DOS must report to the Governor, President of the Senate, and Speaker of the House on the recommendations and findings to replace the statue by January 1, 2017.

After the selections are made, the Legislature must pass a memorial requesting the replacement of the statue of General Edmund Kirby Smith. If the Governor agrees in writing with the replacement request, the memorial will be submitted to the United States Joint Committee on the Library of Congress for consideration.

The bill permits the council to raise funds from private sources to fund the costs associated with the replacement of the statue. The funds raised must be placed in the Grants and Donations Trust

Fund of the DOS and may be used only for the limited purposes associated with replacing the statue.

The bill takes effect upon becoming a law.

II. Present Situation:

National Statuary Hall

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

Replacement of Statues

A statue must have been on display for at least a decade before it may be replaced.⁵ Like all current statues, a replacement statue must be made of marble or bronze and depict a distinguished, deceased citizen of the donating state.⁶

A state may request that the United States Joint Committee on the Library of Congress approve the replacement of its statues by a resolution from the state’s Legislature and the consent of the Governor.⁷ The state is responsible for costs related to the replacement, including the “construction, transportation, and placement of the new statue, the removal and transportation of the statue being replaced, and any unveiling ceremony.”⁸

After the Joint Committee has approved the request, ownership of the replaced statue transfers to the state and the replaced statue may only be returned to the Capitol by federal law.⁹ A duly authorized state official must inform the Architect of the Capitol where the replaced statue will be displayed after it is removed from the Capitol.¹⁰

¹ Architect of the Capitol, *About the National Statuary Hall Collection*, available at <http://www.aoc.gov/capitol-hill/national-statuary-hall-collection/about-national-statuary-hall-collection> (last viewed January 15, 2016).

² *Id.*

³ 2 U.S.C. s. 2131.

⁴ 2 U.S.C. s. 2131a(a).

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

⁶ 2 U.S.C. s. 2132(b)(1).

⁷ 2 U.S.C. s. 2132(a).

⁸ 2 U.S.C. s. 2132(b)(2).

⁹ 2 U.S.C. s. 2132(d).

¹⁰ Architect of the Capitol, Office of the Curator, *Procedure and Guidelines for Replacement of Statues in the National Statuary Hall Collection*, (January 2014), available at http://www.aoc.gov/sites/default/files/statue_replacement_guidelines_2014.pdf (last viewed January 15, 2016).

Florida's Statues

The Florida statues in the National Statuary Hall Collection are Dr. John Gorrie and General Edmund Kirby Smith.¹¹ Florida donated a statue of Dr. Gorrie to the National Statuary Hall Collection in 1914. Dr. Gorrie (1802-1855) was a physician in Apalachicola, Florida, who advocated draining swamps, the use of mosquito netting to prevent disease, and the cooling of sickrooms to reduce fever. Dr. Gorrie was granted a patent for a machine to make ice and is credited with being the father of refrigeration and air-conditioning.¹²

In 1922, Florida gave a statue of Gen. Kirby Smith to the National Statuary Hall Collection. General Edmund Kirby Smith (1824-1893) was a soldier and educator who served in the Mexican War and taught mathematics at the United States Military Academy (West Point). He resigned from the United States Army in 1861 to join the Confederate States of America. He rose to the rank of general and surrendered the last military force of the Confederacy in the Civil War. After the Civil War, he moved to Tennessee where he pursued an academic career and served as Chancellor of the University of Nashville.¹³

Great Floridians Program

The Great Floridians Program recognizes and records the achievements of living and deceased Floridians who have made major contributions to the progress and welfare of Florida.¹⁴ The Division of Historical Resources of the DOS (division) nominates present or former Florida citizens who made major contributions to the progress of the United States or Florida.¹⁵ In identifying people worthy of a nomination, the division is required seek the advice of people who are experienced in informing the public about Florida's history.¹⁶ Annually, the division must convene an ad hoc committee composed of representatives of specified government officials. The committee must meet as least twice a year and must nominate at least two individuals to be submitted to the Secretary of State.¹⁷ The Secretary of State then selects two individuals to be honored as 'Great Floridians'.¹⁸ The division is required to educate the public about the Great Floridians selected by the Secretary of State.¹⁹

The Florida Council on Arts and Culture

The Florida Council on Arts and Culture (council) is an advisory body within the DOS that promotes arts and culture throughout the state.²⁰ The council consists of 15 members who are

¹¹ Architect of the Capitol, *National Statuary Hall Collection*, available at <http://www.aoc.gov/the-national-statuary-hall-collection> (last viewed January 15, 2016).

¹² Architect of the Capitol, *National Statuary Hall Collection, John Gorrie*, available at <http://www.aoc.gov/capitol-hill/national-statuary-hall-collection/john-gorrie> (last viewed January 15, 2016).

¹³ Architect of the Capitol, *National Statuary Hall Collection, Edmund Kirby Smith*, available at <http://www.aoc.gov/capitol-hill/national-statuary-hall-collection/edmund-kirby-smith> (last viewed January 15, 2016).

¹⁴ Section 267.0731, F.S.

¹⁵ Section 267.0731(1), F.S.

¹⁶ Section 267.0731(1)(a), F.S.

¹⁷ Section 267.0731(1)(b), F.S.

¹⁸ Section 267.0731(1), F.S.

¹⁹ Section 267.0731(2), F.S.

²⁰ Section 265.285(1)(a) and (2)(a), F.S.

appointed by the Governor, the Speaker of the House of Representatives, and the President of the Senate. The members must have a substantial history of community service in the performing or visual arts, science, history, or children's museums.²¹ The council advises the Secretary of the State regarding the administration of grants pertaining to arts and culture, and reviews applications for grants related to cultural facilities.²²

III. Effect of Proposed Changes:

The bill provides that the ad hoc committee of the Great Floridians Program must select a prominent Florida citizen, who may include a person of distinguished civil or military service, to be commemorated in the National Statuary Hall Collection. The Division of Historical Resources is required to prescribe the guidelines to be used for the selection. Once a selection has been made the ad hoc committee must submit its recommendation to the Division of Historical Resources and the Division of Cultural Affairs of the DOS.

The bill requires the Florida Council on Arts and Culture (council) to select a sculptor, with preference given to a sculptor from Florida, to design the statue of the prominent Florida citizen selected. Guidelines prescribed by the DOS and 2 U.S.C. s. 2131 must be used in the selection of the sculptor.

The council and the DOS must estimate the costs associated with the replacement of the statue, including the costs:

- To design, construct, transport, and place the new statue;
- To remove and transfer of the current statue; and
- Any unveiling ceremony for the new statue.

The bill permits the council to raise funds from private sources to fund the costs associated with the replacement of the statue. The funds raised must be placed in the Grants and Donations Trust Fund of the DOS and may be used only for the limited purposes associated with statue replacement described in the bill.

Based on the recommendations and findings of the ad hoc committee and the council, the DOS must submit a report, by January 1, 2017, to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include:

- The name of the prominent Florida citizen and a description of the process used to select the prominent Florida citizen;
- The name of the sculptor and a description of the process used to select the sculptor; and
- An estimate of the total costs associated with replacement of the statue, including the costs to design, construct, transport, and place the new statue; the removal and transfer of the current statue; and any unveiling ceremony for the new statue.

After the selection of a prominent Florida citizen and a sculptor has been made, the Legislature must pass a memorial requesting the United States Joint Committee on the Library of Congress approve the request to replace of the statue of General Edmund Kirby Smith. Upon the

²¹ Section 265.285(1), F.S.

²² Section 265.285(2)(f) and (h), F.S.

Legislature's adoption of the memorial, the Governor must agree in writing with the request to replace the statue, and then the memorial will be submitted to the Joint Committee on the Library of Congress for consideration.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the Great Floridians Program to select a prominent Florida citizen to replace the statue of General Edmund Kirby Smith and be commemorated at the National Statuary Hall Collection. The bill also requires the DOS to prescribe the guidelines used in the selection of a sculptor to design the statue. The DOS should be able to absorb the costs of the bill from existing agency resources.

The bill permits the Florida Council on Arts and Culture to raise funds from private sources to fund the costs associated with the replacement of the statue. The funds raised must be placed in the Grants and Donations Trust Fund of the DOS and may be used only for the limited purposes associated with statue replacement described in the bill.

VI. Technical Deficiencies:

The bill requires the ad hoc committee of the Great Floridians Program to select a Florida citizen based upon guidelines prescribed by the Division of Historical Resources and the council to select a sculptor based upon guidelines prescribed by the DOS and federal laws related to statue replacement. The DOS currently has no applicable rules or guidelines for the Great Floridians

Program or the council, and it is unclear what types of guidelines will be prescribed to implement the bill.²³

The bill requires the Legislature to pass a memorial after the selections are made, but the DOS does not report to the Legislature and Governor on the selections until January 1, 2017. It may be more appropriate to require a memorial during the next session of the Legislature after the report is made.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an undesignated section of Florida law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Fiscal Policy on January 20, 2016:

The CS specifies that the prominent Florida citizen to be selected by ad hoc committee of may include a person of distinguished civil or military service and the committee must submit its recommendation to the Division of Historical Resources and Division of Cultural Affairs. The CS also clarifies that when selecting a sculptor to design the statue, preference should be given to a sculptor from Florida.

The CS instructs the Florida Council on Arts and Culture and the DOS to estimate the costs associated with replacement of the statue, including the costs:

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

The CS permits the Florida Council on Arts and Culture to raise funds from private sources to fund the costs associated with the replacement of the statue. The funds raised must be placed in the Grants and Donations Trust Fund of the DOS and may be used only for the limited purposes. The CS also requires the DOS to file a report to the Governor, President of the Senate, and Speaker of the House on the recommendations and findings of the ad hoc committee and council by January 1, 2017.

²³ Email from Eddie Philips, Florida Department of State, Office of Legislative Affairs dated November 6, 2015 (on file with the Senate Committee on Governmental Oversight and Accountability).

B. Amendments:

None.

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



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Legg) recommended the following:

Senate Amendment (with title amendment)

Delete lines 38 - 49
and insert:

citizen, who may include, but is not limited to, a person of distinguished civil or military service, to be commemorated in the National Statuary Hall Collection of the United States Capitol. The ad hoc committee shall submit its recommendation to the Division of Historical Resources and the Division of Cultural Affairs.

(2) At its first meeting following the effective date of



this act, the Florida Council on Arts and Culture, as established under s. 265.285, Florida Statutes, shall select a sculptor, according to the guidelines prescribed by the Department of State and 2 U.S.C. s. 2131, with preference given to a sculptor from this state, to design a statue of the prominent Florida citizen selected pursuant to subsection (1) for replacement of the statue of General Edmund Kirby Smith in the National Statuary Hall Collection.

(3) The Florida Council on Arts and Culture and the Department of State shall estimate the costs associated with the replacement of the statue, including the costs to design, construct, transport, and place the new statue; the removal and transfer of the current statue; and any unveiling ceremony for the new statue. The Florida Council on Arts and Culture may raise funds from private sources to fund the costs associated with the replacement of the statue. Funds raised must be placed in the Grants and Donations Trust Fund of the Department of State and may be used only for the limited purposes associated with statue replacement described in this subsection.

(4) Based on the recommendations and findings of the ad hoc committee and the Florida Council on Arts and Culture, the Department of State shall submit a report, by January 1, 2017, to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include, but is not limited to, the following:

(a) The name of the prominent Florida citizen and the process used to select the prominent Florida citizen.

(b) The name of the sculptor and the process used to select the sculptor.



41 (c) An estimate of the total costs associated with
42 replacement of the statue, including the costs to design,
43 construct, transport, and place the new statue; the removal and
44 transfer of the current statue; and any unveiling ceremony for
45 the new statue.

46 (5) In accordance with 2 U.S.C. s. 2132, upon the selection
47

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

49 And the title is amended as follows:

50 Delete lines 9 - 10

51 and insert:

52 statue; requiring the Florida Council on Arts and
53 Culture and the Department of State to estimate costs
54 associated with the replacement of the statue;
55 authorizing the council to raise funds to support such
56 costs; providing for the deposit of funds raised into
57 the Grants and Donations Trust Fund of the department;
58 requiring the department to submit a report to the
59 Governor and the Legislature by a specified date;
60 specifying required content of the report; providing
61 for

By Senator Legg

17-00249A-16

2016310__

1 A bill to be entitled
 2 An act relating to the National Statuary Hall;
 3 providing for replacement of the statue of General
 4 Edmund Kirby Smith in the National Statuary Hall
 5 Collection at the United States Capitol; providing for
 6 selection of a prominent Florida citizen to be
 7 commemorated in the National Statuary Hall Collection;
 8 providing for selection of a sculptor to design the
 9 statue; providing for the gathering of necessary funds
 10 to carry out replacement of the statue; providing for
 11 submission of the state's request to the United States
 12 Joint Committee on the Library of Congress for
 13 approval to replace the statue; providing an effective
 14 date.

15
 16 WHEREAS, pursuant to 2 U.S.C. s. 2131, each state is
 17 permitted to provide and furnish to the United States Capitol
 18 two statues, in marble or bronze, of deceased persons who have
 19 been prominent citizens of the state for placement in the
 20 National Statuary Hall Collection, and

21 WHEREAS, currently, Florida has two statues, of Dr. John
 22 Gorrie and of General Edmund Kirby Smith, in the National
 23 Statuary Hall Collection, and

24 WHEREAS, pursuant to 2 U.S.C. s. 2132, a state may request
 25 that the Joint Committee on the Library of Congress approve the
 26 replacement of any statue the state has provided for display in
 27 the National Statuary Hall Collection at the United States
 28 Capitol, NOW, THEREFORE,
 29

Page 1 of 3

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

17-00249A-16

2016310__

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

31
 32 Section 1. (1) At its first annual meeting following the
 33 effective date of this act, the ad hoc committee of the Great
 34 Floridians Program within the Division of Historical Resources
 35 of the Department of State, as established under s.
 36 267.0731(1)(b), Florida Statutes, shall select, according to
 37 guidelines prescribed by the division, a prominent Florida
 38 citizen to be commemorated in the National Statuary Hall
 39 Collection at the United States Capitol.

40 (2) At its first meeting following the effective date of
 41 this act, the Florida Council on Arts and Culture, as
 42 established under s. 265.285, Florida Statutes, shall select,
 43 according to guidelines prescribed by the Department of State, a
 44 sculptor to design a statue of the prominent Florida citizen
 45 selected pursuant to subsection (1) for replacement of the
 46 statue of General Edmund Kirby Smith in the National Statuary
 47 Hall Collection and shall gather necessary funds to carry out
 48 the replacement of the statue.

49 (3) In accordance with 2 U.S.C. s. 2132, upon the selection
 50 of a prominent Florida citizen under subsection (1) and a
 51 sculptor under subsection (2), the Legislature shall request by
 52 memorial that the United States Joint Committee on the Library
 53 of Congress approve the request to replace the statue of General
 54 Edmund Kirby Smith and that the Architect of the Capitol carry
 55 out the request. Upon adoption of the memorial by the
 56 Legislature and approval of the request in writing by the
 57 Governor, the memorial shall be submitted to the United States
 58 Joint Committee on the Library of Congress.

Page 2 of 3

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

17-00249A-16

2016310__

59

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG
17th District

Legg.John.web@FLSenate.gov

December 7, 2015

The Honorable Anitere Flores
Committee on Fiscal Policy, Chair
225 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 310 - National Statuary Hall

Dear Chair Flores:

SB 310: National Statuary Hall has been referred to your committee. I respectfully request that it be placed on the Committee on Fiscal Policy Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "John Legg".

John Legg
State Senator, District 17

cc: Jennifer Hrdlicka, Staff Director
Tamra Lyon, Administrative Assistant

REPLY TO:

- 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

APPEARANCE RECORD

1/20/16

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

310

Meeting Date

Bill Number (if applicable)

Topic National Statuary Hall

Amendment Barcode (if applicable)

Name Seber Newsome III

Job Title Retired

Address 86110 Fieldstone Drive

Phone 904-225-5591

Street
Yulee

Fl

32097

Email seberiii@comcast.net

City

State

Zip

Speaking: For Against Information

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

Representing myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

1-20-16

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

310

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title

Address 111 NW 1st St 2810

Phone 305-979-7110

Street MIAMI 33128

Email JMM2@MIAMIDDOF.GOV

City State Zip

Speaking: For Against Information

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

Representing MIAMI-DADE COUNTY

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 Fiscal Policy

BILL: CS/SB 390

INTRODUCER: Judiciary Committee and Senator Simpson

SUBJECT: Public Records/Public Agency Contract for Services

DATE: January 19, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 390 requires requests for public agency records relating to contracts for services to be made directly to the public agency and requires several provisions in agency contracts for services related to public records. Specifically, the bill:

- Revises the procedures a person must follow to obtain public records from a contractor that is acting on behalf of a public agency;
- Provides for the assessment of attorney fees and costs against a contractor who fails to provide access to a public record;
- Provides that a contractor who fails to provide records to a public agency commits a noncriminal infraction, punishable by a fine, or if the failure was willful and knowing, commits a misdemeanor;
- Provides that the requestor, to be entitled to fees and costs, must provide notice to the custodian and contractor, and an opportunity to correct a violation of public records law, at least 8 business days before filing a lawsuit; and
- Authorizes contractors to retain public records upon the completion of a contract. Under current law, these records must be returned to the contracting agency.

The bill has no impact on state funds.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that every individual has a right of access to public records, unless exempted, which are made or received in connection with official public business.¹ This right applies to records of the legislative, executive, and judicial branches. The Florida Constitution also requires all meetings of a collegial public body of the executive branch or any local government at which official acts are taken or public business is discussed to be open and noticed to the public.²

Florida law implements the constitutional right of access to records and meetings by specifying conditions under which qualifying entities must provide public access to government records and meetings. The Public Records Act, codified in ch. 119, F.S., expressly guarantees every person's right to inspect and copy any state or local government public record³ at any reasonable time, under reasonable conditions, and under the supervision of the public records custodian.⁴ The Sunshine Law requires all meetings of a board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁵

An agency may not impose greater conditions on responding to a public records request than that required by law. For example, an agency may not require a person seeking a public record to disclose his or her background.⁶ Nor may an agency require an individual to put his or her request in writing as a condition of production.⁷ An agency must honor a request whether a person requests records by phone, in writing, or in person, provided that the request is sufficient to identify the records sought.⁸

¹ Article I, s. 24(a), FLA. CONST.

² Article I, s. 24(b), FLA. CONST.

³ Section 119.011(12), F.S., defines "public record" as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32, 36-37 (Fla. 1992).

⁴ Section 119.07(1)(a), F.S.

⁵ Section 286.011(1), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Article III, s. 4(e) of the Florida Constitution.

⁶ *Bevan v. Wanicka*, 505 So. 2d 1116, 1118 (Fla. 2d DCA 1987).

⁷ *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, n.1 (Fla. 3d DCA 2001); Op. Att'y Gen. Informal Opinion (Dec. 16, 2003), available at:

<http://myfloridalegal.com/ago.nsf/informalprintview/7AA59B4C58D0818085256DFF00627B55> (last visited Jan. 15, 2016).

⁸ Op. Att'y Gen. Fla. 80-57 (1980), available at:

<http://www.myfloridalegal.com/ago.nsf/printview/29B1FE397E99E1238525658D005C903B> (last visited Jan. 15, 2016).

Enforcing Public Records Laws and Attorney Fees

The Florida Constitution, requires the Legislature to enact laws governing the enforcement of public records requirements, including the “maintenance, control, destruction, disposal, and disposition of records.”⁹

Florida law provides that a person may enforce the right to a public record by a lawsuit against an agency.¹⁰ In those lawsuits, the court must set an immediate hearing, giving the case priority over other cases.¹¹ If a court orders an agency to open its records for inspection, the agency must comply within 48 hours.¹² If the court finds that the agency unlawfully refused access to a public record, the court will order the public agency to pay costs and attorney fees.¹³ An unjustified delay in turning over public records is considered an unlawful refusal, and a court will award attorney fees even if the delay is not willful or is due to incompetence.¹⁴

Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of fees. The assessment of attorney fees is a legal consequence independent of the public records request.¹⁵ Once an enforcement action is filed, the court will require a public agency to pay the requestor’s attorney fees even after the agency has produced the records.¹⁶

The public policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial. In addition, granting attorney fees makes it more likely that public agencies will comply with public records laws.¹⁷

Contracts for Services and Public Records Law

Public agencies, including local and statewide governmental entities and municipal officers, may hire contractors to provide services and act on behalf of the agency. Contractors can be individuals or business entities. Private contractors who act on behalf of a public agency are required by law and the terms of their contracts to comply with public records laws in the same manner as a public agency.¹⁸

Every public records contract for services must include a provision that requires the contractor to comply with public records law. Specifically, a contractor must:

- Keep and maintain public records typically required by the public agency to perform the service;

⁹ Article I, s. 24(c), FLA. CONST.

¹⁰ Section 119.11, F.S.,

¹¹ Section 119.11(1), F.S.

¹² Section 119.11(2), F.S.

¹³ Section 119.12, F.S.

¹⁴ *Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654, 655-656 (Fla. 1st DCA 2014); *Barfield v. Town of Eatonville*, 675 So. 2d 223, 225 (Fla. 5th DCA 1996).

¹⁵ *Mazer v. Orange County*, 811 So. 2d 857, 859 (Fla. 5th DCA 2002).

¹⁶ *Mazer*, 811 So. 2d at 860; *Barfield*, 675 So. 2d at 224; *Althouse v. Palm Beach County Sheriff’s Office*, 92 So. 3d 899, 902 (Fla. 4th DCA 2012).

¹⁷ *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993).

¹⁸ Section 119.0701(1) and (2), F.S.; *News and Sun-Sentinel Co. v. Schwab, Twitty and Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

- Provide public access to public records on the same terms and conditions that the public agency would provide the record and at the same cost authorized by law;
- Protect from disclosure records that are exempt from disclosure requirements or confidential; and
- Retain records as required by law and transfer at no cost all public records to the public agency upon termination of the contract.¹⁹

Currently, there is no statutory requirement to include the contact information of the public agency's custodian of records in a contract for service.

A public agency is required to enforce the terms of its contract if a contractor fails to abide by public records laws.²⁰ Actions may include unilateral cancellation of the contract by a state agency if a contractor refuses to allow public access to materials the contractor receives in conjunction with the contract.²¹

Contractors may unlawfully place conditions on the release of records, refuse to provide public records, or unlawfully delay in providing records. If a contractor fails to comply with a public records request, the requestor may sue the contractor to enforce the right to have access to the records. If a court determines that the contractor unlawfully withheld public records, the court must order the contractor to pay for the cost of the lawsuit and the requestor's attorney fees in the same manner that a public agency would be liable.²² Therefore, once a lawsuit is filed, a contractor may also be held liable for attorney fees even after providing the requested records. The fees provision, however, "was not intended to force private entities to comply with the inspection requirements of [the Public Records Act] by threatening to award attorney's fees against them."²³

When is a Private Contractor an Agency for Public Records Purposes?

Not all contracts for services subject a contractor to public records requirements. The Attorney General was asked to issue an opinion on whether a contractor who enters into a contract for services with an agency is automatically acting on behalf of the agency and subject to public records law.²⁴ The issue required the Attorney General to construe the meaning of the term "contractor" which is defined in s. 119.0701(1)(a), F.S., as an "individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency ..." The Attorney General Opinion (AGO) concludes that a court must additionally examine the nature and scope of services provided, citing in support

¹⁹ Section 119.0701(2), F.S. Upon termination of a contract, the contractor must destroy any duplicate public records that are exempt or confidential and exempt from disclosure. All records stored electronically must be provided to the public agency in a format compatible with the information technology systems of the public agency. Section 119.0701(2)(d), F.S.

²⁰ Section 119.0701(3), F.S.

²¹ Section 287.058(1)(c), F.S., provides that state agency contracts which exceed \$35,000 must include a provision that permits the state to unilaterally cancel the contract if the contractor refuses to permit access to public records. This does not apply to contracts related to certain state employee benefits.

²² Sections 119.0701(2) and 119.12, F.S.; *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993).

²³ *New York Times Co.*, 616 So. 2d at 29.

²⁴ Op. Att'y Gen. Fla. 2014-06 (June 18, 2014), available at:

<http://www.myfloridalegal.com/ago.nsf/Opinions/FFA361674B780AE085257CFD00650CCB> (last visited Jan. 15, 2016).

Parsons & Whittemore, which held that a contract with a public agency alone is insufficient to trigger public records requirements.²⁵ In another case cited in the AGO, *Stanfield v. Salvation Army*, the Salvation Army had contracted with a county to provide all of the county's probation services. The court held that the Salvation Army took the place of the county, acted on behalf of the county, and was therefore subject to public records law.²⁶

In contrast to the Attorney General Opinion, courts have applied a totality of factors test, which asks the following questions:²⁷

- Whether the public agency created the contractor?
- How much public funding was involved?
- How much the public agency regulated the contractor?
- To what extent was there commingling of decision making processes?
- Whether the contractor was performing a government function?
- What are the goals of the contractor?²⁸

A contractor's uncertainty as to whether it is an agency for public records purposes is not necessarily considered an unlawful delay or refusal. A court may consider uncertainty to be reasonable, and not impose attorney fees and costs.²⁹

Specious Requests of Public Records

Over the past few years, there have been several examples of lawsuits predicated on the failure of a contractor to provide records in response to a public records request, but in reality were attempts to collect attorney fees.

For example, on September 9, 2014, the circuit court in Palm Beach County denied attorney fees in a public records case in which a contractor denied access to a requestor of a contractor's proof of insurance and contract with the Department of Health. The contractor processed claims for the Department of Health for underserved women aged 50-64 who had breast or cervical cancer. The contractor asserted that he denied the request because he kept the documents in a restricted area where confidential medical records were being processed and because the requestor's behavior made the contractor uncomfortable.³⁰

The court ultimately found that the contractor was an agency for public records purposes, but noted that it was reasonable for the contractor "to have safety and security concerns in light of the secure nature of the facility and his responsibility to balance confidentiality concerns and the

²⁵ *Parsons & Whittemore, Inc. v. Metropolitan Dade County*, 429 So. 2d 343, 346 (Fla. 3d DCA 1983).

²⁶ *Stanfield v. Salvation Army*, 695 So. 2d 501 (Fla. 5th DCA 1997).

²⁷ *News and Sun-Sentinel Co.*, 596 So. 2d at 1031.

²⁸ *Id.* at 1032 – 1033.

²⁹ *New York Times Co.*, 616 So. 2d at 29; *Stanfield*, 695 So. 2d at 502.

³⁰ Other facts of the case are: The plaintiff already had a copy of the contract on his smart phone which he showed the contractor. The contractor was uncomfortable because the plaintiff showed up unannounced, dressed in shorts, with a camera around his neck and refused to identify himself. The plaintiff was recording the encounter but did not inform the contractor that he was doing so. Also, the contractor asked the plaintiff to make a written request for the records.

safety of his employees.”³¹ Further, the court explained that “a person cannot just show up, demand to see public records of his random choosing, and if he experiences any delay then file suit. The facts of this case show clearly how the Statute can be misused.”³²

The court denied the plaintiff’s request for attorney fees based on the court’s finding that the denial was reasonable. The parties ultimately settled the matter, and the court dismissed the case with prejudice.³³

On December 1, 2014, a circuit court in Duval County denied relief to the same plaintiff in a lawsuit to enforce a public records request and assess attorney fees.³⁴ According to the court order, the plaintiff made two separate requests for public records to a nonprofit organization under contract to provide social services for the Department of Children and Families. The plaintiff did not provide advance notice or written notice of any kind prior to the request. The contract manager refused to provide a document because the contract manager believed that the document was not a public record. The plaintiff secretly documented the requests and denials on video. The plaintiff also videotaped the time on a clock during the interactions and later admitted to having done so to present as evidence in a subsequent lawsuit.³⁵ The court found that the manner in which the requestors made the request ensured that “they obtained exactly what they wanted, namely, an initial denial of an unreasonable and bogus request.”³⁶

The court ruled the plaintiff’s method of requesting public records an abuse of public records laws and “nothing more than a scam.”³⁷ The final order stated that the plaintiff and his attorney, who had an arrangement to split his attorney fees with the plaintiff, had “a financial interest in assuring that his requests for public records [were] refused.”³⁸ Generally, an attorney may not share his or her fees with someone who is not a lawyer.³⁹ The court noted that in 2014, the plaintiff had filed 18 public records lawsuits in Duval County and the same attorney represented the plaintiff in approximately 13 of those

³¹ Order Denying Plaintiff’s Complaint to Enforce Florida’s Public Records Act and for Declaratory Injunctive and Monetary Relief and Denying Plaintiff’s Request for Attorney Fees, *Jeff Gray v. United Group Programs, Inc.*, No 502014CA-004858, pg. 5 (Fla. 15th Cir. Ct. 2014).

