

CS/CS/SB 208 by **AP, CM, Hukill (CO-INTRODUCERS) Thrasher, Hays, Latvala, Simpson, Simmons, Negrón, Braynon, Altman, Galvano, Gibson;** (Similar to H 0127) Motorsports Entertainment Complexes

SM 476 by **Hays;** (Identical to H 0381) Amendments to the Constitution of the United States

SJR 1188 by **Lee;** Prospective Appointment of Judicial Vacancies

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SB 520 by **Richter;** (Identical to H 0457) Public Records/Dental Workforce Surveys

SB 358 by **Ring;** (Compare to CS/H 0139) Volunteers for Organized Youth Sports and Recreational Programs

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SM 658 by **Stargel (CO-INTRODUCERS) Benacquisto;** (Similar to H 0625) Balanced Federal Budget

SB 1636 by **CJ;** (Similar to H 7125) Renaming the Parole Commission

SB 856 by **Detert;** Uniform Fraudulent Transfer Act

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Thrasher, Chair
Senator Smith, Vice Chair

MEETING DATE: Thursday, March 20, 2014
TIME: 10:30 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Thrasher, Chair; Senator Smith, Vice Chair; Senators Benacquisto, Diaz de la Portilla, Galvano, Gardiner, Latvala, Lee, Margolis, Montford, Negron, Richter, Ring, Simmons, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/CS/SB 208 Appropriations / Commerce and Tourism / Hukill (Similar H 127)	Motorsports Entertainment Complexes; Providing for a monthly distribution of a specified amount of sales tax revenue to a complex certified as a motorsports entertainment complex by the Department of Economic Opportunity; authorizing the department to certify a single motorsports complex if it meets specified criteria; authorizing the Auditor General to verify the expenditure of specified distributions and to notify the Department of Revenue of improperly expended funds so that it may pursue recovery, etc. CM 01/08/2014 Fav/CS AFT 02/06/2014 Fav/CS AP 03/06/2014 Fav/CS RC 03/20/2014 Favorable	Favorable Yeas 12 Nays 1
2	SM 476 Hays (Identical HM 381, Compare CS/HM 81)	Amendments to the Constitution of the United States; Applying to Congress to call a convention for the sole purpose of proposing amendments to the Constitution of the United States which impose fiscal restraints on the Federal Government, limit the power and jurisdiction of the Federal Government, and limit the terms of office for federal officials and members of Congress, etc. JU 02/11/2014 Favorable RC 03/20/2014 Favorable	Favorable Yeas 8 Nays 5
3	SJR 1188 Lee	Prospective Appointment of Judicial Vacancies; Proposing amendments to the State Constitution to authorize the Governor to prospectively fill vacancies in certain judicial offices, etc. JU 03/11/2014 Fav/1 Amendment RC 03/20/2014 Fav/CS	Fav/CS Yeas 10 Nays 5

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, March 20, 2014, 10:30 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 520 Richter (Identical H 457)	Public Records/Dental Workforce Surveys; Providing an exemption from public records requirements for information contained in dental workforce surveys submitted by dentists or dental hygienists to the Department of Health; providing exceptions to the exemption; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. HP 02/04/2014 Favorable GO 03/13/2014 Favorable RC 03/20/2014 Favorable	Favorable Yeas 15 Nays 0
5	SB 358 Ring (Compare CS/H 139)	Volunteers for Organized Youth Sports and Recreational Programs; Expanding provisions relating to athletic coaches for independent sanctioning authorities to require youth sports or recreation authorities to conduct specified background screening of all volunteers with any youth athletic team or organized youth recreational program using publicly owned facilities; prohibiting a youth sports or recreation authority from delegating such duty; requiring that specified documentation be maintained for a specified period by such authorities, etc. CF 02/04/2014 Favorable CA 03/05/2014 Favorable RC 03/12/2014 Temporarily Postponed RC 03/20/2014 Fav/CS	Fav/CS Yeas 15 Nays 0
6	SM 658 Stargel (Similar HM 625)	Balanced Federal Budget ; Applying to Congress to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States which requires a balanced federal budget, etc. JU 02/11/2014 Favorable RC 03/20/2014 Favorable	Favorable Yeas 9 Nays 4
7	SB 1636 Criminal Justice (Similar H 7125)	Renaming the Parole Commission; Renaming the Parole Commission as the Florida Commission on Offender Review; providing a directive to the Division of Law Revision and Information; conforming provisions to changes made by the act, etc. RC 03/20/2014 Favorable	Favorable Yeas 11 Nays 4
8	SB 856 Detert	Uniform Fraudulent Transfer Act; Providing that certain transfers of charitable contributions to charitable or religious organizations are exempt from specified provisions, etc. CM 03/03/2014 Favorable BI 03/11/2014 Favorable RC 03/20/2014 Favorable	Favorable Yeas 13 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, March 20, 2014, 10:30 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
		Consideration of Ethics Commission report relating to Senator Soto	Favorable Yeas 14 Nays 0
		Consideration of complaint relating to Senator Sachs	Favorable Yeas 14 Nays 0
		Other Related Meeting Documents	

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 208

INTRODUCER: Commerce and Tourism Committee and Senator Hukill and others

SUBJECT: Motorsports Entertainment Complexes

DATE: March 18, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Askey</u>	<u>Hrdlicka</u>	<u>CM</u>	Fav/CS
2.	<u>Fournier</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	Fav/CS
3.	<u>Fournier</u>	<u>Kynoch</u>	<u>AP</u>	Fav/CS
4.	<u>Askey</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 208 permits the Department of Economic Opportunity to certify one motorsports entertainment complex to receive a monthly distribution from state sales tax revenues.

The bill authorizes the Auditor General to conduct audits to ensure that distributions are expended as required and, if not found in compliance, notify the Department of Revenue which may pursue recovery of such funds.

The distribution is \$166,667 monthly for up to 30 years. For Fiscal Year 2014-2015, the fiscal impact of the bill is a negative \$1.7 million; the recurring fiscal impact is a negative \$2 million annually.

II. Present Situation:

Motorsports in Florida

Automobile racing in Florida has a long and storied history stretching back more than 100 years. In April 1902, the first “tests of speed” began on the 12-mile stretch of beach between Ormond and Daytona.¹

¹ Randall L. Hall, *Automobile Racing in the South*, The Journal of Southern History, (August 2002).

In late 1947, a group of racing promoters gathered in Daytona Beach to create an organization which would unify automobile racers and build back interest in the sport following World War II. This meeting was the impetus for the incorporation of the National Association of Stock Car Auto Racing (NASCAR) in 1948.²

Today, NASCAR is automobile racing's largest sanctioning body for stock cars. Currently, NASCAR has 28 sanctioned tracks. Additionally, Florida is one of only three states that have two NASCAR-sanctioned tracks. These tracks are the Daytona International Speedway and the Homestead-Miami Speedway.³ Information on the tracks is below:

	Daytona International Speedway⁴	Homestead Miami Speedway⁵
Major Races	Daytona 500, Coke Zero 400	Ford EcoBoost 400, Ford EcoBoost 300
Year Opened	1959	1995
Grandstand Seating Capacity	147,000	65,000
Location	Volusia County	Miami-Dade County
Facility Operator	International Speedway Corporation (facility leased from Daytona Beach Racing and Recreational Facilities District)	International Speedway Corporation (facility leased from City of Homestead)

The Daytona 500 is the opening race of the NASCAR Sprint Cup Series, and is considered the race that “sets the tone for the entire season to follow.”⁶ The Ford EcoBoost 400 is the NASCAR Sprint Cup Series' final race.

Aside from the two NASCAR-sanctioned tracks, Florida is home to an additional 50 automobile racing tracks. These tracks are located throughout the state, and provide local amateur racers and enthusiasts the opportunity to be involved with the sport.⁷

Sales and Use Tax

Chapter 212, F.S., contains the state's statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. A 6 percent sales and use tax is levied on tangible personal property and a limited number of services. The statutes currently provide for more than 200 different exemptions.

² *Id.*

³ NASCAR Tracks, available at: www.nascar.com/races/tracks/, (last visited on December 17, 2013).

⁴ ESPN, *NASCAR Track Guide: Daytona International Speedway*, (June 27, 2011), available at: <http://espn.go.com/espn/thelife/news/story?id=2346804>, (last visited on December 17, 2013).

⁵ Homestead Miami Speedway website, *The History of Homestead-Miami Speedway*, available at: <http://www.homesteadmiamispeedway.com/About/Track-History.aspx>, (last visited on December 17, 2013).

⁶ *Supra* note 4.

⁷ Florida Race Track Directory of Asphalt & Dirt Tracks & Drag Strips, available at: <http://www.racingin.com/track/florida.aspx>, (last visited December 17, 2013).

Sales Tax Funding of Professional Sports Facilities

Since 1991, Florida has authorized distributions from state sales tax for professional sports facilities and for spring training facilities.⁸ There are eight certified new or retained professional sports franchise facilities in Florida, the total number allowed under the statute.⁹ The maximum payment allowed for a new or retained professional sports franchise facility is \$166,667 per month for up to 30 years. The facilities funded under this program and the payment distribution for each are listed below:

Facility name	Certified entity	Franchise	First Payment	Final Payment	Total payments as of January 2014
Sun Life Stadium	Dolphins Stadium/ South Florida Stadium	Florida (Miami) Marlins ¹⁰	06/1994	06/2023	\$41,166,749
Everbank Field	City of Jacksonville	Jacksonville Jaguars	06/1994	05/2024	\$39,333,412
Tropicana Field	City of St. Petersburg	Tampa Bay Rays	06/1995	06/2025	\$37,166,741
Tampa Bay Times Forum	Tampa Sports Authority	Tampa Bay Lightning	09/1995	08/2025	\$36,833,407
BB&T Center	Broward County	Florida Panthers	08/1996	07/2026	\$35,000,070
Raymond James Stadium	Hillsborough County	Tampa Bay Buccaneers	01/1997	12/2026	\$34,166,729
American Airlines Arena	BPL, LTD	Miami Heat	03/1998	03/2028	\$31,666,730
Amway Center	City of Orlando	Orlando Magic	02/2008	01/2038	\$12,000,024

(Information from the Department of Economic Opportunity and Department of Revenue)

A local governments may be certified to receive funding for the purpose of acquiring, constructing, reconstructing, or renovating a spring training facility.¹¹ In order to be certified, a facility must be located in a county that levies a tourist development tax under s. 125.0104, F.S., which authorizes an additional 1-cent excise tax on transient lodgings that is used to pay debt service on bonds issued to finance the facility. (Duval County and Miami-Dade County are authorized under other statutes to levy additional transient lodging taxes for this purpose.¹²) Even

⁸ Section 212.20(6)(d)6.b. and e., F.S.

⁹ Section 288.1162, F.S. The number of new or retained facilities eligible for funding was increased from 6 to eight by ch. 96-320, L.O.F.

¹⁰ The Marlins franchise relocated from Sun Life Stadium to Marlins Park for the 2012 baseball season.

¹¹ Sections 288.11621 and 288.11631, F.S.

¹² Section 212.0305(4)(a), F.S. (Duval County) and s. 212.0305(4)(b), F.S., (Miami-Dade County.)

though new spring training facilities had been eligible for certification since 1991 under s. 288.1162, F.S., no such facilities were certified. In 2000, funding (\$41,667 per month for up to 30 years) for each of five “retained” spring training facilities was provided.¹³ In 2006 the number of spring training facilities eligible for funding was doubled.¹⁴ As of January 8, 2013, there were 10 certified local governments. The local governments and the payment distribution for each are listed below:

Certified Local Government	Franchise	Facility	First Payment	Final Payment	Total Payments as of January 2014
City of Clearwater	Philadelphia Phillies	Bright House Field	2/2001	2/2031	\$6,458,385
City of Dunedin	Toronto Blue Jays	Dunedin Stadium	2/2001	2/2023	\$6,458,385
Indian River County	Los Angeles Dodgers ¹⁵	Holman Stadium (Dodgertown)	2/2001	2/2031	\$6,458,385
Osceola County	Houston Astros	Osceola County Stadium	2/2001	2/2016	\$6,458,385
City of Lakeland	Detroit Tigers	Joker Marchant Stadium	2/2001	2/2016	\$6,027,795
Charlotte County	Tampa Bay Rays	Charlotte County Stadium	3/2007	3/2037	\$3,458,361
City of Bradenton	Pittsburgh Pirates	McKechnie Field	3/2007	3/2037	\$3,458,361
City of Fort Lauderdale ¹⁶	NA	NA	3/2007	3/2037	\$0
City of Sarasota ¹⁷	Baltimore Orioles	Ed Smith Stadium	3/2007	3/2037	\$3,458,361
St. Lucie County	New York Mets	Digital Domain Park	3/2007	3/2037	\$1,824,793
Lee County	Minnesota Twins	Hammond Stadium	7/2013	6/2043	\$291,669

(Information from the Department of Economic Opportunity and Department of Revenue)

¹³ Chapter 2000-186, L.O.F.

¹⁴ Chapter 2006-262, L.O.F.

¹⁵ The L.A. Dodgers relocated their spring training operations to Arizona in 2008.

¹⁶ The City of Ft. Lauderdale was unable to find a suitable home for the Baltimore Orioles. In 2011, OTTED requested the city return the unspent funds to the state. The city submitted a check to the state for the full amount, plus interest, as required by statute. The funds were returned to the state’s General Revenue Fund. On April 6, 2012, a notice was published in the Florida Administrative Register announcing the application period for the Spring Training Baseball Facilities program, based on an opening that resulted from the decertification of the City of Fort Lauderdale and the return of funds. Lee County was the only applicant, on behalf of the Minnesota Twins for \$15 million over 30 years. On August 9, 2012, Lee County received notice that it had been certified.

¹⁷ Sarasota was awarded funds for a facility for the Cincinnati Reds, but was unable to use these funds because the Reds moved to Arizona in 2009. Sarasota petitioned the then Director of OTTED, and was granted permission to use the state funds to help pay debt service on bonds to be issued and entered into a long-term agreement with the Baltimore Orioles.

In 2013, the Legislature approved a new funding program for spring training facilities. Section 288.11631, F.S., provides funding for a facility used by a single spring training franchise up to \$55,555 per month for up to 30 years; a facility used by more than one franchise can receive \$111,110 monthly for up to 37.5 years.¹⁸

Monthly sales tax distributions (\$166,667 for up to 300 months) also fund the professional golf hall of fame.¹⁹ The International Game Fish Association World Center facility received a lump-sum payment (\$999,996) after it was certified in 2000 and received a monthly distribution (\$83,333 for up to 168 months) which ended in FY 2013-14.

Local Government Half-cent Sales Tax Program

The Local Government Half-cent Sales Tax Program (program) is the largest source of revenue received by local governments among the state's shared revenue sources. The program primarily serves to provide ad valorem and utility tax relief, in addition to providing eligible local governments revenues for local programs.²⁰ A local government may also pledge funds from the program for payment of principal and interest on any capital project.²¹

Moneys for the program are collected pursuant to the provisions of ch. 212, F.S. The program distributes funds to eligible local governments through three distributions of sales tax revenues remitted by a sales tax dealer within the eligible participating county.²² The *ordinary* distribution operates by a transfer of 8.814 percent of net sales tax proceeds remitted by a sales tax dealer in the eligible local government's jurisdiction to the Local Government Half-cent Sales Tax Clearing Trust Fund (trust fund).²³ The *emergency* and *supplemental* distributions operate by a transfer of 0.095 percent of net sales tax proceeds to the trust fund, and are available only to those counties that meet certain fiscal eligibility requirements, or have an inmate population of greater than 7 percent of the total county population.^{24,25} An additional, separate distribution from the trust fund is available to qualifying fiscally constrained counties.²⁶

Funds remitted by sales tax dealers within a local government's jurisdiction and transferred to the trust fund are earmarked and distributed monthly to the governing bodies of participating eligible local governments.²⁷ Program funds are distributed to participating county and municipal governments based on a distribution formula.²⁸

¹⁸ Chapter 2013-42, L.O.F.

¹⁹ Section 212.20(6)(d)6.c., F.S.

²⁰ Office of Economic and Demographic Research, *2012 Local Government Financial Information Handbook*, (October 2012), available at: <http://edr.state.fl.us/Content/local-government/reports/lgfi12.pdf>, (last visited on December 17, 2013).

²¹ Section 218.64, F.S.

²² Section 218.63, F.S., defines eligibility requirements. In order to participate in the program, a local government must meet the revenue sharing eligibility requirements specified in s. 218.23, F.S.

²³ Section 212.20(6)(d)2., F.S.

²⁴ Section 212.20(6)(d)3., F.S.

²⁵ *Supra* note 20 at page 55.

²⁶ Section 218.67, F.S.

²⁷ Section 218.61, F.S.

²⁸ Section 218.62, F.S.

If a majority of the members of the governing body of a county government and a majority of the members of the governing authority of municipalities representing at least 50 percent of the county's municipal population adopt an ordinance, up to \$2 million annually of the program funds allocated to that county may be used for the following purposes:^{29, 30}

- Funding a facility certified as a new or retained professional sports franchise under s. 288.1162, F.S., or a facility certified as a spring training franchise under s. 288.11621, F.S.
- Funding an applicant certified as a “motorsports entertainment complex” under s. 288.1171, F.S.

Motorsports Entertainment Complex Certification

Section 288.1171, F.S., provides the procedure by which a local government may receive certification for a motorsport entertainment complex in order to use \$2 million of Local Government Half-cent Sales Tax Program funds to pay for certain costs associated with the complex. As of October 30, 2013, no local government has received certification for a motorsport entertainment complex to use such funds.³¹ A motorsport entertainment complex is defined as a closed-course racing facility.

The Department of Economic Opportunity (DEO) is responsible for screening and certifying applicants to allow them to use program funds for these purposes. An applicant must be a unit of local government that either owns a motorsport entertainment complex or owns the land on which a complex is located.

Before certifying an applicant as a motorsport entertainment complex, the DEO must first verify that:

- The local government holds title to the land on which the complex is located or holds title to the complex; and
- The local government in which the complex is located has certified by resolution after a public hearing that the application for certification serves a public purpose.

If the DEO determines an applicant meets eligibility requirements, it must notify the applicant and the Department of Revenue (DOR) of the applicant's certification through an official letter. If an applicant does not meet the requirements, the DEO must notify the applicant within 10 days of such determination. An applicant may not receive more than one certification. There are no limitations on the number of applicants that may be certified.

An applicant certified as a motorsport entertainment complex may only use funds provided from the Local Government Half-cent Sales Tax Program for the public purposes of paying for the construction, reconstruction, expansion, or renovation of a motorsport entertainment complex, including related transportation and other infrastructure improvements; paying debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to bonds issued for such activities; or refinancing the bonds. Additional eligible uses include paying for

²⁹ Section 218.64(3)(b), F.S.

³⁰ If a county and municipal government's governing body support using program funds to support funding of professional sports, spring training, or motorsports entertainment complexes, their distribution for general use is provided *after* funding is provided for these projects.

³¹ Department of Economic Opportunity, *Agency Bill Analysis: SB 208*, (October 30, 2013).

advertising and promotional activities related to the motorsport entertainment complex or the municipality or county in which the complex is located, if such activities are designed to increase tourism or promote economic development of the municipality or county.³²

The DOR may perform an audit to ensure the distributions are expended as required, and may pursue recovery of any funds not expended as required by law.