³² *Id.* at 4.

³³ Order of Dismissal with Prejudice, *Jeff Gray v. United Group Programs, Inc.*, No 502014CA-004858 (Fla. 15th Cir. Ct. 2014).

³⁴ Final Order Denying Relief Under Public Records Act, *Jeffrey Marcus Gray v. Lutheran Social Services of Northeast Florida, Inc.*, No. 2014-CA-4647 (Fla. 4th Cir. Ct. 2014).

³⁵ *Id.* at 4.

³⁶ *Id.* at 6.

³⁷ *Id.*

³⁸ *Id.* at 4.

³⁹ R. Regulating Fla. Bar 4-5.4.

cases.⁴⁰ The case is currently on appeal, although the First District Court of Appeal has denied the plaintiff's request for oral argument.⁴¹

In addition to the court cases discussed above, a 2014 article in the *Miami Herald* details similar incidents. Two organizations and a law firm allegedly partnered to target unsuspecting businesses that were unaware that public records laws applied to them. In one case, the requestors emailed requests over a weekend, and when the businesses failed to comply, the requestors filed a lawsuit and demanded a settlement in excess of costs and fees. The requestors implemented a quota of generating 25 new lawsuits per week. The group filed more than 140 lawsuits in 27 counties. In fact, industry groups such as the Florida Engineering Society sent out a warning to its members due to the frequency of legal actions filed against engineers.⁴²

III. Effect of Proposed Changes:

The bill establishes the custodian of records at a public agency as the point of contact for both the requestor of public records and a contractor that has questions about its duties under the public record laws. The bill also authorizes an agency contractor to retain public records after the completion of a contract instead of returning them to the agency. These revised duties and responsibilities must be set forth in contracts between the agency and the contractor, and all agency contracts must be revised accordingly by October 1, 2016.

Specifically, the bill requires each public agency contract for services to include:

- A statement that the contractor may contact the agency public records custodian if the contractor has questions about the application of the public records law to the contract. The statement must identify the contact information of the agency's custodian of public records;
- A provision that the contractor "[k]eep and maintain public records required by the public agency to perform the service;"⁴³
- A provision that the contractor provide the public agency with a copy of requested records or allow the records to be copied or inspected within a reasonable time;
- A provision to ensure that the contractor prevents the disclosure of confidential and exempt records for the duration of the contract and after the completion of the contract if the records are not transferred to the public agency; and

⁴⁰ Final Order Denying Relief Under Public Records Act, *Jeffrey Marcus Gray v. Lutheran Social Services of Northeast Florida, Inc.*, No. 2014-CA-4647, pg. 7 (Fla. 4th Cir. Ct. 2014). The court further opined, "If a private entity must pay an attorney's fee every time an agent denies a needless request, the cost to the state to provide important services by contracting with private entities will increase; or private entities might discontinue bidding on these contracts. The chilling effect could be disastrous to the State. Further the [Public Records] Act was not designed to create a cottage industry for so-called "civil rights activists" or others who seek to abuse the Act for financial gain."

⁴¹ A Notice of Appeal was filed with the First District Court of Appeal in Case Number 1D14-5793 (December 19, 2014). The last action on this case occurred on September 28, 2015, when the court denied oral arguments.

⁴² Tristram Korten and Trevor Aaronson, *In Lawsuits Statewide, Questions of Profits and Public Records*, FLORIDA CENTER FOR INVESTIGATIVE REPORTING, MIAMI HERALD, Nov. 9, 2014, available at: <http://www.miamiherald.com/news/state/florida/article3683176.html> (last visited Jan. 15, 2016).

⁴³ Article I, s. 24 of the Florida Constitution provides that "[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf." As such, an agency may not authorize a contractor to maintain fewer documents than the Constitution requires.

- A provision requiring a contractor that retains public records after the completion of a contract to continue to make records available to the contracting agency upon its request.

The bill requires all public records requests relating to a contract for services must be made directly to the public agency. The public agency must notify the contractor if the agency does not have the requested records, and the contractor must provide the records or allow them to be inspected or copied within a reasonable time.

The bill specifies penalties that apply to a contractor who fails to timely provide public records to the agency. A contractor who fails to provide public records within a reasonable time commits a noncriminal infraction punishable by up to a \$500 fine. A contractor who willfully and knowingly fails to comply commits a first degree misdemeanor, punishable by up to a year in jail and up to a \$1,000 fine.

Similarly, the bill provides that a contractor may be sued for failing to respond to a public records request. To be entitled to attorney fees and costs, however, the requestor must meet certain requirements. The requestor must send a written notice of the public records request and the failure to comply to the agency public records custodian and the contractor at least 8 business days before filing suit. The notice must be sent by common carrier, registered, Global Express Guaranteed, or certified mail. A contractor who complies with the public records request within 8 business days after the notice is sent is not liable for attorney fees or costs.

The bill, in s. 119.0701(4)(d), F.S., also allows the “reasonable costs of enforcement” to be assessed against a public agency. The bill, however, does not indicate what act or omission would subject an agency to liability or authorize a lawsuit against the agency.⁴⁴

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require counties or municipalities to take an action requiring the significant expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

The bill makes it possible for former private contractors to be public records custodians even when the contractor is no longer acting on behalf of an agency.

⁴⁴ The potential bases of an agency’s liability which might be implied by the bill include: failing to immediately forward a public records request to a contractor, improperly directing a contractor to withhold access to a public record, failing to terminate the agency’s contract with a contractor that fails to provide access to a record, or making an agency vicariously liable for the misconduct of a contractor, including the destruction of public records.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill, by placing prerequisites to the entitlement to attorney fees and costs in an action to compel compliance with the public record laws may encourage the resolution of disputes before the initiation of lawsuits. The requestor, however, may incur attorney fees that cannot be recovered from the contractor if the contractor provides records within the 8 day period after pre-suit notice is sent.

C. Government Sector Impact:

Agencies that Contract for Services

If the contractor retains public records upon termination of a contract, an agency may have to rely on the former contractor to provide records upon request. An agency may be liable for attorney fees because the contractor failed to produce records in a timely manner.

Department of Management Services

The Department of Management Services indicates that the department does not expect a fiscal impact from the provisions of the bill.⁴⁵

VI. **Technical Deficiencies:**

Under the bill, the contractor is permitted to retain the public records after the completion of the contract. The bill is silent on what duties, if any, a terminated contractor has regarding retained records if the contractor goes out of business. Most likely the public agencies can address this issue in the contract.

The bill, in s. 119.0701(4)(d), F.S., also allows the “reasonable costs of enforcement” to be assessed against a public agency. The bill, however, does not indicate what act or omission would subject an agency to liability or authorize a lawsuit against the agency.

VII. **Related Issues:**

None.

⁴⁵ Department of Management Services, *2016 Legislative Bill Analysis* (Nov. 12, 2015) (on file with the Senate Committee on Judiciary).

VIII. Statutes Affected:

This bill substantially amends section 119.0701 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 Judiciary on December 1, 2015:

- Revises the penalties that apply to a contractor who fails to comply with a public records request;
- Clarifies that a plaintiff's written notice of a public records violation must be provided to the custodian of records and the contractor; and
- Relieves from liability for costs of enforcement a contractor who complies with a public records request within 8 business days after a pre-suit notice is sent.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Simpson

590-01780-16

2016390c1

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.0701, F.S.; requiring that a public agency
 4 contract for services include a statement providing
 5 the contact information of the public agency's
 6 custodian of records; prescribing the form of the
 7 statement; revising required provisions in a public
 8 agency contract for services regarding a contractor's
 9 compliance with public records laws; requiring that a
 10 public records request relating to records for a
 11 public agency's contract for services be made directly
 12 to the public agency; requiring a contractor to
 13 provide requested records to the public agency or
 14 allow inspection or copying of requested records under
 15 specified circumstances; providing penalties;
 16 specifying circumstances under which a court must
 17 assess the reasonable costs of enforcement against a
 18 contractor; specifying what constitutes sufficient
 19 notice; providing that a contractor who takes certain
 20 action is not liable for the reasonable costs of
 21 enforcement; specifying applicable law for determining
 22 the reasonable costs of enforcement assessed against a
 23 public agency; requiring a public agency to amend a
 24 contract for services by a time certain to comply with
 25 the act; providing an effective date.
 26
 27 Be It Enacted by the Legislature of the State of Florida:
 28
 29 Section 1. Section 119.0701, Florida Statutes, is amended

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

590-01780-16

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30 to read:
 31 119.0701 Contracts; public records.—
 32 (1) DEFINITIONS.—For purposes of this section, the term:
 33 (a) "Contractor" means an individual, partnership,
 34 corporation, or business entity that enters into a contract for
 35 services with a public agency and is acting on behalf of the
 36 public agency as provided under s. 119.011(2).
 37 (b) "Public agency" means a state, county, district,
 38 authority, or municipal officer, or department, division, board,
 39 bureau, commission, or other separate unit of government created
 40 or established by law.
 41 (2) CONTRACT REQUIREMENTS.—In addition to other contract
 42 requirements provided by law, each public agency contract for
 43 services must include:
 44 (a) The following statement, in substantially the following
 45 form, identifying the contact information of the public agency's
 46 custodian of public records in at least 14-point boldfaced type:
 47
 48 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF
 49 SECTION 119.0701, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO
 50 PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT
 51 ...(custodian of public records)... AT ...(telephone number, e-
 52 mail address, and mailing address)....
 53
 54 (b) A provision that requires the contractor to comply with
 55 public records laws, specifically to:
 56 1. ~~(a)~~ Keep and maintain public records that ordinarily and
 57 necessarily would be required by the public agency in order to
 58 perform the service.

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59 ~~2.(b)~~ Upon request from the public agency's custodian of
 60 public records, provide the public agency with a copy of the
 61 requested records or allow the access to public records to be
 62 inspected or copied within a reasonable time on the same terms
 63 and conditions that the public agency would provide the records
 64 ~~and~~ at a cost that does not exceed the cost provided in this
 65 chapter or as otherwise provided by law.

66 ~~3.(e)~~ Ensure that public records that are exempt or
 67 confidential and exempt from public records disclosure
 68 requirements are not disclosed except as authorized by law for
 69 the duration of the contract term and following completion of
 70 the contract if the contractor does not transfer the records to
 71 the public agency.

72 ~~4.(d)~~ Upon completion of the contract, Meet all
 73 requirements for retaining public records and transfer, at no
 74 cost, to the public agency all public records in possession of
 75 the contractor or keep and maintain public records required by
 76 the public agency to perform the service. If the contractor
 77 transfers all public records to the public agency upon
 78 completion of the contract, the contractor shall ~~upon~~
 79 termination of the contract and destroy any duplicate public
 80 records that are exempt or confidential and exempt from public
 81 records disclosure requirements. If the contractor keeps and
 82 maintains public records upon completion of the contract, the
 83 contractor shall meet all applicable requirements for retaining
 84 public records and provide requested records to a public agency
 85 pursuant to the requirements of this section. All records stored
 86 electronically must be provided to the public agency, upon
 87 request from the public agency's custodian of public records, in

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590-01780-16

2016390c1

88 a format that is compatible with the information technology
 89 systems of the public agency.

90 (3) REQUEST FOR RECORDS; NONCOMPLIANCE.—

91 (a) A request to inspect or copy public records relating to
 92 a public agency's contract for services must be made directly to
 93 the public agency. If the public agency does not possess the
 94 requested records, the public agency shall immediately notify
 95 the contractor of the request, and the contractor must provide
 96 the records to the public agency or allow the records to be
 97 inspected or copied within a reasonable time.

98 (b) If a contractor does not comply with the public
 99 agency's ~~a public records~~ request for records, the public agency
 100 shall enforce the contract provisions in accordance with the
 101 contract.

102 (c) A contractor who fails to provide the public records to
 103 the public agency within a reasonable time commits a noncriminal
 104 infraction, punishable by a fine not to exceed \$500. A
 105 contractor who willfully and knowingly fails to provide the
 106 public records to the public agency within a reasonable time
 107 commits a misdemeanor of the first degree, punishable as
 108 provided in s. 775.082 or s. 775.083.

109 (4) CIVIL ACTION.—

110 (a) If a civil action is filed to compel production of
 111 public records relating to the public agency's contract for
 112 services, the court shall assess and award against the
 113 contractor the reasonable costs of enforcement, including
 114 reasonable attorney fees, if:

115 1. The court determines that a contractor unlawfully
 116 refused to comply with the public records request within a

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590-01780-16

2016390c1

117 reasonable time; and

118 2. At least 8 business days before filing the action, the
119 plaintiff provided written notice of the public records request,
120 including a statement that the contractor has not complied with
121 the request, to the public agency and to the contractor.

122 (b) A notice complies with subparagraph (a)2. if it is sent
123 to the public agency's records custodian and to the contractor
124 at the contractor's address listed on its contract with the
125 public agency or to the contractor's registered agent. Such
126 notices must also be sent by common carrier delivery service or
127 by registered, Global Express Guaranteed, or certified mail,
128 with postage or shipping paid by the sender and with evidence of
129 delivery, which may be in an electronic format.

130 (c) A contractor who complies with a public records request
131 within 8 business days after the notice is sent is not liable
132 for the reasonable costs of enforcement.

133 (d) An award of the reasonable costs of enforcement against
134 a public agency must be in accordance with s. 119.12.

135 Section 2. A public agency has until October 1, 2016, to
136 amend a public agency contract for services, if needed, in order
137 to comply with the amendment made by this act to section
138 119.0701, Florida Statutes.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Environmental Preservation and Conservation,
Vice Chair
Appropriations Subcommittee on General Government
Finance and Tax
Judiciary
Transportation

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR WILTON SIMPSON
18th District

December 1, 2015

Honorable Anitere Flores
Committee on Fiscal Policy
225 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairwoman Flores,

Please place Senate Bill 390 relating to Public Records/Public Agency Contract for Services, on the next Committee on Fiscal Policy agenda.

Please contact my office with any questions. Thank you.

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson
Senator, 18th District

CC: Jennifer Hrdlicka, Staff Director
Tamra Lyon, Committee Administrative Assistant

REPLY TO:

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: www.flsenate.gov

ANDY GARDINER
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)

1/20/16
Meeting Date

390
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Erin Ballas

Job Title _____

Address 110 E. College Ave
Street
Tallahassee FL 32301
City State Zip

Phone 850 681 1065

Email erindaly@paconsultants.com

Speaking: For Against Information

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

Representing National Waste and Recycling 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.

THE FLORIDA SENATE
APPEARANCE RECORD

1-20-16

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

390

Meeting Date

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Justin Thames

Job Title Director of Governmental Affairs

Address 325 W. College Ave.

Phone 850-528-2209

Street Tallahassee FL

Email thamesj@flcpa.org

City Tallahassee State FL Zip 32301

Speaking: For Against Information

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

Representing Florida Institute of CPAs

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 Fiscal Policy

BILL: SB 460

INTRODUCER: Senators Bradley and Soto

SUBJECT: Experimental Treatments for Terminal Conditions

DATE: January 19, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Pre-meeting

I. Summary:

SB 460 amends the Right to Try Act to include cannabis that is sold and manufactured by an approved dispensing organization in the definition of “investigational drug, biological product, or device.”

Under the bill, an eligible patient and the eligible patient’s legal representative may purchase and possess cannabis for the patient’s medical use and an approved DO and its owners, managers, and employees may manufacture, possess, sell, deliver, distribute, dispense, and lawfully dispose of cannabis so long as the requirements of the Right to Try Act are met. Such persons are exempt from criminal penalties under ch. 893, F.S., and other laws. Further, an approved DO is exempt from the requirements of s. 381.986, F.S., and the DO and its owners, managers, and employees are not subject to licensure or regulation under ch. 465, F.S.

An eligible patient and his or her legal representative may only obtain the cannabis from a DO approved under s. 381.986, F.S. The bill provides that the Right to Try Act does not impair the license of an approved DO under s. 381.986, F.S.

The bill may result in increased sales tax revenue from new sales of medical cannabis that would be generated under the provisions of the bill. However, it is likely that the fiscal impact would be insignificant due to eligibility restrictions in the Right to Try Act.

II. Present Situation:

Treatment of Marijuana in Florida

Florida law defines cannabis as “all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound,

manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin,”¹ and places it, along with other sources of THC, on the list of Schedule I controlled substances.² The definition excludes “low-THC cannabis” as defined in s. 381.986, F.S., if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed in conformance with that section.

Schedule I controlled substances are substances that have a high potential for abuse and no currently accepted medical use in the United States.³ As a Schedule I controlled substance, possession and trafficking of cannabis carry criminal penalties that vary from a first degree misdemeanor⁴ up to a first degree felony with a mandatory minimum sentence of 15 years in state prison and a \$200,000 fine.⁵ Paraphernalia⁶ that is sold, manufactured, used, or possessed with the intent to be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, is also prohibited and carries criminal penalties ranging from a first degree misdemeanor to a third degree felony.⁷

Medical Marijuana in Florida: the Compassionate Medical Cannabis Act of 2014

Patient Treatment with Low-THC Cannabis

The Compassionate Medical Cannabis Act of 2014⁸ (act) legalized a low tetrahydrocannabinol (THC) and high cannabidiol (CBD) form of cannabis (low-THC cannabis)⁹ for medical use¹⁰ by patients suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms. The act provides that a Florida licensed allopathic or osteopathic physician who has completed the required training¹¹ and has examined and is treating such a patient may order low-THC cannabis for that patient to treat such disease, disorder, or condition or to alleviate its symptoms, if no other satisfactory alternative

¹ Section 893.02(3), F.S.

² Section 893.03(1)(c)7. and 37., F.S.

³ Section 893.03(1), F.S.

⁴ This penalty is applicable to possession or delivery of less than 20 grams of cannabis. *See* s. 893.13(3) and (6)(b), F.S.

⁵ Trafficking in more than 25 pounds, or 300 plants, of cannabis is a first degree felony with a mandatory minimum sentence that varies from 3 to 15 years in state prison depending on the quantity of the cannabis possessed, sold, etc. *See* s. 893.135(1)(a), F.S.

⁶ Section 893.145, F.S.

⁷ Section 893.147, F.S.

⁸ Chapter 2014-157, L.O.F., and s. 381.986, F.S.

⁹ Section 381.986(b), F.S., defines “low-THC cannabis,” as the dried flowers of the plant *Cannabis* which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight, or the seeds, resin, or any compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

¹⁰ Section 381.986(1)(c), F.S., defines “medical use” as administration of the ordered amount of low-THC cannabis; and the term does not include the possession, use, or administration by smoking, or the transfer of low-THC cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient’s legal representative. Section 381.986(1)(e), F.S., defines “smoking” as burning or igniting a substance and inhaling the smoke; smoking does not include the use of a vaporizer.

¹¹ Section 381.986(4), F.S., requires such physicians to successfully complete an 8-hour course and examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association that encompasses the clinical indications for the appropriate use of low-THC cannabis, appropriate delivery mechanisms, contraindications for such use, and the state and federal laws governing its ordering, dispensing, and processing.

treatment options exist for that patient. In order for a physician to order low-THC cannabis for a patient, all of the following conditions must apply:

- The patient is a permanent resident of Florida;
- The physician determines that the risks of ordering low-THC cannabis are reasonable in light of the potential benefit for that patient;¹²
- The physician registers as the orderer of low-THC cannabis for the patient on the compassionate use registry (registry) maintained by the DOH and updates the registry to reflect the contents of the order;
- The physician maintains a patient treatment plan that includes the dose, route of administration, planned duration, and monitoring of the patient's symptoms and other indicators of tolerance or reaction to the low-THC cannabis;
- The physician submits the patient treatment plan quarterly to the University of Florida College of Pharmacy (UFCP) for research on the safety and efficacy of low-THC cannabis on patients; and
- The physician obtains the voluntary informed consent of the patient or the patient's legal guardian to treatment with low-THC cannabis after sufficiently explaining the current state of knowledge in the medical community about the effectiveness of treatment of the patient's condition with low-THC cannabis, the medically acceptable alternatives, and the potential risks and side effects.¹³

The act creates exceptions to existing law to allow qualified patients¹⁴ and their legal representatives to purchase, acquire, and possess low-THC cannabis (up to the amount ordered) for that patient's medical use; and to allow dispensing organizations (DO) and their owners, managers, and employees to acquire, possess, cultivate, and dispose of excess product in reasonable quantities to produce low-THC cannabis and to possess, process, and dispense low-THC cannabis. DOs and their owners, managers, and employees are not subject to licensure and regulation under ch. 465, F.S., relating to pharmacies.¹⁵

Dispensing Organizations under the Act

On November 23, 2015, the Department of Health (DOH) approved a DO in each of the following five regions as required by the act: northwest Florida, northeast Florida, central Florida, southeast Florida, and southwest Florida.¹⁶ In order to be approved as a DO, an applicant must possess a certificate of registration issued by the Department of Agriculture and Consumer Services for the cultivation of more than 400,000 plants, be operated by a nurseryman, and have been operating as a registered nursery in this state for at least 30 continuous years. Applicants are also required to demonstrate:

- The technical and technological ability to cultivate and produce low-THC cannabis;

¹² If a patient is younger than 18 years of age, a second physician must concur with this determination, and such determination must be documented in the patient's medical record.

¹³ Section 381.986(2), F.S.

¹⁴ Section 381.986(1)(d), F.S., defines a "qualified patient" as a Florida resident who has been added by a physician licensed under ch. 458, F.S., or ch. 459, F.S., to the compassionate use registry to receive low-THC cannabis from a DO.

¹⁵ Section 381.986(7), F.S.

¹⁶ Section 381.986(5)(b), F.S. A map of the dispensing regions and approved dispensing organizations is available on the DOH website at: <http://www.floridahealth.gov/media/ocu/compassionate-dispensing-org-map.pdf> (last visited Jan. 14, 2016).

- The ability to secure the premises, resources, and personnel necessary to operate as a DO;
- The ability to maintain accountability of all raw materials, finished products, and any byproducts to prevent diversion or unlawful access to or possession of these substances;
- An infrastructure reasonably located to dispense low-THC cannabis to registered patients statewide or regionally as determined by the department;
- The financial ability to maintain operations for the duration of the 2-year approval cycle, including the provision of certified financials to the department;
- That all owners and managers have been fingerprinted and have successfully passed a level 2 background screening pursuant to s. 435.04, F.S; and
- The employment of a medical director, who must be a physician and have successfully completed a course and examination that encompasses appropriate safety procedures and knowledge of low-THC cannabis.¹⁷

An approved DO must post a \$5 million performance bond within 10 business days of approval. The DOH is authorized to charge an initial application fee and a licensure renewal fee, but is not authorized to charge an initial licensure fee.¹⁸ An approved DO must maintain all approval criteria at all times.¹⁹

Beginning on July 7, 2014, the DOH held several rule workshops²⁰ to write and adopt rules implementing the provisions of s. 381.986, F.S., and the DOH put forward a proposed rule on September 9, 2014.²¹ This proposed rule was challenged by multiple organizations involved in the rulemaking workshops and was found to be an invalid exercise of delegated legislative authority by an administrative law judge on November 14, 2014.²² Afterward, the DOH held a negotiated rulemaking workshop in February of 2015, which resulted in a new proposed rule being published on February 6, 2015.²³ The new proposed rule was also challenged on, among other things, the DOH's statement of estimated regulatory costs and the DOH's conclusion that the rule will not require legislative ratification. Hearings were held on April 23 and 24, 2015, and a final order was issued on May 27, 2015, which found the rule to be valid.²⁴ The rules took effect June 17, 2015, and the DOH held an application period for DO approval which ended on July 8, 2015. The five approved DOs were selected from 28 applications that were submitted.²⁵

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 381.986(6), F.S.

²⁰ An audio recording of the rule development workshops is available on the DOH website at: <http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/rulemaking/index.html> (last visited Jan. 14, 2016).

²¹ Proposed Rule ch. 64-4, F.A.C., ID 14941024, (Aug. 14, 2014) and changed, ID 15040352, (Sept. 9, 2014).

²² Tornello Landscape Corp. v. DOH, Case No. 14-4547RP; Fl. Medical Cannabis Assoc. v. DOH, Case No. 14-4517RP; Plants of Ruskin, Inc. v. DOH, Case No. 14-4299RP; Costa Farms, LLC v. DOH, Case No. 14-4296RP (Fla. DOAH 2014). A copy of each Final Order is available on the Division of Administrative Hearings website.

²³ Proposed Rule ch. 64-4, ID 15645147, (Feb. 2, 2015).

²⁴ Baywood Nurseries Co., Inc. v. DOH, Case No. 15-1694RP (Fla. DOAH 2015).

²⁵ Information about the applications and the approved DOs is available on the DOH, Office of Compassionate Use, Resources website, available at: <http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/resources/index.html> (last visited Jan. 18, 2016).

The Compassionate Use Registry

The act requires the DOH to create a secure, electronic, and online registry for the registration of physicians and patients and for the verification of patient orders by DOs, which is accessible to law enforcement.²⁶ The registry must allow DOs to record the dispensing of low-THC cannabis, and must prevent an active registration of a patient by multiple physicians. Physicians must register qualified patients with the registry and DOs are required to verify that the patient has an active registration in the registry, that the order presented matches the order contents as recorded in the registry, and that the order has not already been filled before dispensing any low-THC cannabis. DOs are also required to record in the registry the date, time, quantity, and form of low-THC cannabis dispensed.²⁷ The DOH has indicated that the registry is built and ready to move to the operational phase.²⁸

The Office of Compassionate Use and Research on Low-THC Cannabis

The DOH was required to establish the Office of Compassionate Use under the direction of the deputy state health officer to administer the act.²⁹ The Office of Compassionate Use is authorized to enhance access to investigational new drugs for Florida patients through approved clinical treatment plans or studies by:

- Creating a network of state universities and medical centers recognized for demonstrating excellence in patient-centered coordinated care for persons undergoing cancer treatment and therapy in this state;³⁰
- Making any necessary application to the United States Food and Drug Administration (FDA) or a pharmaceutical manufacturer to facilitate enhanced access to compassionate use for Florida patients; and
- Entering into agreements necessary to facilitate enhanced access to compassionate use for Florida patients.³¹

The act includes several provisions related to research on low-THC cannabis and cannabidiol including:

- Requiring physicians to submit quarterly patient treatment plans to the UFCP for research on the safety and efficacy of low-THC cannabis;³²
- Authorizing state universities to perform research on cannabidiol and low-THC cannabis and exempting them from the provisions in ch. 893, F.S., for the purposes of such research;³³ and
- Appropriating \$1 million to the James and Esther King Biomedical Research Program for research on cannabidiol and its effects on intractable childhood epilepsy.³⁴

²⁶ Section 381.986(5)(a), F.S.

²⁷ Section 381.986(6), F.S.

²⁸ Conversation of Health Policy Committee staff with Jennifer Tschetter, Chief of Staff (DOH) (March 20, 2015).

²⁹ Section 385.212, F.S.

³⁰ See s. 381.925, F.S.

³¹ Section 385.212, F.S.

³² Section 381.986(2)(e), F.S.

³³ Section 385.211, F.S.

³⁴ Chapter 2014-157, L.O.F.

Medical Marijuana in Florida: The Necessity Defense

Despite the fact that the use, possession, and sale of marijuana are prohibited by state law, Florida courts have found that circumstances can necessitate medical use of marijuana and circumvent the application of criminal penalties. The necessity defense was successfully applied in a marijuana possession case in *Jenks v. State* where the First District Court of Appeal found that “section 893.03 does not preclude the defense of medical necessity” for the use of marijuana if the defendant:

- Did not intentionally bring about the circumstance which precipitated the unlawful act;
- Could not accomplish the same objective using a less offensive alternative available; and
- The evil sought to be avoided was more heinous than the unlawful act.³⁵

In the cited case, the defendants, a married couple, were suffering from uncontrollable nausea due to AIDS treatment and had testimony from their physician that he could find no effective alternative treatment. Under these facts, the court found that the defendants met the criteria to qualify for the necessity defense and ordered an acquittal of the charges of cultivating cannabis and possession of drug paraphernalia.

Medical Marijuana Laws in Other States

Currently, 23 states, the District of Columbia, and Guam have some form of law that permits the use of marijuana for medicinal purposes.³⁶ These laws vary widely in detail but most are similar in that they touch on several recurring themes. For example, most state laws require an identification card and registry for patients and caregivers to use medical marijuana; require the patient to receive certification from up to two physicians that the patient has a qualifying condition before the patient may use medical marijuana; allow a patient to designate a caregiver who can possess the medical marijuana and assist the patient in using the medical marijuana; and provide general restrictions on how medical marijuana can be obtained (self-cultivated or from a dispensary) and where it can be used.³⁷

Of the 17 states with low-THC cannabis laws similar to s. 381.986, F.S., most specify that the use of such low-THC cannabis is reserved for patients with epileptic or seizure disorders. Florida allows the treatment of cancer and Georgia allows the treatment of end stage cancer and other specified conditions. Additionally, the definition of low-THC cannabis differs from state to state. The THC level allowed range from as high as below 5 percent to less than 0.3 percent; most states restrict the level of THC to below 1 percent. CBD levels are generally required to be high, with most states requiring at least 10 percent.³⁸

³⁵ *Jenks v. State*, 582 So.2d 676, 679 (Fla. 1st DCA 1991), *review denied*, 589 So.2d 292 (Fla. 1991).

³⁶ These states include: Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington. California was the first to establish a medical marijuana program in 1996 and New York was the most recent state to pass medical marijuana legislation in June 2014. Seventeen states allow limited access to marijuana products (low-THC and/or high CBD-cannabidiol). Alabama, Florida, Georgia, Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming. National Conference of State Legislatures, *State Medical Marijuana Laws*, (Jan. 8, 2016), available at: <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (last visited Jan. 13, 2016).

³⁷ Analysis by Senate Health Policy committee staff of *supra* note 36.

³⁸ *Supra* note 36.

Interaction with the Federal Government

The Federal Controlled Substances Act lists marijuana as a Schedule 1 drug and provides no exceptions for medical uses.³⁹ Possession, manufacture, and distribution of marijuana is a crime under federal law.⁴⁰ Although a state's medical marijuana laws protect patients from prosecution for the legitimate use of marijuana under state law, state medical marijuana laws do not protect individuals from prosecution under federal law.

In 2013, the United States Department of Justice (USDOJ) issued statements indicating that the federal government would not pursue cases for low-level drug crimes, leaving such prosecutions largely up to state authorities. The U.S. Attorney General issued a statement that the USDOJ was changing policy such that individuals “who have committed low-level, nonviolent drug offenses, who have no ties to large-scale organizations, gangs, or cartels, will no longer be charged with offenses that impose draconian mandatory minimum sentences... [and] would instead receive sentences better suited to their individual conduct...”⁴¹ Further, the USDOJ issued a memorandum clarifying that the department considers small-scale marijuana use to be a state matter which states may choose to punish and certain operations adhering to state laws legalizing marijuana in conjunction with robust state regulatory systems would be far less likely to come under federal scrutiny.⁴² In addition, a rider in recent appropriations acts and continuing resolutions has prohibited the USDOJ from using appropriated funds to prevent specified states (including Florida) from implementing the states own medical marijuana laws.⁴³

The Florida Right to Try Act

Section 499.0295, F.S., creates the Right to Try Act which allows drug manufacturers to make investigational drugs, biological products, or devices⁴⁴ (experimental treatment) available to an eligible patient (with or without compensation). The Right to Try Act defines an “eligible patient” as a person who meets all of the following requirements:

- Has a terminal condition⁴⁵ attested to by that patient's physician and confirmed by a second independent specialist physician;

³⁹ 21 U.S.C. s. 812

⁴⁰ The punishments vary depending on the amount of marijuana and the intent with which the marijuana is possessed. *See* 21 U.S.C ss. 841-865.

⁴¹ USDOJ, *Smart on Crime: Reforming the Criminal Justice System for the 21st Century*, (Aug. 2013), p. 3, available at: <http://www.justice.gov/ag/smart-on-crime.pdf> (last visited on Jan. 13, 2016).

⁴² USDOJ Memorandum for all U.S. Attorneys, “*Guidance Regarding Marijuana Enforcement*,” (August 29, 2013), available at: <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf> (last visited Jan. 13, 2016).

⁴³ *See* s. 542, Pub. L. No. 114-113 (Consolidated Appropriations Act, 2016). A recent court order by the U.S. District Court for the Northern District of California recently held that a similar provision in the previous appropriations act (s. 538, Pub. L. No. 113-235) does not prohibit the USDOJ from enforcing violations of *federal* marijuana laws by individuals or businesses who are complying with state medical marijuana laws. *U.S. v. Marin Alliance for Medical Marijuana and Shaw*, Order re: Motion to Dissolve Permanent Injunction, No. C 98-00086 CB, (Oct. 19, 2015), available at <http://www.scribd.com/doc/286089509/US-vs-Marin-Alliance-for-Medical-Marijuana#scribd> (last visited Jan. 13, 2016).

⁴⁴ Section 499.0295(2)(b), F.S. defines “investigational drug, biological product, or device” as a drug, biological product, or device that has successfully completed phase 1 of a clinical trial but has not been approved for general use by the FDA and remains under investigation in a clinical trial approved by the FDA.

⁴⁵ Section 499.0295(2)(c), F.S. defines “terminal condition” as a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible even with the

- Has considered all other treatment options for that condition currently approved by the FDA;
- Has given written informed consent for the use of an experimental treatment, which must include:
 - An explanation of the currently approved products and treatment for the patient's condition;
 - An attestation that the patient concurs with his or her physician in believing that all currently approved products and treatments are unlikely to prolong the patient's life;
 - Identification of the specific experimental treatment the patient is seeking to use;
 - A realistic description of the most likely outcomes of using the experimental treatment;
 - A statement that the patient's health plan or third-party administrator and physician are not obligated to pay for care or treatment consequent to the use of the experimental treatment unless required to do so by law or contract;
 - A statement that the patient's eligibility for hospice care may be withdrawn if the patient begins such treatment and that hospice care may be reinstated once the treatment ends if the patient meets hospice eligibility requirements; and
 - A statement that the patient understands that he or she is liable for all expenses consequent to the use of the experimental treatment and that the liability extends to the patient's estate unless otherwise stated in the contract;⁴⁶
- Has documentation from his or her treating physician that the patient meets the above requirements.⁴⁷

The Right to Try Act prescribes how the eligible patient's use of the experimental treatment may impact certain third parties including that:

- A health plan, third party administrator, or governmental agency may, but is not required to, provide coverage for the costs of such treatment;⁴⁸
- A hospital or health care facility is not required to provide new or additional services unless such services are approved by that hospital or health care facility;⁴⁹
- The patient's heirs are not liable for any outstanding debt related to the patient's use of such treatment if the patient dies while undergoing such treatment;⁵⁰
- A licensing board and a state entity responsible for Medicare certification may not revoke, fail to renew, suspend, or take other action against a physician's license based solely on the physician's recommendations to an eligible patient regarding access to treatment under the Right to Try Act;⁵¹ and
- The Right to Try Act does not create a private cause of action:
 - Against the manufacturer of the experimental treatment;
 - Against a person or entity involved in the care of an eligible patient who is using the experimental treatment; or

administration of available treatment options currently approved by FDA, and, without the administration of life-sustaining procedures, will result in death within 1 year after diagnosis if the condition runs its normal course.

⁴⁶ Section 499.0295(2)(d), F.S.

⁴⁷ Section 499.0295(2)(a), F.S.

⁴⁸ Section 499.0295(4), F.S.

⁴⁹ Section 499.029(5), F.S.

⁵⁰ Section 499.0295(6), F.S.

⁵¹ Section 499.0295(7), F.S.

- For any harm to the patient that is the result of the use of the experimental treatment if the manufacturer or other person or entity complies in good faith with the terms of Right to Try Act and exercises reasonable care.⁵²

III. Effect of Proposed Changes:

SB 460 amends the Right to Try Act to include cannabis that is sold and manufactured by an approved dispensing organization (DO) as defined in s. 381.986, F.S., in the definition of “investigational drug, biological product, or device.”

Under the bill, an eligible patient and the eligible patient’s legal representative may purchase and possess cannabis for the patient’s medical use and an approved DO and its owners, managers, and employees may manufacture, possess, sell, deliver, distribute, dispense, and lawfully dispose of cannabis so long as the requirements of the Right to Try Act are met. Such persons are exempt from criminal penalties under ch. 893, F.S., and other laws.⁵³ Further, an approved DO is exempt from the requirements of s. 381.986, F.S., and the DO and its owners, managers, and employees are not subject to licensure or regulation under ch. 465, F.S.⁵⁴

An eligible patient and his or her legal representative may only obtain the cannabis from a DO approved under s. 381.986, F.S. The bill provides that the Right to Try Act does not impair the license of an approved DO under s. 381.986, F.S.

The bill takes effect on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁵² Section 499.0295(8), F.S.

⁵³ Chapter 893, F.S., is the Florida Comprehensive Drug Abuse Prevention and Control Act. Specifically, the bill exempts patients from s. 893.13, F.S., related to unauthorized selling, purchasing, manufacturing, and possessing of controlled substances; s. 893.135, F.S., related to trafficking in controlled substances; and s. 893.147, F.S., related to the use, manufacture, possession, and sale of drug paraphernalia.

⁵⁴ Chapter 465, F.S., is the Florida Pharmacy Act.

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

The state may see increased sales tax revenue from new sales of medical cannabis that would be generated under the provisions of the bill. However, it is likely that the fiscal impact would be insignificant due to eligibility restrictions in the Right to Try Act.

B. Private Sector Impact:

SB 460 may have a positive fiscal impact on approved dispensing organizations that may see new sales generated by an increased number of patients to whom they may sell medical cannabis.

C. Government Sector Impact:

See Tax/Fee Issues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill is silent on the regulatory authority of the DOH to develop rules to regulate activities of dispensing organizations for activities that are authorized under the bill. The regulatory framework created by the Compassionate Medical Cannabis Act under s. 381.986, F.S., may not be adequate to prevent or deter diversion of cannabis that is authorized to be manufactured by this bill.

Additionally, the bill exempts dispensing organizations from licensing and regulation under ch. 465, F.S., relating to pharmacy, but does not specifically exempt the dispensing organizations from regulation under ch. 499, F.S., related to the manufacturing of drugs, devices, and cosmetics. Since the bill makes changes in ch. 499, F.S., it may be advisable to also specifically exempt dispensing organizations from regulation under that chapter.

VIII. Statutes Affected:

This bill substantially amends section 499.0295 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.



LEGISLATIVE ACTION

Senate	.	House
Comm: PEND	.	
01/21/2016	.	
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	.	
	.	

The Committee on Fiscal Policy (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 381.986, Florida Statutes, is amended to read:

381.986 Compassionate use of low-THC cannabis.—

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

(a) "Caregiver" means an individual who is 21 years of age or older, a permanent resident of the state, and registered with



11 the Department of Health to assist a patient with the medical
12 use of low-THC cannabis.

13 (b)(a) "Dispensing organization" means an organization
14 approved by the department to cultivate, process, and dispense
15 low-THC cannabis pursuant to this section.

16 (c) "Independent testing laboratory" means a laboratory,
17 and the managers, employees, or contractors of the laboratory,
18 which has no direct or indirect interest in a dispensing
19 organization.

20 (d)(b) "Low-THC cannabis" means a plant of the genus
21 *Cannabis*, the dried flowers of which contain 0.8 percent or less
22 of tetrahydrocannabinol and more than 10 percent of cannabidiol
23 weight for weight; the seeds thereof; the resin extracted from
24 any part of such plant; or any compound, manufacture, salt,
25 derivative, mixture, or preparation of such plant or its seeds
26 or resin that is dispensed only from a dispensing organization.

27 (e)(e) "Medical use" means administration of the ordered
28 amount of cannabis or low-THC cannabis. The term does not
29 include:

- 30 1. The possession, use, or administration by smoking.
- 31 2. ~~The term also does not include~~ The transfer of low-THC
32 cannabis to a person other than the qualified patient for whom
33 it was ordered or the qualified patient's caregiver ~~legal~~
34 ~~representative~~ on behalf of the qualified patient.
- 35 3. The use or administration of cannabis, low-THC cannabis,
36 or low-THC cannabis products:
 - 37 a. On any form of public transportation.
 - 38 b. In any public place.
 - 39 c. In a registered qualified patient's place of work, if



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40 restricted by his or her employer.

41 d. In a correctional facility.

42 e. On the grounds of any preschool, primary school, or
43 secondary school.

44 f. On a school bus.

45 ~~(f)(d)~~ "Qualified patient" means a resident of this state
46 who has been added to the compassionate use registry by a
47 physician licensed under chapter 458 or chapter 459 to receive
48 low-THC cannabis from a dispensing organization.

49 ~~(g)(e)~~ "Smoking" means burning or igniting a substance and
50 inhaling the smoke. Smoking does not include the use of a
51 vaporizer.

52 (2) PHYSICIAN ORDERING.—~~Effective January 1, 2015,~~ A
53 physician licensed under chapter 458 or chapter 459 who has
54 examined and is treating a patient suffering from cancer or a
55 physical medical condition that chronically produces symptoms of
56 seizures or severe and persistent muscle spasms may order for
57 the patient's medical use low-THC cannabis to treat such
58 disease, disorder, or condition or to alleviate symptoms of such
59 disease, disorder, or condition, if no other satisfactory
60 alternative treatment options exist for that patient. A
61 physician licensed under chapter 458 or chapter 459 may order
62 cannabis for the use of patients as established in s. 499.0295.
63 Before a physician orders cannabis or low-THC cannabis, and all
64 of the following conditions must apply:

65 (a) The patient is a permanent resident of this state.

66 (b) The physician determines that the risks of ordering
67 cannabis or low-THC cannabis are reasonable in light of the
68 potential benefit for that patient. For low-THC cannabis, if a



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69 patient is younger than 18 years of age, a second physician must
70 concur with this determination, and such determination must be
71 documented in the patient's medical record.

72 (c) The physician registers as the orderer of cannabis or
73 low-THC cannabis for the named patient on the compassionate use
74 registry maintained by the department and updates the registry
75 to reflect the contents of the order. The physician must also
76 register the patient and the patient's caregiver. The physician
77 shall deactivate the patient's and his or her caregiver's
78 registrations ~~registration~~ when treatment is discontinued.

79 (d) The physician maintains a patient treatment plan that
80 includes the dose, route of administration, planned duration,
81 and monitoring of the patient's symptoms and other indicators of
82 tolerance or reaction to the cannabis or low-THC cannabis.

83 (e) The physician submits the patient treatment plan
84 quarterly to the University of Florida College of Pharmacy for
85 research on the safety and efficacy of low-THC cannabis on
86 patients.

87 (f) The physician obtains the voluntary informed consent of
88 the patient or the patient's legal guardian to treatment with
89 cannabis or low-THC cannabis after sufficiently explaining the
90 current state of knowledge in the medical community of the
91 effectiveness of treatment of the patient's condition with low-
92 THC cannabis, the medically acceptable alternatives, and the
93 potential risks and side effects.

94 (g) The physician is not a medical director employed by a
95 dispensing organization.

96 (3) PENALTIES.—

97 (a) A physician commits a misdemeanor of the first degree,



98 punishable as provided in s. 775.082 or s. 775.083, if the
99 physician orders cannabis or low-THC cannabis for a patient
100 without a reasonable belief that the patient is suffering from:
101 1. Cancer or a physical medical condition that chronically
102 produces symptoms of seizures or severe and persistent muscle
103 spasms that can be treated with low-THC cannabis;~~or~~
104 2. Symptoms of cancer or a physical medical condition that
105 chronically produces symptoms of seizures or severe and
106 persistent muscle spasms that can be alleviated with low-THC
107 cannabis; or
108 3. For the ordering of cannabis, a condition that meets the
109 requirements specified in s. 499.0295.
110 (b) Any person who fraudulently represents that he or she
111 has cancer, ~~or~~ a physical medical condition that chronically
112 produces symptoms of seizures or severe and persistent muscle
113 spasms, or a condition that meets the requirements specified in
114 s. 499.0295 to a physician for the purpose of being ordered
115 cannabis or low-THC cannabis by such physician commits a
116 misdemeanor of the first degree, punishable as provided in s.
117 775.082 or s. 775.083.
118 (c) A physician who orders cannabis or low-THC cannabis and
119 receives compensation from a dispensing organization related to
120 the ordering of cannabis or low-THC cannabis is subject to
121 disciplinary action under the applicable practice act and s.
122 456.072(1)(n).
123 (4) PHYSICIAN EDUCATION.—
124 (a) Before ordering low-THC cannabis for use by a patient
125 in this state, the appropriate board shall require the ordering
126 physician licensed under chapter 458 or chapter 459 to



127 successfully complete an 8-hour course and subsequent
128 examination offered by the Florida Medical Association or the
129 Florida Osteopathic Medical Association that encompasses the
130 clinical indications for the appropriate use of low-THC
131 cannabis, the appropriate delivery mechanisms, the
132 contraindications for such use, as well as the relevant state
133 and federal laws governing the ordering, dispensing, and
134 possessing of this substance. The ~~first~~ course and examination
135 shall ~~be presented by October 1, 2014, and shall be administered~~
136 ~~at least annually thereafter.~~ Successful completion of the
137 course may be used by a physician to satisfy 8 hours of the
138 continuing medical education requirements required by his or her
139 respective board for licensure renewal. This course may be
140 offered in a distance learning format.
141 (b) The appropriate board shall require the medical
142 director of each dispensing organization approved under
143 subsection (5) to successfully complete a 2-hour course and
144 subsequent examination offered by the Florida Medical
145 Association or the Florida Osteopathic Medical Association that
146 encompasses appropriate safety procedures and knowledge of low-
147 THC cannabis.
148 (c) Successful completion of the course and examination
149 specified in paragraph (a) is required for every physician who
150 orders low-THC cannabis each time such physician renews his or
151 her license. In addition, successful completion of the course
152 and examination specified in paragraph (b) is required for the
153 medical director of each dispensing organization each time such
154 physician renews his or her license.
155 (d) A physician who fails to comply with this subsection



156 and who orders low-THC cannabis may be subject to disciplinary
157 action under the applicable practice act and under s.
158 456.072(1)(k).

159 (5) DUTIES AND POWERS OF THE DEPARTMENT. ~~By January 1,~~
160 ~~2015, The department shall:~~

161 (a) The department shall create a secure, electronic, and
162 online compassionate use registry for the registration of
163 physicians, ~~and~~ patients, and caregivers as provided under this
164 section and s. 499.0295. The registry must be accessible to law
165 enforcement agencies and to a dispensing organization in order
166 to verify patient authorization for cannabis or low-THC cannabis
167 and record the cannabis or low-THC cannabis dispensed. The
168 registry must prevent an active registration of a patient or
169 caregiver by multiple physicians.

170 (b) The department shall establish a system for issuing and
171 renewing patient and caregiver registration cards; establish the
172 circumstances under which the cards may be revoked by, or must
173 be returned to, the department; and establish fees to implement
174 such system. The department must require, at a minimum, the
175 registration cards to:

176 1. Provide the name, address, and date of birth of the
177 patient or caregiver.

178 2. Have a full-face, passport-type, color photograph of the
179 patient or caregiver taken within the 90 days before
180 registration.

181 3. Identify whether the cardholder is a patient or
182 caregiver.

183 4. List a unique numeric identifier for the patient or
184 caregiver which is matched to the identifier used for such



185 person in the department's compassionate use registry.

186 5. Provide the expiration date, which shall be 1 year after
187 the date of the physician's initial order of low-THC cannabis.

188 6. For the caregiver, provide the name and unique numeric
189 identifier of the patient that the caregiver is assisting.

190 7. Be resistant to counterfeiting or tampering.

191 (c) ~~(b)~~ The department shall authorize the establishment of
192 five dispensing organizations to ensure reasonable statewide
193 accessibility and availability as necessary for patients
194 registered in the compassionate use registry and who are ordered
195 low-THC cannabis under this section, one in each of the
196 following regions: northwest Florida, northeast Florida, central
197 Florida, southeast Florida, and southwest Florida. The
198 department shall develop an application form and impose an
199 initial application and biennial renewal fee that is sufficient
200 to cover the costs of administering this section. An applicant
201 for approval as a dispensing organization must be able to
202 demonstrate:

203 1. The technical and technological ability to cultivate and
204 produce low-THC cannabis. The applicant must possess a valid
205 certificate of registration issued by the Department of
206 Agriculture and Consumer Services pursuant to s. 581.131 that is
207 issued for the cultivation of more than 400,000 plants, be
208 operated by a nurseryman as defined in s. 581.011, and have been
209 operated as a registered nursery in this state for at least 30
210 continuous years.

211 2. The ability to secure the premises, resources, and
212 personnel necessary to operate as a dispensing organization.

213 3. The ability to maintain accountability of all raw



214 materials, finished products, and any byproducts to prevent
215 diversion or unlawful access to or possession of these
216 substances.

217 4. An infrastructure reasonably located to dispense low-THC
218 cannabis to registered patients statewide or regionally as
219 determined by the department.

220 5. The financial ability to maintain operations for the
221 duration of the 2-year approval cycle, including the provision
222 of certified financials to the department. Upon approval, the
223 applicant must post a \$5 million performance bond.

224 6. That all owners and managers have been fingerprinted and
225 have successfully passed a level 2 background screening pursuant
226 to s. 435.04.

227 7. The employment of a medical director who is a physician
228 licensed under chapter 458 or chapter 459 to supervise the
229 activities of the dispensing organization.

230 (d) The department must inspect each dispensing
231 organization's properties, cultivation facilities, processing
232 facilities, and retail facilities before the organization begins
233 operations and at least biennially upon renewal of the
234 dispensing organization's approval. The department may conduct
235 announced or unannounced inspections, including followup
236 inspections, at reasonable hours in order to ensure that such
237 property and facilities maintain compliance with this section
238 and s. 499.0295 and to ensure that the dispensing organization
239 has not committed any act that would endanger the health,
240 safety, or security of a qualified patient, the dispensing
241 organization staff, or the community in which the dispensing
242 organization is located. Approval under this section constitutes



243 permission for the department to enter and inspect the premises
244 and facilities of any dispensing organization. The department
245 may inspect any approved dispensing organization, and a
246 dispensing organization must make all facility premises,
247 equipment, documents, cannabis, low-THC cannabis, and low-THC
248 cannabis products available to the department upon inspection.

249 (e) The department must ensure that each dispensing
250 organization adheres to the testing and labeling requirements
251 for cannabis, low-THC cannabis, and low-THC cannabis products
252 established in subsection (7). The department may test any
253 cannabis, low-THC cannabis, or low-THC cannabis product in order
254 to ensure that it is safe for human consumption and that it
255 meets the requirements in this section and section 499.0295.

256 (f)1. Subject to subparagraph 2., the department may impose
257 an administrative penalty not to exceed \$10,000 for each
258 instance of the following violations:

259 a. Violating this section, s. 499.0295, or department rule.
260 b. Failing to maintain qualifications for approval.
261 c. Endangering the health, safety, or security of a
262 qualified patient.

263 d. Improperly disclosing personal and confidential
264 information of the qualified patient.

265 e. Attempting to procure a license by bribery or fraudulent
266 misrepresentation.

267 f. Being convicted or found guilty of, or entering a plea
268 of nolo contendere to, regardless of adjudication, a crime in
269 any jurisdiction which directly relates to the business of a
270 dispensing organization.

271 g. Making or filing a report or record that the dispensing



272 organization knows to be false.
273 h. Willfully failing to maintain a record required by this
274 section or a rule of the department.
275 i. Willfully impeding or obstructing an employee or agent
276 of the department in the furtherance of his or her official
277 duties.
278 j. Engaging in fraud or deceit, negligence, incompetence,
279 or misconduct in the business practices of a dispensing
280 organization.
281 k. Making misleading, deceptive, or fraudulent
282 representations in or related to the business practices of a
283 dispensing organization.
284 l. Having a license or the authority to engage in any
285 regulated profession, occupation, or business that is related to
286 the business practices of a dispensing organization revoked,
287 suspended, or otherwise acted against, including the denial of
288 licensure, by the licensing authority of any jurisdiction,
289 including its agencies or subdivisions, for a violation that
290 would constitute a violation under state law. A licensing
291 authority's acceptance of a relinquishment of licensure or a
292 stipulation, consent order, or other settlement, offered in
293 response to or in anticipation of the filing of charges against
294 the license, shall be construed as an action against the
295 license.
296 m. Violating a lawful order of the department or an agency
297 of the state, or failing to comply with a lawfully issued
298 subpoena of the department or an agency of the state.
299 2. Before imposing an administrative penalty under this
300 paragraph, the department shall provide to the dispensing



301 organization notice of the alleged violation and allow 20
302 business days for the dispensing organization to take corrective
303 action to cure the alleged violation and, if applicable, to
304 implement corrective action to prevent a future violation. If
305 the dispensing organization takes appropriate corrective action
306 to cure the alleged violation and, if applicable, takes
307 appropriate corrective action to prevent a future violation, the
308 violation shall be deemed cured and an administrative penalty
309 may not be imposed. If the violation is not cured, the
310 department may impose an administrative penalty on the
311 dispensing organization and may suspend, revoke, deny, or refuse
312 to renew the approval of the dispensing organization.
313 (g) The department shall renew the approval of a dispensing
314 organization biennially if the dispensing organization meets the
315 requirements of this section, pays the biennial renewal fee,
316 and, if applicable, has cured each violation alleged under
317 paragraph (f).
318 (h)-(e) The department shall monitor physician registration
319 and ordering of cannabis and low-THC cannabis for ordering
320 practices that could facilitate unlawful diversion or misuse of
321 cannabis or low-THC cannabis and take disciplinary action as
322 indicated.
323 (i)-(d) The department shall adopt rules necessary to
324 implement this section.
325 (6) DISPENSING ORGANIZATION.-
326 (a) An approved dispensing organization shall maintain
327 compliance with the criteria demonstrated for selection and
328 approval as a dispensing organization under subsection (5) at
329 all times. Before dispensing low-THC cannabis to a qualified



330 patient or his or her caregiver or cannabis to a patient or his
331 or her caregiver who qualifies under the requirements in s.
332 499.0295, the dispensing organization shall verify that the
333 patient or caregiver has an identification card for cannabis or
334 low-THC cannabis issued by the department, active registration
335 in the compassionate use registry, the order presented matches
336 the order contents as recorded in the registry, and the order
337 has not already been filled. Upon dispensing the cannabis or
338 low-THC cannabis, the dispensing organization shall record in
339 the registry the date, time, quantity, and form of cannabis or
340 low-THC cannabis dispensed.

341 (b) A dispensing organization may have cultivation
342 facilities, processing facilities, and retail facilities.

343 1. All regulation of cultivation facilities and processing
344 facilities is preempted to the state.

345 2. The cultivation facilities and processing facilities
346 must be closed to the public.

347 3. A municipality may determine by ordinance the criteria
348 for the number and location of, and other permitting
349 requirements that do not conflict with state law or rule for,
350 all retail facilities located within its municipal boundaries. A
351 county may determine by ordinance the criteria for the number,
352 location, and other permitting requirements that do not conflict
353 with state law or rule for all retail facilities located within
354 the unincorporated areas of that county.

355 4. Retail facilities must have all utilities and resources
356 necessary to store and dispense cannabis, low-THC cannabis, and
357 cannabis and low-THC cannabis products.

358 5. Retail facilities must be secured and have theft-



359 prevention systems, including an alarm system, cameras, and 24-
360 hour security personnel.

361 6. Before a retail facility may dispense cannabis, low-THC
362 cannabis or a low-THC cannabis product, the dispensing
363 organization must have a computer network compliant with the
364 federal Health Insurance Portability and Accountability Act of
365 1996 which is able to access and upload data to the
366 compassionate use registry and which shall be used by all retail
367 facilities operated by that dispensing organization.