III. Effect of Proposed Changes:

The bill permits the DEO to certify one motorsports entertainment complex to receive a monthly distribution from state sales tax revenues.

Section 1 amends s. 212.20, F.S., to direct the DOR to distribute \$166,667 monthly from state sales tax revenues to a motorsports entertainment complex certified under s. 288.1171, F.S.

Section 2 amends s. 288.1171, F.S., to permit a single motorsports entertainment complex to receive a distribution from state sales tax revenue upon certification by the DEO.

Application

Before certification, the DEO must determine that the project meets the following criteria:

- The local government holds title to the land on which the complex is located or holds title to the complex;
- The local government in which the complex is located has certified by resolution after a public hearing that the application for certification serves a public purpose;
- The applicant has approval from a sanctioning body³³ that motorsport events are sanctioned to occur at the applicant's complex;
- The applicant's facility has at least 50,000 fixed seats;
- The applicant has projections, verified by the DEO, which demonstrate that the complex will attract paid attendance of more than 100,000 annually;
- The applicant has an independent analysis, verified by the DEO, which demonstrates that the amount of revenues generated by the taxes imposed under ch. 212, F.S., with respect to the use and operation of the complex will equal or exceed \$2 million annually;
- The applicant has demonstrated that it has or is capable of providing, or has financial or other commitments to provide, one-half the cost incurred or related to the improvement and development of the complex; and

³² Distributions to professional sports facilities and local governments for funding spring training facilities under s. 212.20(6)(d)6.b and e., F.S., may not be used for advertising and promotional activities related to the motorsport entertainment complex or the municipality or county in which the complex is located, if such activities are designed to increase tourism or promote economic development of the municipality or county.

³³ Defined in current law under s. 288.1171(1)(e), F.S., as the American Motorcycle Association (AMA), Championship Auto Racing Teams (CART), Grand American Road Racing Association (Grand Am), Indy Racing League (IRL), National Association for Stock Car Auto Racing (NASCAR), National Hot Rod Association (NHRA), Professional Sportscar Racing (PSR), Sports Car Club of America (SCCA), United States Auto Club (USAC), or any successor organization, or any other nationally recognized governing body of motorsports which establishes and administers rules and regulations governing all participants involved in such events and all persons conducting such events, and requires certain liability assurances, including insurance.

- The total cost of the construction, reconstruction, expansion, or renovation of the complex exceeds \$250 million.

Certification

The bill provides that the approved applicant may not seek a distribution from the Local Government Half-cent Sales Tax Program under s. 218.64(3), F.S., while receiving a distribution from state sales tax revenue under s. 212.20, F.S.

Audits

The bill authorizes the Auditor General to verify the expenditure of distributions, and notify the DOR of improperly expended funds so that it may pursue recovery of such funds pursuant to the laws and rules governing the assessment of taxes.

Section 3 provides for an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The distribution of sales tax revenue to a motorsports entertainment complex would decrease General Revenue by \$1.7 million in Fiscal Year 2014-2015 and \$2 million on a recurring basis.

B. Private Sector Impact:

The bill will allow the owner of a certified motorsports entertainment complex to receive funding of up to \$2 million per year for up to 30 years, for a total distribution of \$60 million, to support renovations of such a complex.

C. Government Sector Impact:

The DEO indicated that any costs incurred would be covered by current resources.

The DOR indicated that the bill would have insignificant impact on the department.

Funds distributed under s. 212.20, F.S., to a motorsports entertainment complex may be used to pay for advertising or promotion of or related to the motorsports entertainment complex or the municipality or county in which the complex is located, if the advertising or promotion is designed to increase paid attendance at the complex or increase tourism in or promote the economic development of the community in which the complex is located.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.20 and 288.1171.

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 Appropriations on March 6, 2014:

The committee substitute makes it clear that current-law provisions which allow a local government to spend funds on behalf of a motorsports complex are not changed or eliminated. The new requirements established in the bill are applicable only to a motorsports entertainment complex seeking state funds.

CS by Commerce and Tourism on Jan. 8, 2014:

The committee substitute corrects a reference to clarify that the certified applicant may not seek a distribution from the Local Government Half-cent Sales Tax Program under s. 218.64(3), F.S., while receiving a distribution from state sales tax revenue under s. 212.20, F.S.

- B. **Amendments:**

None.

By the Committees on Appropriations; and Commerce and Tourism;
and Senators Hukill, Thrasher, Hays, Latvala, Simpson, Simmons,
Negron, Braynon, Altman, Galvano, and Gibson

576-02241-14

2014208c2

1 A bill to be entitled
2 An act relating to motorsports entertainment
3 complexes; amending s. 212.20, F.S.; providing for a
4 monthly distribution of a specified amount of sales
5 tax revenue to a complex certified as a motorsports
6 entertainment complex by the Department of Economic
7 Opportunity; amending s. 288.1171, F.S.; authorizing
8 the department to certify a single motorsports complex
9 if it meets specified criteria; authorizing the
10 Auditor General to verify the expenditure of specified
11 distributions and to notify the Department of Revenue
12 of improperly expended funds so that it may pursue
13 recovery; providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Paragraph (d) of subsection (6) of section
18 212.20, Florida Statutes, is amended to read:
19 212.20 Funds collected, disposition; additional powers of
20 department; operational expense; refund of taxes adjudicated
21 unconstitutionally collected.—
22 (6) Distribution of all proceeds under this chapter and s.
23 202.18(1)(b) and (2)(b) shall be as follows:
24 (d) The proceeds of all other taxes and fees imposed
25 pursuant to this chapter or remitted pursuant to s. 202.18(1)(b)
26 and (2)(b) shall be distributed as follows:
27 1. In any fiscal year, the greater of \$500 million, minus
28 an amount equal to 4.6 percent of the proceeds of the taxes
29 collected pursuant to chapter 201, or 5.2 percent of all other

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30 taxes and fees imposed pursuant to this chapter or remitted
31 pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in
32 monthly installments into the General Revenue Fund.
33 2. After the distribution under subparagraph 1., 8.814
34 percent of the amount remitted by a sales tax dealer located
35 within a participating county pursuant to s. 218.61 shall be
36 transferred into the Local Government Half-cent Sales Tax
37 Clearing Trust Fund. Beginning July 1, 2003, the amount to be
38 transferred shall be reduced by 0.1 percent, and the department
39 shall distribute this amount to the Public Employees Relations
40 Commission Trust Fund less \$5,000 each month, which shall be
41 added to the amount calculated in subparagraph 3. and
42 distributed accordingly.
43 3. After the distribution under subparagraphs 1. and 2.,
44 0.095 percent shall be transferred to the Local Government Half-
45 cent Sales Tax Clearing Trust Fund and distributed pursuant to
46 s. 218.65.
47 4. After the distributions under subparagraphs 1., 2., and
48 3., 2.0440 percent of the available proceeds shall be
49 transferred monthly to the Revenue Sharing Trust Fund for
50 Counties pursuant to s. 218.215.
51 5. After the distributions under subparagraphs 1., 2., and
52 3., 1.3409 percent of the available proceeds shall be
53 transferred monthly to the Revenue Sharing Trust Fund for
54 Municipalities pursuant to s. 218.215. If the total revenue to
55 be distributed pursuant to this subparagraph is at least as
56 great as the amount due from the Revenue Sharing Trust Fund for
57 Municipalities and the former Municipal Financial Assistance
58 Trust Fund in state fiscal year 1999-2000, no municipality shall

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59 receive less than the amount due from the Revenue Sharing Trust
60 Fund for Municipalities and the former Municipal Financial
61 Assistance Trust Fund in state fiscal year 1999-2000. If the
62 total proceeds to be distributed are less than the amount
63 received in combination from the Revenue Sharing Trust Fund for
64 Municipalities and the former Municipal Financial Assistance
65 Trust Fund in state fiscal year 1999-2000, each municipality
66 shall receive an amount proportionate to the amount it was due
67 in state fiscal year 1999-2000.

68 6. Of the remaining proceeds:

69 a. In each fiscal year, the sum of \$29,915,500 shall be
70 divided into as many equal parts as there are counties in the
71 state, and one part shall be distributed to each county. The
72 distribution among the several counties must begin each fiscal
73 year on or before January 5th and continue monthly for a total
74 of 4 months. If a local or special law required that any moneys
75 accruing to a county in fiscal year 1999-2000 under the then-
76 existing provisions of s. 550.135 be paid directly to the
77 district school board, special district, or a municipal
78 government, such payment must continue until the local or
79 special law is amended or repealed. The state covenants with
80 holders of bonds or other instruments of indebtedness issued by
81 local governments, special districts, or district school boards
82 before July 1, 2000, that it is not the intent of this
83 subparagraph to adversely affect the rights of those holders or
84 relieve local governments, special districts, or district school
85 boards of the duty to meet their obligations as a result of
86 previous pledges or assignments or trusts entered into which
87 obligated funds received from the distribution to county

Page 3 of 9

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

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2014208c2

88 governments under then-existing s. 550.135. This distribution
89 specifically is in lieu of funds distributed under s. 550.135
90 before July 1, 2000.

91 b. The department shall distribute \$166,667 monthly
92 ~~pursuant to s. 288.1162~~ to each applicant certified as a
93 facility for a new or retained professional sports franchise
94 pursuant to s. 288.1162. Up to \$41,667 shall be distributed
95 monthly by the department to each certified applicant as defined
96 in s. 288.11621 for a facility for a spring training franchise.
97 However, not more than \$416,670 may be distributed monthly in
98 the aggregate to all certified applicants for facilities for
99 spring training franchises. The department shall also distribute
100 \$166,667 monthly to an applicant certified as a motorsports
101 entertainment complex under s. 288.1171. Distributions begin 60
102 days after such certification and continue for not more than 30
103 years, except as otherwise provided in s. 288.11621. A certified
104 applicant identified in this sub-subparagraph may not receive
105 more in distributions than expended by the applicant for the
106 public purposes provided for under ~~in~~ s. 288.1162(5), ~~or~~ s.
107 288.11621(3), or s. 288.1171(7).

108 c. Beginning 30 days after notice by the Department of
109 Economic Opportunity to the Department of Revenue that an
110 applicant has been certified as the professional golf hall of
111 fame pursuant to s. 288.1168 and is open to the public, \$166,667
112 shall be distributed monthly, for up to 300 months, to the
113 applicant.

114 d. Beginning 30 days after notice by the Department of
115 Economic Opportunity to the Department of Revenue that the
116 applicant has been certified as the International Game Fish

Page 4 of 9

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

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117 Association World Center facility pursuant to s. 288.1169, and
 118 the facility is open to the public, \$83,333 shall be distributed
 119 monthly, for up to 168 months, to the applicant. This
 120 distribution is subject to reduction pursuant to s. 288.1169. A
 121 lump sum payment of \$999,996 shall be made, after certification
 122 and before July 1, 2000.

123 e. The department shall distribute up to \$55,555 monthly to
 124 each certified applicant as defined in s. 288.11631 for a
 125 facility used by a single spring training franchise, or up to
 126 \$111,110 monthly to each certified applicant as defined in s.
 127 288.11631 for a facility used by more than one spring training
 128 franchise. Monthly distributions begin 60 days after such
 129 certification or July 1, 2016, whichever is later, and continue
 130 for not more than 30 years, except as otherwise provided in s.
 131 288.11631. A certified applicant identified in this sub-
 132 subparagraph may not receive more in distributions than expended
 133 by the applicant for the public purposes provided in s.
 134 288.11631(3).

135 7. All other proceeds must remain in the General Revenue
 136 Fund.

137 Section 2. Subsection (2) of section 288.1171, Florida
 138 Statutes, is amended, present subsections (4) through (7) of
 139 that section are redesignated as subsections (5) through (8),
 140 respectively, and amended, and a new subsection (4) is added to
 141 that section, to read:

142 288.1171 Motorsports entertainment complex; definitions;
 143 certification; duties.-

144 (2) The department shall serve as the state agency for
 145 screening applicants for funding under s. 212.20, for local

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146 option funding under s. 218.64(3), and for certifying an
 147 applicant as a motorsports entertainment complex. The department
 148 shall develop and adopt rules for the receipt and processing of
 149 applications for funding under ss. 212.20 and s. 218.64(3). The
 150 department shall make a determination regarding any application
 151 filed by an applicant within not later than 120 days after the
 152 application is filed.

153 (4) The department may certify a single applicant as a
 154 motorsports entertainment complex for funding under s. 212.20 if
 155 the applicant meets all of the following conditions:

156 (a) The applicant meets the requirements of subsection (3).

157 (b) The applicant has a verified copy of the approval of a
 158 sanctioning body stating that motorsport events are sanctioned
 159 to occur at the applicant's complex.

160 (c) The applicant's facility has at least 50,000 fixed
 161 seats.

162 (d) The applicant has projections, verified by the
 163 department, which demonstrate that the motorsports entertainment
 164 complex will annually attract paid attendance of more than
 165 100,000 persons.

166 (e) The applicant has an independent analysis or study,
 167 verified by the department, which demonstrates that the amount
 168 of revenues generated by the taxes imposed under chapter 212
 169 with respect to the use and operation of the motorsports
 170 entertainment complex will annually equal or exceed \$2 million.

171 (f) The applicant has demonstrated that it has provided, is
 172 capable of providing, or has financial or other commitments to
 173 provide more than one-half of the costs incurred or related to
 174 the improvement and development of the complex.

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175 (g) The total cost of construction, reconstruction,
 176 expansion, or renovation of the complex exceeds \$250 million.

177
 178 The approved applicant may not seek funding under s. 218.64(3)
 179 while receiving funding under s. 212.20.

180 (5)(4) Upon determining that an applicant meets the
 181 requirements of subsection (3) or subsection (4), the department
 182 shall notify the applicant and the executive director of the
 183 Department of Revenue of such certification by means of an
 184 official letter granting certification. If the applicant fails
 185 to meet the certification requirements of subsection (3) or
 186 subsection (4), the department shall notify the applicant within
 187 not later than 10 days following such determination.

188 (6)(5) A motorsports entertainment complex that has been
 189 previously certified under this section and has received funding
 190 under such certification is ineligible for ~~any~~ additional
 191 certification.

192 (7)(6) An applicant certified as a motorsports
 193 entertainment complex may use funds provided pursuant to s.
 194 212.20 or s. 218.64(3) only for the following public purposes:

195 (a) Paying for the construction, reconstruction, expansion,
 196 or renovation of a motorsports entertainment complex.

197 (b) Paying debt service reserve funds, arbitrage rebate
 198 obligations, or other amounts relating payable with respect to
 199 bonds issued for the construction, reconstruction, expansion, or
 200 renovation of the motorsports entertainment complex or for the
 201 reimbursement of such costs or the refinancing of bonds issued
 202 for such purposes.

203 (c) Paying for construction, reconstruction, expansion, or

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204 renovation of transportation or other infrastructure
 205 improvements related to, necessary for, or appurtenant to the
 206 motorsports entertainment complex, including, ~~without~~
 207 ~~limitation~~, paying debt service reserve funds, arbitrage rebate
 208 obligations, or other amounts relating payable with respect to
 209 bonds issued for the construction, reconstruction, expansion, or
 210 renovation of such transportation or other infrastructure
 211 improvements, and for the reimbursement of such costs or the
 212 refinancing of bonds issued for such purposes.

213 (d) Paying for programs of advertising and promotion of or
 214 related to the motorsports entertainment complex or the
 215 municipality in which the motorsports entertainment complex is
 216 located, or the county if the motorsports entertainment complex
 217 is located in an unincorporated area, if such programs of
 218 advertising and promotion are designed to increase paid
 219 attendance at the motorsports entertainment complex or increase
 220 tourism in or promote the economic development of the community
 221 in which the motorsports entertainment complex is located.

222 (8)(7) ~~The Department of Revenue may audit.~~ As provided in
 223 s. 11.45 213.34, the Auditor General may conduct an audit to
 224 verify that the distributions pursuant to this section have been
 225 expended as required in this section. ~~Such information is~~
 226 ~~subject to the confidentiality requirements of chapter 213.~~ If
 227 the Auditor General ~~Department of Revenue~~ determines that the
 228 distributions pursuant to certification ~~under this section~~ have
 229 not been expended as required by this section, the Auditor
 230 General shall notify the Department of Revenue, which ~~it~~ may
 231 pursue recovery of such funds pursuant to the laws and rules
 232 governing the assessment of taxes.

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233

Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/2014

Meeting Date

Topic _____

Bill Number 208

Name BRIAN PITTS

(if applicable)

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/20/11
Meeting Date

Topic Motorsports

Bill Number S 208
(if applicable)

Name Brewster Bevis

Amendment Barcode _____
(if applicable)

Job Title Senior Vice President

Address 516 N Adams

Phone 224-7173

Street

Taly
City

FL
State

32301
Zip

E-mail bbevis@aif.com

Speaking: For Against Information

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/20/14

Meeting Date

Topic MOTORSPORTS

Bill Number 208
(if applicable)

Name IAN ANDERSON

Amendment Barcode _____
(if applicable)

Job Title _____

Address 913 PENINSULA DR.

Phone 386-214-5290

Street
ORLANDO BEACH FL 32174
City State Zip

E-mail IANTHEREALTOR@ME.COM

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/20/2014 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic MOTOR SPORTS

Bill Number 208 (if applicable)

Name G G GALLOWAY

Amendment Barcode (if applicable)

Job Title COMMERCIAL REAL ESTATE

Address 1305 OAK FOREST

Phone 386-672-8530

Street

ORMOND BEACH, F 32174

City

State

Zip

E-mail ggalloway@cbcbenchmark.com

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

Representing

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

Lobbyist registered with Legislature: [] Yes [X] 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

3-20-14

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

Meeting Date

Topic Motorsports Bill Number SB 208
(if applicable)

Name Cheryl Coxwell Amendment Barcode _____
(if applicable)

Job Title Director, Public Affairs, International Speedway

Address One Daytona Blvd Phone 386-681-6517

Street

Daytona Beach, FL 32114

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing International Speedway Corporation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Finance and Tax, *Chair*
Appropriations
Appropriations Subcommittee on Education
Commerce and Tourism
Communications, Energy, and Public Utilities
Community Affairs
Governmental Oversight and Accountability

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL

8th District

March 6, 2014

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

Re: Senate Bill 208 -- Motorsports Entertainment Complex

Dear Chairman Thrasher:

Senate Bill 208, relating to Motorsports Entertainment Complex, has been referred to the Rules Committee. I am requesting your consideration to include SB 208 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy L. Hukill".

Dorothy L. Hukill
State Senator, District 8

cc: John Phelps, Staff Director of the Rules Committee
Tamra Lyon, Administrative Assistant of the Rules Committee

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SM 476

INTRODUCER: Senator Hays

SUBJECT: Amendments to the Constitution of the United States

DATE: March 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Munroe</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SM 476 is a state application to the United States Congress calling upon Congress to convene an Article V constitutional amendments convention for the sole purposes of proposing amendments to the U.S. Constitution to: impose fiscal restraints on the federal government; limit the power and jurisdiction of the federal government; and limit the terms of office for federal officials and members of Congress. Each of these three proposed amendment categories is severable from one another and may be counted individually to satisfy the requirement that 34 state legislatures apply to Congress to call a constitutional convention.