368 7. Other than cannabis, low-THC cannabis, and cannabis and
369 low-THC cannabis products, a dispensing organization may not
370 dispense or sell any other type of retail product other than the
371 paraphernalia required for the medical use of cannabis or low-
372 THC cannabis in the form required on the physician's order for
373 such cannabis.

374 (c) Within 15 days after such information becomes
375 available, a dispensing organization must provide the department
376 with updated information, as applicable, including:

377 1. The location and a detailed description of any new or
378 proposed facilities.

379 2. The updated contact information, including electronic
380 and voice communication, for all dispensing organization
381 facilities.

382 3. The registration information for any vehicles used for
383 the transportation of cannabis, low-THC cannabis, and cannabis
384 and low-THC cannabis products, including confirmation that all
385 such vehicles have tracking and security systems.

386 4. A plan for the recall of any or all cannabis, low-THC
387 cannabis, or cannabis and low-THC cannabis products.



388 (d) To ensure the safe transport of cannabis and low-THC
389 cannabis to dispensing organization facilities, laboratories, or
390 patients, the dispensing organization must:

391 1. Maintain a transportation manifest, which must be
392 retained for at least 1 year.

393 2. Ensure only vehicles in good working order are used to
394 transport low-THC cannabis.

395 3. Lock cannabis and low-THC cannabis in separate
396 compartments or containers within the vehicle.

397 4. Require at least two persons to be in a vehicle
398 transporting cannabis or low-THC cannabis, and require at least
399 one person to remain in the vehicle while the cannabis or low-
400 THC cannabis is being delivered.

401 5. Provide specific safety and security training to
402 employees transporting or delivering cannabis or low-THC
403 cannabis.

404 (7) TESTING AND LABELING OF LOW-THC CANNABIS.-

405 (a) All cannabis, low-THC cannabis, and cannabis and low-
406 THC cannabis products must be tested by an independent testing
407 laboratory before the dispensing organization may dispense them.
408 The independent testing laboratory shall provide the dispensing
409 organization with test results. Before dispensing, the
410 dispensing organization must determine that the test results
411 indicate that the low-THC cannabis or low-THC cannabis product
412 meets the definition of low-THC cannabis or low-THC cannabis
413 product, that all cannabis and low-THC cannabis is safe for
414 human consumption, and that all cannabis and low-THC cannabis is
415 free from contaminants that are unsafe for human consumption.

416 (b) All cannabis, low-THC cannabis, and cannabis and low-



417 THC cannabis products must be labeled before dispensing. The
418 label must include, at a minimum:

419 1. For low-THC cannabis and low-THC cannabis products, a
420 statement that the low-THC cannabis or low-THC cannabis product
421 meets the requirements in paragraph (a);

422 2. The name of the independent testing laboratory that
423 tested the cannabis, low-THC cannabis, or cannabis or low-THC
424 cannabis product;

425 3. The name of the cultivation and processing facility
426 where the cannabis, low-THC cannabis, or cannabis or low-THC
427 cannabis product originates; and

428 4. The batch number and harvest number from which the
429 cannabis, low-THC cannabis, or cannabis or low-THC cannabis
430 product originates.

431 (8) Persons who have direct or indirect interest in the
432 dispensing organization and the dispensing organization's
433 managers, employees, and contractors who directly interact with
434 cannabis, low-THC cannabis, or cannabis or low-THC cannabis
435 products are prohibited from ordering cannabis, low-THC
436 cannabis, or cannabis or low-THC cannabis products, offering
437 prescriptions, or providing medical advice to qualified
438 patients.

439 (9)-(7) EXCEPTIONS TO OTHER LAWS.-

440 (a) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
441 any other provision of law, but subject to the requirements of
442 this section, a qualified patient and the qualified patient's
443 caregiver ~~legal representative~~ may purchase and possess for the
444 patient's medical use up to the amount of low-THC cannabis
445 ordered for the patient.



446 (b) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
447 any other provision of law, but subject to the requirements of
448 this section, an approved dispensing organization and its
449 owners, managers, and employees may manufacture, possess, sell,
450 deliver, distribute, dispense, and lawfully dispose of
451 reasonable quantities, as established by department rule, of
452 low-THC cannabis. For purposes of this subsection, the terms
453 "manufacture," "possession," "deliver," "distribute," and
454 "dispense" have the same meanings as provided in s. 893.02.
455 (c) An approved dispensing organization and its owners,
456 managers, and employees are not subject to licensure or
457 regulation under chapter 465 for manufacturing, possessing,
458 selling, delivering, distributing, dispensing, or lawfully
459 disposing of reasonable quantities, as established by department
460 rule, of low-THC cannabis.
461 Section 2. Paragraph (b) of subsection (2) of section
462 499.0295, Florida Statutes, is amended, and subsection (10) is
463 added to that section, to read:
464 499.0295 Experimental treatments for terminal conditions.—
465 (2) As used in this section, the term:
466 (b) "Investigational drug, biological product, or device"
467 means:
468 1. A drug, biological product, or device that has
469 successfully completed phase 1 of a clinical trial but has not
470 been approved for general use by the United States Food and Drug
471 Administration and remains under investigation in a clinical
472 trial approved by the United States Food and Drug
473 Administration; or
474 2. Cannabis, as defined in s. 893.02, that is manufactured



475 and sold by an approved dispensing organization as defined in s.
476 381.986.
477 (10)(a) Notwithstanding s. 893.13, s. 893.135, s. 893.147,
478 or any other law an eligible patient and the eligible patient's
479 caregiver, as defined in s. 381.986, may purchase and possess
480 cannabis, for the patient's medical use, as defined in s.
481 381.986, if:
482 1. The patient meets all the requirements of this section;
483 2. The patient is added to the compassionate use registry
484 established under s. 381.986 by a physician who has met the
485 training requirements for ordering low-THC cannabis established
486 in s. 381.986(4); and
487 3. All cannabis purchased and possessed by the patient and
488 his or her caregiver is obtained from an approved dispensing
489 organization as defined in s. 381.986.
490 (b) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
491 any other law, but subject to the requirements of this section,
492 an approved dispensing organization and its owners, managers,
493 employees and contractors may cultivate, manufacture, possess,
494 sell, deliver, distribute, dispense, and lawfully dispose of
495 cannabis as defined in s. 893.02.
496 1. Before dispensing cannabis to an eligible patient or his
497 or her caregiver pursuant to this section, a dispensing
498 organization must require the eligible patient or his or her
499 legal caregiver to produce his or her identification card as
500 issued by the Department of Health and must verify that the
501 eligible patient has an active registration on the compassionate
502 use registry.
503 2. Before dispensing, all cannabis must be tested by an



504 independent testing laboratory, as defined in s. 381.986(1)(b),
505 and must meet all testing and labeling criteria established for
506 low-THC cannabis in s. 381.986(7) and by the department in rule
507 other than criteria regarding percentages of
508 tetrahydrocannabinol or cannabidiol.

509 3. When manufacturing, selling, delivering, dispensing,
510 distributing, and lawfully disposing of cannabis, as defined in
511 s. 893.02, pursuant to this section an approved dispensing
512 organization must meet all criteria established in s. 381.986
513 applicable to cultivating, manufacturing, selling, delivering,
514 dispensing, distributing, and lawfully disposing of low-THC
515 cannabis except that cannabis produced pursuant to this section
516 is not restricted as to the amount of tetrahydrocannabinol or
517 cannabidiol.

518 (c) An approved dispensing organization as defined in s.
519 381.986 and its owners, managers, employees and contractors are
520 not subject to licensure or regulation under chapter 465 or
521 chapter 499 for manufacturing, possessing, selling, delivering,
522 distributing, dispensing, or lawfully disposing of cannabis.

523 (d) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
524 any other law, but subject to the requirements of this section
525 and s. 381.986, an independent testing laboratory and its
526 employees may receive and possess cannabis for the sole purpose
527 of testing the cannabis to ensure compliance with this section
528 and s. 381.986(7).

529 (e) As used in this subsection, the terms "manufacture,"
530 "possession," "deliver," "distribute," and "dispense" have the
531 same meanings as provided in s. 893.02.

532 (f) This section does not impair the approval of a



533 dispensing organization under s. 381.986.

534 Section 3. This act shall take effect July 1, 2016.

535

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

537 And the title is amended as follows:

538 Delete everything before the enacting clause
539 and insert:

540 A bill to be entitled
541 An act relating to the medical use of cannabis;
542 amending s. 381.986, F.S.; defining terms; restricting
543 the use of cannabis and low-THC cannabis in certain
544 areas; establishing that a physician may order
545 cannabis for the use of certain patients; requiring
546 physicians to register patients and their caregivers
547 on the compassionate use registry; restricting
548 dispensing organization medical directors from
549 ordering cannabis and low-THC cannabis; specifying
550 that cannabis may be ordered only for conditions that
551 meet the requirements of s. 499.0295, F.S.;

552 establishing a licensure violation for physicians who
553 order cannabis or low-THC cannabis and receive
554 compensation from a dispensing organization; requiring
555 the Department of Health to establish a system for
556 issuing identification cards to patients and
557 caregivers; specifying what information must be
558 included on the identification cards; requiring the
559 department to inspect a dispensing organization's
560 properties and facilities; requiring the department to
561 ensure that each dispensing organization adheres to



562 testing and labeling requirements for cannabis, low-
563 THC cannabis, and low-THC cannabis products;
564 establishing fines for violations; establishing
565 violations for which fines may be imposed; requiring
566 the department to provide 20 business days for a
567 dispensing organization to cure a violation; allowing
568 the department to impose an administrative penalty on,
569 or suspend, revoke, or deny the approval of, a
570 dispensing organization when violations are not cured;
571 requiring the department to biennially renew the
572 approval of a dispensing organization; specifying that
573 dispensing organizations may have certain types of
574 facilities; preempting the regulation of cultivation
575 facilities and processing facilities to the state;
576 requiring that cultivation facilities and processing
577 facilities be closed to the public; allowing local
578 governments to determine the location and other
579 permitting requirements for retail facilities; placing
580 certain requirements on retail facilities; restricting
581 dispensing organizations from selling retail products
582 other than paraphernalia required for the use of
583 cannabis or low-THC cannabis as ordered; requiring
584 dispensing organizations to update the department with
585 certain information within 15 days; requiring
586 dispensing organizations to meet specified
587 requirements for the transportation of cannabis and
588 low-THC cannabis; establishing testing and labeling
589 requirements for cannabis and low-THC cannabis; making
590 technical and conforming changes; amending s.



591 499.0295, F.S.; revising the term "investigational
592 drug, biological product, or device" to include
593 cannabis, as defined in s. 893.02, F.S., under certain
594 circumstances; authorizing certain patients to
595 purchase and medically use cannabis under certain
596 circumstances; allowing dispensing organizations to
597 cultivate, manufacture, possess, sell, deliver,
598 distribute, dispense, and lawfully dispose of cannabis
599 under certain circumstances and when meeting certain
600 criteria; exempting dispensing organizations and their
601 owners, managers, employees and contractors from
602 certain licensure requirements; exempting independent
603 testing laboratories from criminal prohibitions for
604 the purpose of testing cannabis; stating that certain
605 terms are defined in s. 893.02, F.S.; clarifying that
606 the provisions in the section do not impair the
607 approval of a dispensing organization under 381.986,
608 F.S.; providing an effective date.



LEGISLATIVE ACTION

Senate	.	House
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The Committee on Fiscal Policy (Abruzzo) recommended the following:

Senate Amendment to Amendment (466428) (with directory and title amendments)

Delete lines 466 - 533
and insert:

(a) "Dispensing organization" means an organization approved by the Department of Health under paragraph (10) (d) to cultivate, process, and dispense cannabis pursuant to this section.

~~(c)(b)~~ "Investigational drug, biological product, or



11 device" means:

12 1. A drug, biological product, or device that has

13 successfully completed phase 1 of a clinical trial but has not

14 been approved for general use by the United States Food and Drug

15 Administration and remains under investigation in a clinical

16 trial approved by the United States Food and Drug

17 Administration; or

18 2. Cannabis that is manufactured and sold by a dispensing

19 organization.

20 (10) (a) Notwithstanding s. 893.13, s. 893.135, s. 893.147,

21 or any other law, but subject to the requirements of this

22 section, an eligible patient and the eligible patient's legal

23 representative may purchase cannabis from a dispensing

24 organization and may possess such cannabis for the patient's

25 medical use.

26 (b) Notwithstanding s. 381.986, s. 893.13, s. 893.135, s.

27 893.147, or any other law, but subject to the requirements of

28 this section, a dispensing organization and its owners,

29 managers, and employees may manufacture, possess, sell, deliver,

30 distribute, dispense, and lawfully dispose of cannabis.

31 (c) A dispensing organization and its owners, managers, and

32 employees are not subject to licensure or regulation under

33 chapter 465 for manufacturing, possessing, selling, delivering,

34 distributing, dispensing, or lawfully disposing of cannabis.

35 (d) By October 1, 2016, the Department of Health shall

36 approve the establishment of 20 additional dispensing

37 organizations to cultivate, process, and dispense cannabis

38 pursuant to this section. An applicant for approval as a

39 dispensing organization must demonstrate that it possesses the



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40 qualifications specified in s. 381.986(5)(b)2.-7 or that it is a
41 recognized class member of *Pigford v. Glickman*, 182 F.R.D. 82
42 (D.D.C. 1999) or *In re Black Farmers Litig.*, 856 F. Supp. 2d 1
43 (D.D.C. 2011) and a member of the Black Farmers and
44 Agriculturalists Association.

45 (e) As used in this subsection, the terms "manufacture,"
46 "possession," "deliver," "distribute," and "dispense" have the
47 same meanings as provided in s. 893.02.

48 (f) The Department of Health may adopt rules to administer
49 this subsection.

50

51 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

52 And the directory clause is amended as follows:

53 Delete lines 461 - 462

54 and insert:

55 Section 2. Paragraphs (a) through (d) of subsection (2) of
56 section 499.0295, Florida Statutes, are redesignated as
57 paragraphs (b) through (e), respectively, present paragraph (b)
58 of that subsection is amended, a new paragraph (a) is added to
59 that subsection, and subsection (10) is

60

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

62 And the title is amended as follows:

63 Delete lines 591 - 604

64 and insert:

65 499.0295, F.S.; defining the term "dispensing
66 organization"; revising the definition of the term
67 "investigational drug, biological product, or device";
68 providing for eligible patients or their legal



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69 representatives to purchase cannabis from dispensing
70 organizations and possess such cannabis for medical
71 use; authorizing certain licensed dispensing
72 organizations to manufacture, possess, sell, deliver,
73 distribute, dispense, and dispose of cannabis;
74 exempting dispensing organizations from specified
75 laws; directing the Department of Health to approve
76 the establishment of a limited number of dispensing
77 organizations by a specified date; requiring
78 applicants for approval as dispensing organizations to
79 demonstrate they possess certain qualifications;
80 authorizing the Department of Health to adopt rules;
81 stating that certain



LEGISLATIVE ACTION

Senate	.	House
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The Committee on Fiscal Policy (Abruzzo) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 21 - 53

and insert:

(a) "Dispensing organization" means an organization approved by the Department of Health under paragraph (10)(d) to cultivate, process, and dispense cannabis pursuant to this section.

(c) ~~(b)~~ "Investigational drug, biological product, or device" means:



11 1. A drug, biological product, or device that has
12 successfully completed phase 1 of a clinical trial but has not
13 been approved for general use by the United States Food and Drug
14 Administration and remains under investigation in a clinical
15 trial approved by the United States Food and Drug
16 Administration; or
17 2. Cannabis that is manufactured and sold by a dispensing
18 organization.
19 (10) (a) Notwithstanding s. 893.13, s. 893.135, s. 893.147,
20 or any other law, but subject to the requirements of this
21 section, an eligible patient and the eligible patient's legal
22 representative may purchase cannabis from a dispensing
23 organization and may possess such cannabis for the patient's
24 medical use.
25 (b) Notwithstanding s. 381.986, s. 893.13, s. 893.135, s.
26 893.147, or any other law, but subject to the requirements of
27 this section, a dispensing organization and its owners,
28 managers, and employees may manufacture, possess, sell, deliver,
29 distribute, dispense, and lawfully dispose of cannabis.
30 (c) A dispensing organization and its owners, managers, and
31 employees are not subject to licensure or regulation under
32 chapter 465 for manufacturing, possessing, selling, delivering,
33 distributing, dispensing, or lawfully disposing of cannabis.
34 (d) By October 1, 2016, the Department of Health shall
35 approve the establishment of 20 additional dispensing
36 organizations to cultivate, process, and dispense cannabis
37 pursuant to this section. An applicant for approval as a
38 dispensing organization must demonstrate that it possesses the
39 qualifications specified in s. 381.986(5)(b)2.-7 or that it is a



40 recognized class member of *Pigford v. Glickman*, 182 F.R.D. 82
41 (D.D.C. 1999) or *In re Black Farmers Litig.*, 856 F. Supp. 2d 1
42 (D.D.C. 2011) and a member of the Black Farmers and
43 Agriculturalists Association.

44 (e) As used in this subsection, the terms "manufacture,"
45 "possession," "deliver," "distribute," and "dispense" have the
46 same meanings as provided in s. 893.02.

47 (f) The Department of Health may adopt rules to administer
48 this subsection.

49
50 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

51 And the directory clause is amended as follows:

52 Delete lines 16 - 17

53 and insert:

54 Section 1. Paragraphs (a) through (d) of subsection (2) of
55 section 499.0295, Florida Statutes, are redesignated as
56 paragraphs (b) through (e), respectively, present paragraph (b)
57 of that subsection is amended, a new paragraph (a) is added to
58 that subsection, and subsection (10) is

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

61 And the title is amended as follows:

62 Delete lines 4 - 12

63 and insert:

64 revising the definition of the term "investigational
65 drug, biological product, or device"; providing for
66 eligible patients or their legal representatives to
67 purchase cannabis from dispensing organizations and
68 possess such cannabis for medical use; authorizing



69 certain licensed dispensing organizations to
70 manufacture, possess, sell, deliver, distribute,
71 dispense, and dispose of cannabis; exempting
72 dispensing organizations from specified laws;
73 directing the Department of Health to approve the
74 establishment of a limited number of dispensing
75 organizations by a specified date; requiring
76 applicants for approval as dispensing organizations to
77 demonstrate they possess certain qualifications;
78 authorizing the Department of Health to adopt rules;
79 providing an effective date.

By Senator Bradley

7-00574A-16

2016460__

A bill to be entitled

An act relating to experimental treatments for terminal conditions; amending s. 499.0295, F.S.; revising the definition of the term "investigational drug, biological product, or device"; providing for eligible patients or their legal representatives to purchase and possess cannabis for medical use; authorizing certain licensed dispensing organizations to manufacture, possess, sell, deliver, distribute, dispense, and dispose of cannabis; exempting such organizations from specified laws; defining terms; providing applicability; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 499.0295, Florida Statutes, is amended, and subsection (10) is added to that section, to read:

499.0295 Experimental treatments for terminal conditions.—

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

(b) "Investigational drug, biological product, or device" means:

1. A drug, biological product, or device that has successfully completed phase 1 of a clinical trial but has not been approved for general use by the United States Food and Drug Administration and remains under investigation in a clinical trial approved by the United States Food and Drug Administration; or

2. Cannabis that is manufactured and sold by an approved

Page 1 of 2

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

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dispensing organization as defined in s. 381.986.

(10) (a) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, an eligible patient and the eligible patient's legal representative may purchase and possess cannabis for the patient's medical use.

(b) An eligible patient and the eligible patient's legal representative may obtain cannabis only from an approved dispensing organization as defined in s. 381.986.

(c) Notwithstanding s. 381.986, s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, an approved dispensing organization as defined in s. 381.986 and its owners, managers, and employees may manufacture, possess, sell, deliver, distribute, dispense, and lawfully dispose of cannabis.

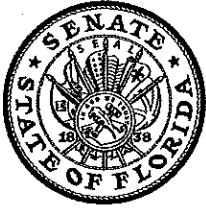
(d) An approved dispensing organization as defined in s. 381.986 and its owners, managers, and employees are not subject to licensure or regulation under chapter 465 for manufacturing, possessing, selling, delivering, distributing, dispensing, or lawfully disposing of cannabis. As used in this subsection, the terms "manufacture," "possession," "deliver," "distribute," and "dispense" have the same meanings as provided in s. 893.02.

(e) This section does not impair the license of an approved dispensing organization under s. 381.986.

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

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: December 9, 2015

I respectfully request that **Senate Bill # 460**, relating to Experimental Treatments for Terminal Conditions, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley", written over a horizontal line.

Senator Rob Bradley
Florida Senate, District 7

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/20/16

Meeting Date

SB 460

Bill Number (if applicable)



Amendment

466428

Amendment Barcode (if applicable)

Topic Right to Try

Name Ron Watson

Job Title Lobbyist

Address 3738 Murdon Way

Street

Phone (850) 567-1202

Tallahassee FL 32309

City

State

Zip

Email watson, strategies@concast.net

Speaking: For Against Information

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

Representing AH Med

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/20/2016
Meeting Date

SB 460
Bill Number (if applicable)

Topic Experimental Cannabis for Terminal Conditions

Amendment Barcode (if applicable)

Name Dr. Gregory Gerdeman, PhD

Job Title Professor of Biology

Address 2401 15th Avenue N
Street

Phone (727) 417-0594

St Petersburg FL 33713
City State Zip

Email GLGerdeman@gmail.com

Speaking: For Against Information

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

Representing Myself, with interest for patients

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

SB460
Bill Number (if applicable)

Meeting Date _____

Topic END OF LIFE

Amendment Barcode (if applicable) _____

Name CATHY JORDAN

Job Title _____

Address 4307 99 AVENUE E.

Phone 941 981 3000

PARRISH FL 34219
City State Zip

Email _____

Speaking: For Against Information

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

Representing PRS. FL CAN

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/20/16
Meeting Date

460
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Yolanda Cash Jackson

Job Title Lobbyist

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Black Farmers & Agriculturalist Assoc - FL Chapter

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/20/16
Meeting Date

460
Bill Number (if applicable)

Topic RIGHT TO TRY

Amendment Barcode (if applicable)

Name LOUIS ROTUNDO

Job Title _____

Address 302 Pinestraw Circle

Phone 407-699-9361

Street

Altamonte Springs FL

32714

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FLA Medical Cannabis 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.

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 Fiscal Policy

BILL: CS/SB 504

INTRODUCER: Health Policy Committee and Senator Grimsley

SUBJECT: Laser Hair Removal

DATE: January 19, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	Fav/CS
2.	Brown	Pigott	AHS	Recommend: Favorable
3.	Jones	Hrdlicka	FP	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 504 requires a licensed electrologist who uses a laser or pulse-light device to be certified by a nationally recognized electrology organization and have appropriate training, as determined by the Board of Medicine, for each device used. The bill defines a laser or pulsed-light device as an electronic device approved by the United States Food and Drug Administration for laser hair removal.

The bill has no fiscal impact to state funds.

The bill is effective July 1, 2016.

II. Present Situation:

State Regulation of Electrology

Chapter 478, F.S., governs the regulation of electrologists and the practice of electrolysis or electrology. "Electrolysis or electrology" is defined as the permanent removal of hair by destroying the hair-producing cells of the skin and vascular system, using equipment and devices approved by the Board of Medicine (BOM) which have been cleared by, and registered with, the

United States Food and Drug Administration (FDA) and that are used pursuant to protocols approved by the BOM.¹

A person may not practice electrolysis or hold himself or herself out as an electrologist unless that person has an active valid Florida license under ch. 478, F.S.² Specifically, an applicant for a license must:

- Be at least 18 years old;
- Be of good moral character;
- Possess a high school diploma or high school equivalency diploma;
- Have not committed an act that constitutes grounds for discipline as an electrologist in Florida;
- Have successfully completed the academic and practical training requirements of an electrolysis training program approved of by the BOM, not to exceed 120 hours; and
- Have passed a written examination developed by the DOH or a national examination approved by the BOM.³

The BOM, with the assistance of the Electrolysis Council,⁴ establishes minimum standards for the delivery of electrolysis services and adopts rules to implement ch. 478, F.S.⁵

Use of Laser and Light-based Devices for Hair Removal or Reduction

Florida electrologists are currently permitted to use laser and light-based devices for hair removal or reduction if they:

- Have completed a 30-hour continuing education course approved by the Electrolysis Council;⁶
- Are certified in the use of laser and light-based devices for the removal or reduction of hair by a national certification organization approved by the Electrolysis Council and the BOM;
- Are using only the laser and light-based hair removal or reduction devices upon which they have been trained; and
- Are operating under the direct supervision and responsibility of a physician⁷ properly trained in laser hair removal and licensed pursuant to the provisions of ch. 458 or ch. 459, F.S.⁸

¹ Section 478.42(5), F.S.

² Section 478.49(1), F.S.

³ Section 478.45(1), F.S.

⁴ Section 478.44, F.S., creates the Electrolysis Council, and specifies its membership and meeting requirements.

⁵ Section 478.43, F.S. *See* Rules 64B8-50 through 64B8-56, F.A.C., which regulate the licensure, practice, continuing education, and discipline of electrologists.

⁶ Rule 64B8-52.004, F.A.C.

⁷ A physician cannot supervise more than four electrologists at any one time. Rule 64B8-56.002(6), F.A.C.

⁸ Rule 64B8-56.002(2), F.A.C.

The Electrolysis Council and the BOM have approved the Society for Clinical & Medical Hair Removal, Inc.,⁹ as the national certification organization to certify Florida electrologists in the use of laser and light-based devices for the removal or reduction of hair.¹⁰

There are currently 1,240 active electrologist licenses in Florida. The DOH does not distinguish in its reporting between those certified and those not certified in use of lasers.¹¹

III. Effect of Proposed Changes:

The bill amends s. 478.42, F.S., to define the terms:

- “Laser hair removal” as the use of a laser or pulsed-light device in a hair removal procedure that does not remove the epidermis;¹² and
- “Laser or pulsed-light device” as an electronic device approved of by the United States FDA for laser hair removal.

The bill requires a licensed electrologist who uses a laser or pulsed-light device in laser hair removal procedures to be certified by a nationally-recognized electrology organization in the use of these devices and have the appropriate training, as determined by BOM rule, for each device used.

The bill is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁹ The Society for Clinical & Medical Hair Removal, Inc., is an international non-profit organization with members in the United States, Canada, United Arab Emirates, and other countries. The certification programs are aimed toward physicians, nurses, and medical estheticians to demonstrate their knowledge of the profession. The Society of Clinical & Medical Hair Removal, Inc., *About Us*, available at <https://www.scmhr.org/about-scmhr> (last visited Jan. 15, 2016).

¹⁰ Department of Health, Licensing and Regulation, Electrolysis, Laser, *Laser Information*, available at <http://www.floridahealth.gov/licensing-and-regulation/electrolysis/laser/index.html> (last visited Jan. 15, 2016).

¹¹ The number of active Florida licenses was calculated by adding “In State Active,” “Out of State Active,” and “Military Active” practitioners. See Florida Department of Health, Division of Medical Quality Assurance, Annual Report and Long Range Plan, Fiscal Year 2014-2015, *Summary of Licensed Practitioners*, at pg. 10, available at <http://mqawebteam.com/annualreports/1415/> (last visited Jan. 15, 2016).

¹² The epidermis defined as the outer layer skin. Merriam-Webster, an Encyclopedia Britannica Company, *Epidermis*, available at <http://www.merriam-webster.com/dictionary/epidermis> (last viewed Jan. 15, 2016).

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 the following sections of Florida Statutes: 478.42 and 478.49.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Health Policy on December 1, 2015:

Places the definitions in s. 478.42, F.S., and the certification requirements in s. 478.49, F.S., instead of placing both in s. 478.45, F.S., as in the underlying bill.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Grimsley

588-01770-16

2016504c1

1 A bill to be entitled
2 An act relating to laser hair removal; amending s.
3 478.42, F.S.; defining terms; amending s. 478.49,
4 F.S.; providing certification and training
5 requirements for licensed electrologists who use laser
6 or pulsed-light devices in hair removal; providing an
7 effective date.

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

10

11 Section 1. Subsections (6) and (7) are added to section
12 478.42, Florida Statutes, to read:

13

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

14

15 (6) "Laser hair removal" means the use of a laser or
16 pulsed-light device in a hair removal procedure that does not
17 remove the epidermis.