This memorial is revoked and withdrawn, nullified, and superseded as if it had never been passed, if it is used for the purpose of calling a convention or used in support of conducting a convention to amend the U.S. Constitution for any purpose other than imposing fiscal restraints on the federal government, limiting the power and jurisdiction of the federal government, or limiting the terms of office for federal officials and members of Congress.

This memorial serves as a continuing application, in accordance with the requirements for calling a constitutional convention, until the legislatures of at least two-thirds of states also make applications on one or more of the three proposed amendment categories listed in the memorial.

II. Present Situation:

Article V of the U.S. Constitution provides a mechanism for proposing amendments to the U.S. Constitution. Article V of the U.S. Constitution, states:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall proposed Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when

ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent shall be deprived of its equal Suffrage in the Senate.

Article V of the U.S. Constitution means that amendments to the Constitution may be proposed in one of two ways. First, an amendment may be proposed upon a two-thirds vote of the U.S. House of Representatives and the Senate.¹ Secondly, upon the applications of two-thirds (34) of the state legislatures, Congress must call an amendments convention.

Congress is authorized to choose the method states may ratify proposed amendments. First, Congress may require that amendments be ratified by ad hoc conventions in three-fourths (38) of the states for the specific purpose of the consideration of amendments. Secondly, Congress may require that an amendment be ratified by three-fourths (38) of the legislatures of the states.²

Article X of the U.S. Constitution provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Article X draws the line between the powers of states and the power of the federal government. The volume of litigation on the scope of federal power suggests that the exact line between state and federal power is not clear. However, if Congress legislates upon a subject that is exclusively within its jurisdiction and constitutional control, and manifests its intention to deal with the subject in full, then any state law is preempted to the extent it is contrary to federal law.³

III. Effect of Proposed Changes:

This memorial is a state application to the United States Congress calling upon Congress to convene an Article V constitutional amendments convention for the sole purposes of proposing amendments to the U.S. Constitution to: impose fiscal restraints on the federal government; limit the power and jurisdiction of the federal government; and limit the terms of office for federal officials and members of Congress. Each of these three proposed amendment categories is severable from one another and may be counted individually towards the requirement that 34 states apply to Congress to call to satisfy the requirement that 34 state legislatures apply to Congress to call a constitutional convention.

This memorial is revoked and withdrawn, nullified, and superseded as if it had never been passed, if it is used for the purpose of calling a convention or used in support of conducting a convention to amend the U.S. Constitution for any purpose other than imposing fiscal restraints on the federal government, limiting the power and jurisdiction of the federal government, or limiting the terms of office for federal officials and members of Congress.

¹ See 16 AM. JUR. 2D CONSTITUTIONAL LAW s. 15.

² Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (Jul. 9, 2012) p. 2, <http://www.fas.org/sgp/crs/misc/R42589.pdf>

³ See 16A AM. JUR. 2D CONSTITUTIONAL LAW s. 232.

This memorial serves as a continuing application, in accordance with the requirements for calling a constitutional convention, until the legislatures of at least two-thirds of states also make applications on one or more of the three proposed amendment categories listed in the memorial

Copies of the memorial are to be distributed to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Because an Article V amendments convention has never been conducted, what might actually occur procedurally or substantively is unclear.

Diverse scholars have raised, but not necessarily answered, many questions regarding the nature of an amendments convention. Some of those issues involve, in part:

- To what extent Congress would establish the framework for the convention;

- Whether the scope of the convention is limited in its focus or expanded to include other topics;
- Whether the states have any constitutional authority over the convention once it is convened;
- Whether it is the role of Congress to summon, convene, define, and administer the convention; or
- How convention delegates will be apportioned among the states and whether it might occur in a manner similar to the Electoral College.⁴

Congressional legislation was introduced between 1973 and 1992, in anticipation of an amendments convention being convened, that endeavored to develop a procedural framework that would address the issues raised above and similar issues. None of the legislation passed both Houses of Congress.⁵

VIII. Statutes Affected:

None.

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.

⁴ See general, Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (Jul. 9, 2012), <http://www.fas.org/sgp/crs/misc/R42589.pdf>. See also, James Kenneth Rogers, *The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process*, 30 HARV. J.L & PUB. POL'Y 1005, 1009-1010 (2007).

⁵ Neale, at 26.

By Senator Hays

11-00350A-14

2014476__

Senate Memorial

A memorial to the Congress of the United States, applying to Congress to call a convention for the sole purpose of proposing amendments to the Constitution of the United States which impose fiscal restraints on the Federal Government, limit the power and jurisdiction of the Federal Government, and limit the terms of office for federal officials and members of Congress.

WHEREAS, the Founders of the United States of America provided in the Constitution of the United States for a limited Federal Government of express enumerated powers, and

WHEREAS, the Tenth Amendment to the Constitution specifically provides that all powers not delegated to the Federal Government nor prohibited by the Constitution to the states are reserved to the states, respectively, or to the people, and

WHEREAS, for many decades, this balance of power was generally respected and followed by those occupying positions of authority in the Federal Government, and

WHEREAS, as federal power has expanded over the past decades, federal spending has exponentially increased to the extent that it is now decidedly out of balance in relation to actual revenues or when comparing the ratio of accumulated public debt to the nation's gross domestic product, and

WHEREAS, in 2013, the Federal Government's accumulated public debt exceeded \$17 trillion, which is more than double that in 2006, and

Page 1 of 3

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11-00350A-14

2014476__

WHEREAS, projections of federal deficit spending in the coming decades demonstrate that this power shift and its fiscal impacts are continuing and pose serious threats to the freedom and financial security of the American people and future generations, and

WHEREAS, the Founders of the United States of America provided a procedure in Article V of the Constitution to amend the Constitution on application of two-thirds of the several states, calling a convention for proposing amendments that will be valid to all intents and purposes if ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as one or the other mode of ratification may be proposed by Congress, and

WHEREAS, it is a fundamental duty of state legislatures to support, protect, and defend the liberty of the American people, including generations yet to come, by asserting their solemn duty and responsibility under the Constitution to call for a convention under Article V for proposing amendments to the Constitution to reverse and correct the ominous path that the country is now on and to restrain future expansions and abuses of federal power, NOW, THEREFORE,

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

(1) That the Legislature of the State of Florida does hereby make application to Congress pursuant to Article V of the Constitution of the United States to call an Article V convention for the sole purpose of proposing amendments to the Constitution of the United States which:

Page 2 of 3

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

11-00350A-14

2014476__

59 (a) Impose fiscal restraints on the Federal Government.

60 (b) Limit the power and jurisdiction of the Federal
61 Government.

62 (c) Limit the terms of office for federal officials and
63 members of Congress.

64 (2) That these three proposed amendment categories are
65 severable from one another and may be counted individually
66 toward the required two-thirds number of applications made by
67 the state legislatures for the calling of an Article V
68 convention.

69 (3) That this memorial is revoked and withdrawn, nullified,
70 and superseded to the same effect as if it had never been
71 passed, and retroactive to the date of passage, if it is used
72 for the purpose of calling a convention or used in support of
73 conducting a convention to amend the Constitution of the United
74 States for any purpose other than imposing fiscal restraints on
75 the Federal Government, limiting the power and jurisdiction of
76 the Federal Government, or limiting the terms of office for
77 federal officials and members of Congress.

78 (4) That this application constitutes a continuing
79 application in accordance with Article V of the Constitution of
80 the United States until the legislatures of at least two-thirds
81 of the several states have made applications on one or more of
82 the three proposed amendment categories listed above.

83 BE IT FURTHER RESOLVED that copies of this memorial be
84 dispatched to the President of the United States, to the
85 President of the United States Senate, to the Speaker of the
86 United States House of Representatives, and to each member of
87 the Florida delegation to the United States Congress.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/2014

Meeting Date

Topic _____

Bill Number 476

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/14

Meeting Date

Topic _____

Bill Number 476
(if applicable)

Name Tim Nungesser

Amendment Barcode _____
(if applicable)

Job Title Legislative Director

Address 110 E. Jefferson St.

Phone 850-445-5367

Street

Tallahassee FL 32301

City

State

Zip

E-mail tim.nungesser@flb.org

Speaking: For Against Information

Representing National Federation of Independent Business

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Banking and Insurance
Commerce and Tourism

JOINT COMMITTEES:

Joint Select Committee on Collective Bargaining, *Co-Chair*
Joint Legislative Auditing Committee
Joint Legislative Budget Commission

SENATOR ALAN HAYS

11th District

MEMORANDUM

To: Senator John Thrasher, Chair
Rules Committee
CC: John B. Phelps, Staff Director
Tamra Lyon, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SM 476 – Amendments to the Constitution of the United States

Date: February 11, 2014

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
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DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SJR 1188

INTRODUCER: Rules Committee and Senator Lee

SUBJECT: Prospective Appointment of Judicial Vacancies

DATE: March 21, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/1 amendment
2.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SJR 1188 amends the State Constitution to require the Governor to prospectively fill certain vacancies in a judicial office on the Florida Supreme Court or a district court of appeal and allow the Governor to prospectively fill another type of vacancy. The amendment requires the Governor to prospectively fill a vacancy that will occur due to a justice or judge reaching the mandatory retirement age or failing to qualify for a retention election. The Governor is allowed to prospectively fill a vacancy that occurs when a justice or judge fails to be retained in office at an election.

Currently, the Governor's authority to appoint a Supreme Court Justice or district court of appeal judge does not manifest itself until the expiration of the sitting judge's or justice's term. Additionally, under the existing timeframes for filling a judicial vacancy, the potential exists for a judicial office to be vacant for 120 days after a vacancy occurs. Under the amendment, the existing timeframes for a judicial nominating commission to nominate individuals to fill a prospective vacancy begin at the conclusion of the qualifying period for retention or immediately following the general election in which the voters do not vote to retain a judge or justice.

II. Present Situation:

The Selection and Retention of Judges and Justices under Florida Law

Trial Courts -Election by Voters

Florida law establishes two separate methods for selecting judges and justices for office. In the trial courts, comprised of the county and circuit courts, judges are elected by a majority vote of the qualified electors in a nonpartisan election. The term of office is 6 years. To serve an additional term, the judge must qualify and run for office in a subsequent general election and again be elected by a majority of the electorate voting in that election.

Appellate Courts -Nomination and Merit Retention

Initial Appointment

In the appellate courts, which are the district courts of appeal and the Supreme Court, the method is different. The selection process is called merit retention which was adopted in 1976 through an amendment to the State Constitution. The Supreme Court justices and district court judges are initially appointed by the Governor from a list of three to six nominees supplied by the appropriate judicial nominating commission. The new judge or justice faces his or her first merit retention vote in the first general election that is scheduled at least 1 year after appointment. If a majority of the electors in the territorial jurisdiction vote to retain, the judge or justice is retained for a 6-year term in office. The territorial jurisdiction for a judge on a district court of appeal is comprised of multiple counties and judicial circuits making up that particular jurisdiction. In contrast, because the Supreme Court has statewide jurisdiction, the name of the Justice appears on the ballot state-wide for election.

Subsequent Terms

To serve a subsequent term, the judge from the district court of appeal or a justice from the Supreme Court must qualify for retention by a vote of the electors in the general election which occurs closest and before the expiration of the judge's or justice's term. The ballot then asks the simple question "Shall Justice (or Judge) (name of judge or justice) of the (name of the court) be retained in office?" If a majority of the qualified electors voting in the territorial jurisdiction of the court vote to retain, the justice or judge is retained for another 6-year term. If a majority of the electors vote to not retain, a vacancy exists in the office upon the expiration of the term being served by the justice or judge.¹

Term of Office for Supreme Court Justices and District Court of Appeals Judges

The term of office for a justice or judge who is retained begins on the first Tuesday after the first Monday in January following the general election.²

Judicial Nominating Commissions

The State Constitution requires the establishment of a separate judicial nominating commission, as provided by general law, for the Supreme Court, each district court of appeal, and each judicial circuit for all trial courts within the circuit.³

¹ The State Constitution, in s. 10, Art. V, provides that, under specified circumstances, a jurisdiction may approve a local option to select circuit or county judges by merit selection and retention rather than election. The local option has not been approved in any circuit or county.

² FLA. CONST. art. V, s. 10(a).

³ FLA. CONST. art. V, s. 11(d).

Each judicial nominating commission is composed of four members of The Florida Bar, nominated by the Board of Governors of the Bar and selected by the Governor, and five members appointed by the Governor, of which two are members of the Bar and engaged in the practice of law. The members must be residents of the territorial jurisdiction served by the commission. The term of office is 4 years.⁴

No justice of judge is permitted to serve as a member of the commission but members may hold an office other than a judicial office. A member of a commission is not eligible for appointment to a state judicial office over which the commission has authority to make a nomination during his or her term of office or for 2 years afterwards.

Vacancy in Office and Timeframes

A vacancy in office occurs if a justice or judge is ineligible for retention, fails to qualify for retention,⁵ or is not retained by a majority vote in the general election. The vacancy exists upon the expiration of the term being served by the justice. The State Constitution directs that the governor must “fill the vacancy by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment.” The Governor must make the selection from a list of three to six persons nominated by the judicial nominating committee for the Supreme Court.⁶ The Supreme Court has determined that the Governor must make his or her selection from the list of nominees supplied by the commission and is not allowed to reject the list and request another slate of names.⁷

The nominations must be submitted by the judicial nominating committee within 30 days after the prospective vacancy occurs unless the Governor extends the period for a time that does not exceed 30 days. The Governor then has 60 days after the nominations are submitted to him or her to make the appointment.⁸

Mandatory Retirement under the Constitution

The State Constitution prohibits a justice or judge from serving after he or she has attained the age of 70 except for a temporary assignment or to complete a term “one-half of which has been served.”⁹

Term of Office – Governor

A Governor is elected to a 4-year term in office at each general election which is held in an even numbered year but which is not a multiple of four. The term begins on the first Tuesday after the first Monday in January of the year after the election.¹⁰

⁴ FLA. CONST. art. V, s. 20(c); s. 43.291(3), F.S.

⁵ Section 105.031(1), F.S. provides that “Candidates for judicial office shall qualify no earlier than noon on the 120th day, and no later than noon of the 116th day, before the primary election.”

⁶ FLA. CONST. art V, s. 11(a).

⁷ 14 So. 3d 941 (Fla. 2009).

⁸ FLA. CONST. art. V, s. 11(c).

⁹ FLA. CONST. art. V, s. 8.

¹⁰ FLA. CONST. art. IV, s. 5(a).

When Appointments May be Made to Fill Vacancies

Governor Bush requested an advisory opinion from the Supreme Court in 2006 as to when a vacancy occurs as the result of a mandatory retirement of a judge who was not eligible for retention. The Court responded that the vacancy would not occur until the judge's term actually expired.¹¹ In a concurring opinion, Justice Cantero agreed¹² with the majority holding but emphasized that nothing in the Florida Constitution prevented the appropriate judicial nominating commission from beginning the nominating process to name a successor before the vacancy actually occurs. He stated that "The constitution is silent on when the process must begin" and noted that vacancies in office should be avoided when possible, or at least, minimized. Justice Cantero wrote that if a judicial nominating commission is forced to delay the beginning of its proceedings until a judge leaves office, the affected court might be left without a judge for months, thereby placing an enormous burden on the remaining members of the court.

When Does a Governor's Authority to Make Appointments End?

The Florida Supreme Court issued a 1955 decision resolving the question of when an outgoing Governor's authority to fill a judicial vacancy ends and when an incoming Governor's authority begins.¹³ The Court concluded that the authority of the outgoing Governor did not end until the incoming Governor actually takes office.

When Governor Dan McCarty died in office on September 30, 1953, Senate President Charley Johns became acting Governor until the installation of Governor LeRoy Collins on January 4, 1955. Governor Collins had been elected in 1954 to fill the unexpired term of the deceased Governor. Outgoing Governor Johns appointed Thomas Tappy to fill a judicial vacancy that would occur at midnight, Monday, January 3, 1955, just hours before Governor Collins' inauguration. On Tuesday, January 4, 1955, inauguration day, Governor Collins was sworn into office at about noon. He tried to appoint another person to that same judicial office once he was inaugurated. The Supreme Court concluded that acting Governor John's midnight appointment of Thomas Tappy was valid. The Court noted that the incumbent Governor continued in office and was entitled to exercise any power to appoint an individual to office until his successor had been sworn into the office.

III. Effect of Proposed Changes:

This joint resolution amends two sections of Article V of the State Constitution pertaining to the Governor's ability to appoint judges and justices to the district courts of appeal and the Supreme Court. The bill authorizes the Governor to "prospectively" fill vacancies and explains when a prospective vacancy occurs. The Governor is currently permitted to fill vacancies only upon the expiration of the term of the person vacating the office.

¹¹ *Advisory Opinion to the Governor re Judicial Vacancy Due to Mandatory Retirement*, 940 So. 2d 1090 (Fla. 2006).

¹² *Id.* at 94, 95.

¹³ *Tappy v. State*, 82 So. 2d (Fla. 1955).

Article V, Section 10—Retention

Under current law, a Governor is permitted to fill a vacancy on an appellate court or the Supreme Court when a justice or judge is either ineligible for retention, fails to qualify for retention, or loses a retention election. The vacancy exists upon “the expiration of the term being served by the justice or judge” and not before that time.

This amendment to the State Constitution authorizes the Governor to fill a “prospective” vacancy on a court. A prospective vacancy occurs, not at the end of the term being served by the justice or judge, but at the time that the justice or judge is either ineligible for retention, at the end of the qualifying period for retention when the individual fails to qualify for retention, or immediately after the general election when the judge or justice does not receive the necessary votes to be retained.

This amendment requires the judicial nominating commission to begin its work in advance of the expiration of the justice of judge’s term. By requiring the commission to provide the Governor with a list of nominees sooner, the process of nomination and appointment will conclude before the expiration of the term of the sitting justice or judge if a justice or judge is ineligible for retention or fails to qualify for retention. If a justice or judge is not retained at the general election, the judicial nominating commission will begin its 30 day work in November instead of January as the current law requires. As a result, instead of actual vacancies on a court potentially lasting 120 days, some vacancies may be eliminated on the Supreme Court and district courts of appeal while others may be significantly reduced.

Article V, Section 11—Vacancies

The amendment to this section of the State Constitution provides that whenever a prospective vacancy occurs in a judicial office subject to election for retention, the Governor must fill the prospective vacancy, as under existing law, by an appointment from a list of at least three but not more than six persons nominated by the appropriate judicial nominating commission. The amendment further specifies that the appointment commences upon the expiration of the term of the office being vacated and ends on the first Tuesday after the first Monday in January of the year following the next general election.

Although this amendment authorizes the Governor to select an appointee before the expiration of the current office holder’s term, it does not allow the Governor to shorten the current office holders’ term of office.

Application of the Amendment

The amendment will first apply to judicial vacancies on a district court of appeal or on the Supreme Court which occur in January 2017.

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:

This joint resolution will be submitted to the voters for approval or rejection if agreed to by a three-fifths vote of the membership of each house of the Legislature.¹⁴ To take effect, this amendment must be approved by a vote of at least 60 percent of the voters voting on the measure during the 2014 General Election.¹⁵

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator does not expect the joint resolution to have a fiscal impact on the state courts system.¹⁶

Proposed amendments to the State Constitution must be published in a newspaper of general circulation in each county in which a newspaper is published in the 10th week and 6th week before the election in which amendments are submitted to the electors.¹⁷ The state will bear the costs of publishing the joint resolution.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁴ FLA. CONST. art. XI, s. 1.