17

18 (7) "Laser or pulsed-light device" means an electronic
19 device approved by the United States Food and Drug
20 Administration for laser hair removal.

20

21 Section 2. Section 478.49, Florida Statutes, is amended to
22 read:

22

478.49 License and certification required.—

23

24 (1) No person may practice electrology or hold herself or
25 himself out as an electrologist in this state unless the person
26 has been issued a license by the department and holds an active
27 license pursuant to the requirements of this chapter.

27

28 (2) A licensee shall display her or his license in a
29 conspicuous location in her or his place of practice and provide
it to the department or the board upon request.

Page 1 of 2

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588-01770-16

2016504c1

30 (3) A licensee who uses a laser or pulsed-light device in a
31 laser hair removal procedure must be certified by a nationally
32 recognized electrology organization in the use of these devices
33 and must have the appropriate training, as determined by board
34 rule, for each such device used by the licensee.

35

Section 3. This act shall take effect July 1, 2016.

Page 2 of 2

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The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: January 13, 2016

I respectfully request that **Senate Bill #504**, relating to Laser Hair Removal, 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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Communications, Energy, and Public Utilities, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health
and Human Services
Health Policy
Transportation

JOINT COMMITTEES:
Joint Administrative Procedures Committee
Joint Legislative Budget Commission

SENATOR DENISE GRIMSLEY

Deputy Majority Leader
21st District

January 19, 2016

The Honorable Anitere Flores, Chair
Senate Committee on Fiscal Policy
225 Knott Building
402 S. Monroe Street
Tallahassee, FL 32399-1300

Dear Madame Chair,

Senate Bill 504, relating to Laser Hair Removal, will be considered by your committee tomorrow afternoon. I will be in the Transportation Committee meeting and respectfully request that Marty Mielke, my legislative assistant, be able to present this bill.

Thank you for your consideration.

Sincerely,

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

Denise Grimsley
Senator, District 21

DG/mm

REPLY TO:

- 205 South Commerce Avenue, Suite A, Sebring, Florida 33870 (863) 386-6016
- 212 East Stuart Avenue, Lake Wales, Florida 33853 (863) 679-4847
- 306 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

ANDY GARDINER
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 Fiscal Policy

BILL: CS/SB 518

INTRODUCER: Fiscal Policy Committee; Transportation Committee and Senator Soto and others

SUBJECT: Special License Plates

DATE: January 22, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Eichin	TR	Fav/CS
2.	Sanders	Ryon	MS	Favorable
3.	Aldana	Hrdlicka	FP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 518 creates a special military license plate for recipients of the Bronze Star Medal. Revenue generated from the sale of this license plate will be deposited into the Grants and Donations Trust Fund and the State Homes for Veterans Trust Fund.

The bill specifies that the special military license plate for former prisoners of war must also include a likeness of the Prisoner of War Medal.

The bill also redirects revenue generated from the sale of the Woman Veteran special license plate from the Operations and Maintenance Trust Fund to the Grants and Donations Trust Fund.

The DHSMV estimates a total cost of \$8,402 for Fiscal Year 2015-2016 to implement the bill. See Section V. Government Sector Impact.

II. Present Situation:

Special License Plates

Current law provides for several types of license plates. In addition to plates issued for governmental or business purposes, the Florida Department of Highway Safety and Motor Vehicles (DHSMV) offers four basic types of plates to the general public:

- Standard plates;

- Specialty license plates;
- Personalized prestige license plates; and
- Special use license plates.

Certain members of the general public may be eligible to apply for special use license plates if they are able to document their eligibility pursuant to various sections of ch. 320, F.S. Special use license plates primarily include special military license plates as well as plates for the disabled.

Currently, there are 21 special military license plates authorized in s. 320.089, F.S., available to military service members or veterans for the following types of service:

- Veteran of the United States Armed Forces;
- Active or retired member of the Florida National Guard;
- Survivor of the attack on Pearl Harbor;
- Recipient of the Purple Heart Medal;
- Active or retired member of any branch of the United States Armed Forces Reserve;
- Recipient of the Combat Infantry Badge;
- Recipient of the Combat Medical Badge;
- Recipient of the Combat Action Badge;
- Recipient of the Combat Action Ribbon;
- Recipient of the Air Force Combat Medal;
- Recipient of the Distinguished Flying Cross;
- Former Prisoner of War;
- Veteran of the Korean War;
- Veteran of the Vietnam War;
- Service member or veteran of Operation Desert Shield;
- Service member or veteran of Operation Desert Storm;
- Service member or veteran of Operation Enduring Freedom;
- Service member or veteran of Operation Iraqi Freedom;
- Veteran of World War II;
- Navy Submariner; and
- Woman Veteran.

Special military license plates authorized under s. 320.089, F.S., are stamped with words consistent with the type of special plate issued. For example, a special plate issued to a current or former member of the Florida National Guard is stamped with the words “National Guard.” Additionally, a likeness of the related campaign medal or badge appears on the plate.¹

Applicants for special military license plates under s. 320.089, F.S., are required to pay the annual license tax in s. 320.08, F.S., with the exception of certain disabled veterans who qualify for the Pearl Harbor, Purple Heart, or Prisoner of War plate, to whom such plates are issued at no cost.² With the exception of Woman Veteran plates, the first \$100,000 of the general revenue

¹ For plate samples, see Department of Highway Safety and Motor Vehicles, *Military License Plates*, available at <http://www.flhsmv.gov/specialtytags/miltags.html> (last visited Dec. 18, 2015).

² Section 320.089(1)(c) and (2)(a), F.S.

generated annually from the sale of special use military plates is deposited into the Grants and Donations Trust Fund under the Veterans' Nursing Homes of Florida Act, as described in s. 296.38(2), F.S. Additional general revenue is deposited into the State Homes for Veterans Trust Fund and used to construct, operate, and maintain domiciliary and nursing homes for veterans.³

For Fiscal Year 2014-2015, the total revenue from special military license plates was \$2,711,574.⁴

Woman Veteran License Plate

During the 2015 Regular Session, the Legislature created the Woman Veteran special military license plate.⁵ Revenue generated from the sale of the Woman Veteran plate is deposited into the Operations and Maintenance Trust Fund administered by the Florida Department of Veterans' Affairs (FDVA) pursuant to s. 20.375(3), F.S.⁶ The moneys generated from the sale of the plate must be used solely for the creation and implementation of programs that benefit women veterans. The FDVA has since determined that the Grants and Donations Trust Fund is more appropriate to receive distribution of these revenues.⁷

Bronze Star Medal

The Bronze Star Medal was established on February 4, 1944, to recognize those who served after December 6, 1941, in any capacity in or with the Armed Forces of the United States or a friendly foreign nation. The Bronze Star Medal is awarded to a person who distinguished himself or herself by heroic or meritorious service, not involving participation in aerial flight, in connection with military operations against an armed enemy; or while engaged in military operations involving conflict with an opposing armed force in which the United States is not a belligerent party. Recipients of the Bronze Star Medal must be receiving imminent danger pay while serving in a geographic area authorized for special pay.⁸ In order of precedence, the Department of Defense (DoD) places the Bronze Star Medal seventh amongst DoD wide military decorations and awards following the Distinguished Fly Cross and preceding the Purple Heart.⁹

III. Effect of Proposed Changes:

The bill creates a special military license plate for recipients of the Bronze Star Medal. The plate will be stamped with the words "Bronze Star" and a likeness of the Bronze Star Medal. To receive a Bronze Star special military license plate the individual must submit an application for

³ Section 320.089(1)(b), F.S.

⁴ E-mail from Florida Department of Veterans' Affairs (Nov. 23, 2015) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

⁵ See ch. 2015-91, Laws of Fla.

⁶ Section 320.089(1)(c), F.S.

⁷ E-mail from Florida Department of Veterans' Affairs (Dec. 2, 2015) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

⁸ Department of the Army, *Military Awards*, Army Regulation 600-8-22 (June 25, 2015).

⁹ Department of Defense, *Manual of Military Decorations and Awards: DoD Service Awards – Campaign, Expeditionary, and Service Medals*, Manual No. 1348.33, Vol. 2 (May 15, 2015). The order of precedence for military awards varies by branch of service.

the plate to the DHSMV, provide proof that he or she is a Bronze Star Medal recipient, and pay the appropriate license tax as provided in s. 320.08, F.S. Revenue generated from the sale of the Bronze Star plate is deposited in the Grants and Donations Trust Fund and the State Home for Veterans Trust Fund.

The bill specifies that the special military license plate for former prisoners of war must also include a likeness of the Prisoner of War Medal.¹⁰ Currently, the license plate must only be stamped with the words “Ex-POW.”

The bill also redirects revenue from the sale of the Woman Veteran license plate from the Operations and Maintenance Trust Fund administered by the FDVA to the Grants and Donations Trust Fund administered by the FDVA. Current law specifies that revenue from the sale of the Woman Veteran license plate must be used solely by the FDVA for the creation and implementation of programs that benefit women veterans.

Additionally, the bill clarifies the authority of the veterans’ nursing homes¹¹ and the veterans’ domiciliary home¹² with respect to funds in the Grants and Donations Trust Fund.

The bill takes effect July 1, 2016.

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.

¹⁰ For information about the Prisoner of War Medal, see U.S. Air Force, *Fact Sheets: Prisoner of War Medal* (Aug. 4, 2010), available at <http://www.afpc.af.mil/library/factsheets/factsheet.asp?id=7788> (last visited Jan. 22, 2016).

¹¹ Chapter 296, part II, F.S., and s. 296.38, F.S.

¹² Chapter 296, part I, F.S., and s. 296.11, F.S.

B. Private Sector Impact:

Individuals who choose to receive the Bronze Star license plate will pay the same tax and fees as if he or she were issued a standard license plate.¹³

There is a \$28 new license plate fee if the special license plate is replacing any plate prior to the 10-year forced replacement of the current license plate.¹⁴

C. Government Sector Impact:

The DHSMV estimates an initial startup cost of \$2,882 for the creation and manufacture of 1,000 Bronze Star license plates to be distributed to Tax Collector offices statewide to meet public demand.¹⁵ It is indeterminate how many individuals will be eligible and choose to receive a special license plate.

The DHSMV also estimates a nonrecurring cost of \$5,520 in FTE resources to the department for 138 programming hours required for implementation of the bill, exclusive of planning and testing time.

The bill may have a positive impact on the Grants and Donations Trust Fund and the State Homes for Veterans Trust Fund from sales of the new special military license plate.

Any fiscal impact related to the change to the special military license plate for former prisoners of war is likely to be insignificant to the DHSMV.

VI. Technical Deficiencies:

Section 3 of the bill provide that the veterans' domiciliary home shall deposit moneys generated from the sale of the Woman Veteran license plate into the Grants and Donations Trust Fund. However, the veterans' domiciliary home does not receive revenue generated from the sale of the license plate because they do not sell license plates.

Further, revenues generated from the sale of the Woman Veteran license plates are deposited directly from the point of sale to the designated trust fund administered by the FDVA, to be used solely for the creation and implementation of programs that benefit women veterans.

Lines 225 – 230 of the bill create confusion and a possible conflict with the law related to the deposit and use of the Woman Veteran license plate revenue.

VII. Related Issues:

None.

¹³ License taxes vary based on type and weight of vehicle. *See* s. 320.08, F.S.

¹⁴ Section 320.0607(3), F.S.

¹⁵ Department of Highway Safety and Motor Vehicles, *SB 518 Agency Bill Analysis* (Oct. 20, 2015) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 320.089, 296.11, and 296.38.

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 Fiscal Policy on January 20, 2016:

The committee substitute specifies that the special military license plate for former prisoners of war must also include a likeness of the Prisoner of War Medal. The CS also removes provision creating conflict with the deposit of revenues received from the sale of Woman Veteran special license plates, and clarifies the authority of the veterans' nursing homes and the veterans' domiciliary home with respect to funds in the Grants and Donations Trust Fund.

CS by Transportation on December 12, 2015:

The CS requires that funds received from the sale of Woman Veteran special license plates are to be deposited in the Grants and Donations Trust Fund administered by the FDVA, instead of the Operations and Maintenance Trust Fund. Additional language is added to ensure funds received from the sale of the Woman Veteran plate must be expended solely for the creation and implementation of programs that benefit women veterans.

- B. **Amendments:**

None.



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Abruzzo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 100 - 214

and insert:

320.06, may have the words "Ex-POW" stamped on the plate and the likeness of the Prisoner of War medal with the words "Ex-POW"

followed by the serial number. Each application shall be accompanied by proof that the applicant meets the qualifications specified in paragraph (a) or paragraph (b).

(a) A citizen of the United States who served as a member



11 of the Armed Forces of the United States or the armed forces of
12 a nation allied with the United States who was held as a
13 prisoner of war at such time as the Armed Forces of the United
14 States were engaged in combat, or his or her unremarried
15 surviving spouse, may be issued the special license plate
16 provided for in this subsection without payment of the license
17 tax imposed by s. 320.08.

18 (b) A person who was serving as a civilian with the consent
19 of the United States Government, or a person who was a member of
20 the Armed Forces of the United States while he or she was not a
21 United States citizen and was held as a prisoner of war when the
22 Armed Forces of the United States were engaged in combat, or his
23 or her unremarried surviving spouse, may be issued the special
24 license plate provided for in this subsection upon payment of
25 the license tax imposed by s. 320.08.

26 (3) Each owner or lessee of an automobile or truck for
27 private use, a truck weighing not more than 7,999 pounds, or a
28 recreational vehicle as specified in s. 320.08(9)(c) or (d),
29 which is not used for hire or commercial use who is a resident
30 of this state and who is the unremarried surviving spouse of a
31 recipient of the Purple Heart medal, upon application to the
32 department accompanied by the payment of the required fees,
33 shall be issued a license plate as provided in s. 320.06 which
34 is stamped with the words "Purple Heart" and the likeness of the
35 Purple Heart medal followed by the serial number. Each
36 application shall be accompanied by proof that the applicant is
37 the unremarried surviving spouse of a recipient of the Purple
38 Heart medal.

39 (4) The owner or lessee of an automobile or truck for



40 private use, a truck weighing not more than 7,999 pounds, or a
41 recreational vehicle as specified in s. 320.08(9)(c) or (d)
42 which is not used for hire or commercial use who is a resident
43 of this state and a current or former member of the United
44 States Armed Forces who was deployed and served in Korea during
45 the Korean War as defined in s. 1.01(14), upon application to
46 the department accompanied by proof of active membership or
47 former active duty status during the Korean War and payment of
48 the license tax for the vehicle as provided in s. 320.08, shall
49 be issued a license plate as provided by s. 320.06 which, in
50 lieu of the registration license number prescribed by s. 320.06,
51 is stamped with the words "Korean War Veteran" and a likeness of
52 the Korean Service Medal, followed by the registration license
53 number of the plate. Proof that the applicant was awarded the
54 Korean Service Medal is sufficient to establish eligibility for
55 the license plate.

56 (5) The owner or lessee of an automobile or truck for
57 private use, a truck weighing not more than 7,999 pounds, or a
58 recreational vehicle as specified in s. 320.08(9)(c) or (d)
59 which is not used for hire or commercial use who is a resident
60 of this state and a current or former member of the United
61 States military who was deployed and served in Vietnam during
62 United States military deployment in Indochina, upon application
63 to the department accompanied by proof of active membership or
64 former active duty status during these operations and payment of
65 the license tax for the vehicle as provided in s. 320.08, shall
66 be issued a license plate as provided by s. 320.06 which, in
67 lieu of the registration license number prescribed by s. 320.06,
68 is stamped with the words "Vietnam War Veteran" and a likeness



69 of the Vietnam Service Medal, followed by the registration
70 license number of the plate. Proof that the applicant was
71 awarded the Vietnam Service Medal is sufficient to establish
72 eligibility for the license plate.

73 (6) The owner or lessee of an automobile or truck for
74 private use, a truck weighing not more than 7,999 pounds, or a
75 recreational vehicle as specified in s. 320.08(9)(c) or (d)
76 which is not used for hire or commercial use who is a resident
77 of this state and a current or former member of the United
78 States military who was deployed and served in Saudi Arabia,
79 Kuwait, or another area of the Persian Gulf during Operation
80 Desert Shield or Operation Desert Storm; in Afghanistan during
81 Operation Enduring Freedom; or in Iraq during Operation Iraqi
82 Freedom, upon application to the department accompanied by proof
83 of active membership or former active duty status during one of
84 these operations and payment of the license tax for the vehicle
85 as provided in s. 320.08, shall be issued a license plate as
86 provided by s. 320.06 which, in lieu of the registration license
87 number prescribed by s. 320.06, is stamped with the words
88 "Operation Desert Shield," "Operation Desert Storm," "Operation
89 Enduring Freedom," or "Operation Iraqi Freedom," as appropriate,
90 and a likeness of the related campaign medal followed by the
91 registration license number of the plate. Proof that the
92 applicant was awarded the Southwest Asia Service Medal, Iraq
93 Campaign Medal, Afghanistan Campaign Medal, or Global War on
94 Terrorism Expeditionary Medal is sufficient to establish
95 eligibility for the appropriate license plate.

96 Section 2. Subsection (2) of section 296.11, Florida
97 Statutes, is amended to read:



98 296.11 Funds of home and disposition of moneys.-
99 (2) The home shall deposit all moneys received pursuant to
100 s. 296.15 ~~in into~~ the Grants and Donations Trust Fund. Such
101 moneys deposited in the Grants and Donations Trust Fund must be
102 expended for the common benefit of the residents of the home,
103 such as improved facilities, recreational equipment,
104 recreational supplies, and goods and services offered or
105 available to all residents, subject to the requirements of
106 chapter 216.

107 Section 3. Subsection (2) of section 296.38, Florida
108 Statutes, is amended to read:

109 296.38 Funds of home and disposition of moneys.-

110 (2) (a) The home may ~~shall be empowered to~~ receive and
111 accept gifts, grants, and endowments ~~in the name of the home~~.
112 All such gifts, grants, and endowments shall ~~are to~~ be used for
113 the benefit of the home and its residents. In the absence of a
114 specific directive from the benefactor, the administrator and,
115 ~~together with the director may, shall have the authority to~~
116 determine how these gifts, grants, and endowments will ~~could~~
117 best benefit the home and its residents ~~unless the benefactor~~
118 ~~requests or instructs that the gift, grant, or endowment be used~~
119 ~~for a specific purpose~~. The home shall deposit all moneys
120 received pursuant to this subsection ~~in into~~ the Grants and
121 Donations Trust Fund. Such moneys deposited in the Grants and
122 Donations Trust

123
124 ===== T I T L E A M E N D M E N T =====

125 And the title is amended as follows:

126 Delete lines 8 - 9



127 and insert:
128 Maintenance Trust Fund; conforming a cross-reference;
129 authorizing the Prisoner of War medal to be on the
130 "Ex-POW" license plate; amending ss. 296.11 and
131 296.38, F.S.; specifying requirements for expenditure
132 of moneys deposited in the Grant and Donations Trust
133 Fund under certain circumstances; requiring

By the Committee on Transportation; and Senators Soto and Hutson

596-01806-16

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1 A bill to be entitled
 2 An act relating to special license plates; amending s.
 3 320.089, F.S.; creating a special license plate for
 4 recipients of the Bronze Star medal; requiring any
 5 revenue generated from the sale of Woman Veteran
 6 license plates to be deposited into the Grants and
 7 Donations Trust Fund, instead of the Operations and
 8 Maintenance Trust Fund; conforming a cross-reference;
 9 amending ss. 296.11 and 296.38, F.S.; requiring
 10 certain homes to deposit all moneys received from the
 11 sale of Woman Veteran license plates into the Grants
 12 and Donations Trust Fund; requiring that such moneys
 13 be expended for certain purposes; providing an
 14 effective date.
 15
 16 Be It Enacted by the Legislature of the State of Florida:
 17
 18 Section 1. Section 320.089, Florida Statutes, is amended to
 19 read:
 20 320.089 Veterans of the United States Armed Forces; members
 21 of National Guard; survivors of Pearl Harbor; Purple Heart and
 22 Bronze Star medal recipients; active or retired United States
 23 Armed Forces reservists; Combat Infantry Badge, Combat Medical
 24 Badge, or Combat Action Badge recipients; Combat Action Ribbon
 25 recipients; Air Force Combat Action Medal recipients;
 26 Distinguished Flying Cross recipients; former prisoners of war;
 27 Korean War Veterans; Vietnam War Veterans; Operation Desert
 28 Shield Veterans; Operation Desert Storm Veterans; Operation
 29 Enduring Freedom Veterans; Operation Iraqi Freedom Veterans;

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

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30 Women Veterans; World War II Veterans; and Navy Submariners;
 31 special license plates; fee.—
 32 (1) (a) Each owner or lessee of an automobile or truck for
 33 private use or recreational vehicle as specified in s.
 34 320.08(9) (c) or (d), which is not used for hire or commercial
 35 use, who is a resident of the state and a veteran of the United
 36 States Armed Forces, a Woman Veteran, a World War II Veteran, a
 37 Navy Submariner, an active or retired member of the Florida
 38 National Guard, a survivor of the attack on Pearl Harbor, a
 39 recipient of the Purple Heart medal, a recipient of the Bronze
 40 Star medal, an active or retired member of any branch of the
 41 United States Armed Forces Reserve, or a recipient of the Combat
 42 Infantry Badge, Combat Medical Badge, Combat Action Badge,
 43 Combat Action Ribbon, Air Force Combat Action Medal, or
 44 Distinguished Flying Cross, upon application to the department,
 45 accompanied by proof of release or discharge from any branch of
 46 the United States Armed Forces, proof of active membership or
 47 retired status in the Florida National Guard, proof of
 48 membership in the Pearl Harbor Survivors Association or proof of
 49 active military duty in Pearl Harbor on December 7, 1941, proof
 50 of being a Purple Heart or Bronze Star medal recipient, proof of
 51 active or retired membership in any branch of the United States
 52 Armed Forces Reserve, or proof of membership in the Combat
 53 Infantrymen's Association, Inc., proof of being a recipient of
 54 the Combat Infantry Badge, Combat Medical Badge, Combat Action
 55 Badge, Combat Action Ribbon, Air Force Combat Action Medal, or
 56 Distinguished Flying Cross, and upon payment of the license tax
 57 for the vehicle as provided in s. 320.08, shall be issued a
 58 license plate as provided by s. 320.06 which, in lieu of the

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

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59 serial numbers prescribed by s. 320.06, is stamped with the
 60 words "Veteran," "Woman Veteran," "WWII Veteran," "Navy
 61 Submariner," "National Guard," "Pearl Harbor Survivor," "Combat-
 62 wounded veteran," "Bronze Star," "U.S. Reserve," "Combat
 63 Infantry Badge," "Combat Medical Badge," "Combat Action Badge,"
 64 "Combat Action Ribbon," "Air Force Combat Action Medal," or
 65 "Distinguished Flying Cross," as appropriate, and a likeness of
 66 the related campaign medal or badge, followed by the serial
 67 number of the license plate. Additionally, the Purple Heart
 68 plate may have the words "Purple Heart" stamped on the plate and
 69 the likeness of the Purple Heart medal appearing on the plate.

70 (b) Notwithstanding any other provision of law to the
 71 contrary, beginning with fiscal year 2002-2003 and annually
 72 thereafter, the first \$100,000 in general revenue generated from
 73 the sale of license plates issued under this section shall be
 74 deposited into the Grants and Donations Trust Fund, as described
 75 in s. 296.38(2), to be used for the purposes established by law
 76 for that trust fund. Any additional general revenue generated
 77 from the sale of such plates shall be deposited into the State
 78 Homes for Veterans Trust Fund and used solely to construct,
 79 operate, and maintain domiciliary and nursing homes for
 80 veterans, subject to the requirements of chapter 216.

81 (c) Any revenue generated from the sale of Woman Veteran
 82 license plates must be deposited into the Grants and Donations
 83 ~~Operations and Maintenance~~ Trust Fund administered by the
 84 Department of Veterans' Affairs pursuant to s. 20.375(2) ~~s.~~
 85 ~~20.375(3)~~ and must be used solely for the purpose of creating
 86 and implementing programs to benefit women veterans.
 87 Notwithstanding any provisions of law to the contrary, an

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88 applicant for a Pearl Harbor Survivor license plate or a Purple
 89 Heart license plate who also qualifies for a disabled veteran's
 90 license plate under s. 320.084 shall be issued the appropriate
 91 special license plate without payment of the license tax imposed
 92 by s. 320.08.

93 (2) Each owner or lessee of an automobile or truck for
 94 private use, a truck weighing not more than 7,999 pounds, or a
 95 recreational vehicle as specified in s. 320.08(9)(c) or (d),
 96 which is not used for hire or commercial use who is a resident
 97 of this state and who is a former prisoner of war, or his or her
 98 unremarried surviving spouse, upon application to the
 99 department, shall be issued a license plate as provided in s.
 100 320.06, stamped with the words "Ex-POW" followed by the serial
 101 number. Each application shall be accompanied by proof that the
 102 applicant meets the qualifications specified in paragraph (a) or
 103 paragraph (b).

104 (a) A citizen of the United States who served as a member
 105 of the Armed Forces of the United States or the armed forces of
 106 a nation allied with the United States who was held as a
 107 prisoner of war at such time as the Armed Forces of the United
 108 States were engaged in combat, or his or her unremarried
 109 surviving spouse, may be issued the special license plate
 110 provided for in this subsection without payment of the license
 111 tax imposed by s. 320.08.

112 (b) A person who was serving as a civilian with the consent
 113 of the United States Government, or a person who was a member of
 114 the Armed Forces of the United States while he or she was not a
 115 United States citizen and was held as a prisoner of war when the
 116 Armed Forces of the United States were engaged in combat, or his

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117 or her unremarried surviving spouse, may be issued the special
 118 license plate provided for in this subsection upon payment of
 119 the license tax imposed by s. 320.08.

120 (3) Each owner or lessee of an automobile or truck for
 121 private use, a truck weighing not more than 7,999 pounds, or a
 122 recreational vehicle as specified in s. 320.08(9)(c) or (d),
 123 which is not used for hire or commercial use who is a resident
 124 of this state and who is the unremarried surviving spouse of a
 125 recipient of the Purple Heart medal, upon application to the
 126 department accompanied by the payment of the required fees,
 127 shall be issued a license plate as provided in s. 320.06 which
 128 is stamped with the words "Purple Heart" and the likeness of the
 129 Purple Heart medal followed by the serial number. Each
 130 application shall be accompanied by proof that the applicant is
 131 the unremarried surviving spouse of a recipient of the Purple
 132 Heart medal.

133 (4) The owner or lessee of an automobile or truck for
 134 private use, a truck weighing not more than 7,999 pounds, or a
 135 recreational vehicle as specified in s. 320.08(9)(c) or (d)
 136 which is not used for hire or commercial use who is a resident
 137 of this state and a current or former member of the United
 138 States Armed Forces who was deployed and served in Korea during
 139 the Korean War as defined in s. 1.01(14), upon application to
 140 the department accompanied by proof of active membership or
 141 former active duty status during the Korean War and payment of
 142 the license tax for the vehicle as provided in s. 320.08, shall
 143 be issued a license plate as provided by s. 320.06 which, in
 144 lieu of the registration license number prescribed by s. 320.06,
 145 is stamped with the words "Korean War Veteran" and a likeness of

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146 the Korean Service Medal, followed by the registration license
 147 number of the plate. Proof that the applicant was awarded the
 148 Korean Service Medal is sufficient to establish eligibility for
 149 the license plate.

150 (5) The owner or lessee of an automobile or truck for
 151 private use, a truck weighing not more than 7,999 pounds, or a
 152 recreational vehicle as specified in s. 320.08(9)(c) or (d)
 153 which is not used for hire or commercial use who is a resident
 154 of this state and a current or former member of the United
 155 States military who was deployed and served in Vietnam during
 156 United States military deployment in Indochina, upon application
 157 to the department accompanied by proof of active membership or
 158 former active duty status during these operations and payment of
 159 the license tax for the vehicle as provided in s. 320.08, shall
 160 be issued a license plate as provided by s. 320.06 which, in
 161 lieu of the registration license number prescribed by s. 320.06,
 162 is stamped with the words "Vietnam War Veteran" and a likeness
 163 of the Vietnam Service Medal, followed by the registration
 164 license number of the plate. Proof that the applicant was
 165 awarded the Vietnam Service Medal is sufficient to establish
 166 eligibility for the license plate.