¹⁵ FLA. CONST. art. XI, s. 5(e).

¹⁶ Office of the State Courts Administrator, *Judicial Impact Statement for SJR 1188*, (March 8, 2014) (on file with the Senate Committee on Judiciary).

¹⁷ FLA. CONST. art. XI, s. 5(e).

VIII. Statutes Affected:

This bill amends sections 10 and 11 of Article V of the State Constitution.

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 Rules on March 20, 2014:

The CS clarifies the ballot summary language to state that the Governor is required to prospectively fill vacancies resulting from a justice or judge reaching the mandatory retirement age or failing to qualify for retention and allows prospective appointments if a judge or justice is not retained at an election.

- B. **Amendments:**

None.

By Senator Lee

24-01143B-14

20141188__

Senate Joint Resolution

A joint resolution proposing amendments to Sections 10 and 11 of Article V of the State Constitution to authorize the Governor to prospectively fill vacancies in certain judicial offices.

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

That the following amendments to Sections 10 and 11 of Article V of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE V

JUDICIARY

SECTION 10. Retention; election and terms.—

(a) Any justice or judge may qualify for retention by a vote of the electors in the general election next preceding the expiration of the justice's or judge's term in the manner prescribed by law. ~~When~~ ~~if~~ a justice or judge is ineligible for retention or fails to qualify for retention, a prospective vacancy is deemed to occur at the conclusion of the qualifying period for retention for the purpose of appointing a successor justice or judge, and a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge. When a justice or judge so qualifies, the ballot shall read substantially as follows: "Shall Justice (or Judge) ...(name of justice or judge)... of the ...(name of the court)... be

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

24-01143B-14

20141188__

retained in office?" If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to retain, the justice or judge shall be retained for a term of six years. The term of the justice or judge retained shall commence on the first Tuesday after the first Monday in January following the general election. If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to not retain, a prospective vacancy is deemed to occur immediately following the general election for the purpose of appointing a successor justice or judge, and a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge.

(b) (1) The election of circuit judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that circuit approves a local option to select circuit judges by merit selection and retention rather than by election. The election of circuit judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

(2) The election of county court judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that county approves a local option to select county judges by merit selection and retention rather than by election. The election of county court judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

(3)a. A vote to exercise a local option to select circuit court judges and county court judges by merit selection and retention rather than by election shall be held in each circuit

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24-01143B-14

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59 and county at the general election in the year 2000. If a vote
60 to exercise this local option fails in a vote of the electors,
61 such option shall not again be put to a vote of the electors of
62 that jurisdiction until the expiration of at least two years.

63 b. After the year 2000, a circuit may initiate the local
64 option for merit selection and retention or the election of
65 circuit judges, whichever is applicable, by filing with the
66 custodian of state records a petition signed by the number of
67 electors equal to at least ten percent of the votes cast in the
68 circuit in the last preceding election in which presidential
69 electors were chosen.

70 c. After the year 2000, a county may initiate the local
71 option for merit selection and retention or the election of
72 county court judges, whichever is applicable, by filing with the
73 supervisor of elections a petition signed by the number of
74 electors equal to at least ten percent of the votes cast in the
75 county in the last preceding election in which presidential
76 electors were chosen. The terms of circuit judges and judges of
77 county courts shall be for six years.

78 SECTION 11. Vacancies.—

79 (a) (1) Whenever a vacancy occurs in a judicial office to
80 which election for retention applies, the governor shall fill
81 the vacancy by appointing for a term ending on the first Tuesday
82 after the first Monday in January of the year following the next
83 general election occurring at least one year after the date of
84 appointment, one of not fewer than three persons nor more than
85 six persons nominated by the appropriate judicial nominating
86 commission.

87 (2) Whenever a prospective vacancy occurs in a judicial

24-01143B-14

20141188__

88 office for which election for retention applies, the governor
89 shall fill the prospective vacancy by appointing a justice or
90 judge from among at least three persons but not more than six
91 persons nominated by the appropriate judicial nominating
92 commission. The term of the appointment commences upon the
93 expiration of the term of the office being vacated and ends on
94 the first Tuesday after the first Monday in January of the year
95 following the next general election.

96 (b) The governor shall fill each vacancy on a circuit court
97 or on a county court, wherein the judges are elected by a
98 majority vote of the electors, by appointing for a term ending
99 on the first Tuesday after the first Monday in January of the
100 year following the next primary and general election occurring
101 at least one year after the date of appointment, one of not
102 fewer than three persons nor more than six persons nominated by
103 the appropriate judicial nominating commission. An election
104 shall be held to fill that judicial office for the term of the
105 office beginning at the end of the appointed term.

106 (c) The nominations shall be made within thirty days from
107 the occurrence of a vacancy or prospective vacancy unless the
108 period is extended by the governor for a time not to exceed
109 thirty days. The governor shall make the appointment within
110 sixty days after the nominations have been certified to the
111 governor.

112 (d) There shall be a separate judicial nominating
113 commission as provided by general law for the supreme court,
114 each district court of appeal, and each judicial circuit for all
115 trial courts within the circuit. Uniform rules of procedure
116 shall be established by the judicial nominating commissions at

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20141188_

117 each level of the court system. Such rules, or any part thereof,
118 may be repealed by general law enacted by a majority vote of the
119 membership of each house of the legislature, or by the supreme
120 court, five justices concurring. Except for deliberations of the
121 judicial nominating commissions, the proceedings of the
122 commissions and their records shall be open to the public.

123 BE IT FURTHER RESOLVED that the following statement be
124 placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE V, SECTIONS 10, 11

127 PROSPECTIVE APPOINTMENT OF CERTAIN JUDICIAL VACANCIES.-
128 Proposing an amendment to the State Constitution authorizing the
129 Governor to prospectively fill a vacancy in a judicial office to
130 which election for retention applies that results from a
131 justice's or judge's reaching the mandatory retirement age,
132 failure to qualify for a retention election, or failure to be
133 retained through election. Under current law, the Governor may
134 not act to fill such vacancies until after the current justice
135 or judge completes his or her term.

136



147730

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/12/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Lee) recommended the following:

Senate Amendment

In ballot statement, delete lines 127 - 135
and insert:

PROSPECTIVE APPOINTMENT OF CERTAIN JUDICIAL VACANCIES.-
Proposing an amendment to the State Constitution requiring the
Governor to prospectively fill vacancies in a judicial office to
which election for retention applies resulting from the
justice's or judge's reaching the mandatory retirement age or
failure to qualify for a retention election; and allowing
prospective appointments if a justice or judge is not retained



147730

12 | at an election. Currently, the Governor may not fill an expected
13 | vacancy until the current justice's or judge's term expires.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/20/14
Meeting Date

Topic Judicial Vacancies

Bill Number SB 1188
(if applicable)

Name Karen Zaremba

Amendment Barcode _____
(if applicable)

Job Title Teacher

Address 3871 Island Club Cir.
Street

Phone 561-642-0513

Lantana FL 33462
City State Zip

E-mail K.Zarem@attol.com

WAVE
Speaking: For Against Information

Representing Self-

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE APPEARANCE RECORD

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

3/20/14

Meeting Date

Topic Judicial Vacancies

Bill Number SB 1188
(if applicable)

Name Carol Horton

Amendment Barcode _____
(if applicable)

Job Title _____

Address 5954 Triphammer Rd.

Phone 561-762-7635

Street

Lake Worth, FL 33463

City

State

Zip

E-mail hsch1@bellsouth.net

Speaking: For Against Information

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 520

INTRODUCER: Senator Richter

SUBJECT: Public Records/Dental Workforce Surveys

DATE: March 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Peterson</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 520 creates a public records exemption for personal identifying information provided by dentists or dental hygienists to the Department of Health (DOH) in their responses to dental workforce surveys. The information is designated confidential and exempt but must be disclosed by the DOH when authorized by the person who is identified or pursuant to court order. The bill allows the DOH to release the information for research purposes subject to specific conditions.

This bill exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill also provides a statement of public necessity as required by the Florida Constitution.

Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person 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 of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "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" to mean "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 (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)). *But see* s. 11.0431, F.S. (Providing public access to records of the Senate and the House of Representatives, subject to specified exemptions.)

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

Workforce Surveys

The DOH currently administers two optional workforce surveys—one for dentists and one for dental hygienists—which may be completed as part of licensure renewal. The DOH first offered the survey to dentists in 2009 and 89 percent of all dentists with active licenses responded.¹³ The DOH offered the survey to dental hygienists in 2011 and 87.9 percent responded.¹⁴ The data from both surveys are analyzed by the DOH Public Health Dental Program. The Public Health Dental Program disseminates the workforce reports on dentists and dental hygienists in two primary ways—by posting on the DOH website and through the Oral Health Florida Coalition, which is a broad-based organization of local stakeholders committed to improving oral health in Florida.¹⁵

Unlike dentists and dental hygienists, medical and osteopathic physicians are *required* to respond to a workforce survey as a condition of license renewal.¹⁶ Findings from the survey are used by the Physician Workforce Advisory Council, which provides advice and recommendations to the DOH on issues related to physician workforce planning.¹⁷ All personal identifying information contained in records provided by physicians in response to the survey is confidential and exempt.¹⁸

III. Effect of Proposed Changes:

The bill creates a public records exemption for dental workforce surveys that is similar to the exemption currently in law for physician workforce surveys. The exemption for physician workforce surveys makes disclosure of the information to research entities mandatory when the research entity has complied with the specified conditions. By contrast, SB 520 makes disclosure permissive.¹⁹ In addition, SB 520 provides that research entities holding dental workforce survey information will be “prohibited” from releasing identifying information, while research entities holding physician workforce surveys must “restrict” the release of identifying information.²⁰

Specifically, the bill provides that all personal identifying information contained in records provided by dentists or dental hygienists licensed under ch. 466, F.S., in response to a dental workforce survey and held by the DOH, is confidential and exempt²¹ from public records

¹³ Florida Department of Health, *Report on the 2009-2010 Workforce Survey of Dentists* (March 2011) (on file with the Senate Health Policy Committee).

¹⁴ Florida Department of Health, *2013 Bill Analysis, Economic Statement, and Fiscal Note for SB 1066*, on file with the Senate Health Policy Committee.

¹⁵ E-mail from Katherine Kamaya, Florida Department of Health (Jan. 23, 2014) (on file with the Senate Committee on Health Policy). Oral Health Florida, under the facilitation of the Florida Public Health Institute, is working with national, state, and local stakeholders to improve oral health in Florida. The coalition’s mission is to increase public understanding of and public support for programs and policies that aim to improve oral health in Florida.

¹⁶ See ss. 458.3191 and 459.0081, F.S.

¹⁷ Section 381.4018, F.S.

¹⁸ See ss. 458.3193 and 459.0083, F.S.

¹⁹ SB 520 is the substance of bills that have either passed, or been considered by, the Senate in each of the following Sessions: 2010, 2011, 2012, and 2013. All prior bills made disclosure of the information to research entities mandatory when the research entity complied with the required conditions for disclosure.

²⁰ Section 458.3193(3), F.S.

²¹ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. See *supra* note 6.

requirements. However, the DOH must disclose the information under the following circumstances:

- With the express written consent of the person who is identified or the person's legally authorized representative; or
- By court order upon a showing of good cause.

In addition, the DOH may disclose the information to a research entity, if the entity:

- Seeks the record or data pursuant to a research protocol approved by the DOH;
- Maintains the records in accordance with the protocol; and
- Enters into a purchase and data-use agreement with DOH. The agreement must restrict the release of information that would identify individuals, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data.

The bill authorizes the DOH to deny a research entity's request if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit.

The bill provides for repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.²² The statement finds that preserving the confidentiality of the information will result in more candid responses to the surveys, which, in turn, are important to addressing the availability of the dental workforce in Florida.

The bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

²² Section 24(c), Art. I of the Florida Constitution.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 520 may create a minimal fiscal impact for the DOH because staff responsible for complying with public records requests may need training related to the new public records exemption. In addition, the DOH may incur costs associated with redacting the confidential and exempt information prior to releasing a record. These costs, however, can be absorbed by the DOH as part of current operations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 466.051 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Richter

23-00421-14

2014520__

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 466.051, F.S.; providing an exemption from public
 4 records requirements for information contained in
 5 dental workforce surveys submitted by dentists or
 6 dental hygienists to the Department of Health;
 7 providing exceptions to the exemption; providing for
 8 future legislative review and repeal of the exemption
 9 under the Open Government Sunset Review Act; providing
 10 a statement of public necessity; providing an
 11 effective date.

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

15 Section 1. Section 466.051, Florida Statutes, is created to
 16 read:

17 466.051 Confidentiality of certain information contained in
 18 dental workforce surveys.-

19 (1) Personal identifying information that is contained in a
 20 record provided by a dentist or dental hygienist licensed under
 21 this chapter in response to a dental workforce survey and held
 22 by the Department of Health is confidential and exempt from s.
 23 119.07(1) and s. 24(a), Art. I of the State Constitution.

24 Personal identifying information in such a record:

25 (a) Shall be disclosed with the express written consent of
 26 the individual to whom the information pertains or the
 27 individual's legally authorized representative.

28 (b) Shall be disclosed by court order upon a showing of
 29 good cause.

Page 1 of 3

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

23-00421-14

2014520__

30 (c) May be disclosed to a research entity, if the entity
 31 seeks the records or data pursuant to a research protocol
 32 approved by the Department of Health, maintains the records or
 33 data in accordance with the approved protocol, and enters into a
 34 purchase and data-use agreement with the department, the fee
 35 provisions of which are consistent with s. 119.07(4). The
 36 department may deny a request for records or data if the
 37 protocol provides for intrusive follow-back contacts, does not
 38 plan for the destruction of the confidential records after the
 39 research is concluded, is administratively burdensome, or does
 40 not have scientific merit. The agreement must prohibit the
 41 release of information by the research entity which would
 42 identify individuals, limit the use of records or data to the
 43 approved research protocol, and prohibit any other use of the
 44 records or data. Copies of records or data issued pursuant to
 45 this paragraph remain the property of the department.

46 (2) This section is subject to the Open Government Sunset
 47 Review Act in accordance with s. 119.15 and shall stand repealed
 48 on October 2, 2019, unless reviewed and saved from repeal
 49 through reenactment by the Legislature.

50 Section 2. The Legislature finds that it is a public
 51 necessity that personal identifying information that is
 52 contained in a record provided by a dentist or dental hygienist
 53 licensed under chapter 466, Florida Statutes, who responds to a
 54 dental workforce survey be made confidential and exempt from
 55 disclosure. Candid and honest responses by licensed dentists or
 56 dental hygienists to the workforce survey will ensure that
 57 timely and accurate information is available to the Department
 58 of Health. The Legislature finds that the failure to maintain

Page 2 of 3

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

23-00421-14

2014520__

59 the confidentiality of such personal identifying information
60 would prevent the resolution of important state interests to
61 ensure the availability of dentists or dental hygienists in this
62 state.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/20/2014

Meeting Date

Topic _____

Bill Number 520

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/20/14
Meeting Date

Topic Public Records Exemption Dentists

Bill Number 520
(if applicable)

Name Casey Stoutamire

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 118 E Jefferson St.

Phone 850-224-1089

Tallahassee FL 32301
City State Zip

E-mail cstoutamire@floridadental.org

Speaking: For Against Information

Representing Florida Dental 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

Tallahassee, Florida 32399-1100

COMMITTEES:
Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

March 13, 2014

The Honorable John Thrasher, Chair
Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Thrasher:

Senate Bill 520, Public Records to a Dental Workforce Survey, has been referred to the Committee on Rules. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: John Phelps, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 358

INTRODUCER: Rules Committee and Senator Ring

SUBJECT: Volunteers for Organized Youth Sports and Recreational Programs

DATE: March 20, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanford</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	<u>Sanford</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 358 clarifies the definition of “athletic coach” to include coaches, assistant coaches, and referees. It requires independent sanctioning authorities to conduct level 1 background screenings for each current and prospective athletic coach and prohibits the authority from delegating this responsibility to individual teams.

The bill provides that athletic coaches may not act as athletic coaches unless a background screening has been completed which did not result in disqualification of the coach. It authorizes the independent sanctioning authority to allow a disqualified person to act as an athletic coach if the authority determines that the persons meets the requirements for an exemption from disqualification set forth in s. 435.07, F.S.

It requires that the sanctioning authority maintain the results of screenings and notices of disqualification for at least 5 years.

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

II. Present Situation:

Definitions

Current law defines an “athletic coach” as a person who is authorized by an independent sanctioning authority to work for 20 or more hours within a calendar year, whether for compensation or as a volunteer, for a youth athletic team based in this state, and has direct contact with one or more minors on the youth athletic team.

An “independent sanctioning authority” means a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team in this state if the team includes one or more minors and is not affiliated with a private school as defined in s. 1002.01, F.S.

Background Screenings for Athletic Coaches

Independent sanctioning authorities are required to conduct background screenings of athletic coaches. A background screening consists of a name search of the state and federal registries of sexual predators and sexual offenders on websites maintained by the Florida Department of Law Enforcement (FDLE) and the Attorney General of the United States.¹

Sexual Predator and Offender Information

The FDLE compiles information regarding sex offenders and makes that information available to the public. The information on the FDLE public website of sexual offenders and sexual predators is derived from the Florida Department of Corrections, the Florida Department of Highway Safety and Motor Vehicles, and various law enforcement officials.² The Dru Sjodin National Sex Offender Public Website of the United States Department of Justice provides a centralized database to search for information about the location of people convicted of sexual crimes.

Level 1 Background Screening

In 1995, the Legislature created standard procedures for criminal history background screening of prospective employees in order to protect vulnerable persons. Chapter 435, F.S., outlines the screening standards for Level 1 and Level 2 employment screening. The FDLE provides criminal history checks to the employer.³ The primary difference between Level 1 and Level 2 screenings is that Level 2 screenings require the submission of fingerprint information for applicants, while Level 1 screenings are name-based demographic screenings. The list of disqualifying offenses for both Level 1 and Level 2 screenings covers includes 44 separate offenses, and 6 entire chapters of Florida law. Offenses relating to domestic violence are also grounds for disqualification.⁴

¹ Section 943.0438, F.S.

² Florida Department of Law Enforcement, *Florida Sexual Offenders and Predators*, available at <http://offender.fdle.state.fl.us> (last visited Feb. 13, 2014).

³ The cost for a Level 1 screening is \$40.50, according to the FDLE website, available at <http://www.fdle.state.fl.us/Content/getdoc/1acc7c3e-dac7-45d4-8739-0d221749d8ce/FAQ.aspx> (last visited March 21, 2014).

⁴ Section 435.03(2), F.S. (Level 1 screening standards), refers to the list of offenses set forth in s. 435.04(2), F.S. (Level 2 screening standards). Section 435.03(3) adds domestic violence offenses defined in s. 741.28, F.S.

Exemptions from Disqualification

Section 435.07, F.S., provides a mechanism to obtain an exemption from disqualification if a person is disqualified from employment through either a Level 1 or Level 2 background screening. An exemption may be granted if the applicant was disqualified for:

- Felonies committed more than 3 years prior to the date of disqualification;
- Misdemeanors;
- Offenses that were felonies when committed but now are misdemeanors; or
- Findings of delinquency.

The person seeking an exemption must demonstrate by clear and convincing evidence that he or she should not be disqualified. This evidence may include:

- An explanation of the circumstances surrounding the criminal incident for which the exemption is sought;
- The time period that has elapsed since the incident;
- The nature of the harm caused to the victim;
- The history of the applicant since the incident; or
- Any other evidence indicating that the applicant will not present a danger if employment or continued employment is allowed.⁵

III. Effect of Proposed Changes:

Section 1 clarifies the definition of “athletic coach” to mean a coach, assistant coach, or referee. It requires the independent sanctioning authority to conduct a Level 1 background screening pursuant to s. 435.03, F.S., for each current and prospective athletic coach. It prohibits the authority from delegating this responsibility to an individual team.

CS/SB 358 provides that the sanctioning authority may not authorize any person to act as an athletic coach unless a Level 1 screening has been conducted and has not resulted in disqualification of that individual. It requires Level 1 background screenings to be conducted annually for each athletic coach. It requires, in addition to the background screening, a search of the internet registries of sexual predators and sexual offenders maintained by FDLE and the Attorney General of the United States. It allows background screening conducted by a commercial consumer reporting agency, so long as that screening includes a Level 1 background screening and a search of the sexual predators and sex offender registries.

The bill authorizes the independent sanctioning authority to allow a person disqualified by the background screening to act as an athletic coach if it determines that the person meets the requirements for an exemption from disqualification under s. 435.07, F.S.

It requires that the independent sanctioning authority maintain for a least 5 years documentation of the results of background screening for each person screened, and the written notice of disqualification provided to each person who is disqualified as a result of the screening.

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

⁵ Section 435.07(3), F.S.

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 sex offender registry screening requirements of the bill are expected to have a nominal effect on the authorities. The state and national registries are public websites that can be accessed by persons with minimal computer skills, and searches can be conducted relatively quickly. Those authorities electing to perform searches via a commercial consumer reporting agency may incur moderate expenses for the screening. The authorities may pass these screening costs on to volunteer applicants and incur no costs from this screening requirement.

The Level 1 screenings cost \$40.50 each. This cost will likely be passed on to the athletic coach applicant and may have a negative impact on recruitment and retention of these volunteers.

C. Government Sector Impact:

FDLE reports no projected fiscal impact from the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends section 943.0438 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 Rules on March 20, 2014:

The Committee Substitute:

- Narrows the group requiring background screening from all volunteers for organized youth sports and recreational activities to coaches, assistant coaches, and referees for youth athletic teams;
- Adds Level 1 screening pursuant to s. 435.03, F.S., to the requirements for background screening for athletic coaches;
- Authorizes the sanctioning authority to grant exemptions from disqualification pursuant to s. 435.07, F.S.; and
- Removes conforming changes which were necessary under the prior version of the bill.

- B. **Amendments:**

None.



293046

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2014	.	
	.	
	.	
	.	

The Committee on Rules (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) and paragraphs (a), (b), (c), and
(d) of subsection (2) of section 943.0438, Florida Statutes, are
amended to read:

943.0438 Athletic coaches for independent sanctioning
authorities.—

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

(a) "Athletic coach" means a person who:



293046

12 1. Is authorized by an independent sanctioning authority to
13 work as a coach, assistant coach, or referee for 20 or more
14 hours within a calendar year, whether for compensation or as a
15 volunteer, for a youth athletic team based in this state; and

16 2. Has direct contact with one or more minors on the youth
17 athletic team.

18 (b) "Independent sanctioning authority" means a private,
19 nongovernmental entity that organizes, operates, or coordinates
20 a youth athletic team in this state if the team includes one or
21 more minors and is not affiliated with a private school as
22 defined in s. 1002.01.

23 (2) An independent sanctioning authority shall:

24 (a)1. Conduct a level 1 background screening pursuant to s.
25 435.03 of each current and prospective athletic coach. The
26 authority may not delegate this responsibility to an individual
27 team and may not authorize any ~~No person shall be authorized by~~
28 ~~the independent sanctioning authority~~ to act as an athletic
29 coach unless a level 1 background screening is ~~has been~~
30 conducted and does ~~did~~ not result in disqualification under
31 paragraph (b). Level 1 background screenings shall be conducted
32 annually for each athletic coach. For purposes of this section,
33 a background screening shall include ~~be conducted with~~ a search
34 of the athletic coach's name or other identifying information
35 against state and federal registries of sexual predators and
36 sexual offenders, which are available to the public on Internet
37 sites provided by:

38 a. The Department of Law Enforcement under s. 943.043; and

39 b. The Attorney General of the United States under 42
40 U.S.C. s. 16920.



293046

41 2. For purposes of this section, a background screening
42 conducted by a commercial consumer reporting agency in
43 compliance with the federal Fair Credit Reporting Act using the
44 identifying information referenced in subparagraph 1. ~~and~~ that
45 includes a level 1 background screening and a search of
46 ~~searching~~ that information against the sexual predator and
47 sexual offender Internet sites listed in sub-subparagraphs 1.a.
48 and b. shall be deemed to satisfy in compliance with the
49 requirements of this paragraph ~~section~~.

50 (b) Disqualify any person from acting as an athletic coach
51 as provided in s. 435.03 or if he or she is identified on a
52 registry described in paragraph (a). The authority may allow a
53 person disqualified under this paragraph to act as an athletic
54 coach if it determines that the person meets the requirements
55 for an exemption from disqualification under s. 435.07.

56 (c) Provide, within 7 business days following the
57 background screening under paragraph (a), written notice to a
58 person disqualified under this section advising the person of
59 the results and of his or her disqualification.

60 (d) Maintain for at least 5 years documentation of:

61 1. The results for each person screened under paragraph
62 (a); and

63 2. The written notice of disqualification provided to each
64 person under paragraph (c).

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

66
67 ===== T I T L E A M E N D M E N T =====

68 And the title is amended as follows:

69 Delete everything before the enacting clause



293046

70 and insert:

71 A bill to be entitled
72 An act relating to athletic coaches for youth athletic
73 teams; amending s. 943.0438, F.S.; revising the
74 definition of the term "athletic coach"; expanding
75 provisions relating to athletic coaches for
76 independent sanctioning authorities to require such
77 authorities to conduct specified background screening
78 of certain coaches of youth athletic teams; providing
79 that the duty may not be delegated; providing for
80 disqualification; providing for exemption from
81 disqualification; requiring that specified
82 documentation be maintained for a specified period by
83 such authorities; providing an effective date.



575756

LEGISLATIVE ACTION

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

The Committee on Rules (Ring) recommended the following:

Senate Amendment

Delete lines 27 - 28

and insert:

~~independent sanctioning~~ authority to work for 20 or more hours
within a calendar year, whether for compensation or as a

By Senator Ring

29-00558-14

2014358__

1 A bill to be entitled
 2 An act relating to volunteers for organized youth
 3 sports and recreational programs; amending s.
 4 943.0438, F.S.; defining the terms "volunteer" and
 5 "youth sports or recreation authority"; expanding
 6 provisions relating to athletic coaches for
 7 independent sanctioning authorities to require youth
 8 sports or recreation authorities to conduct specified
 9 background screening of all volunteers with any youth
 10 athletic team or organized youth recreational program
 11 using publicly owned facilities; prohibiting a youth
 12 sports or recreation authority from delegating such
 13 duty; requiring that specified documentation be
 14 maintained for a specified period by such authorities;
 15 conforming provisions to changes made by the act;
 16 providing an effective date.
 17
 18 Be It Enacted by the Legislature of the State of Florida:
 19
 20 Section 1. Section 943.0438, Florida Statutes, is amended
 21 to read:
 22 943.0438 ~~Volunteers Athletic coaches~~ for organized youth
 23 sports and recreation independent sanctioning authorities.-
 24 (1) As used in this section, the term:
 25 (a) "~~Volunteer Athletic coach~~" means a person who:
 26 1. Is authorized by a youth sports or recreation ~~a~~
 27 ~~independent sanctioning~~ authority to work ~~for 20 or more hours~~
 28 ~~within a calendar year~~, whether for compensation or as a
 29 volunteer, for a youth athletic team or organized youth

Page 1 of 5

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

29-00558-14

2014358__

30 recreational program using publicly owned facilities based in
 31 this state; and
 32 2. Has direct contact with one or more minors on the youth
 33 athletic team.
 34 (b) "~~Youth sports or recreation independent sanctioning~~
 35 authority" means a private, nongovernmental entity that
 36 organizes, operates, or coordinates a youth athletic team or
 37 organized youth recreational program using publicly owned
 38 facilities in this state if the team or program includes one or
 39 more minors and is not affiliated with a private school as
 40 defined in s. 1002.01.
 41 (2) A youth sports or recreation ~~An independent sanctioning~~
 42 authority shall:
 43 (a)1. Conduct a background screening of each current and
 44 prospective volunteer athletic coach. The authority may not
 45 delegate this responsibility to an individual team or program
 46 and may not authorize a ~~No person shall be authorized by the~~
 47 ~~independent sanctioning authority~~ to act as a volunteer an
 48 ~~athletic coach~~ unless a background screening is ~~has been~~
 49 conducted and does ~~did~~ not result in disqualification under
 50 paragraph (b). Background screenings shall be conducted annually
 51 for each volunteer athletic coach. For purposes of this section,
 52 a background screening shall be conducted with a search of the
 53 volunteer's athletic coach's name or other identifying
 54 information against state and federal registries of sexual
 55 predators and sexual offenders, which are available to the
 56 public on Internet sites provided by:
 57 a. The Department of Law Enforcement under s. 943.043; and
 58 b. The Attorney General of the United States under 42

Page 2 of 5

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

29-00558-14

2014358__

59 U.S.C. s. 16920.

60 2. For purposes of this section, a background screening
61 conducted by a commercial consumer reporting agency in
62 compliance with the federal Fair Credit Reporting Act using the
63 identifying information referenced in subparagraph 1. and that
64 includes searching that information against the sexual predator
65 and sexual offender Internet sites listed in sub-subparagraphs
66 1.a. and b. is shall be deemed to satisfy in compliance with the
67 requirements of this paragraph section.

68 (b) Disqualify a any person from acting as a volunteer an
69 athletic coach if he or she is identified on a registry
70 described in paragraph (a).

71 (c) Provide, within 7 business days after following the
72 background screening under paragraph (a), written notice to a
73 person disqualified under this section advising the person of
74 the results and of his or her disqualification.

75 (d) Maintain for at least 5 years documentation of:

76 1. The results for each person screened under paragraph
77 (a); and

78 2. The written notice of disqualification provided to each
79 person under paragraph (c).

80 (e) Adopt guidelines to educate volunteers athletic
81 coaches, officials, administrators, and youth athletes and their
82 parents or guardians of the nature and risk of concussion and
83 head injury.

84 (f) Adopt bylaws or policies that require the parent or
85 guardian of a youth who is participating in athletic competition
86 or other recreational programs or who is a candidate for an
87 athletic team or recreational program to sign and return an

29-00558-14

2014358__

88 informed consent that explains the nature and risk of concussion
89 and head injury, including the risk of continuing to play after
90 concussion or head injury, each year before participating in
91 athletic competition or other recreational programs, or engaging
92 in any practice, tryout, workout, or other physical activity
93 associated with the youth's candidacy for an athletic team or
94 recreational program.

95 (g) Adopt bylaws or policies that require each youth
96 athlete or recreational program participant who is suspected of
97 sustaining a concussion or head injury in a practice or
98 competition to be immediately removed from the activity. A youth
99 athlete or recreational program participant who is has been
100 removed from an activity may not return to practice or
101 competition until the youth or participant submits to a
102 volunteer or volunteer supervisor the athletic coach a written
103 medical clearance to return stating that he or she the youth
104 athlete no longer exhibits signs, symptoms, or behaviors
105 consistent with a concussion or other head injury. Medical
106 clearance must be authorized by the appropriate health care
107 practitioner trained in the diagnosis, evaluation, and
108 management of concussions as defined by the Sports Medicine
109 Advisory Committee of the Florida High School Athletic
110 Association.

111 (3) In a civil action for the death of, or injury or damage
112 to, a third person caused by the intentional tort of a volunteer
113 an athletic coach that relates to alleged sexual misconduct by
114 the volunteer athletic coach, there is a rebuttable presumption
115 that the youth sports or recreation independent sanctioning
116 authority was not negligent in authorizing the person to act as

29-00558-14

2014358__

117 a volunteer ~~athletic coach~~ if the authority complied with the
118 background screening and disqualification requirements of
119 subsection (2) ~~before~~ prior to such authorization.

120 (4) The Legislature encourages youth sports and recreation
121 ~~independent sanctioning~~ authorities ~~for youth athletic teams~~ to
122 participate in the Volunteer and Employee Criminal History
123 System, as authorized by the National Child Protection Act of
124 1993 and s. 943.0542.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/2014

Meeting Date

Topic _____

Bill Number 358

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SM 658

INTRODUCER: Senator Stargel

SUBJECT: Balanced Federal Budget

DATE: March 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SM 658 is an application to the United States Congress calling upon Congress to convene an Article V constitutional amendments convention. The convention would be limited to proposing an amendment to the Constitution which requires that, except in a national emergency, the total of all federal appropriations for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year, together with any related and appropriate fiscal restraints. This is commonly referred to as a balanced budget amendment.

The memorial provides that it may not be added to other application totals on any other subject calling for a constitutional convention in an effort to meet the requisite number of 34 applications needed to call a convention. It is to be a continuing application and supersedes all previous applications on the subject.

II. Present Situation:

Methods of Amending the U.S. Constitution

Article V of the United States Constitution provides two methods for proposing amendments to the Constitution. The first method authorizes Congress to propose amendments to the states which are approved by a two-thirds vote of both Houses of Congress.¹ Amendments approved in this manner do not require the President's signature and are transmitted to each state for ratification.² Starting with the Bill of Rights in 1789, Congress used this method to submit 33 amendments to the states. Of those 33 proposals, 27 amendments to the Constitution were approved by the states.³

¹ U.S. CONST. art. V.

² U.S. National Archives and Records Administration, *The Constitutional Amendment Process*, <http://www.archives.gov/federal-register/constitution> (last visited February 4, 2014).

³ Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (July 9, 2012), <http://www.fas.org/sgp/crs/misc/R42589.pdf>.

The second method, which has never been used, requires Congress to call a convention for proposing amendments when two-thirds of the state legislatures apply to Congress to call an amendments convention.⁴ Currently, 34 states would need to make applications to meet the two-thirds requirement to call an Article V Convention. Because an Article V amendments convention has never been conducted, what might actually occur procedurally or substantively is unclear.

Article V further provides that the amendments shall become a part of the Constitution when ratified by the Legislatures of three-fourths of the states or by conventions in three-fourths of the states. This would require ratification by 38 states. Because Article V provides that the amendments become valid when ratified by three-fourths of the legislatures or conventions “as the one or the other Mode of Ratification may be proposed by the Congress,” Congress may choose the method of ratification. With the exception of the 21st Amendment, which repealed the 18th Amendment and prohibition, Congress has sent all proposed amendments to the legislatures for ratification.⁵

It has become accepted procedure, although not stated in the Constitution, that Congress may set time limits on the ratification process and specify when an amendment must be ratified by the requisite number of states to become valid. With several amendments, Congress stated that ratification must occur within 7 years after their proposal to become effective.⁶ The U.S. Supreme Court, in *Dillon v. Gloss*, concluded that Congress does have the authority to determine what a reasonable time frame for ratification is, even though the Constitution is silent on the matter.⁷

Although no attempts to call an Article V Convention have ever been successful, two relatively recent attempts approached the requisite number of 34 applications to Congress. In 1969, a total of 33 states submitted applications for a convention to address U.S. Supreme Court decisions that dealt with voting districts and the apportionment of votes. The effort fell short of the total number required by one application. Several states later rescinded their applications and the call for a convention dissipated.⁸

In the second instance, and similar to this proposal, state legislatures made application to Congress to call an Article V Convention requesting a balanced budget amendment. In 1975, North Dakota was the first state to make application, followed by a succession of 30 other states over the years, ending with Missouri’s application in 1983 as the 32nd application. The effort fell short of the 34 applications to Congress by two states and again, interest in calling for a convention declined.⁹

In 1976, Florida adopted Senate Memorial 234 and House Memorial 2801, each calling for a convention for proposing an amendment that would require a balanced federal budget. In 1988,

⁴ U.S. CONST. art. V.

⁵ Neale, *supra*, note 3, at 22.

⁶ *Id.* at 2.

⁷ *Dillon v. Gloss*, 256 U.S. 368 (1921).

⁸ James Kenneth Rogers, *The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process*, 30 HARV. J.L. & PUB. POL’Y 1005, 1009-1010 (2007).

⁹ *Id.* at 1010.

the Legislature adopted Senate Memorial 302, which, rather than call for a constitutional convention, urged Congress to propose an amendment to the U.S. Constitution requiring a federal balanced budget. In 2010, the Legislature passed SCR 10, which called for an amendments convention to propose amendments to provide for a balanced federal budget and limit Congress' ability to dictate to the states requirements for the expenditure of federal funds. None of these attempts was ultimately successful and no federal balanced budget amendment has been offered to the states for ratification.

Federal and State Balanced Budget Requirements

There is no requirement in the U.S. Constitution that the federal government must operate under a balanced federal budget. Florida, in contrast, is required to have a balanced budget and those provisions are set forth in both the State Constitution and statute. Article VII, section 1 states that "Provision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period." Similarly, s. 216.221(1), F.S., provides that "All appropriations shall be maximum appropriations, based upon the collection of sufficient revenues to meet and provide for such appropriations." The subsection also provides that it is the Governor's duty to ensure that "revenues collected will be sufficient to meet the appropriations and that no deficit occurs in any state fund."

According to the National Conference of State Legislatures, 45 states have some kind of a constitutional requirement for a balanced budget. In four states it is only a statutory requirement, while Vermont is the only state without any requirement for a balanced budget.¹⁰

Current Federal Financial Debt Information

On February 4, 2014, the Congressional Budget Office (CBO) released its report "*The Budget and Economic Outlook: 2014 to 2024*." Contained in that report is the following financial information from the CBO's Baseline Budget Projections and Federal Debt Projected in CBO's Baseline:

- The actual budget deficit for the U.S. Government for 2013 was \$680 billion.
- The actual debt held by the public for 2013 was \$11.982 trillion, which is the sum total of all previous annual deficits.
- The budget deficit will be \$514 billion and the debt held by the public will be \$12.717 trillion at the end of 2014.¹¹
- The Gross Federal Debt at the end of 2013 was \$16.717 trillion and the Gross Federal Debt for 2014 is projected to be \$17.694 trillion.¹²

¹⁰ E-mail from Todd Haggerty, NCSL Fiscal Affairs Program (February 3, 2014) (on file with the Senate Committee on Judiciary).

¹¹ Congressional Budget Office, Congress of the United States, *The Budget and Economic Outlook: 2014 To 2024* (2014), Congressional Budget Office, Table 1-2.

¹² *Id.*, at Table 1.3. The report, on p. 17, defines Gross Federal Debt as "Federal debt held by the public plus Treasury securities held by federal trust funds and other government accounts."