167 (6) The owner or lessee of an automobile or truck for
 168 private use, a truck weighing not more than 7,999 pounds, or a
 169 recreational vehicle as specified in s. 320.08(9)(c) or (d)
 170 which is not used for hire or commercial use who is a resident
 171 of this state and a current or former member of the United
 172 States military who was deployed and served in Saudi Arabia,
 173 Kuwait, or another area of the Persian Gulf during Operation
 174 Desert Shield or Operation Desert Storm; in Afghanistan during

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175 Operation Enduring Freedom; or in Iraq during Operation Iraqi
 176 Freedom, upon application to the department accompanied by proof
 177 of active membership or former active duty status during one of
 178 these operations and payment of the license tax for the vehicle
 179 as provided in s. 320.08, shall be issued a license plate as
 180 provided by s. 320.06 which, in lieu of the registration license
 181 number prescribed by s. 320.06, is stamped with the words
 182 "Operation Desert Shield," "Operation Desert Storm," "Operation
 183 Enduring Freedom," or "Operation Iraqi Freedom," as appropriate,
 184 and a likeness of the related campaign medal followed by the
 185 registration license number of the plate. Proof that the
 186 applicant was awarded the Southwest Asia Service Medal, Iraq
 187 Campaign Medal, Afghanistan Campaign Medal, or Global War on
 188 Terrorism Expeditionary Medal is sufficient to establish
 189 eligibility for the appropriate license plate.

190 Section 2. Present subsection (3) of section 296.11,
 191 Florida Statutes, is redesignated as subsection (4), and a new
 192 subsection (3) is added to that section, to read:

193 296.11 Funds of home and disposition of moneys.-

194 (3) The home shall deposit all moneys received pursuant to
 195 s. 320.089(1) (c) from the sale of Woman Veteran license plates
 196 into the Grants and Donations Trust Fund. Notwithstanding
 197 subsection (2), all such moneys must be expended solely for the
 198 purpose of creating and implementing programs that benefit women
 199 veterans.

200 Section 3. Subsection (2) of section 296.38, Florida
 201 Statutes, is amended to read:

202 296.38 Funds of home and disposition of moneys.-

203 (2) (a) The home ~~may~~ shall be empowered to receive and

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204 accept gifts, grants, and endowments ~~in the name of the home.~~
 205 All such gifts, grants, and endowments ~~shall are to~~ be used for
 206 the benefit of the home and its residents. ~~In the absence of a~~
 207 ~~specific directive from the benefactor,~~ the administrator ~~and,~~
 208 ~~together with the director may,~~ shall have the authority to
 209 determine how these gifts, grants, and endowments ~~will could~~
 210 best benefit the home and its residents ~~unless the benefactor~~
 211 ~~requests or instructs that the gift, grant, or endowment be used~~
 212 ~~for a specific purpose.~~ The home shall deposit all moneys
 213 received pursuant to this subsection into the Grants and
 214 Donations Trust Fund. Moneys in the Grants and Donations Trust
 215 Fund shall be expended for the common benefit of the residents
 216 of the home, such as recreational equipment and supplies,
 217 improved facilities, ~~recreational supplies,~~ and goods and
 218 services offered or available to all residents.

219 (b) The home shall deposit all moneys received pursuant to
 220 s. 320.089(1) (c) from the sale of Woman Veteran license plates
 221 into the Grants and Donations Trust Fund. Notwithstanding
 222 paragraph (a), all such moneys must be expended solely for the
 223 purpose of creating and implementing programs that benefit women
 224 veterans.

225 Section 4. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/20/16

Meeting Date

SB 518

Bill Number (if applicable)

Topic Special License Plates

Amendment Barcode (if applicable)

Name Colonel Mike Prendergast

Job Title Executive Director

Address The Capitol, Suite 2105

Phone (850) 487-1533

Street

Tallahassee FL 32399

City

State

Zip

Email exdir@fdva.state.fl.us

Speaking: For Against Information

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

Representing The Florida Dept. of Veterans' Affairs

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 542

INTRODUCER: Health Policy Committee and Senator Stargel

SUBJECT: Continuing Care Facilities

DATE: January 19, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	Favorable
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 542 allows a nursing home that applies for the Nursing Home Gold Seal Program to demonstrate that its corporate entity as a whole meets the financial soundness and stability requirements for the program, rather than the nursing home on its own, if the nursing home is part of a:

- Continuing care retirement community that is not accredited; or
- A multifacility corporate entity that operates a combination of nursing homes, assisted living facilities, or independent living facilities.

The bill requires a nursing home that is part of a multifacility corporate entity to also submit a consolidated corporate financial statement to satisfy the financial soundness and stability requirement.

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

II. Present Situation:

The Nursing Home Gold Seal Program

The Gold Seal Program was created as an award and recognition program for nursing facilities that demonstrate excellence in long-term care over a sustained period.¹ The Gold Seal Program designation may be used in advertising for a facility that has received such designation.² Currently, of the 684 licensed nursing homes in Florida there are 32 Gold Seal facilities.³

Program Eligibility-General

To be considered for the Gold Seal Award a facility must submit the following information to the Agency for Health Care Administration (AHCA):

- A letter of recommendation;⁴
- A completed Gold Seal Award application;
- Financial documentation required by Rule 59A-4.203, F.A.C.; and
- Stable workforce documentation required by Rule 59A-4.204, F.A.C.⁵

To be eligible for the Gold Seal award a facility must meet the following general requirements:

- Be licensed and operating for 30 months prior to application;
- Have no class I or class II deficiencies⁶ within the 30 months preceding the application for the program;
- Provide evidence of financial soundness and stability;
- Participate in a consumer satisfaction process that involves residents, family members, and guardians;
- Provide evidence of the involvement of families and members of the community in the facility on a regular basis;
- Have a stable workforce as evidenced by a low rate of turnover among certified nursing assistants and licensed nurses within the preceding 30 months;
- Provide evidence that verified complaints to the Long-Term Care Ombudsman Program have not resulted in citation for licensure within the preceding 30 months; and
- Provide targeted in-service training to meet the training needs identified by internal or external quality assurance efforts.⁷

¹ Section 400.235(2), F.S.

² Rule 59A-4.201(2), F.A.C.

³ Agency for Health Care Administration, Florida Health Finder Search, facility/provider type: Nursing Home and advanced search: Gold Seal Award Recipient, (search conducted Jan. 17, 2016), *available at*: <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (last visited Jan. 17, 2016).

⁴ Section 400.235(6), F.S. The AHCA, a nursing facility industry organization, a consumer, the State Long-Term Care Ombudsman Program, or a member of the community where the nursing home is located may recommend facilities that meet Gold Seal criteria.

⁵ Rule 59A-4.201, F.A.C.

⁶ Class I and II deficiencies are defined in s. 408.813, F.S.

⁷ Sections 400.235(5) and (7), F.S.

Only applicants that have a quality of care ranking within the top 15 percent of facilities regionally, or top 10 percent of facilities statewide, and that have five-star facility designations overall are considered.⁸

Program Eligibility-Financial Soundness and Stability

To be eligible for a Gold Seal Award a facility must provide evidence of financial soundness and stability according to standards adopted by the AHCA in administrative rule.⁹

A nursing home that is not part of the same corporate entity as a continuing care facility must provide evidence of 30 months of financial stability and soundness including:

- Financial statements that include a balance sheet, an income statement, and a statement of cash flow for three consecutive years immediately preceding the application;
- A report from a certified public accountant who has audited or reviewed such financial statements and that specifies an unqualified opinion;
- A one-year set of pro-forma financial statements; and
- At least two of the following:
 - A positive assets to liabilities ratio;
 - A positive tangible net worth; or
 - A times interest earned ratio of 115 percent.¹⁰

A nursing home that is part of the same corporate entity as a continuing care facility satisfies the financial requirements if the continuing care facility:¹¹

- Meets the minimum liquid reserve requirement under s. 651.035; and
- Is accredited by the National Continuing Care Accreditation Commission, as long as the accreditation is not provisional.

Currently, an entity that is part of a consolidated entity can submit consolidated financial statements if the statements break out the balance sheet, income statement and statement of cash flows of the individual licensee.¹²

The nursing home or its parent company¹³ may not have been the subject of bankruptcy proceedings in the preceding 30 months.¹⁴ Facilities operated by a federal or state agency are deemed to be financially stable for purposes of applying for the Gold Seal.¹⁵

⁸ Rule 59A-4.202, F.A.C. Both the ranking and the five-star facility designation are determined by the AHCA.

⁹ Section 400.235(5)(b), F.S., and Rule 59A-4.203, F.A.C.

¹⁰ Rule 59A-4.203, F.A.C.

¹¹ Section 400.235(5)(b), F.S.

¹² Rule 59A-4.203(1)(a), F.A.C.

¹³ A parent company means an entity that owns, leases, or through any other device controls a group of two or more health care facilities or at least one health care facility and any other business. A related party management company is considered to be a parent company. See rule 59A-4.200(3), F.A.C.

¹⁴ Rule 59A-4.203(3), F.A.C.

¹⁵ Section 400.235(5)(b), F.S.

Continuing Care Facilities

A continuing care facility, also known as a continuing care retirement community (CCRC), provides a combination of senior independent living, assisted living, and nursing home services.¹⁶ CCRCs offer different levels of care based on what the CCRC offers and the needs of the resident. A CCRC usually has independent living apartments or houses and a nursing home, and some include an assisted living facility (ALF).¹⁷ Residents pay an entrance fee plus monthly fees and can move from independent living to assisted living (if available) to the nursing home, based on their needs. A CCRC typically provides shelter and nursing care or personal services¹⁸ to residents in a facility upon the payment of an entrance fee.¹⁹ In addition to the entrance fee, a CCRC generally charges residents monthly fees to cover costs related to health care and other aspects of community living.²⁰ As of January 2016, there are 73 licensed CCRCs in Florida.²¹

Oversight responsibility of CCRCs is shared between the AHCA and the Office of Insurance Regulation (OIR). The AHCA licenses the nursing home and ALFs that are part of a CCRC. The OIR regulates the CCRC contracts.²² The OIR is responsible for authorizing and monitoring the operations of facilities and determining the facilities' financial status and management capability.²³ If a continuing care provider is accredited through a process substantially equivalent to the requirements of ch. 651, F.S., the OIR may waive the requirements of that chapter.²⁴ Currently, CCRCs must be accredited by the National Continuing Care Accreditation Commission in order to obtain a waiver of examination and reporting requirements.²⁵

Assisted Living Facilities

An ALF is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.²⁶ A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-

¹⁶ Senior Living.org, *Continuing Care Retirement Communities*, (Aug. 11, 2011), available at: <http://www.seniorliving.org/lifestyles/ccrc/> (last visited Jan. 12, 2015).

¹⁷ *Infra* note 22.

¹⁸ CCRCs can provide residents with assisted living, memory support care, dining options, housekeeping, security, transportation, social and recreational activities, and wellness and fitness programs. See Jane E. Zarem, Editor, *Today's Continuing Care Retirement Community*, CCRC Task Force, p. 10, (July 2010), available at: http://www.leadingage.org/uploadedFiles/Content/Consumers/Paying_for_Aging_Services/CCRCcharacteristics_7_2011.pdf (last visited Jan. 12, 2015).

¹⁹ Section 651.011(2), F.S.

²⁰ American Association of Retired Persons, *About Continuing Care Retirement Communities*, available at: http://www.aarp.org/relationships/caregiving-resource-center/info-09-2010/ho_continuing_care_retirement_communities.html (last visited Jan. 12, 2015).

²¹ Office of Insurance Regulation, *Active Company Search, company type: Continuing Care Retirement Community (CCRC)*, (as of Jan. 15, 2016), available at: <http://www.floir.com/CompanySearch/> (last visited Jan. 17, 2016).

²² Florida Agency for Health Care Administration, Resources, Long-Term Care Providers Information, available at: <http://www.floridahealthfinder.gov/seniors/long-term-care.aspx> (last visited Jan. 11, 2015).

²³ See ss. 651.021 and 651.023, F.S.

²⁴ Section 651.028, F.S.

²⁵ Rule 69O-193.055, F.A.C.

²⁶ Section 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.

administration of medication.²⁷ Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.²⁸

An ALF must have a standard license issued by the AHCA under part I of ch. 429, F.S., and part II of ch. 408, F.S.²⁹ In addition to a standard license, an ALF may have one or more specialty licenses that allow the ALF to provide additional care. These specialty licenses include limited nursing services,³⁰ limited mental health services,³¹ and extended congregate care services.³²

Currently, there are 3,078 licensed ALF's in Florida.³³

Senior Independent Living Communities

Senior independent living communities are communities in which healthy seniors can live on their own but that do not offer assisted living or nursing services. Independent living communities can offer amenities such as transportation, security, yard maintenance, laundry service, group meals, and social and cultural activities.³⁴ Currently, there are over 200 senior independent living communities in Florida.³⁵

III. Effect of Proposed Changes:

The bill amends s. 400.235, F.S., to allow a nursing home that applies for the Nursing Home Gold Seal Program to demonstrate that its corporate entity as a whole meets the financial soundness and stability requirements for the program, rather than the nursing home on its own, if the nursing home is part of a:

- Continuing care retirement community that is not accredited; or
- A multifacility corporate entity that operates a combination of nursing homes, assisted living facilities, or independent living facilities.

The bill requires a nursing home that is part of a multifacility corporate entity to also submit a consolidated corporate financial statement to satisfy the financial soundness and stability requirement.

The bill is effective upon becoming law.

²⁷ Section 429.02(17), F.S.

²⁸ Section 429.02(1), F.S.

²⁹ Section 429.07(2), F.S. See also *Supra* note 22.

³⁰ Section 429.07(3)(c), F.S.

³¹ Section 429.075, F.S.

³² Section 429.07(3)(b), F.S.

³³ Agency for Health Care Administration, Florida Health Finder Search, facility/provider type: Assisted Living Facility and advanced search: Gold Seal Award Recipient, (search conducted Jan. 17, 2016), *available at*: <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (last visited Jan. 17, 2016).

³⁴ Senior Living.org, *Selecting an Independent Living Community*, (Feb. 14, 2011), *available at*: <http://www.seniorliving.org/lifestyles/independent-living-communities/> (last visited Dec. 22, 2015).

³⁵ According to the senior living search website, aPlaceforMom, *Independent Living in Florida*, *available at*: <http://www.aplaceformom.com/independent-living/florida> (last visited Nov. 20, 2015).

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 may have a positive fiscal impact on CCRCs that are not accredited and that have a nursing home component as well as corporate entities that operate multiple housing arrangements that wish to apply for the Nursing Home Gold Seal Program.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/SB 542 refers to multifacility corporate entities that operate a combination of nursing homes, assisted living facilities, or independent living facilities. Since both nursing homes and assisted living facilities are licensed by the state, using the term “independent living facility” may cause some confusion as independent living facilities are not licensed entities and the term is not defined. Additionally, the term independent living services has a separate meaning in ch. 413, F.S., related to services provided for people with severe disabilities.³⁶ It may be advisable to use a more specific term, such as senior independent living community or facility for independent living, or to describe the living arrangements intended to be covered in the bill in order to avoid any confusion.

³⁶ Section 413.20(12), F.S.

VIII. Statutes Affected:

The bill substantially amends section 400.235 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 Health Policy on November 17, 2015:

The CS allows a nursing home applicant for the Nursing Home Gold Seal Program that is part of a multifacility corporate entity to submit a consolidated corporate financial statement to demonstrate financial soundness and stability rather than demonstrating that the nursing home meets those requirements separately.

- B. **Amendments:**

None.

By the Committee on Health Policy; and Senator Stargel

588-01307-16

2016542c1

1 A bill to be entitled
2 An act relating to continuing care facilities;
3 amending s. 400.235, F.S.; providing financial
4 requirements for certain nursing homes to be
5 recognized as a Gold Seal Program facility; providing
6 an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Paragraph (b) of subsection (5) of section
11 400.235, Florida Statutes, is amended to read:

12 400.235 Nursing home quality and licensure status; Gold
13 Seal Program.—

14 (5) Facilities must meet the following additional criteria
15 for recognition as a Gold Seal Program facility:

16 (b) Evidence financial soundness and stability according to
17 standards adopted by the agency in administrative rule. Such
18 standards must include, but not be limited to, criteria for the
19 use of financial statements that are prepared in accordance with
20 generally accepted accounting principles and that are reviewed
21 or audited by certified public accountants.

22 1. A nursing home that is part of the same corporate entity
23 as a continuing care facility licensed under chapter 651 which
24 meets the minimum liquid reserve requirements specified in s.
25 651.035 satisfies the financial soundness and stability
26 requirement if such continuing care facility ~~and~~ is accredited
27 by a recognized accrediting organization under s. 651.028 and
28 rules of the Office of Insurance Regulation, ~~satisfies this~~
29 requirement as long as the accreditation is not provisional; or

Page 1 of 2

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

588-01307-16

2016542c1

30 if such continuing care facility demonstrates that it meets in
31 its entirety the financial standards adopted by the agency.

32 2. A nursing home that is part of a multifacility corporate
33 entity operating nursing homes, assisted living facilities, or
34 independent living facilities or a combination thereof satisfies
35 the financial soundness and stability requirement if the nursing
36 home submits a consolidated corporate financial statement to the
37 agency and demonstrates that the multifacility corporate entity
38 in its entirety meets the financial standards adopted by the
39 agency.

40
41 For purposes of this paragraph, facilities operated by a federal
42 or state agency are deemed to be financially stable for purposes
43 of applying for the Gold Seal.

44
45 A facility assigned a conditional licensure status may not
46 qualify for consideration for the Gold Seal Program until after
47 it has operated for 30 months with no class I or class II
48 deficiencies and has completed a regularly scheduled relicensure
49 survey.

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

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic
Security
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

December 16, 2015

The Honorable Anitere Flores
Senate Fiscal Policy Committee, Chair
413 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Flores:

I respectfully request that SB 542, related to *Continuing Care Facilities*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: Jennifer Hrdlicka/ Staff Director
Tamra Lyon/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
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)

1/20/16
Meeting Date

542
Bill Number (if applicable)

Topic Continuing Care Communities

Amendment Barcode (if applicable)

Name Melody Arnold

Job Title Govt Affairs Mgr

Address 307 West Park Ave

Phone (850) 224-3907

TUH FL 32301
City State Zip

Email marnold@phee.com

Speaking: For Against Information

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

Representing FL 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/20/16
Meeting Date

CS/SB 542
Bill Number (if applicable)

Topic Continuing Care Facilities

Amendment Barcode (if applicable)

Name Susan Langston

Job Title Vice President of Advocacy

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Tallahassee

City

FL

State

32308

Zip

Email slangston@leadingageflorida.org

Speaking: For Against Information

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

Representing Leading Age 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.

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 Fiscal Policy

BILL: CS/CS/CS/SB 590

INTRODUCER: Fiscal Policy Committee; Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senators Detert and Gaetz

SUBJECT: Adoption

DATE: January 21, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 590 revises the circumstances under which an adoption consent is valid, binding and enforceable; amends the factors a court must consider in determining whether the best interests of the child are served by transferring custody to a prospective adoptive parent chosen by the parent or adoptive entity; authorizes the court to establish reasonable timelines for the transfer of custody; requires the court to provide written notice to a parent of his or her right to participate in a private adoption plan earlier in the process than currently required by law; and amends the definitions of “abandonment” and “parent” under ch. 39, F.S.

According to the Department of Children and Families, the bill is not expected to impact state funds. However, according to the Office of State Courts Administrator the bill is expected to have an indeterminate negative impact on judicial workloads.

II. Present Situation:

The Department of Children and Families and Dependency

Chapter 39, F.S., governs child protection for the state. Chapter 63, F.S., addresses adoption. The Department of Children and Families (DCF) investigates all allegations of abuse, neglect, and

abandonment.¹ The DCF may file a petition with the circuit court to place the child in shelter and enter an adjudication that the child is dependent.²

A child who is dependent is a child found by the court:

- To have been abandoned, abused, or neglected by the child’s parent or parents³ or legal custodians;
- To have been surrendered to the DCF, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency for purpose of adoption;
- To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the DCF, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of ch. 39, F.S., a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;
- 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;
- To have no parent or legal custodians capable of providing supervision and care;
- To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians; or
- 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.⁴

If the court adjudicates the child as dependent, the child is placed in the state’s care.⁵ When a child is placed in the state’s care the state “acts in the protective and provisional role of in loco parentis” or in place of the parent for the child.⁶

Dependency Proceedings

The purpose of dependency proceedings is for the court to determine if allegations of child abuse, abandonment, or neglect stated in a petition filed by the DCF or other interested person are true.⁷ If the court finds the allegations to be true, the court will direct a course of action to protect a child. A course of action is provided through a written case plan, which may include

¹ Section 39.01(1), F.S. defines “abandoned” or “abandonment” as a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

² Section 39.301, F.S.

³ Section 39.01(49). F.S. defines “parent” as a woman who gives birth to a child and a man whose consent to the adoption of the child would be required under s. [63.062](#)(1), F.S. If a child has been legally adopted, the term “parent” means the adoptive mother or father of the child. The term does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless the parental status falls within the terms of s. [39.503](#)(1) or s. [63.062](#)(1), F.S.

⁴ Section 39.01(15), F.S.

⁵ Section 39.501(1) and (2), F.S.

⁶ *Buckner v. Family Services of Central Florida, Inc.*, 876 So. 2d 1285, 1288 (Fla. 5th DCA 2004).

⁷ Section 39.501(1) and (2), F.S.

requiring a parent, legal guardian, or a child into treatment and services, dependency mediation, and placement of a child in protective supervision.⁸

Dependency Proceeding	Description of Process	Controlling Statute
Removal	<p>If probable cause exists such as, abuse, neglect or abandonment, a child may be taken into custody by law enforcement and placed under the custody of the DCF.</p> <p>A child may be detained by medical or hospital personnel if returning the child to the parent or caregiver presents an imminent danger to the child.</p>	<p>s. 39.401, F.S.</p> <p>s. 39.395, F.S.</p>
Shelter Hearing	<p>A shelter hearing must occur within 24 hours of a child’s removal to determine if probable cause exists to continue to keep the child in shelter⁹ care.</p>	<p>s. 39.401, F.S.</p>
Petition for Dependency¹⁰	<p>A petition for dependency states the allegations that brought the case before the court and is required to be filed within 21 days of the shelter hearing. The purpose of a petition seeking the adjudication of a child as a dependent child is the protection of the child and not the punishment of the person creating the condition of dependency.</p>	<p>s. 39.501, F.S.</p>
Arraignment Hearing and Shelter Review	<p>Within 28 days after the shelter hearing, the court must hold an arraignment hearing to allow the parent to admit, deny, or consent to the allegations within the petition for dependency and to allow the court to review the necessity for the child’s continued shelter placement.</p> <ul style="list-style-type: none"> • If the parent or legal custodian denies any of the allegations of the petition for dependency, the court shall hold an <i>adjudicatory hearing</i> within 30 days after the date of the arraignment hearing. • If the parent or legal custodian admits or consents to the findings in the petition for dependency, the court shall conduct a <i>disposition hearing</i> within 15 days after the arraignment hearing. 	<p>s. 39.506, F.S.</p>
Adjudicatory Hearing¹¹	<p>An adjudicatory hearing is held within 30 days of arraignment. It is a hearing for the court to determine whether or not the facts support the allegations stated in the petition for dependency cases or in termination of parental rights cases. The judge determines whether child is dependent during this hearing.</p>	<p>s. 39.507, F.S.</p>

⁸ Section 39.521(1)(b), F.S.

⁹ Section 39.01(70), F.S., defines “shelter” as a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication.

¹⁰ Section 39.501, F.S., requires the petition to specifically set forth the acts or omissions upon which the petition is based and the identity of the person or persons alleged to have committed the acts or omissions, if known.

¹¹ Section 39.01(4), F.S.

Dependency Proceeding	Description of Process	Controlling Statute
	If the court finds that the allegations have not been proven, the child is not dependent and the case may be dismissed. If the court finds the child dependent the court must schedule a disposition hearing within 30 days.	
Disposition Hearing¹²	<p>The court will hold a disposition hearing to determine the most appropriate protections, services, and placement for the child in dependency cases if:</p> <ul style="list-style-type: none"> • The court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing; • The parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition; or • The parents or legal custodians have failed to appear for the arraignment hearing after proper notice or have not been located despite a diligent search. <p>After a disposition hearing the court may hold a post-disposition hearing¹³ to change the temporary legal custody or conditions of protective supervision.¹⁴</p>	ss. 39.506 and 39.521, F.S.
Judicial Review Hearings	The court must review the status and placement of the child every 6 months, or upon motion of a party.	s. 39.701, F.S.
Petition for Termination of Parental Rights (TPR)	Once the child has been out of home for 12 months, if the DCF determines that reunification is no longer a viable goal, termination of parental rights is in the best interest of the child, and other requirements are met, then a petition for termination of parental rights is filed by the DCF. A termination of parental rights permanently deprives the parents of any rights to the child. ¹⁵	ss. 39.801 – 39.815, F.S.
Advisory Hearing	An advisory hearing on the petition to terminate parental rights must be held as soon as possible after all parties have been served a copy of the petition. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for termination of parental rights.	s. 39.808, F.S.
Adjudicatory Trial	An adjudicatory trial must be set within 45 days after the advisory hearing. The judge determines whether to terminate parental rights to the child at this trial.	s. 39.809, F.S.

¹² Section 39.01(25), F.S.

¹³ Section 39.522, F.S.

¹⁴ Section 39.01(64), F.S., defines “protective supervision” as a legal status in dependency cases which permits the child to remain safely in his or her own home or other nonlicensed placement under the supervision of an agent of the DCF and which must be reviewed by the court during the period of supervision.

¹⁵ Section 39.811(5), F.S.

Adoption

After termination of parental rights, the court retains jurisdiction over a child for whom custody is given to a social service agency until the child is adopted.¹⁶ If the DCF is given custody of a child for a subsequent adoption under ch. 39, F.S., the DCF may place the child with a licensed adoption agency, a registered child-caring agency, or a family home for prospective adoption.¹⁷ Prospective adoptive parents may not file a petition for adoption until the court has entered a judgment terminating parental rights.

However, in instances in which a child is adjudicated dependent but parental rights have not yet been terminated, s. 63.082, F.S., allows a parent to execute a consent to place the child with an adoption entity or qualified adoptive parents. The court considers consent given in these circumstances to be valid, binding, and enforceable. Upon execution of the consent of the parent:

- The adoption entity may intervene in the dependency case.
- The adoption entity must provide the court with a copy of the preliminary home study of the prospective adoptive parents and other evidence of the suitability of the placement.¹⁸
- The dependency court will hold a hearing to review documents in support of intervention and determine whether a change in placement is appropriate.
- Upon a determination by the court that the prospective adoptive parents are properly qualified to adopt the child and that the adoption appears to be in the best interests of the child, the court must immediately order the transfer of custody of the child to the prospective adoptive parents, under the supervision of the adoption entity.
- The court determines the best interest of the child are served by transferring custody to the prospective adoptive parents by considering:
 - The rights of the parent to determine an appropriate placement for the child;
 - The permanency offered;
 - The child's bonding with any potential adoptive home that the child has been residing in; and
 - The importance of maintaining sibling relationships, if any.
- The adoption entity is responsible for keeping the dependency court informed of the status of the adoption proceedings every 90 days from the date of the order changing placement of the child until the date of finalization of the adoption.
- In all dependency proceedings, after it is determined that reunification is not a viable alternative and prior to the filing of a petition for termination of parental rights, the court must advise the biological parent who is a party to the case of the right to participate in a private adoption plan.¹⁹

Parental Rights to Select a Prospective Adoptive Parent

In the case of *In re Adoption of K.A.G.*, 152 So. 3d 1271 (Fla. 5th DCA 2014),²⁰ the DCF instituted dependency proceedings and filed a shelter petition on behalf of a child whose father awaited trial for murdering the child's mother. The child was placed in the temporary custody of

¹⁶ Section 39.811(9)

¹⁷ Section 39.812(1), F.S.

¹⁸ Section 63.082(6)(b), F.S.

¹⁹ Section 63.082(6), F.S.