III. Effect of Proposed Changes:

Senate Memorial 658 is an application to Congress urging Congress to call a limited Article V Convention for the purpose of proposing an amendment to the U.S. Constitution that would, in the absence of a national emergency, specify that the total of all federal appropriations made by Congress for any fiscal year not exceed the total of all estimated federal revenues for that year, along with any related and appropriate fiscal restraints.

Senate Memorial 658 also provides that the application is to be considered as covering the same subject matter as other state applications calling for a federal balanced budget and is to be combined with those applications to reach the requisite 34 applications necessary to call an amendments convention. It may not be added for purposes of reaching the two-thirds total necessary to call a convention on any other topic. It is considered a continuing application and exists until the two-thirds total of applications on the same subject matter is reached. It supersedes all previous applications made by the Legislature on this balanced budget subject.

While the constitutional amendment process involves two separate steps, the proposal and its ratification, this memorial only makes application for an amendments convention and has no control over the outcome of the convention. Therefore, there is no guarantee that the proposed language would eventually be agreed upon or ratified by the states. If the amendments convention is called and the language is later ratified by the requisite number of states, it would become an amendment to the U.S. Constitution which would mandate that, in the absence of a national emergency, Congress may not pass a budget in which the appropriations exceed the estimated federal revenues for a fiscal year, together with any related and appropriate fiscal restraints.

If this proposed amendment is eventually ratified, the federal government would be required to drastically change its approach to fiscal policy. The fiscal impact would be felt significantly in the government and private sector, although it would be difficult to offer any measurable indication of what those results would be.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If an Article V amendments convention is called at some point in the future, the state might be responsible for the costs of sending delegates to the convention. Whether Congress or the state would be responsible for related expenses for the convention is not a settled issue at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Because an Article V amendments convention has never been conducted, what might actually occur procedurally or substantively is unclear.

Diverse scholars have raised, but not necessarily answered, many questions regarding the nature of an amendments convention. Some of those issues involve, in part:

- To what extent Congress would establish the framework for the convention;
- Whether the scope of the convention would be limited in its focus or may be expanded to include other topics;
- Whether the states have any constitutional authority over the convention once it is convened;
- Whether it is the role of Congress to summon, convene, define, and administer the convention; or
- How convention delegates will be apportioned among the states and whether it might occur in a manner similar to the Electoral College.¹³

Congressional legislation was introduced between 1973 and 1992, in anticipation of an amendments convention being convened, that endeavored to develop a procedural framework that would address the issues raised above and similar issues. None of the legislation passed both Houses of Congress.¹⁴

VIII. Statutes Affected:

None.

¹³ See the sources cited in footnotes 3 and 8 for an in-depth analysis of these issues.

¹⁴ Neale, *supra* note 3 at 26.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senators Stargel and Benacquisto

15-00757-14

2014658__

Senate Memorial

A memorial to the Congress of the United States, applying to Congress to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States which requires a balanced federal budget.

WHEREAS, the Legislature of the State of Florida passed Senate Concurrent Resolution 10 on April 21, 2010, and

WHEREAS, Senate Concurrent Resolution 10 made application to Congress to call a convention for proposing amendments pursuant to Article V of the Constitution of the United States for two purposes: to achieve and maintain a balanced federal budget and to control the ability of Congress and federal executive agencies to dictate to states requirements for the expenditure of federal funds, and

WHEREAS, the Legislature of the State of Florida desires to conform to the single subject applications from Alabama, Alaska, Arkansas, Colorado, Delaware, Indiana, Iowa, Kansas, Maryland, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Pennsylvania, and Texas and limit its application to Congress for the sole purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget, NOW, THEREFORE,

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

(1) That the Legislature of the State of Florida hereby applies to Congress, under Article V of the Constitution of the

Page 1 of 2

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15-00757-14

2014658__

United States, to call a convention limited to proposing an amendment to the Constitution requiring that, in the absence of a national emergency, the total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year, together with any related and appropriate fiscal restraints.

(2) That this application is to be considered as covering the same subject matter as the presently outstanding balanced budget applications from other states and is to be aggregated with the applications from those states for the purpose of attaining the two-thirds number of states necessary to require the calling of a convention, but may not be aggregated with applications on any other subject calling for a constitutional convention under Article V of the United States Constitution.

(3) That this application constitutes a continuing application in accordance with Article V until the legislatures of at least two-thirds of the states have made applications on the same subject and supersedes all previous applications by this Legislature on the same subject.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

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)

3/20/2014

Meeting Date

Topic _____

Bill Number 658
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/20/14
Meeting Date

Topic _____ Bill Number 658 (if applicable)
Name Tim Nungesser Amendment Barcode _____ (if applicable)
Job Title Legislative Director
Address 110 E. Jefferson St. Phone 850-445-5367
Street
Tallahassee FL 32301 E-mail tim.nungesser@nfib.org
City State Zip

Speaking: For Against Information

Representing National Federation of Independent Business

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)

3/20/14
Meeting Date

Topic Bill

Bill Number 658
(if applicable)

Name Frank Meiners

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 1633

Phone 591-0177

Idell
City

FL 32302
State Zip

E-mail frank@chymail.com

Speaking: For Against Information

Representing AIF

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

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL
15th District

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

February 11, 2014

The Honorable John Thrasher
Senate Rules Committee, Chair
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Thrasher:

I am respectfully requesting that SM 658, related to *Balanced Federal Budget*, 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 black ink that reads "Kelli Stargel".

Kelli Stargel
Senator, District 15

Cc: John Phelps/ Staff Director
Tamra Lyon/ AA

REPLY TO:

- 902 S. Florida Avenue, Suite 102, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1636
INTRODUCER: Criminal Justice Committee
SUBJECT: Renaming the Parole Commission
DATE: March 17, 2014 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
<u>Sumner</u>	<u>Cannon</u>		CJ SPB 7048 as Introduced
1. <u>Sumner</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 1636 changes the name of the Parole Commission to the Florida Commission on Offender Review to more accurately reflect the roles of the commission.

II. Present Situation:

The Parole Commission (Commission) is a constitutionally authorized decision-making body. Article IV, section 8 of the Florida Constitution, provides that there may be created by law a parole and probation commission with the power to supervise persons on probation and grant paroles of conditional releases to persons under sentences for crime (s. 20.32, F.S.). In 1941, the Commission was created by law to administer parole. Since that time, the administration of conditional release, conditional medical release, control release, and addiction recovery has been placed under the Commission. The Commission also acts as the investigative arm of the Governor and Cabinet, sitting as the Board of Executive Clemency (Clemency Board), in clemency matters.

Parole

Parole is the release of an inmate, prior to the expiration of the inmate's court-imposed sentence, with a period of supervision to be successfully completed by compliance with the conditions and terms of the release agreement ordered by the Commission. The decision of the Commission to parole an inmate shall represent an act of grace of the State and should not be considered a right. The Parole Commission administers parole (see chs. 947, 948, and 949, F.S.). It allows an inmate who has been granted parole to serve the remainder of his or her prison sentence outside the confines of the institution. Once released, the parolee is subject to conditions of supervision, and if those conditions are violated, the Commission may return the parolee to prison. Parole has experienced a number of changes over the years. In 1978, the Florida Legislature enacted "Objective Parole Guidelines," which required the Commission to develop and implement rules and criteria upon which parole decisions were to be made. These criteria were based on risk

assessment and combined historical Commission decision-making experience with individual case elements. The most significant change, however, came in 1983. In that year, sentencing guidelines were enacted, thereby effectively abolishing parole for those offenders who were sentenced for crimes committed on or after October 1, 1983.

Currently, all inmates who committed a capital felony murder prior to May 25, 1994, and all inmates who committed all other capital felonies, including sexual battery prior to October 1, 1995, are also parole eligible. There are approximately 5,107 inmates who are still eligible for parole consideration and numerous offenders who are still under parole supervision.

Post Prison Release

Conditional Release

In 1988, the Florida Legislature created the Conditional Release Program and placed it under the administration of the Commission (see chs. 947, 948, and 960, F.S.). Conditional Release requires mandatory post-prison supervision for inmates who are sentenced for certain violent crimes and who have served a prior felony commitment, or who are sentenced as a habitual offender, violent habitual offender, violent career criminal, or sexual predator. Unlike parole, conditional release is not discretionary release. Upon release from prison, inmates who are subject to conditional release are supervised for a period of time equal to the gain-time that they received in prison. These offenders are subject to strict conditions of supervision set by the Commission and this supervision can be revoked and the releasee returned to prison if the Commission determines that a violation of supervision has occurred.

Control Release

In 1989, the Florida Legislature created the Control Release Authority (see chs. 947 and 948, F.S.). This program was a prison population management system administered by the Commission to keep the prison population at its lawful capacity. The Commission does not currently review the inmate population for discretionary release under this authority as there are sufficient prison beds for the current prison population. There are, however, a small number of control releasees who are still under supervision. The Commission is responsible for monitoring the progress of these releasees and conducting revocation hearings when alleged violations are reported.

Conditional Medical Release

In 1992, the Florida Legislature created Conditional Medical Release (see chs. 947, 948, and 960, F.S.). This is a discretionary release that allows the Commission to release inmates on supervision who are “terminally ill” or “permanently incapacitated” and who are not a danger to others.

Addiction Recovery Supervision Program

In 2001, the Legislature created the Addiction Recovery Supervision Program and placed it under the Commission’s administration. This program requires mandatory post prison supervision for offenders who are released from a state correctional facility, were convicted of a crime committed on or after July 1, 2001, have a history of substance abuse or addiction or have

participated in any drug treatment, and have not been convicted of a disqualifying offense. The law requires the Commission to set the terms and conditions of supervision and to revoke that supervision if the offender fails to comply with them. The first offender eligible for the program was released from prison in June 2002. In FY 2008-09, 2,057 offenders were placed in the program.

Clemency

Clemency is a constitutionally authorized process that provides the means through which convicted felons may seek restoration of their civil rights and may be considered for relief from punishment. The Office of Executive Clemency was created in 1975 to process applications for executive clemency requiring approval of the Governor and Cabinet who sit collectively as the Executive Clemency Board.

In addition to processing requests for restoration of civil rights, applications for alien status, full pardons, remission of fines, waiver requests, commutations of sentence and specific authority to own, possess or use firearms, the office also provides verification and/or certification of restoration of civil rights and other forms of clemency granted, to law enforcement agencies, state attorneys, public defenders, licensing agencies, and supervisors of elections.

The Parole Commission primarily processes clemency applications and reviews certain inmates under their purview. There is confusion over the role of the Parole Commission because its name does not depict the duties actually prescribed by law.

Victim Services

The Victim Services' section provides direct, personal service to crime victims and their families. Staff attempt to locate all victims of parole eligible inmates and persons seeking clemency to inform them of their right to be heard and participate in the clemency or parole process. Victims are also informed of their right to be notified by the Department of Corrections of an inmate's movement within the prison system or escape.

Revocations

The Revocations Section reviews all violation reports, prepares arrest warrants, updates the National Crime Information Center/Florida Crime Information Center databases (NCIC/FCIC), responds to requests from law enforcement agencies, coordinates the extradition of violators, and performs functions relating to the docketing and processing of cases for Commission action involving review of supervision and violations of supervision.

The violation process begins when law enforcement or the Department of Corrections notifies the Commission that a releasee has violated one or more conditions of his/her supervision. The Revocations Section is responsible for reviewing these reported violations and preparing a warrant for a Commissioner's signature. The Commission may issue a warrant for the arrest of any offender when reasonable grounds exist to believe the releasee has violated any of the conditions of supervision.

2012-2013 Workload by Hours



III. Effect of Proposed Changes:

The bill changes the name of the Parole Commission to the Florida Commission on Offender Review to more accurately reflect the roles of the Commission. The bill provides a directive to the Division of Law Revision and Information to rename ch. 947, F.S., as “Florida Commission on Offender Review.” The bill makes conforming and technical changes.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None, except administrative costs to change the name.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.315, 20.32, 23.21, 98.093, 186.005, 255.502, 322.16, 394.926, 394.927, 633.304, 775.089, 775.16, 784.07, 784.078, 800.09, 843.01, 843.02, 843.08, 893.11, 921.16, 921.20, 921.21, 921.22, 940.03, 940.05, 940.061, 941.23, 943.0311, 943.06, 944.012, 944.02, 944.171, 944.4731, 945.091, 945.10, 945.47, 945.73, 947.005, 947.01, 947.02, 947.021, 947.045, 947.141, 947.146, 947.181, 947.185, 947.22, 948.09, 948.10, 949.05, 951.29, 957.06, 958.045, 960.001, 960.17, 985.04, and 985.045.

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

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

None.

B. Amendments:

None.

By the Committee on Criminal Justice

591-02092-14

20141636__

A bill to be entitled

An act relating to renaming the Parole Commission; providing legislative findings; renaming the Parole Commission as the Florida Commission on Offender Review; providing a directive to the Division of Law Revision and Information; amending ss. 20.315, 20.32, 23.21, 98.093, 186.005, 255.502, 322.16, 394.926, 394.927, 633.304, 775.089, 775.16, 784.07, 784.078, 800.09, 843.01, 843.02, 843.08, 893.11, 921.16, 921.20, 921.21, 921.22, 940.03, 940.05, 940.061, 941.23, 943.0311, 943.06, 944.012, 944.02, 944.171, 944.4731, 945.091, 945.10, 945.47, 945.73, 947.005, 947.01, 947.02, 947.021, 947.045, 947.141, 947.146, 947.181, 947.185, 947.22, 948.09, 949.05, 951.29, 957.06, 958.045, 960.001, 960.17, 985.04, and 985.045, F.S.; conforming provisions to changes made by the act; making technical changes; providing an effective date.

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

Section 1. The Legislature finds and recognizes the importance of the state's role in the transition of inmates from prison to the community in reducing recidivism rates. Therefore, the Parole Commission, authorized by s. 8(c), Article IV of the State Constitution, is renamed as the Florida Commission on Offender Review.

Section 2. The Division of Law Revision and Information is directed to rename chapter 947, Florida Statutes, as "Florida

Page 1 of 59

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

591-02092-14

20141636__

Commission on Offender Review."

Section 3. Subsections (9) and (10) of section 20.315, Florida Statutes, are amended to read:

20.315 Department of Corrections.—There is created a Department of Corrections.

(9) FORM OF COMMITMENT; NOTICE OF PAROLE VIOLATION.—All commitments shall state the statutory authority therefor. The Secretary of Corrections shall have the authority to prescribe the form to be used for commitments. ~~Nothing in~~ This act does not shall be construed to abridge the authority and responsibility of the Florida Parole Commission on Offender Review with respect to the granting and revocation of parole. The Department of Corrections shall notify the Florida Parole Commission on Offender Review of all violations of parole conditions and provide reports connected thereto as may be requested by the commission. The commission shall have the authority to issue orders dealing with supervision of specific parolees, and such orders shall be binding on all parties.

(10) SINGLE INFORMATION AND RECORDS SYSTEM.—Only one offender-based information and records computer system shall be maintained by the Department of Corrections for the joint use of the department and the Florida Parole Commission on Offender Review. The data system shall be managed through the department's office of information technology. The department shall develop and maintain, in consultation with the Criminal and Juvenile Justice Information Systems Council under s. 943.08, such offender-based information, including clemency administration information and other computer services to serve the needs of both the department and the Florida Parole

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59 Commission on Offender Review. The department shall notify the
 60 commission of all violations of parole and the circumstances
 61 thereof.

62 Section 4. Section 20.32, Florida Statutes, is amended to
 63 read:

64 20.32 ~~Florida Parole~~ Commission on Offender Review.-

65 (1) The Parole and Probation Commission, authorized by s.
 66 8(c), Art. IV, State Constitution of 1968, is continued and
 67 renamed the Florida Parole Commission on Offender Review. The
 68 commission retains its powers, duties, and functions with
 69 respect to the granting and revoking of parole and shall
 70 exercise powers, duties, and functions relating to
 71 investigations of applications for clemency as directed by the
 72 Governor and ~~the~~ Cabinet.

73 (2) All powers, duties, and functions relating to the
 74 appointment of the Florida Parole Commission on Offender Review
 75 as provided in s. 947.02 or s. 947.021 shall be exercised and
 76 performed by the Governor and ~~the~~ Cabinet. Except as provided in
 77 s. 947.021, each appointment shall be made from among the first
 78 three eligible persons on the list of the persons eligible for
 79 said position.

80 (3) The commission may require any employee of the
 81 commission to give a bond for the faithful performance of his or
 82 her duties. The commission may determine the amount of the bond
 83 and must approve the bond. In determining the amount of the
 84 bond, the commission may consider the amount of money or
 85 property likely to be in custody of the officer or employee at
 86 any one time. The premiums for the bonds must be paid out of the
 87 funds of the commission.

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88 Section 5. Subsection (1) of section 23.21, Florida
 89 Statutes, is amended to read:

90 23.21 Definitions.—For purposes of this part:

91 (1) "Department" means a principal administrative unit
 92 within the executive branch of state government, ~~as defined in~~
 93 chapter 20, ~~and includes the State Board of Administration, the~~
 94 Executive Office of the Governor, the Fish and Wildlife
 95 Conservation Commission, the Florida Parole Commission on
 96 Offender Review, the Agency for Health Care Administration, the
 97 State Board of Education, the Board of Governors of the State
 98 University System, the Justice Administrative Commission, the
 99 capital collateral regional counsel, and separate budget
 100 entities placed for administrative purposes within a department.

101 Section 6. Paragraph (e) of subsection (2) of section
 102 98.093, Florida Statutes, is amended to read:

103 98.093 Duty of officials to furnish information relating to
 104 deceased persons, persons adjudicated mentally incapacitated,
 105 and persons convicted of a felony.—

106 (2) To the maximum extent feasible, state and local
 107 government agencies shall facilitate provision of information
 108 and access to data to the department, including, but not limited
 109 to, databases that contain reliable criminal records and records
 110 of deceased persons. State and local government agencies that
 111 provide such data shall do so without charge if the direct cost
 112 incurred by those agencies is not significant.

113 (e) The Florida ~~Parole~~ Commission on Offender Review shall
 114 furnish at least bimonthly to the department data, including the
 115 identity of those persons granted clemency in the preceding
 116 month or any updates to prior records which have occurred in the

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117 preceding month. The data shall contain the commission's case
 118 number and the person's name, address, date of birth, race,
 119 gender, Florida ~~driver driver's~~ license number, Florida
 120 identification card number, or the last four digits of the
 121 social security number, if available, and references to record
 122 identifiers assigned by the Department of Corrections and the
 123 Department of Law Enforcement, a unique identifier of each
 124 clemency case, and the effective date of clemency of each
 125 person.

126 Section 7. Subsection (1) of section 186.005, Florida
 127 Statutes, is amended to read:

128 186.005 Designation of departmental planning officer.—

129 (1) The head of each executive department and the Public
 130 Service Commission, the Fish and Wildlife Conservation
 131 Commission, the Florida Parole Commission on Offender Review,
 132 and the Department of Military Affairs shall select from within
 133 such agency a person to be designated as the planning officer
 134 for such agency. The planning officer shall be responsible for
 135 coordinating with the Executive Office of the Governor and with
 136 the planning officers of other agencies all activities and
 137 responsibilities of such agency relating to planning.

138 Section 8. Subsection (3) of section 255.502, Florida
 139 Statutes, is amended to read:

140 255.502 Definitions; ss. 255.501-255.525.—As used in this
 141 act, the following words and terms shall have the following
 142 meanings unless the context otherwise requires:

143 (3) "Agency" means any department created by chapter 20,
 144 the Executive Office of the Governor, the Fish and Wildlife
 145 Conservation Commission, the Florida Parole Commission on

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146 Offender Review, the State Board of Administration, the
 147 Department of Military Affairs, or the Legislative Branch or the
 148 Judicial Branch of state government.

149 Section 9. Paragraph (c) of subsection (1) of section
 150 322.16, Florida Statutes, is amended to read:

151 322.16 License restrictions.—

152 (1)

153 (c) The department may further, at any time, impose other
 154 restrictions on the use of the license with respect to time and
 155 purpose of use or may impose any other condition or restriction
 156 upon recommendation of any court, of the Florida Parole
 157 Commission on Offender Review, or of the Department of
 158 Corrections with respect to any individual who is under the
 159 jurisdiction, supervision, or control of the entity that made
 160 the recommendation.

161 Section 10. Section 394.926, Florida Statutes, is amended
 162 to read:

163 394.926 Notice to victims of release of persons committed
 164 as sexually violent predators; notice to Department of
 165 Corrections and Florida Parole Commission on Offender Review.—

166 (1) As soon as is practicable, the department shall give
 167 written notice of the release of a person committed as a
 168 sexually violent predator to any victim of the committed person
 169 who is alive and whose address is known to the department or, if
 170 the victim is deceased, to the victim's family, if the family's
 171 address is known to the department. Failure to notify is not a
 172 reason for postponement of release. This section does not create
 173 a cause of action against the state or an employee of the state
 174 acting within the scope of the employee's employment as a result

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175 of the failure to notify pursuant to this part.
 176 (2) If a sexually violent predator who has an active or
 177 pending term of probation, community control, parole,
 178 conditional release, or other court-ordered or postprison
 179 release supervision is released from custody, the department
 180 must immediately notify the Department of Corrections' Office of
 181 Community Corrections in Tallahassee. The Florida Parole
 182 Commission on Offender Review must also be immediately notified
 183 of any releases of a sexually violent predator who has an active
 184 or pending term of parole, conditional release, or other
 185 postprison release supervision that is administered by the
 186 Florida Parole Commission on Offender Review.
 187 Section 11. Section 394.927, Florida Statutes, is amended
 188 to read:
 189 394.927 Escape while in lawful custody; notice to victim;
 190 notice to the Department of Corrections and Florida Parole
 191 Commission on Offender Review.—
 192 (1) A person who is held in lawful custody pursuant to a
 193 judicial finding of probable cause under s. 394.915 or pursuant
 194 to a commitment as a sexually violent predator under s. 394.916
 195 and who escapes or attempts to escape while in such custody
 196 commits a felony of the second degree, punishable as provided in
 197 s. 775.082, s. 775.083, or s. 775.084.
 198 (2) If a person who is held in custody pursuant to a
 199 finding of probable cause or commitment as a sexually violent
 200 predator escapes while in custody, the department shall
 201 immediately notify the victim in accordance with s. 394.926. The
 202 state attorney that filed the petition for civil commitment of
 203 the escapee must also be immediately notified by the department.

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204 If the escapee has an active or pending term of probation,
 205 community control, parole, conditional release, or other court-
 206 ordered or postprison release supervision, the department shall
 207 also immediately notify the Department of Corrections' Office of
 208 Community Corrections in Tallahassee. The Florida Parole
 209 Commission on Offender Review shall also be immediately notified
 210 of an escape if the escapee has an active or pending term of
 211 parole, conditional release, or other postprison release
 212 supervision that is administered by the Florida Parole
 213 Commission on Offender Review.
 214 Section 12. Paragraph (d) of subsection (4) of section
 215 633.304, Florida Statutes, is amended to read:
 216 633.304 Fire suppression equipment; license to install or
 217 maintain.—
 218 (4)
 219 (d) A license of any class may not be issued or renewed by
 220 the division and a license of any class does not remain
 221 operative unless:
 222 1. The applicant has submitted to the State Fire Marshal
 223 evidence of registration as a Florida corporation or evidence of
 224 compliance with s. 865.09.
 225 2. The State Fire Marshal or his or her designee has by
 226 inspection determined that the applicant possesses the equipment
 227 required for the class of license sought. The State Fire Marshal
 228 shall give an applicant a reasonable opportunity to correct any
 229 deficiencies discovered by inspection. To obtain such
 230 inspection, an applicant with facilities located outside this
 231 state must:
 232 a. Provide a notarized statement from a professional

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233 engineer licensed by the applicant's state of domicile
 234 certifying that the applicant possesses the equipment required
 235 for the class of license sought and that all such equipment is
 236 operable; or

237 b. Allow the State Fire Marshal or her or his designee to
 238 inspect the facility. All costs associated with the State Fire
 239 Marshal's inspection shall be paid by the applicant. The State
 240 Fire Marshal, in accordance with s. 120.54, may adopt rules to
 241 establish standards for the calculation and establishment of the
 242 amount of costs associated with any inspection conducted by the
 243 State Fire Marshal under this section. Such rules shall include
 244 procedures for invoicing and receiving funds in advance of the
 245 inspection.

246 3. The applicant has submitted to the State Fire Marshal
 247 proof of insurance providing coverage for comprehensive general
 248 liability for bodily injury and property damage, products
 249 liability, completed operations, and contractual liability. The
 250 State Fire Marshal shall adopt rules providing for the amounts
 251 of such coverage, but such amounts may ~~shall~~ not be less than
 252 \$300,000 for Class A or Class D licenses, \$200,000 for Class B
 253 licenses, and \$100,000 for Class C licenses; and the total
 254 coverage for any class of license held in conjunction with a
 255 Class D license may not be less than \$300,000. The State Fire
 256 Marshal may, at any time after the issuance of a license or its
 257 renewal, require upon demand, and in no event more than 30 days
 258 after notice of such demand, the licensee to provide proof of
 259 insurance, on a form provided by the State Fire Marshal,
 260 containing confirmation of insurance coverage as required by
 261 this chapter. Failure, for any length of time, to provide proof

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262 of insurance coverage as required shall result in the immediate
 263 suspension of the license until proof of proper insurance is
 264 provided to the State Fire Marshal. An insurer which provides
 265 such coverage shall notify the State Fire Marshal of any change
 266 in coverage or of any termination, cancellation, or nonrenewal
 267 of any coverage.

268 4. The applicant applies to the State Fire Marshal,
 269 provides proof of experience, and successfully completes a
 270 prescribed training course offered by the State Fire College or
 271 an equivalent course approved by the State Fire Marshal. This
 272 subparagraph does not apply to any holder of or applicant for a
 273 permit under paragraph (g) or to a business organization or a
 274 governmental entity seeking initial licensure or renewal of an
 275 existing license solely for the purpose of inspecting,
 276 servicing, repairing, marking, recharging, and maintaining fire
 277 extinguishers used and located on the premises of and owned by
 278 such organization or entity.

279 5. The applicant has a current retestor identification
 280 number that is appropriate for the license for which the
 281 applicant is applying and that is listed with the United States
 282 Department of Transportation.

283 6. The applicant has passed, with a grade of at least 70
 284 percent, a written examination testing his or her knowledge of
 285 the rules and statutes governing the activities authorized by
 286 the license and demonstrating his or her knowledge and ability
 287 to perform those tasks in a competent, lawful, and safe manner.
 288 Such examination shall be developed and administered by the
 289 State Fire Marshal, or his or her designee in accordance with
 290 policies and procedures of the State Fire Marshal. An applicant

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291 shall pay a nonrefundable examination fee of \$50 for each
 292 examination or reexamination scheduled. A reexamination may not
 293 be scheduled sooner than 30 days after any administration of an
 294 examination to an applicant. An applicant may not be permitted
 295 to take an examination for any level of license more than a
 296 total of four times during 1 year, regardless of the number of
 297 applications submitted. As a prerequisite to licensure of the
 298 applicant, he or she:

299 a. Must be at least 18 years of age.

300 b. Must have 4 years of proven experience as a fire
 301 equipment permittee at a level equal to or greater than the
 302 level of license applied for or have a combination of education
 303 and experience determined to be equivalent thereto by the State
 304 Fire Marshal. Having held a permit at the appropriate level for
 305 the required period constitutes the required experience.

306 c. Must not have been convicted of a felony or a crime
 307 punishable by imprisonment of 1 year or more under the law of
 308 the United States or of any state thereof or under the law of
 309 any other country. "Convicted" means a finding of guilt or the
 310 acceptance of a plea of guilty or nolo contendere in any federal
 311 or state court or a court in any other country, without regard
 312 to whether a judgment of conviction has been entered by the
 313 court having jurisdiction of the case. If an applicant has been
 314 convicted of any such felony, the applicant shall be excluded
 315 from licensure for a period of 4 years after expiration of
 316 sentence or final release by the Florida Parole Commission on
 317 Offender Review unless the applicant, before the expiration of
 318 the 4-year period, has received a full pardon or has had her or
 319 his civil rights restored.

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320

321 This subparagraph does not apply to any holder of or applicant
 322 for a permit under paragraph (g) or to a business organization
 323 or a governmental entity seeking initial licensure or renewal of
 324 an existing license solely for the purpose of inspecting,
 325 servicing, repairing, marking, recharging, hydrotesting, and
 326 maintaining fire extinguishers used and located on the premises
 327 of and owned by such organization or entity.

328 Section 13. Subsection (4) of section 775.089, Florida
 329 Statutes, is amended to read:

330 775.089 Restitution.—

331 (4) If a defendant is placed on probation or paroled,
 332 complete satisfaction of any restitution ordered under this
 333 section shall be a condition of such probation or parole. The
 334 court may revoke probation, and the Florida Parole Commission on
 335 Offender Review may revoke parole, if the defendant fails to
 336 comply with such order.

337 Section 14. Section 775.16, Florida Statutes, is amended to
 338 read:

339 775.16 Drug offenses; additional penalties.—In addition to
 340 any other penalty provided by law, a person who has been
 341 convicted of sale of or trafficking in, or conspiracy to sell or
 342 traffic in, a controlled substance under chapter 893, if such
 343 offense is a felony, or who has been convicted of an offense
 344 under the laws of any state or country which, if committed in
 345 this state, would constitute the felony of selling or
 346 trafficking in, or conspiracy to sell or traffic in, a
 347 controlled substance under chapter 893, is:

348 (1) Disqualified from applying for employment by any agency

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349 of the state, unless:

350 (a) The person has completed all sentences of imprisonment
351 or supervisory sanctions imposed by the court, by the Florida
352 ~~Parole Commission on Offender Review~~, or by law; or

353 (b) The person has complied with the conditions of
354 subparagraphs 1. and 2. which shall be monitored by the
355 Department of Corrections while the person is under any
356 supervisory sanctions. The person under supervision may:

357 1. Seek evaluation and enrollment in, and once enrolled
358 maintain enrollment in until completion, a drug treatment and
359 rehabilitation program which is approved by the Department of
360 Children and ~~Families Family Services~~, unless it is deemed by
361 the program that the person does not have a substance abuse
362 problem. The treatment and rehabilitation program may be
363 specified by:

364 a. The court, in the case of court-ordered supervisory
365 sanctions;

366 b. The Florida Parole Commission on Offender Review, in the
367 case of parole, control release, or conditional release; or

368 c. The Department of Corrections, in the case of
369 imprisonment or any other supervision required by law.

370 2. Submit to periodic urine drug testing pursuant to
371 procedures prescribed by the Department of Corrections. If the
372 person is indigent, the costs shall be paid by the Department of
373 Corrections.

374 (2) Disqualified from applying for a license, permit, or
375 certificate required by any agency of the state to practice,
376 pursue, or engage in any occupation, trade, vocation,
377 profession, or business, unless:

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378 (a) The person has completed all sentences of imprisonment
379 or supervisory sanctions imposed by the court, by the Florida
380 ~~Parole Commission on Offender Review~~, or by law;

381 (b) The person has complied with the conditions of
382 subparagraphs 1. and 2. which shall be monitored by the
383 Department of Corrections while the person is under any
384 supervisory sanction. If the person fails to comply with
385 provisions of these subparagraphs by either failing to maintain
386 treatment or by testing positive for drug use, the department
387 shall notify the licensing, permitting, or certifying agency,
388 which may refuse to reissue or reinstate such license, permit,
389 or certification. The licensee, permittee, or certificateholder
390 under supervision may:

391 1. Seek evaluation and enrollment in, and once enrolled
392 maintain enrollment in until completion, a drug treatment and
393 rehabilitation program which is approved or regulated by the
394 Department of Children and ~~Families Family Services~~, unless it
395 is deemed by the program that the person does not have a
396 substance abuse problem. The treatment and rehabilitation
397 program may be specified by:

398 a. The court, in the case of court-ordered supervisory
399 sanctions;

400 b. The Florida Parole Commission on Offender Review, in the
401 case of parole, control release, or conditional release; or

402 c. The Department of Corrections, in the case of
403 imprisonment or any other supervision required by law.

404 2. Submit to periodic urine drug testing pursuant to
405 procedures prescribed by the Department of Corrections. If the
406 person is indigent, the costs shall be paid by the Department of

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407 Corrections; or

408 (c) The person has successfully completed an appropriate

409 program under the Correctional Education Program.

410

411 The provisions of this section do not apply to any of the taxes,

412 fees, or permits regulated, controlled, or administered by the

413 Department of Revenue in accordance with the provisions of s.

414 213.05.

415 Section 15. Paragraph (d) of subsection (1) of section

416 784.07, Florida Statutes, is amended to read:

417 784.07 Assault or battery of law enforcement officers,

418 firefighters, emergency medical care providers, public transit

419 employees or agents, or other specified officers;

420 reclassification of offenses; minimum sentences.-

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

422 (d) "Law enforcement officer" includes a law enforcement

423 officer, a correctional officer, a correctional probation

424 officer, a part-time law enforcement officer, a part-time

425 correctional officer, an auxiliary law enforcement officer, and

426 an auxiliary correctional officer, as those terms are

427 respectively defined in s. 943.10, and any county probation

428 officer; an employee or agent of the Department of Corrections

429 who supervises or provides services to inmates; an officer of

430 the Florida Parole Commission on Offender Review; a federal law

431 enforcement officer as defined in s. 901.1505; and law

432 enforcement personnel of the Fish and Wildlife Conservation

433 Commission or the Department of Law Enforcement.

434 Section 16. Paragraph (b) of subsection (2) of section

435 784.078, Florida Statutes, is amended to read:

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436 784.078 Battery of facility employee by throwing, tossing,

437 or expelling certain fluids or materials.-

438 (2)

439 (b) "Employee" includes any person who is a parole examiner

440 with the Florida ~~Parole~~ Commission on Offender Review.

441 Section 17. Paragraph (a) of subsection (1) of section

442 800.09, Florida Statutes, is amended to read:

443 800.09 Lewd or lascivious exhibition in the presence of an

444 employee.-

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

446 (a) "Employee" means any person employed by or performing

447 contractual services for a public or private entity operating a

448 facility or any person employed by or performing contractual

449 services for the corporation operating the prison industry

450 enhancement programs or the correctional work programs under

451 part II of chapter 946. The term also includes any person who is

452 a parole examiner with the Florida Parole Commission on Offender

453 Review.

454 Section 18. Section 843.01, Florida Statutes, is amended to

455 read:

456 843.01 Resisting officer with violence to his or her

457 person.-Whoever knowingly and willfully resists, obstructs, or

458 opposes any officer as defined in s. 943.10(1), (2), (3), (6),

459 (7), (8), or (9); member of the Florida Parole Commission on

460 Offender Review or any administrative aide or supervisor

461 employed by the commission; parole and probation supervisor;

462 county probation officer; personnel or representative of the

463 Department of Law Enforcement; or other person legally

464 authorized to execute process in the execution of legal process

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465 or in the lawful execution of any legal duty, by offering or
466 doing violence to the person of such officer or legally
467 authorized person, is guilty of a felony of the third degree,
468 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

469 Section 19. Section 843.02, Florida Statutes, is amended to
470 read:

471 843.02 Resisting officer without violence to his or her
472 person.—Whoever shall resist, obstruct, or oppose any officer as
473 defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); member
474 of the Florida Parole Commission on Offender Review or any
475 administrative aide or supervisor employed by the commission;
476 county probation officer; parole and probation supervisor;
477 personnel or representative of the Department of Law
478 Enforcement; or other person legally authorized to execute
479 process in the execution of legal process or in the lawful
480 execution of any legal duty, without offering or doing violence
481 to the person of the officer, shall be guilty of a misdemeanor
482 of the first degree, punishable as provided in s. 775.082 or s.
483 775.083.

484 Section 20. Section 843.08, Florida Statutes, is amended to
485 read:

486 843.08 Falsely personating officer, etc.—A person who
487 falsely assumes or pretends to be a sheriff, officer of the
488 Florida Highway Patrol, officer of the Fish and Wildlife
489 Conservation Commission, officer of the Department of
490 Transportation, officer of the Department of Financial Services,
491 officer of the Department of Corrections, correctional probation
492 officer, deputy sheriff, state attorney or assistant state
493 attorney, statewide prosecutor or assistant statewide

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494 prosecutor, state attorney investigator, coroner, police
495 officer, lottery special agent or lottery investigator, beverage
496 enforcement agent, or watchman, or any member of the Florida
497 ~~Parole~~ Commission on Offender Review and any administrative aide
498 or supervisor employed by the commission, or any personnel or
499 representative of the Department of Law Enforcement, or a
500 federal law enforcement officer as defined in s. 901.1505, and
501 takes upon himself or herself to act as such, or to require any
502 other person to aid or assist him or her in a matter pertaining
503 to the duty of any such officer, commits a felony of the third
504 degree, punishable as provided in s. 775.082, s. 775.083, or s.
505 775.084. However, a person who falsely personates any such
506 officer during the course of the commission of a felony commits
507 a felony of the second degree, punishable as provided in s.
508 775.082, s. 775.083, or s. 775.084. If the commission of the
509 felony results in the death or personal injury of another human
510 being, the person commits a felony of the first degree,
511 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

512 Section 21. Paragraph (a) of subsection (1) of section
513 893.11, Florida Statutes, is amended to read:

514 893.11 Suspension, revocation, and reinstatement of
515 business and professional licenses.—For the purposes of s.
516 120.60(6), any conviction in any court reported to the
517 Comprehensive Case Information System of the Florida Association
518 of Court Clerks and Comptrollers, Inc., for the sale of, or
519 trafficking in, a controlled substance or for conspiracy to
520 sell, or traffic in, a controlled substance constitutes an
521 immediate serious danger to the public health, safety, or
522 welfare, and is grounds for disciplinary action by the licensing

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523 state agency. A state agency shall initiate an immediate
 524 emergency suspension of an individual professional license
 525 issued by the agency, in compliance with the procedures for
 526 summary suspensions in s. 120.60(6), upon the agency's findings
 527 of the licensee's conviction in any court reported to the
 528 Comprehensive Case Information System of the Florida Association
 529 of Court Clerks and Comptrollers, Inc., for the sale of, or
 530 trafficking in, a controlled substance, or for conspiracy to
 531 sell, or traffic in, a controlled substance. Before renewing any
 532 professional license, a state agency that issues a professional
 533 license must use the Comprehensive Case Information System of
 534 the Florida Association of Court Clerks and Comptrollers, Inc.,
 535 to obtain information relating to any conviction for the sale
 536 of, or trafficking in, a controlled substance or for conspiracy
 537 to sell, or traffic in, a controlled substance. The clerk of
 538 court shall provide electronic access to each state agency at no
 539 cost and also provide certified copies of the judgment upon
 540 request to the agency. Upon a showing by any such convicted
 541 defendant whose professional license has been suspended or
 542 revoked pursuant to this section that his or her civil rights
 543 have been restored or upon a showing that the convicted
 544 defendant meets the following criteria, the agency head may
 545 reinstate or reactivate such license when:

546 (1) The person has complied with the conditions of
 547 paragraphs (a) and (b) which shall be monitored by the
 548 Department of Corrections while the person is under any
 549 supervisory sanction. If the person fails to comply with
 550 provisions of these paragraphs by either failing to maintain
 551 treatment or by testing positive for drug use, the department

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552 shall notify the licensing agency, which shall revoke the
 553 license. The person under supervision may:

554 (a) Seek evaluation and enrollment in, and once enrolled
 555 maintain enrollment in until completion, a drug treatment and
 556 rehabilitation program which is approved or regulated by the
 557 Department of Children and Families ~~Family Services~~. The
 558 treatment and rehabilitation program shall be specified by:

559 1. The court, in the case of court-ordered supervisory
 560 sanctions;

561 2. The Florida Parole Commission on Offender Review, in the
 562 case of parole, control release, or conditional release; or

563 3. The Department of Corrections, in the case of
 564 imprisonment or any other supervision required by law.