²⁰ *In re Adoption of K.A.G.*, 152 So. 3d 1271 (Fla. 5th DCA 2014).

his maternal aunt and her fiancé. After the DCF petitioned to involuntarily terminate parental rights, the paternal grandmother petitioned to terminate the father's parental rights and adopt the child. The father had given written consent to terminate parental rights and for the grandmother to adopt the child.²¹

The trial court ruled that the father's consent to terminate parental rights was conditional on allowing the grandmother to adopt the child. Therefore, the Aunt did not have the required consent to proceed with her petition for adoption.²² The appeals court agreed with the trial court that the father's consent was properly conditional.²³ The court held that under these circumstances, the court must analyze the best interest of the child through whether "the birth parent's choice of prospective adoptive parents is appropriate and protects the well-being of the child; not that it is the best choice as evaluated by the court or the Department in light of other alternatives."²⁴

Due Process Protections for Parents

A parent who is a party in a dependency action is entitled to due process safeguards. A parent must receive notice of all proceedings or hearings involving the child. Notice of shelter hearings or hearings resulting from medical emergencies must approximate actual notice. Notice by summons is required for other hearings or proceedings before the dependency court.²⁵

During a dependency proceeding, a court may decide that a child's reunification with his or her parent is not viable. In those circumstances, the adoption of the child would often be in the child's best interest. However, once reunification is no longer viable, but before the parent's parental rights are terminated, the court must provide written notice to the parent of his or her right to participate in a private adoption plan.

At each stage of dependency proceedings, parents have the right to counsel appointed by the court if the parents are indigent.²⁶

III. Effect of Proposed Changes:

The bill requires a court to determine whether a change in placement is in the best interest of the child, rather than appropriate. Specifically, the bill changes what a court must consider in determining whether the best interests of the child are served by transferring custody to a prospective adoptive parent chosen by the parent or adoptive entity. Under existing law, a court must consider "the rights of the parent to determine an appropriate placement for a child, the permanency offered, the child's bonding with any potential adoptive home that the child has been residing in, and the importance of maintaining sibling relationships."²⁷ The bill preserves as

²¹ *Id.* at 1272.

²² *Id.*

²³ *Id.* at 1276.

²⁴ *Id.* at 1276, n. 4.

²⁵ Section 39.502(1), F.S.

²⁶ Section 39.013(1) and (9)(a), F.S. In fact, the Florida Constitution requires greater due process than the federal constitutional provision, including the appointment of counsel in every case. *M.E.K. v. R.L.K.*, 921 So. 2d 787, 790 (Fla. 5th DCA 2006).

²⁷ Section 63.082(6)(e), F.S.

a factor the rights of the parent to determine the appropriate placement, the permanency offered, and the importance of maintaining sibling relationships. The bill also requires the court to consider the following additional factors:

- Established bonded relationship between the child and the current caregiver in any potential adoptive home in which the child has been residing;
- The stability of the potential adoptive home in which the child has been residing as well as the desirability of maintaining continuity of placement;
- Reasonable preferences and wishes of a child, provided that the child is sufficiently mature enough to express a preference;
- Whether a petition for termination of parental rights has been filed; and
- What is best for the child.

The bill attempts to expedite the final placement of a child in an adoptive home in two ways. First, the bill requires parents to be given notice of the right to participate in a private adoption plan at an earlier stage of the dependency proceedings. Current law requires parental notice to be given just prior to the filing of a petition for termination of parental rights. The bill requires the court to provide written notice to a parent earlier in the process, at the time of arraignment, in addition to other significant markers of the dependency process. Moving up the time of notice might expedite the permanent placement of a child.

Second, the bill imposes a timeline on the court for holding a final hearing on a motion to intervene and issuing a written final order. Under the bill, the court must hold the final hearing on the motion to intervene and the change of placement of the child within 30 days after the motion is filed. Additionally, the court must issue a written final order within 15 days after the hearing. The timeline may not apply if good cause or mutual agreement of the parties warrants otherwise.

Current law provides that a parent's consent to an adoption is valid for children who are *in the custody* of the DCF. This bill expressly expands the circumstances in which a parent may consent for the adoption of a child in dependency proceedings by allowing a parent to consent when a child is *under the supervision of the DCF, or otherwise subject to the jurisdiction of the dependency court*. Children whose cases are under DCF supervision include children who are in relative care.

Current law provides that if the court finds both that the prospective adoptive parents are qualified and that the adoption is in the best interests of the child, the court must order the immediate transfer of custody of the child to the prospective adoptive parents. The bill instead authorizes the court to establish a reasonable timeline to transition custody pending adoption. This provision provides the court flexibility in determining transfer on a case-by-case basis.

The bill amends the definition of "abandon" or "abandonment" to include that a man's acknowledgement of paternity of the child does not limit the period of time considered in determining whether the child was abandoned.

Current law provides that the term "parent" does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless the parental status falls within the terms of ss. 39.503(1) or 63.062(1), F.S. The bill amends the

definition of a parent to clarify that term also does not include an alleged or prospective parent, unless the parental status is applied for the purpose of determining whether the child has been abandoned.

The bill takes effect July 1, 2016.

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 United States Supreme Court has long recognized that even parents in dependency proceedings have not entirely lost their fundamental rights to parent, as guaranteed by the 14th Amendment of the U.S. Constitution. As stated in *Santosky v. Kramer*, 455 U.S. 745, 753 (1982), the “fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.”²⁸ Therefore, certain due process protections are required, including the burden of proof in a termination of parental rights case. A court must not enter an order terminating parental rights without a finding of clear and convincing evidence that termination is warranted.²⁹ Other due process rights include notice and appointment of counsel for indigent parents.³⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²⁸ *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

²⁹ *Id.* at 756, 769 (1982).

³⁰ *M.E.K. v. R.L.K.*, 921 So.2d 787, 790 (Fla. 5th DCA 2006).

C. Government Sector Impact:

Based on an analysis of the bill, the Office of the State Courts Administrator (OSCA) indicates that an impact on judicial or court workload may result from the bill. Current law recognizes as valid, binding, and enforceable adoption consent from a parent for a child who is in the custody of the DCF. This bill recognizes parental consent for adoption for children who are not just in the custody of the DCF, but also under the supervision of the DCF or otherwise under the jurisdiction of the dependency court. Expanding the pool of cases may increase the number of adoptions. However, OSCA reports that it cannot accurately determine the fiscal impact due to the unavailability of data needed to quantifiably establish any impact.³¹ OSCA further notes that the expedited timeframes to act on motions by an adoption entity may affect judicial workloads. However, any impact is unknown at this time.³²

The Department of Children and Families does not expect a fiscal impact from the bill.³³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 39.01 and 63.082 of the Florida Statutes.

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

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

CS/CS/CS by Fiscal Policy on January 20, 2016:

The committee substitute:

- Amends the definition of “abandoned” or “abandonment,” and “parent” under ch. 39, F.S.
- Amends the factors a court must consider in determining whether the best interests of the child are served by transferring custody to a prospective adoptive parent chosen by the parent or adoptive entity.

³¹ The Office of the State Courts Administrator, *2016 Judicial Impact Statement for CS/SB 590* (Dec. 21, 2015) (on file with the Senate Committee on Judiciary).

³² Email from Alexis Rojas, The Office of the State Courts Administrator (Jan. 12, 2016) (on file with the Senate Committee on Judiciary).

³³ The Department of Children and Families, *2016 Agency Legislative Bill Analysis for CS/SB 590* (Dec. 8, 2015)(on file with the Senate Committee on Judiciary).

CS/CS by Judiciary Committee on January 12, 2016:

- Expands conditions in which adoption consent by a parent is valid, binding, and enforceable by the court based on a child being under the jurisdiction of the dependency court;
- Provides a timeline for the court to hold a final hearing on a motion to intervene and issue a written final order in response to motions by an adoption entity;
- Redefines for purposes of transferring custody of a child to prospective adoption parents the standard of the best interests of the child by:
 - Restoring the rights of the parent as a factor of best interest, provided that it is based on the well-being of the child;
 - Adding as a factor the preferences of the child, if the child is sufficiently mature to express a preference; and
 - Increasing the amount of information a court may use to determine what is best for the child.
- Authorizes the court to establish reasonable requirements and timeframes for the transfer of final custody of a child to prospective adoptive parents pending adoption.
- Clarifies that the court must provide written notice to a parent of his or her right to participate at three different phases of dependency proceedings: at the arraignment hearing, in the order that approves the case plan, and in the order that changes the permanency goal to adoption.

CS by Children, Families, and Elder Affairs Committee on November 19, 2015:

- Allows a parent to execute a consent for placement of a minor that is under the supervision of the department with an adoption entity or qualified prospective adoptive parents and that the consent is valid, binding, and enforceable by the court.
- Revises the standard of review used by the court when making a determination of a change of placement of a child from the appropriateness of the placement to the best interests of the child.
- Ensures that the biological parent is provided written notice of his or her right to participate in a private adoption plan at the arraignment hearing held pursuant to s. 39.506, in the order approving the case plan pursuant to s. 39.603, or in the order that changes the permanency goal to adoption and terminates the parental rights pursuant to s. 39.621, F.S.

B. Amendments:

None.



LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Bradley) recommended the following:

Senate Amendment (with title amendment)

Before line 18

insert:

Section 1. Subsection (49) of section 39.01, Florida Statutes, is amended to read:

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

(49) "Parent" means a woman who gives birth to a child and a man whose consent to the adoption of the child would be



11 required under s. 63.062(1). If a child has been legally
 12 adopted, the term "parent" means the adoptive mother or father
 13 of the child. ~~The term does not include an individual whose~~
 14 ~~parental relationship to the child has been legally terminated,~~
 15 ~~or an alleged or prospective parent, unless the parental status~~
 16 ~~falls within the terms of s. 39.503(1) or s. 63.062(1).~~ For
 17 purposes of this chapter only, when the phrase "parent or legal
 18 custodian" is used, it refers to rights or responsibilities of
 19 the parent and, only if there is no living parent with intact
 20 parental rights, to the rights or responsibilities of the legal
 21 custodian who has assumed the role of the parent. A man's
 22 acknowledgement of paternity of the child does not limit the
 23 period of time considered in determining whether the child was
 24 abandoned within the meaning of subsection (1). The term does
 25 not include an individual whose parental relationship to the
 26 child has been legally terminated, or an alleged or prospective
 27 parent, unless:

(a) The parental status falls within the terms of s. 39.503(1) or s. 63.062(1); or

(b) Parental status is applied for the purpose of determining whether the child has been abandoned.

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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to adoption; amending s. 39.01, F.S.;
redefining the term "parent"; amending s. 63.082,
F.S.;



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Bradley) recommended the following:

Senate Amendment (with title amendment)

Before line 18

insert:

Section 1. Subsections (1) and (49) of section 39.01, Florida Statutes, are amended to read:

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

(1) "Abandoned" or "abandonment" means a situation in which the parent or legal custodian of a child or, in the absence of a



11 parent or legal custodian, the caregiver, while being able, has
12 made no significant contribution to the child's care and
13 maintenance or has failed to establish or maintain a substantial
14 and positive relationship with the child, or both. For purposes
15 of this subsection, "establish or maintain a substantial and
16 positive relationship" includes, but is not limited to, frequent
17 and regular contact with the child through frequent and regular
18 visitation or frequent and regular communication to or with the
19 child, and the exercise of parental rights and responsibilities.
20 Marginal efforts and incidental or token visits or
21 communications are not sufficient to establish or maintain a
22 substantial and positive relationship with a child. A man's
23 acknowledgement of paternity of the child does not limit the
24 period of time considered in determining whether the child was
25 abandoned. The term does not include a surrendered newborn
26 infant as described in s. 383.50, a "child in need of services"
27 as defined in chapter 984, or a "family in need of services" as
28 defined in chapter 984. The incarceration, repeated
29 incarceration, or extended incarceration of a parent, legal
30 custodian, or caregiver responsible for a child's welfare may
31 support a finding of abandonment.

32 (49) "Parent" means a woman who gives birth to a child and
33 a man whose consent to the adoption of the child would be
34 required under s. 63.062(1). If a child has been legally
35 adopted, the term "parent" means the adoptive mother or father
36 of the child. ~~The term does not include an individual whose~~
37 ~~parental relationship to the child has been legally terminated,~~
38 ~~or an alleged or prospective parent, unless the parental status~~
39 ~~falls within the terms of s. 39.503(1) or s. 63.062(1).~~ For



40 purposes of this chapter only, when the phrase "parent or legal
41 custodian" is used, it refers to rights or responsibilities of
42 the parent and, only if there is no living parent with intact
43 parental rights, to the rights or responsibilities of the legal
44 custodian who has assumed the role of the parent. The term does
45 not include an individual whose parental relationship to the
46 child has been legally terminated, or an alleged or prospective
47 parent, unless:

48 (a) The parental status falls within the terms of s.
49 39.503(1) or s. 63.062(1); or

50 (b) Parental status is applied for the purpose of
51 determining whether the child has been abandoned.

52
53 ===== T I T L E A M E N D M E N T =====

54 And the title is amended as follows:

55 Delete line 2

56 and insert:

57 An act relating to adoption; amending s. 39.01, F.S.;
58 redefining the terms "abandoned" or "abandonment" and
59 "parent"; amending s. 63.082, F.S.;



LEGISLATIVE ACTION

Senate		House
Comm: RCS	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Bradley) recommended the following:

1 **Senate Amendment**

2

3 Delete lines 85 - 99

4 and insert:

5 entity, the court shall consider and weigh all relevant factors,
6 including, but not limited to: the rights of the parent to
7 determine an appropriate placement for the child,

8 1. The permanency offered;

9 2. The established bonded relationship between the child

10 and the current caregiver in child's bonding with any potential



674738

11 adoptive home in which ~~that~~ the child has been residing; ~~in,~~
12 3. The stability of the potential adoptive home in which
13 the child has been residing as well as the desirability of
14 maintaining continuity of placement; ~~and~~
15 4. The importance of maintaining sibling relationships, if
16 possible;
17 5. The reasonable preferences and wishes of the child, if
18 the court deems the child to be of sufficient maturity,
19 understanding, and experience to express a preference;
20 6. Whether a petition for termination of parental rights
21 has been filed pursuant to s. 39.806(1)(f), (g), or (h);
22 7. What is best for the child; and
23 8. The right of the parent to determine an appropriate
24 placement for the child.

By the Committees on Judiciary; and Children, Families, and Elder Affairs; and Senators Detert and Gaetz

590-02068-16

2016590c2

A bill to be entitled

An act relating to adoption; amending s. 63.082, F.S.; revising the circumstances under which an adoption consent is valid, binding, and enforceable; requiring a court to determine, under certain circumstances, whether a change of placement of a child is in the child's best interests, rather than whether the change of placement is appropriate; deleting a determination that a court must consider under certain circumstances; authorizing the court to establish certain requirements for the transfer of custody; revising circumstances under which a court must provide written notice to a parent of specified information; providing an effective date.

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

Section 1. Subsection (6) of section 63.082, Florida Statutes, is amended to read:

63.082 Execution of consent to adoption or affidavit of nonpaternity; family social and medical history; revocation of consent.—

(6) (a) If a parent executes a consent for placement of a minor with an adoption entity or qualified prospective adoptive parents and the minor child is under the supervision in the custody of the department, or otherwise subject to the jurisdiction of the dependency court as a result of the entry of a shelter order petition, a dependency petition, or a petition for termination of parental rights pursuant to chapter 39, but parental rights have not yet been terminated, the adoption consent is valid, binding, and enforceable by the court.

Page 1 of 4

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

590-02068-16

2016590c2

(b) Upon execution of the consent of the parent, the adoption entity shall be permitted to intervene in the dependency case as a party in interest and must provide the court that acquired jurisdiction over the minor, pursuant to the shelter or dependency petition filed by the department, a copy of the preliminary home study of the prospective adoptive parents and any other evidence of the suitability of the placement. The preliminary home study must be maintained with strictest confidentiality within the dependency court file and the department's file. A preliminary home study must be provided to the court in all cases in which an adoption entity has intervened pursuant to this section. Unless the court has concerns regarding the qualifications of the home study provider, or concerns that the home study may not be adequate to determine the best interests of the child, the home study provided by the adoption entity shall be deemed to be sufficient and no additional home study needs to be performed by the department.

(c) If an adoption entity files a motion to intervene in the dependency case in accordance with this chapter, the dependency court shall promptly grant a hearing to determine whether the adoption entity has filed the required documents to be permitted to intervene and whether a change of placement of the child is in the best interests of the child appropriate. Absent good cause or mutual agreement of the parties, the final hearing on the motion to intervene and the change of placement of the child must be held within 30 days after the filing of the motion and a written final order shall be filed within 15 days after the hearing.

Page 2 of 4

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

590-02068-16

2016590c2

61 (d) If after consideration of all relevant factors,
 62 including those set forth in paragraph (e), the court determines
 63 ~~Upon a determination by the court~~ that the prospective adoptive
 64 parents are properly qualified to adopt the minor child and that
 65 the adoption ~~is appears to be~~ in the best interests of the minor
 66 child, the court shall ~~promptly immediately~~ order the transfer
 67 of custody of the minor child to the prospective adoptive
 68 parents, under the supervision of the adoption entity. The court
 69 may establish reasonable requirements for the transfer of
 70 custody in the transfer order, including a reasonable period of
 71 time to transition final custody to the prospective adoptive
 72 parents. The adoption entity shall thereafter provide monthly
 73 supervision reports to the department until finalization of the
 74 adoption. If the child has been determined to be dependent by
 75 the court, the department shall provide information to the
 76 prospective adoptive parents at the time they receive placement
 77 of the dependent child regarding approved parent training
 78 classes available within the community. The department shall
 79 file with the court an acknowledgment of the parent's receipt of
 80 the information regarding approved parent training classes
 81 available within the community.

82 (e) In determining whether the best interests of the child
 83 are served by transferring the custody of the minor child to the
 84 prospective adoptive parent selected by the parent or adoption
 85 entity, the court shall consider all relevant factors,
 86 including, but not limited to, the rights of the parent based on
 87 the well-being of ~~to determine an appropriate placement for~~ the
 88 child, the permanency offered, the established bonded
 89 relationship of the child and the current caregiver in child's

Page 3 of 4

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

590-02068-16

2016590c2

90 ~~bonding with~~ any potential adoptive home in which ~~that~~ the child
 91 has been residing ~~in,~~ the stability of the home in which the
 92 child has been residing as well as the desirability of
 93 maintaining continuity of placement, ~~and~~ the importance of
 94 maintaining sibling relationships, if possible, the reasonable
 95 preferences and wishes of the child, if the court deems the
 96 child to be of sufficient maturity, understanding, and
 97 experience to express a preference, whether a petition for
 98 termination of parental rights has been filed pursuant to s.
 99 39.806(1)(f), (g), or (h), and what is best for the child.

100 (f) The adoption entity shall be responsible for keeping
 101 the dependency court informed of the status of the adoption
 102 proceedings at least every 90 days from the date of the order
 103 changing placement of the child until the date of finalization
 104 of the adoption.

105 (g) At the arraignment hearing held pursuant to s. 39.506,
 106 in the order that approves the case plan pursuant to s. 39.603,
 107 and in the order that changes the permanency goal to adoption
 108 pursuant to s. 39.621 ~~In all dependency proceedings, after it is~~
 109 ~~determined that reunification is not a viable alternative and~~
 110 ~~prior to the filing of a petition for termination of parental~~
 111 ~~rights,~~ the court shall provide written notice to advise the
 112 biological parent who is a party to the case of his or her ~~the~~
 113 right to participate in a private adoption plan including
 114 written notice of the factors provided in paragraph (e).

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

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: January 14, 2016

I respectfully request that **Senate Bill #590**, relating to Adoptions, be placed on the:

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

A handwritten signature in cursive script, reading "Nancy C. Detert".

Senator Nancy C. Detert
Florida Senate, District 28

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-20-16

Meeting Date

590

Bill Number (if applicable)

Topic Adoption Intervention

Amendment Barcode (if applicable)

Name Thomas Croom, Ph.D

Job Title President/CEO

Address 113 S. Monroe St
Street

Phone _____

Tallahassee FL 32301
City State Zip

Email tcroom@gofoster.org

Speaking: For Against Information

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

Representing Go Foster!

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-20-16
Meeting Date

590
Bill Number (if applicable)

Topic Adoption Intervention

Amendment Barcode (if applicable)

Name Thomas Croom, PhD

Job Title Board Member

Address _____
Street

Phone _____

City

State

Zip

Email thomas.m.croom@qma.org

Speaking: For Against Information

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

Representing FL State Foster Adoptive Parent Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1/20/16
Meeting Date

SB 590
Bill Number (if applicable)

Topic Adoption Intervention

Amendment Barcode (if applicable)

Name Heather Rosenberg

Job Title President

Address 22 Shoemaker Ct

Phone 850-322-5425

Crawfordville FL 32327

Email hlegir174@gmail.com

City State Zip

Speaking: For Against Information

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

Representing Tallahassee Area Foster + Adoptive Parent 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/20/16
Meeting Date

CS/KS/SB 590
Bill Number (if applicable)

Topic Adoption

Amendment Barcode (if applicable)

Name ALAN ABRAMOWITZ

Job Title Executive Director

Address 600 S. CALHOUN

Phone 850 241-5252

Street

City

Tallah

FL

State

32311

Zip

Email ALAN.ABRAMOWITZ@gal.M.gov

Speaking: For Against Information

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

Representing GUARDIAN AD LITEM Program

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/20/16

Meeting Date

590

Bill Number (if applicable)

Topic Adoption

Amendment Barcode (if applicable)

Name Victoria Zapp

Job Title Exec Dir, Governmental Affairs

Address 411 E. Colley Ave

Phone

Street

City

State

32301

Zip

Email Victoria@fchildren.org

Speaking: For Against Information

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

Representing FL Coalition for Children

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-20-16

Meeting Date

590

Bill Number (if applicable)

Topic Adoption

Amendment Barcode (if applicable)

Name Nelson Diaz

Job Title _____

Address 999 Ponce de Leon Blvd, ste 1105 Phone 3/421-6233

Coral Gables FL 33134 Email _____

City State Zip

Speaking: For Against Information

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

Representing Family Law Section / FL 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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/20/14

Meeting Date

590

Bill Number (if applicable)

Topic Adoption

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr.

Phone _____

Street

Largo

City

Fla.

State

33773

Zip

Email SavingFamilies7@Gmail.com

Speaking: For Against Information

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

Representing Saving 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.

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 Fiscal Policy

BILL: PCS/SB 7000 (697286)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development) and Community Affairs Committee

SUBJECT: Developments of Regional Impact

DATE: January 19, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Stearns</u>	<u>Yeatman</u>		CA Submitted as Committee Bill
1.	<u>Gusky</u>	<u>Miller</u>	<u>ATD</u>	Recommend: Fav/CS
2.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 7000 clarifies that certain proposed developments which are currently consistent with the local government comprehensive plan are not required to be reviewed pursuant to the State Coordinated Review Process for comprehensive plan amendments.

To the extent that developments are not subject to the State Coordinated Review Process, the regulatory compliance costs for those developments would be reduced for both the private sector and for local and state governments. The fiscal impact to the private sector is indeterminate, but expected to be positive; for local and state governments, the bill has an indeterminate, but expected to be insignificant, positive fiscal impact.

The bill is effective July 1, 2016.

II. Present Situation:

A development of regional impact (DRI) is defined in s. 380.06, F.S., as “any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.” The DRI program was initially created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting programs. The DRI program provided a lengthy and complicated review process for

proposed projects that was largely duplicated by the successor comprehensive planning review process.

Comprehensive planning was first required by law in 1975. However, the Growth Management Act of 1985 is considered the watershed law that brought truly modern planning requirements into force. In recognition of this fact, the Environmental Land Management Study Committee in 1992 recommended that the DRI program be eliminated and relegated to an enhanced version of the Intergovernmental Coordination Element (ICE) that is required to be included in local comprehensive plans.¹ After much controversy, this recommendation was not implemented, and the DRI program continued in its previous form.

However, over the years, the program was amended to include a number of exemptions. The following list of exemptions is not exhaustive, but illustrates the number and variety of the exemptions from the DRI program that have been enacted:

- Certain projects that created at least 100 jobs that met certain qualifications – 1997.
- Certain expansions to port harbors, certain port transportation facilities, and certain intermodal transportation facilities – 1999.
- The thresholds used to identify projects subject to the program were increased by 150 percent for development in areas designated as rural areas of critical economic concern (now known as rural areas of opportunity) – 2001.
- Certain proposed facilities for the storage of any petroleum product or certain expansions of existing petroleum product storage facilities – 2002.
- Any renovation or redevelopment within the same land parcel which does not change land use or increase density or intensity of use – 2002.
- Certain waterport or marina developments – 2002.
- The establishment, relocation, or expansion of any military installation as defined in s. 163.3175, F.S. – 2005.

In 2009, the Legislature enacted the most significant exemption from the DRI program: the exemption for Dense Urban Land Areas (DULAs).² In 2015, eight counties and 243 cities qualified as DULAs. This meant that all projects within those counties and cities were exempted from the DRI program. The areas qualifying as DULAs accounted for more than half of Florida's population.³

Comprehensive Plans and the Comprehensive Plan Amendment Process

The Growth Management Act of 1985 required every city and county to create and implement a comprehensive plan to guide future development.⁴ A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods,

¹ See Richard G. Rubino and Earl M. Starnes, *Lessons Learned? The History of Planning in Florida*. Tallahassee, FL: Sentry Press, 2008. ISBN 978-1-889574-31-8.

² Chapter 2009-96, L.O.F.

³ Department of Economic Opportunity, Community Planning, Development, and Services, Community Planning, *Community Planning Table of Content: List of Local Governments Qualifying as Dense Urban Land Areas*, (June 11, 2015), available at <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/list-of-local-governments-qualifying-as-dense-urban-land-areas> (last visited January 15, 2016).

⁴ Chapter 1985-55, L.O.F.

parks, schools, and commercial and industrial developments. Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first.

State law requires a proposed comprehensive plan amendment to receive three public hearings, the first held by the local planning board.⁵ The local commission (city or county) must then hold an initial public hearing regarding the proposed amendment and subsequently transmit it to several statutorily identified reviewing agencies, including the Department of Economic Opportunity (DEO), the relevant Regional Planning Council (RPC), and adjacent local governments that request to participate in the review process.⁶

The state and regional agencies review the proposed amendment for impacts related to their statutory purview. The RPC reviews the amendment specifically for “extrajurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region” as well as adverse effects on regional resources or facilities.⁷ Upon receipt of the reports from the various agencies, the local government holds a second public hearing at which the governing body votes to approve the amendment or not. If the amendment receives a favorable vote it is transmitted to the DEO for final review.⁸ The DEO then has either 31 days or 45 days (depending on the review process to which the amendment is subject) to determine whether the proposed comprehensive plan amendment is in compliance with all relevant agency rules and laws.⁹

The Expedited State Review Process vs. the State Coordinated Review Process

In 2011, the Florida Legislature bifurcated the process for approving comprehensive plan amendments.¹⁰ Most plan amendments were placed into the Expedited State Review Process, while plan amendments related to large-scale developments were placed into the State Coordinated Review Process. The two processes operate in much the same way, however, the State Coordinated Review Process provides a longer review period and requires all agency comments to be coordinated by the DEO, rather than communicated directly to the permitting local government by each individual reviewing agency.

2015 Changes to the DRI Law

In 2015, the Florida Legislature eliminated the requirement that new developments be reviewed pursuant to the DRI process. Instead, the Legislature directed that proposed developments only need to comply with the requirements of the State Coordinated Review Process.¹¹

⁵ Section 163.3174(4)(a), F.S.

⁶ Section 163.3184, F.S.

⁷ Section 163.3184(3)(b)3.a., F.S.

⁸ Section 163.3184(3)(c) and (4)(e), F.S.

⁹ *Id.*

¹⁰ Chapter 2011-14, L.O.F. *See* s. 163.3184(3) and (4), F.S.

¹¹ Section 380.06(30), F.S. Chapter 2015-30, L.O.F.

However, there has been some confusion regarding whether the new statutory language requires new DRI-sized projects that comply with the existing comprehensive plan to nevertheless be reviewed pursuant to the State Coordinated Review Process and to obtain a plan amendment.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3184, F.S., to remove an obsolete reference to “a development that qualifies as a development of regional impact.” In 2015, the Legislature eliminated the requirement that new developments be reviewed pursuant to the DRI process.

Section 2 amends s. 380.06(30), F.S., to clarify that a proposed development that is consistent with the existing comprehensive plan is not required to undergo review pursuant to the State Coordinated Review Process for comprehensive plan amendments. The bill specifies that this subsection does not apply to amendments to a development order governing an existing development of regional impact.

Section 3 provides that the bill is effective on July 1, 2016.

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:

To the extent that developments are not subject to the State Coordinated Review Process, the regulatory compliance costs for those developments would be reduced for private sector developers. The bill has an indeterminate, but expected to be positive, fiscal impact to the private sector.

C. Government Sector Impact:

To the extent that developments are not subject to the State Coordinated Review Process, the regulatory compliance costs for review of those developments would be reduced for

local and state governments. The bill has an indeterminate, but expected to be insignificant, positive fiscal impact to local and state governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3184 and 380.06.

IX. Additional Information:

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

Recommended PCS Barcode 697286 by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on January 13, 2016:

Adds language to s. 380.06(30), F.S., to specify that the provisions of that subsection do not apply to amendments to a development order governing an existing development of regional impact.

- B. **Amendments:**

None.



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Abruzzo) recommended the following:

Senate Amendment (with title amendment)

Before line 12

insert:

Section 1. Subsection (6) is added to section 125.045, Florida Statutes, to read:

125.045 County economic development powers.—

(6) The governing body of a county may employ tax increment financing for the purposes of this section. The tax increment shall be determined annually and may not exceed 95 percent of



11 the difference in ad valorem taxes as provided in s.
12 163.387(1) (a). For any tax increment area created pursuant to
13 this section, the governing body of a county shall administer a
14 separate reserve account for the deposit of tax increment
15 revenues. Tax increment revenues, including the proceeds of any
16 revenue bonds secured by, and repaid with, such tax increment
17 revenues, shall be used exclusively to fund economic development
18 activities within the tax increment area.

=====
20 ===== T I T L E A M E N D M E N T =====
21

And the title is amended as follows:

Delete line 2

and insert:

An act relating to local development; amending s.

125.045, F.S.; authorizing the governing body of a

county to employ tax increment financing; specifying

requirements for a tax increment; requiring the

governing body of a county to administer a separate

reserve account for tax increment areas for the

deposit of tax increment revenues; requiring tax

increment revenues be used to fund economic

development activities within the tax increment area;



LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Abruzzo) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 27 - 28
4 and insert:
5 Section 2. Subsection (2) of section 171.046, Florida 5
6 Statutes, is amended to read:
7 171.046 Annexation of enclaves.—
8 (2) In order to expedite the annexation of enclaves of 150
9 ~~40~~ acres or less into the most appropriate incorporated
10 jurisdiction, based upon existing or proposed service provision



11 arrangements, a municipality may:
12 (a) Annex an enclave by interlocal agreement with the
13 county having jurisdiction of the enclave; or
14 (b) Annex an enclave with fewer than 25 registered voters
15 by municipal ordinance when the annexation is approved in a
16 referendum by at least 60 percent of the registered voters who
17 reside in the enclave.
18
19 ===== T I T L E A M E N D M E N T =====
20 And the title is amended as follows:
21 Delete lines 2 - 4
22 and insert:
23 An act relating to local development; amending s.
24 163.3184, F.S.; clarifying statutory language;
25 amending s. 171.046, F.S.; increasing the size of an
26 enclave that a municipality may annex under certain
27 circumstances; amending s. 380.06, F.S.; providing
28 that a



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Abruzzo) recommended the following:

Senate Amendment (with title amendment)

Between lines 27 and 28

insert:

Section 2. Subsection (2) of section 171.046, Florida Statutes, is amended to read:

171.046 Annexation of enclaves.—

(2) In order to expedite the annexation of enclaves of 150 ~~40~~ acres or less into the most appropriate incorporated jurisdiction, based upon existing or proposed service provision



11 arrangements, a municipality may:

12 (a) Annex an enclave by interlocal agreement with the

13 county having jurisdiction of the enclave; or

14 (b) Annex an enclave with fewer than 25 registered voters

15 by municipal ordinance when the annexation is approved in a

16 referendum by at least 60 percent of the registered voters who

17 reside in the enclave.

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

19 And the title is amended as follows:

20 Delete lines 2 - 4

21 and insert:

22 An act relating to local development; amending s.

23 163.3184, F.S.; clarifying statutory language;

24 amending s. 171.046, F.S.; increasing the size of an

25 enclave that a municipality may annex under certain

26 circumstances; amending s. 380.06, F.S.; providing

27 that a



697286

594-02106-16

Proposed Committee Substitute by the Committee on Fiscal Policy
(Appropriations Subcommittee on Transportation, Tourism, and
Economic Development)

A bill to be entitled

An act relating to developments of regional impact;
amending s. 163.3184, F.S.; clarifying statutory
language; amending s. 380.06, F.S.; providing that a
proposed development that is consistent with certain
comprehensive plans is not required to undergo review
pursuant to the state coordinated review process;
providing applicability; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2) of section
163.3184, Florida Statutes, is amended to read:

163.3184 Process for adoption of comprehensive plan or plan
amendment.—

(2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—

(c) Plan amendments that are in an area of critical state
concern designated pursuant to s. 380.05; propose a rural land
stewardship area pursuant to s. 163.3248; propose a sector plan
pursuant to s. 163.3245 or an amendment to an adopted sector
plan; update a comprehensive plan based on an evaluation and
appraisal pursuant to s. 163.3191; propose a development that is
subject to the state coordinated review process ~~qualifies as a~~
~~development of regional impact~~ pursuant to s. 380.06(30) s-
~~380.06~~; or are new plans for newly incorporated municipalities
adopted pursuant to s. 163.3167 shall follow the state



697286

594-02106-16

coordinated review process in subsection (4).

Section 2. Subsection (30) of section 380.06, Florida
Statutes, is amended to read:

380.06 Developments of regional impact.—

(30) ~~NEW~~ PROPOSED DEVELOPMENTS.—A ~~new~~ proposed development
otherwise subject to the review requirements of this section
shall be approved by a local government pursuant to s.
163.3184(4) in lieu of proceeding in accordance with this
section. However, if the proposed development is consistent with
the comprehensive plan as provided in s. 163.3194(3)(b), the
development is not required to undergo review pursuant to s.
163.3184(4) or this section. This subsection does not apply to
amendments to a development order governing an existing
development of regional impact.

Section 3. This act shall take effect July 1, 2016.

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 Fiscal Policy

BILL: CS/SB 7000

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development) and Community Affairs Committee

SUBJECT: Developments of Regional Impact

DATE: January 22, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Stearns</u>	<u>Yeatman</u>		CA Submitted as Committee Bill
1.	<u>Gusky</u>	<u>Miller</u>	<u>ATD</u>	Recommend: Fav/CS
2.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7000 allows a governing body of a county to employ tax increment financing to fund economic development activities within the tax increment area. This has an indeterminate fiscal impact to local governments.

The bill increases the acreage for the annexation of enclaves from 10 acres to 150 acres.

The bill also clarifies that certain proposed developments which are currently consistent with the local government comprehensive plan are not required to be reviewed pursuant to the State Coordinated Review Process for comprehensive plan amendments. To the extent that developments are not subject to the State Coordinated Review Process, the regulatory compliance costs for those developments would be reduced for both the private sector and for local and state governments. The fiscal impact to the private sector is indeterminate, but expected to be positive; for local and state governments, this portion of the bill has an indeterminate, but expected to be insignificant, positive fiscal impact.

The bill is effective July 1, 2016.

II. Present Situation:

Community Redevelopment Act – Chapter 163, F.S.

The Community Redevelopment Act of 1969¹ authorizes a county or municipality to create community redevelopment agencies (CRAs) as a means of redeveloping slums and blighted areas.² CRAs must operate in accordance with a community redevelopment plan.³

Counties and municipalities are prohibited from exercising the authority provided by the Community Redevelopment Act until they adopt an ordinance that declares an area to be a slum or a blighted area.⁴

The Tax Increment Financing Mechanism for Funding CRAs

CRAs are not permitted to levy or collect taxes; however, the local governing body is permitted to establish a community redevelopment trust fund that is funded through tax increment financing (TIF).⁵ Tax increment financing is a unique tool available to cities and counties for redevelopment activities and is used to leverage public funds to promote private sector activity in the targeted area.

The TIF mechanism requires taxing authorities to annually appropriate an amount to the redevelopment trust fund by January 1 each year. This revenue is used to back bonds issued to finance redevelopment projects in accordance with a redevelopment plan.⁶ The incremental revenue amount is calculated annually as 95 percent of the difference between:

- A frozen base year assessed value, which is the value of real property in the CRA determined as of a fixed starting date; and
- The amount of ad valorem taxes levied by each taxing authority on taxable real property within the CRA.⁷

Thus, as the time period of the CRA increases, its property values increase, and the tax increment revenue increases, which is then available to repay public infrastructure and redevelopment costs of the CRA.

Annexation

Florida's annexation law, ch. 171, F.S., is intended to provide for efficient service delivery and to limit annexation to urban service areas. Florida's annexation policy attempts to accomplish these goals through restrictions aimed at preventing irregular municipal boundaries.

¹ Chapter 163, part III, F.S.

² Section 163.340(8), F.S., defines a "blighted area."

³ Sections 163.360 and 163.370, F.S.

⁴ Sections 163.355(1) and 163.360(1), F.S.

⁵ Through tax increment financing, a baseline tax amount is chosen, and then in future years, any taxes generated above that baseline amount are transferred into the trust fund. Section 163.387, F.S.

⁶ Section 163.387(1)(a), F.S.

⁷ *Id.*

There are three types of annexation: voluntary, involuntary, and enclaves. Voluntary annexation occurs when 100 percent of the landowners in an area proposed to be annexed petition a municipality.⁸ Involuntary annexation allows for separate approval of a proposed annexation in the existing city, at the city's option, and in the area to be annexed. A majority of the property owners must consent when more than 70 percent of the property in a proposed annex area is owned by persons that are not registered electors.⁹

An enclave is any unincorporated improved or developed area lying within a single municipality, or surrounded by a single municipality and a manmade or natural obstacle that permits traffic to enter the unincorporated area only through the municipality.¹⁰

Enclaves can create significant problems in planning, growth management, and service delivery, and s. 171.046, F.S., provides that it is the policy of the state to eliminate enclaves. In order to expedite the annexation of enclaves of 10 acres or less into the most appropriate incorporated jurisdiction, based upon existing or proposed service provision arrangements, a municipality may annex an enclave:

- By interlocal agreement with the county; or
- With fewer than 25 registered voters by municipal ordinance when the annexation is approved in a referendum by at least 60 percent of the registered voters who reside in the enclave.¹¹

Development of Regional Impact

A development of regional impact (DRI) is defined in s. 380.06, F.S., as “any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.” The DRI program was initially created in 1972 as an interim program intended to be replaced by comprehensive planning and permitting programs. The DRI program provided a lengthy and complicated review process for proposed projects that was largely duplicated by the successor comprehensive planning review process.

Comprehensive planning was first required by law in 1975. However, the Growth Management Act of 1985 is considered the watershed law that brought truly modern planning requirements into force. In recognition of this fact, the Environmental Land Management Study Committee in 1992 recommended that the DRI program be eliminated and relegated to an enhanced version of the Intergovernmental Coordination Element (ICE) that is required to be included in local comprehensive plans.¹² After much controversy, this recommendation was not implemented, and the DRI program continued in its previous form.

⁸ Section 171.044(1) and (2), F.S.

⁹ Sections 171.0413 and 171.042, F.S.

¹⁰ Section 171.031(13), F.S.

¹¹ Section 171.046, F.S.

¹² See Richard G. Rubino and Earl M. Starnes, *Lessons Learned? The History of Planning in Florida*. Tallahassee, FL: Sentry Press, 2008. ISBN 978-1-889574-31-8.

However, over the years, the program was amended to include a number of exemptions. The following list of exemptions is not exhaustive, but illustrates the number and variety of the exemptions from the DRI program that have been enacted:

- Certain projects that created at least 100 jobs that met certain qualifications – 1997.
- Certain expansions to port harbors, certain port transportation facilities, and certain intermodal transportation facilities – 1999.
- The thresholds used to identify projects subject to the program were increased by 150 percent for development in areas designated as rural areas of critical economic concern (now known as rural areas of opportunity) – 2001.
- Certain proposed facilities for the storage of any petroleum product or certain expansions of existing petroleum product storage facilities – 2002.
- Any renovation or redevelopment within the same land parcel which does not change land use or increase density or intensity of use – 2002.
- Certain waterport or marina developments – 2002.
- The establishment, relocation, or expansion of any military installation as defined in s. 163.3175, F.S. – 2005.

In 2009, the Legislature enacted the most significant exemption from the DRI program: the exemption for Dense Urban Land Areas (DULAs).¹³ In 2015, eight counties and 243 cities qualified as DULAs. This meant that all projects within those counties and cities were exempted from the DRI program. The areas qualifying as DULAs accounted for more than half of Florida's population.¹⁴

Comprehensive Plans and the Comprehensive Plan Amendment Process

The Growth Management Act of 1985 required every city and county to create and implement a comprehensive plan to guide future development.¹⁵ A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. Development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first.

State law requires a proposed comprehensive plan amendment to receive three public hearings, the first held by the local planning board.¹⁶ The local commission (city or county) must then hold an initial public hearing regarding the proposed amendment and subsequently transmit it to several statutorily identified reviewing agencies, including the Department of Economic Opportunity (DEO), the relevant Regional Planning Council (RPC), and adjacent local governments that request to participate in the review process.¹⁷

¹³ Chapter 2009-96, L.O.F.

¹⁴ Department of Economic Opportunity, Community Planning, Development, and Services, *Community Planning, Community Planning Table of Content: List of Local Governments Qualifying as Dense Urban Land Areas*, (June 11, 2015), available at <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/list-of-local-governments-qualifying-as-dense-urban-land-areas> (last visited January 15, 2016).

¹⁵ Chapter 1985-55, L.O.F.

¹⁶ Section 163.3174(4)(a), F.S.

¹⁷ Section 163.3184, F.S.

The state and regional agencies review the proposed amendment for impacts related to their statutory purview. The RPC reviews the amendment specifically for “extrajurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region” as well as adverse effects on regional resources or facilities.¹⁸ Upon receipt of the reports from the various agencies, the local government holds a second public hearing at which the governing body votes to approve the amendment or not. If the amendment receives a favorable vote it is transmitted to the DEO for final review.¹⁹ The DEO then has either 31 days or 45 days (depending on the review process to which the amendment is subject) to determine whether the proposed comprehensive plan amendment is in compliance with all relevant agency rules and laws.²⁰

The Expedited State Review Process vs. the State Coordinated Review Process

In 2011, the Florida Legislature bifurcated the process for approving comprehensive plan amendments.²¹ Most plan amendments were placed into the Expedited State Review Process, while plan amendments related to large-scale developments were placed into the State Coordinated Review Process. The two processes operate in much the same way, however, the State Coordinated Review Process provides a longer review period and requires all agency comments to be coordinated by the DEO, rather than communicated directly to the permitting local government by each individual reviewing agency.

2015 Changes to the DRI Law

In 2015, the Florida Legislature eliminated the requirement that new developments be reviewed pursuant to the DRI process. Instead, the Legislature directed that proposed developments only need to comply with the requirements of the State Coordinated Review Process.²²

However, there has been some confusion regarding whether the new statutory language requires new DRI-sized projects that comply with the existing comprehensive plan to nevertheless be reviewed pursuant to the State Coordinated Review Process and to obtain a plan amendment.

III. Effect of Proposed Changes:

Section 1 amends s. 125.045, F.S., to allow a governing body of a county to employ tax increment financing for economic development activities. The tax increment must be determined annually and may not exceed 95 percent of the difference in ad valorem taxes as provided in s. 163.387(1)(a), F.S. Generally, s. 163.387(1)(a), F.S., provides that the incremental revenue amount is calculated annually as 95 percent of the difference between a frozen base year assessed value and the amount of ad valorem taxes levied by each taxing authority on taxable real property within the area.

¹⁸ Section 163.3184(3)(b)3.a., F.S.

¹⁹ Section 163.3184(3)(c) and (4)(e), F.S.

²⁰ *Id.*

²¹ Chapter 2011-14, L.O.F. See s. 163.3184(3) and (4), F.S.

²² Section 380.06(30), F.S. Chapter 2015-30, L.O.F.

The county must administer a separate reserve account for the deposit of tax increment revenues. The bill specifies that the tax increment revenues, including the proceeds of any revenue bonds secured by, and repaid with, such tax increment revenues, must be used to fund economic development activities within the tax increment area.

Section 2 amends s. 171.046(2), F.S. to increase the acreage for the annexation of enclaves from 10 acres to 150 acres.

Section 3 amends s. 163.3184, F.S., to remove an obsolete reference to “a development that qualifies as a development of regional impact.” In 2015, the Legislature eliminated the requirement that new developments be reviewed pursuant to the DRI process.

Section 4 amends s. 380.06(30), F.S., to clarify that a proposed development that is consistent with the existing comprehensive plan is not required to undergo review pursuant to the State Coordinated Review Process for comprehensive plan amendments. The bill specifies that this subsection does not apply to amendments to a development order governing an existing development of regional impact.

Section 5 provides that the bill is effective on July 1, 2016.

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:

Article VII, s. 12 of the Florida Constitution permits local governments with taxing powers to issue bonds payable from ad valorem taxes and maturing more than 12 months after issuance only to finance or refinance capital projects authorized by the law and when approved by the electorate.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that developments are not subject to the State Coordinated Review Process, the regulatory compliance costs for those developments would be reduced for private sector developers. The bill has an indeterminate, but expected to be positive, fiscal impact to the private sector.

C. Government Sector Impact:

The portion of the bill that allows a governing body of a county to employ tax increment financing has an indeterminate fiscal impact to local governments.

To the extent that developments are not subject to the State Coordinated Review Process, the regulatory compliance costs for review of those developments would be reduced for local and state governments. This portion of the bill has an indeterminate, but expected to be insignificant, positive fiscal impact to local and state governments

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.045, 163.3184, 171.046, and 380.06.

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 Fiscal Policy on January 20, 2016:

As recommended by the Appropriation Subcommittee on General Government, the CS adds language to s. 380.06(30), F.S., to specify that the provisions of that subsection do not apply to amendments to a development order governing an existing development of regional impact.

The CS also:

- Allows a governing body of a county to employ tax increment financing to fund economic development activities within the tax increment area; and
- Increases the acreage for the annexation of enclaves from 10 acres to 150 acres.

B. Amendments:

None.

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

By the Committee on Community Affairs

578-00738-16

20167000__

1 A bill to be entitled
 2 An act relating to developments of regional impact;
 3 amending s. 163.3184, F.S.; clarifying statutory
 4 language; amending s. 380.06, F.S.; providing that a
 5 proposed development that is consistent with certain
 6 comprehensive plans is not required to undergo review
 7 pursuant to the state coordinated review process;
 8 providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Paragraph (c) of subsection (2) of section
 13 163.3184, Florida Statutes, is amended to read:
 14 163.3184 Process for adoption of comprehensive plan or plan
 15 amendment.—
 16 (2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—
 17 (c) Plan amendments that are in an area of critical state
 18 concern designated pursuant to s. 380.05; propose a rural land
 19 stewardship area pursuant to s. 163.3248; propose a sector plan
 20 pursuant to s. 163.3245 or an amendment to an adopted sector
 21 plan; update a comprehensive plan based on an evaluation and
 22 appraisal pursuant to s. 163.3191; propose a development that is
 23 subject to the state coordinated review process ~~qualifies as a~~
 24 ~~development of regional impact~~ pursuant to s. 380.06(30) or
 25 ~~380.06~~; or are new plans for newly incorporated municipalities
 26 adopted pursuant to s. 163.3167 shall follow the state
 27 coordinated review process in subsection (4).
 28 Section 2. Subsection (30) of section 380.06, Florida
 29 Statutes, is amended to read:

Page 1 of 2

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

578-00738-16

20167000__

30 380.06 Developments of regional impact.—
 31 (30) ~~NEW~~ PROPOSED DEVELOPMENTS.—A ~~new~~ proposed development
 32 otherwise subject to the review requirements of this section
 33 shall be approved by a local government pursuant to s.
 34 163.3184(4) in lieu of proceeding in accordance with this
 35 section. However, if the proposed development is consistent with
 36 the comprehensive plan as provided in s. 163.3194(3)(b), the
 37 development is not required to undergo review pursuant to s.
 38 163.3184(4) or this section.
 39 Section 3. This act shall take effect July 1, 2016.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/20/16
Meeting Date

7000
Bill Number (if applicable)

Topic Support of enclave amendment

Ascuzzo #168558
Amendment Barcode (if applicable)

Name Mat Forrest

Job Title Ballerd Partners

Address 403 E. Park Ave
Street

Phone 850-577-0444

Tallahassee FL 32301
City State Zip

Email mat@ballerdfl.com

Speaking: For Against Information

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

Representing City of Palm Beach Gardens

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/25/16
Meeting Date

7000
Bill Number (if applicable)

Topic DR1

Amendment Barcode (if applicable)

Name ERIC POOLE

Job Title ASST. LEGIS. DIRECTOR

Address 100 S. MUNROE Phone 922 4300
Street

TULLAHSEE FL Email _____
City State Zip

Speaking: For Against Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Chair*
Communications, Energy, and Public Utilities,
Vice Chair
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
8th District

January 19, 2016

The Honorable Anitere Flores
Committee on Fiscal Policy
413 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Flores:

I respectfully ask to be excused from the Committee on Fiscal Policy being held on Wednesday, January 20, 2016 at 4:00 pm. I will not be able to attend due to being ill.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy L. Hukill".

Dorothy L. Hukill

A handwritten signature consisting of stylized initials, possibly "DF".

CC: Jennifer Hrdlicka, Staff Director
Tamra Lyon, Committee Administrative Assistant

REPLY TO:

209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
 Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: KN 412

Case No.:

Type:

Caption: Senate Fiscal Policy Committee

Judge:

Started: 1/20/2016 4:09:04 PM

Ends: 1/20/2016 5:15:00 PM

Length: 01:05:57

4:09:02 PM Meeting called to order
4:09:10 PM Meeting called to order
4:09:10 PM Roll call
4:09:13 PM Quorum present
4:09:35 PM Tab 1 SB 160 presented by Senator Gaetz
4:09:49 PM Amendment 933216 presented by Senator Gaetz
4:10:34 PM Amendment 933216 adopted
4:11:07 PM Martha Cleaver waives in support of the bill
4:11:12 PM Roll call on CS/CS/SB 160
4:11:31 PM CS/CS/SB 160 reported favorably
4:11:43 PM Tab 4 SB 390 presented by Senator Simpson
4:12:14 PM Erin Ballas waives in support of the bill
4:13:14 PM Justin Thames waives in support of the bill
4:13:15 PM Roll call on CS/SB 390
4:13:31 PM CS/SB 390 reported favorably
4:13:49 PM Tab 10 SB 7000 presented by Senator Simpson
4:14:07 PM PCS adopted
4:14:21 PM Amendment 633166 presented by Senator Simpson
4:15:23 PM Senator Flores with question for Senator Simpson on the amendment
4:15:55 PM Senator Simpson's response to Senator Flores
4:16:26 PM Senator Flores with follow-up
4:17:26 PM Senator Simpson with response to Senator Flores
4:17:34 PM Senator Flores with comments
4:18:26 PM Amendment 633166 adopted
4:19:26 PM Amendment 168558 presented by Senator Abruzzo
4:19:41 PM Matt Forrest waives in support of the amendment
4:20:09 PM Senator Clemens recognized in debate on the amendment
4:20:15 PM Amendment 168558 adopted
4:20:50 PM Eric Poole waives in opposition to the bill
4:21:19 PM Roll call on CS/SB 7000
4:21:35 PM CS/SB 7000 reported favorably
4:21:44 PM Tab 7 CS/SB 518 presented by Senator Soto
4:22:09 PM Amendment 879464 presented by Senator Soto
4:23:26 PM Amendment 879464 adopted
4:24:26 PM Colonel Mike Prendergast waives in support of the bill
4:24:43 PM Roll call on CS/CS/SB 518
4:25:08 PM CS/CS/SB 518 reported favorably
4:25:26 PM Tab 6 CS/SB 504 presented by Senator Grimsley's aide
4:25:57 PM Roll call on CS/SB 504
4:26:26 PM CS/SB 504 reported favorably
4:26:42 PM Tab 8 CS/SB 542 presented by Senator Stargel
4:27:15 PM Senator Sachs with question on the bill
4:28:02 PM Senator Stargel with response for Senator Sachs
4:28:29 PM Senator Sachs with follow-up question
4:28:37 PM Senator Stargel with response to Senator Sachs
4:29:07 PM Susan Langston waives in support of the bill
4:29:44 PM Melody Arnold with FL Health Care Association in support of bill
4:30:00 PM Roll call on CS/SB 542
4:30:11 PM CS/SB 542 reported favorably
4:30:28 PM Tab 3 SB 310 presented by Senator Legg
4:30:58 PM Amendment 149704 presented by Senator Legg
4:31:21 PM Amendment 149704 adopted

4:31:48 PM Senator Bean recognized with question on the bill as amended
4:31:57 PM Senator Legg with response to Senator Bean
4:32:11 PM Senator Bean with follow-up question
4:32:44 PM Senator Legg with response
4:32:48 PM Jess McCarty waives in support
4:33:42 PM Seber Newsome III recognized to speak
4:36:20 PM Senator Stargel recognized in debate on the bill
4:37:54 PM Senator Hays recognized in debate on the bill
4:41:19 PM Senator Abruzzo recognized in debate on the bill
4:42:18 PM Senator Flores speaking in debate on the bill
4:43:10 PM Senator Legg recognized to close on the bill as amended
4:43:38 PM Roll call on CS/SB 310
4:44:30 PM CS/SB 310 reported favorably
4:44:48 PM Senator Brandes recognized to present Tab 2 CS/SB 286
4:45:24 PM Amendment 729652 presented by Senator Brandes
4:46:28 PM Amendment adopted
4:46:37 PM Michael Ertel waives in support
4:46:56 PM Meredith Hinshelwood waives in support
4:47:00 PM Roll call on CS/CS/SB 286
4:47:16 PM CS/CS/SB 286 reported favorably
4:47:41 PM Tab 9 CS/CS/SB 590 presented by Senator Detert
4:48:42 PM Amendment 958958 taken up, presented by Senator Detert
4:49:42 PM Amendment 958958 adopted
4:50:04 PM Amendment 674738 taken up and presented by Senator Detert
4:50:39 PM Amendment adopted
4:51:30 PM Thomas Croom waives in support
4:51:45 PM Heather Rosenberg waives in support
4:51:57 PM Alan Abramowitz waives in support
4:52:06 PM Victoria Zepp waives in support
4:52:19 PM Nelson Diaz waives in support
4:52:34 PM Greg Pound recognized to speak
4:54:00 PM Senator Flores with comments
4:55:01 PM Senator Detert recognized to close on the bill
4:56:24 PM Roll call on CS/CS/CS/SB 590
4:57:24 PM CS/CS/CS/SB 590 reported favorably
4:57:36 PM Senator Flores taking point of personal privilege
4:57:51 PM Informal recess
4:58:01 PM Senator Bean with motion to reflect favorably vote for SB 160
4:58:29 PM Senator Clemens motion voting favorably for SB 160 and SB 390
4:58:40 PM Senator Bradley recognized to present Tab 5 SB 460
4:58:55 PM Amendment 466428 taken up and presented by Senator Bradley
5:04:38 PM Senator Hays with question on Amendment 466428
5:05:40 PM Senator Bradley with response to Senator Hays
5:06:35 PM Senator Hays with continued question for Senator Bradley
5:07:42 PM Senator Bradley with response to Senator Hays
5:10:27 PM Senator Hays with follow-up
5:11:26 PM Senator Bradley with response to Senator Hays
5:11:35 PM Senator Hays with follow-up
5:11:46 PM Senator Bradley with response to Senator Hays
5:12:12 PM Senator Margolis with question on the amendment
5:13:11 PM Senator Bradley with response
5:13:30 PM Senator Bradley moves to TP the bill
5:14:30 PM Senator Bradley moves to be marked favorable votes on three bills
5:14:51 PM Meeting adjourned