565 Section 22. Subsection (2) of section 921.16, Florida
 566 Statutes, is amended to read:

567 921.16 When sentences to be concurrent and when
 568 consecutive.—

569 (2) A county court or circuit court of this state may
 570 direct that the sentence imposed by such court be served
 571 concurrently with a sentence imposed by a court of another state
 572 or of the United States or, for purposes of this section,
 573 concurrently with a sentence to be imposed in another
 574 jurisdiction. In such case, the Department of Corrections may
 575 designate the correctional institution of the other jurisdiction
 576 as the place for reception and confinement of such person and
 577 may also designate the place in Florida for reception and
 578 confinement of such person in the event that confinement in the
 579 other jurisdiction terminates before the expiration of the
 580 Florida sentence. The sheriff shall forward commitment papers

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581 and other documents specified in s. 944.17 to the department.
 582 Upon imposing such a sentence, the court shall notify the
 583 Florida Parole Commission on Offender Review as to the
 584 jurisdiction in which the sentence is to be served. Any prisoner
 585 so released to another jurisdiction shall be eligible for
 586 consideration for parole by the Florida Parole Commission on
 587 Offender Review pursuant to ~~the provisions of~~ chapter 947,
 588 except that the commission shall determine the presumptive
 589 parole release date and the effective parole release date by
 590 requesting such person's file from the receiving jurisdiction.
 591 Upon receiving such records, the commission shall determine
 592 these release dates based on the relevant information in that
 593 file and shall give credit toward reduction of the Florida
 594 sentence for gain-time granted by the jurisdiction where the
 595 inmate is serving the sentence. The Florida Parole Commission on
 596 Offender Review may concur with the parole release decision of
 597 the jurisdiction granting parole and accepting supervision.
 598 Section 23. Section 921.20, Florida Statutes, is amended to
 599 read:
 600 921.20 Classification summary; Florida Parole Commission on
 601 Offender Review.—As soon as possible after a prisoner has been
 602 placed in the custody of the Department of Corrections, the
 603 classification board shall furnish a classification summary to
 604 the Florida Parole Commission on Offender Review for use as
 605 provided in s. 945.25. The summary shall include the criminal,
 606 personal, social, and environmental background and other
 607 relevant factors considered in classifying the prisoner for a
 608 penal environment best suited for the prisoner's rapid
 609 rehabilitation.

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610 Section 24. Section 921.21, Florida Statutes, is amended to
 611 read:
 612 921.21 Progress reports to Florida Parole Commission on
 613 Offender Review.—From time to time the Department of Corrections
 614 shall submit to the Florida Parole Commission on Offender Review
 615 progress reports and recommendations regarding prisoners
 616 sentenced under s. 921.18. ~~If~~ When the classification board of
 617 the Department of Corrections determines that justice and the
 618 public welfare will best be served by paroling or discharging a
 619 prisoner, it shall transmit its finding to the Florida Parole
 620 Commission on Offender Review. The commission shall have the
 621 authority to place the prisoner on parole as provided by law or
 622 give the prisoner a full discharge from custody. The period of a
 623 parole granted by the Florida Parole Commission on Offender
 624 Review shall be in its discretion, but the parole period may
 625 ~~shall~~ not exceed the maximum term for which the prisoner was
 626 sentenced.
 627 Section 25. Section 921.22, Florida Statutes, is amended to
 628 read:
 629 921.22 Determination of exact period of imprisonment by
 630 Florida Parole Commission on Offender Review.—Upon the
 631 recommendation of the Department of Corrections, the Florida
 632 Parole Commission on Offender Review shall have the authority to
 633 determine the exact period of imprisonment to be served by
 634 defendants sentenced under ~~the provisions of~~ s. 921.18, but a
 635 prisoner may ~~shall~~ not be held in custody longer than the
 636 maximum sentence provided for the offense.
 637 Section 26. Section 940.03, Florida Statutes, is amended to
 638 read:

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639 940.03 Application for executive clemency.—~~If a~~ ~~When any~~
 640 person intends to apply for remission of any fine or forfeiture
 641 or the commutation of any punishment, or for pardon or
 642 restoration of civil rights, he or she shall request an
 643 application form from the Florida Parole Commission on Offender
 644 Review in compliance with such rules regarding application for
 645 executive clemency as are adopted by the Governor with the
 646 approval of two members of the Cabinet. Such application may
 647 require the submission of a certified copy of the applicant's
 648 indictment or information, the judgment adjudicating the
 649 applicant to be guilty, and the sentence, if sentence has been
 650 imposed, and may also require the applicant to send a copy of
 651 the application to the judge and prosecuting attorney of the
 652 court in which the applicant was convicted, notifying them of
 653 the applicant's intent to apply for executive clemency. An
 654 application for executive clemency for a person who is sentenced
 655 to death must be filed within 1 year after the date the Supreme
 656 Court issues a mandate on a direct appeal or the United States
 657 Supreme Court denies a petition for certiorari, whichever is
 658 later.

659 Section 27. Section 940.05, Florida Statutes, is amended to
 660 read:

661 940.05 Restoration of civil rights.—Any person who has been
 662 convicted of a felony may be entitled to the restoration of all
 663 the rights of citizenship enjoyed by him or her before ~~prior to~~
 664 conviction if the person has:

- 665 (1) Received a full pardon from the Board of Executive
 666 Clemency;
 667 (2) Served the maximum term of the sentence imposed upon

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668 him or her; or

669 (3) Been granted his or her final release by the Florida
 670 Parole Commission on Offender Review.

671 Section 28. Section 940.061, Florida Statutes, is amended
 672 to read:

673 940.061 Informing persons about executive clemency and
 674 restoration of civil rights.—The Department of Corrections shall
 675 inform and educate inmates and offenders on community
 676 supervision about the restoration of civil rights. Each month
 677 the Department of Corrections shall send to the Florida Parole
 678 Commission on Offender Review by electronic means a list of the
 679 names of inmates who have been released from incarceration and
 680 offenders who have been terminated from supervision who may be
 681 eligible for restoration of civil rights.

682 Section 29. Subsections (2) and (3) of section 941.23,
 683 Florida Statutes, are amended to read:

684 941.23 Application for issuance of requisition; by whom
 685 made; contents.—

686 (2) When the return to this state is required of a person
 687 who has been convicted of a crime in this state and has escaped
 688 from confinement or broken the terms of his or her bail,
 689 probation, or parole, the state attorney of the county in which
 690 the offense was committed, the Florida Parole Commission on
 691 Offender Review, the Department of Corrections, or the warden of
 692 the institution or sheriff of the county, from which escape was
 693 made, shall present to the Governor a written application for a
 694 requisition for the return of such person, in which application
 695 shall be stated the name of the person, the crime of which the
 696 person was convicted, the circumstances of his or her escape

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 697 from confinement or of the breach of the terms of his or her
 698 bail, probation, or parole, and the state in which the person is
 699 believed to be, including the location of the person therein at
 700 the time application is made.

701 (3) The application shall be verified by affidavit, shall
 702 be executed in duplicate, and shall be accompanied by two
 703 certified copies of the indictment returned or information and
 704 affidavit filed or of the complaint made to the judge, stating
 705 the offense with which the accused is charged, or of the
 706 judgment of conviction or of the sentence. The prosecuting
 707 officer, Florida Parole Commission on Offender Review,
 708 Department of Corrections, warden, or sheriff may also attach
 709 such further affidavits and other documents in duplicate as he
 710 or she shall deem proper to be submitted with such application.
 711 One copy of the application, with the action of the Governor
 712 indicated by endorsement thereon, and one of the certified
 713 copies of the indictment, complaint, information, and affidavits
 714 or of the judgment of conviction or of the sentence shall be
 715 filed in the office of the Department of State to remain of
 716 record in that office. The other copies of all papers shall be
 717 forwarded with the Governor's requisition.

718 Section 30. Subsection (7) of section 943.0311, Florida
 719 Statutes, is amended to read:

720 943.0311 Chief of Domestic Security; duties of the
 721 department with respect to domestic security.-

722 (7) As used in this section, the term "state agency"
 723 includes the Agency for Health Care Administration, the
 724 Department of Agriculture and Consumer Services, the Department
 725 of Business and Professional Regulation, the Department of

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 726 Children and Families ~~Family Services~~, the Department of Citrus,
 727 the Department of Economic Opportunity, the Department of
 728 Corrections, the Department of Education, the Department of
 729 Elderly Affairs, the Division of Emergency Management, the
 730 Department of Environmental Protection, the Department of
 731 Financial Services, the Department of Health, the Department of
 732 Highway Safety and Motor Vehicles, the Department of Juvenile
 733 Justice, the Department of Law Enforcement, the Department of
 734 Legal Affairs, the Department of Management Services, the
 735 Department of Military Affairs, the Department of Revenue, the
 736 Department of State, the Department of the Lottery, the
 737 Department of Transportation, the Department of Veterans'
 738 Affairs, the Fish and Wildlife Conservation Commission, the
 739 Florida Parole Commission on Offender Review, the State Board of
 740 Administration, and the Executive Office of the Governor.

741 Section 31. Subsection (1) of section 943.06, Florida
 742 Statutes, is amended to read:

743 943.06 Criminal and Juvenile Justice Information Systems
 744 Council.-There is created a Criminal and Juvenile Justice
 745 Information Systems Council within the department.

746 (1) The council shall be composed of 15 members, consisting
 747 of the Attorney General or a designated assistant; the executive
 748 director of the Department of Law Enforcement or a designated
 749 assistant; the secretary of the Department of Corrections or a
 750 designated assistant; the chair of the Florida Parole Commission
 751 on Offender Review or a designated assistant; the Secretary of
 752 Juvenile Justice or a designated assistant; the executive
 753 director of the Department of Highway Safety and Motor Vehicles
 754 or a designated assistant; the Secretary of Children and

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755 ~~Families Family Services~~ or a designated assistant; the State
756 Courts Administrator or a designated assistant; 1 public
757 defender appointed by the Florida Public Defender Association,
758 Inc.; 1 state attorney appointed by the Florida Prosecuting
759 Attorneys Association, Inc.; and 5 members, to be appointed by
760 the Governor, consisting of 2 sheriffs, 2 police chiefs, and 1
761 clerk of the circuit court.

762 Section 32. Subsection (5) of section 944.012, Florida
763 Statutes, is amended to read:

764 944.012 Legislative intent.—The Legislature hereby finds
765 and declares that:

766 (5) In order to make the correctional system an efficient
767 and effective mechanism, the various agencies involved in the
768 correctional process must coordinate their efforts. Where
769 possible, interagency offices should be physically located
770 within major institutions and should include representatives of
771 the public employment service, the vocational rehabilitation
772 programs of the Department of Education, and the Florida Parole
773 Commission on Offender Review. Duplicative and unnecessary
774 methods of evaluating offenders must be eliminated and areas of
775 responsibility consolidated in order to more economically use
776 ~~utilize~~ present scarce resources.

777 Section 33. Subsection (1) of section 944.02, Florida
778 Statutes, is amended to read:

779 944.02 Definitions.—The following words and phrases used in
780 this chapter shall, unless the context clearly indicates
781 otherwise, have the following meanings:

782 (1) "Commission" means the Florida Parole Commission on
783 Offender Review.

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784 Section 34. Paragraph (c) of subsection (2) of section
785 944.171, Florida Statutes, is amended to read:

786 944.171 Housing of inmates.—

787 (2) Notwithstanding s. 944.17, the department may enter
788 into contracts with another state, a political subdivision of
789 another state, or a correctional management services vendor in
790 another state for the transfer and confinement in that state of
791 inmates who have been committed to the custody of the
792 department.

793 (c) The Florida ~~Parole~~ Commission on Offender Review shall
794 conduct any parole hearing for an inmate confined under a
795 contract pursuant to this section according to the rules of the
796 commission.

797 Section 35. Paragraph (b) of subsection (2) of section
798 944.4731, Florida Statutes, is amended to read:

799 944.4731 Addiction-Recovery Supervision Program.—

800 (2)

801 (b) An offender released under addiction-recovery
802 supervision shall be subject to specified terms and conditions,
803 including payment of the costs of supervision under s. 948.09
804 and any other court-ordered payments, such as child support and
805 restitution. If an offender has received a term of probation or
806 community control to be served after release from incarceration,
807 the period of probation or community control may not be
808 substituted for addiction-recovery supervision and shall follow
809 the term of addiction-recovery supervision. A panel of not fewer
810 than two parole commissioners shall establish the terms and
811 conditions of supervision, and the terms and conditions must be
812 included in the supervision order. In setting the terms and

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813 conditions of supervision, the ~~parole~~ commission shall weigh
 814 heavily the program requirements, including, but not limited to,
 815 work at paid employment while participating in treatment and
 816 traveling restrictions. The commission shall also determine
 817 whether an offender violates the terms and conditions of
 818 supervision and whether a violation warrants revocation of
 819 addiction-recovery supervision pursuant to s. 947.141. The
 820 ~~parole~~ commission shall review the offender's record for the
 821 purpose of establishing the terms and conditions of supervision.
 822 The ~~parole~~ commission may impose any special conditions it
 823 considers warranted from its review of the record. The length of
 824 supervision may not exceed the maximum penalty imposed by the
 825 court.

826 Section 36. Paragraph (b) of subsection (1) and paragraph
 827 (b) of subsection (6) of section 945.091, Florida Statutes, are
 828 amended to read:

829 945.091 Extension of the limits of confinement; restitution
 830 by employed inmates.—

831 (1) The department may adopt rules permitting the extension
 832 of the limits of the place of confinement of an inmate as to
 833 whom there is reasonable cause to believe that the inmate will
 834 honor his or her trust by authorizing the inmate, under
 835 prescribed conditions and following investigation and approval
 836 by the secretary, or the secretary's designee, who shall
 837 maintain a written record of such action, to leave the confines
 838 of that place unaccompanied by a custodial agent for a
 839 prescribed period of time to:

840 (b) Work at paid employment, participate in an education or
 841 a training program, or voluntarily serve a public or nonprofit

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842 agency or faith-based service group in the community, while
 843 continuing as an inmate of the institution or facility in which
 844 the inmate is confined, except during the hours of his or her
 845 employment, education, training, or service and traveling
 846 thereto and therefrom. An inmate may travel to and from his or
 847 her place of employment, education, or training only by means of
 848 walking, bicycling, or using public transportation or
 849 transportation that is provided by a family member or employer.
 850 Contingent upon specific appropriations, the department may
 851 transport an inmate in a state-owned vehicle if the inmate is
 852 unable to obtain other means of travel to his or her place of
 853 employment, education, or training.

854 1. An inmate may participate in paid employment only during
 855 the last 36 months of his or her confinement, unless sooner
 856 requested by the Florida Parole Commission on Offender Review or
 857 the Control Release Authority.

858 2. While working at paid employment and residing in the
 859 facility, an inmate may apply for placement at a contracted
 860 substance abuse transition housing program. The transition
 861 assistance specialist shall inform the inmate of program
 862 availability and assess the inmate's need and suitability for
 863 transition housing assistance. If an inmate is approved for
 864 placement, the specialist shall assist the inmate. If an inmate
 865 requests and is approved for placement in a contracted faith-
 866 based substance abuse transition housing program, the specialist
 867 must consult with the chaplain before ~~prior to~~ such placement.
 868 The department shall ensure that an inmate's faith orientation,
 869 or lack thereof, will not be considered in determining admission
 870 to a faith-based program and that the program does not attempt

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871 to convert an inmate toward a particular faith or religious
 872 preference.

873 (6)

874 (b) An offender who is required to provide restitution or
 875 reparation may petition the circuit court to amend the amount of
 876 restitution or reparation required or to revise the schedule of
 877 repayment established by the department or the Florida Parole
 878 Commission on Offender Review.

879 Section 37. Paragraph (d) of subsection (1), paragraphs (a)
 880 and (b) of subsection (2), and subsection (5) of section 945.10,
 881 Florida Statutes, are amended to read:

882 945.10 Confidential information.—

883 (1) Except as otherwise provided by law or in this section,
 884 the following records and information held by the Department of
 885 Corrections are confidential and exempt from the provisions of
 886 s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

887 (d) Florida Parole Commission on Offender Review records
 888 which are confidential or exempt from public disclosure by law.

889 (2) The records and information specified in paragraphs
 890 (1)(a)-(h) may be released as follows unless expressly
 891 prohibited by federal law:

892 (a) Information specified in paragraphs (1)(b), (d), and
 893 (f) to the Office of the Governor, the Legislature, the Florida
 894 Parole Commission on Offender Review, the Department of Children
 895 and Families Family Services, a private correctional facility or
 896 program that operates under a contract, the Department of Legal
 897 Affairs, a state attorney, the court, or a law enforcement
 898 agency. A request for records or information pursuant to this
 899 paragraph need not be in writing.

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900 (b) Information specified in paragraphs (1)(c), (e), and
 901 (h) to the Office of the Governor, the Legislature, the Florida
 902 Parole Commission on Offender Review, the Department of Children
 903 and Families Family Services, a private correctional facility or
 904 program that operates under contract, the Department of Legal
 905 Affairs, a state attorney, the court, or a law enforcement
 906 agency. A request for records or information pursuant to this
 907 paragraph must be in writing and a statement provided
 908 demonstrating a need for the records or information.

909

910 Records and information released under this subsection remain
 911 confidential and exempt from the provisions of s. 119.07(1) and
 912 s. 24(a), Art. I of the State Constitution when held by the
 913 receiving person or entity.

914 (5) The Department of Corrections and the Florida Parole
 915 Commission on Offender Review shall mutually cooperate with
 916 respect to maintaining the confidentiality of records that are
 917 exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I
 918 of the State Constitution.

919 Section 38. Subsection (2) of section 945.47, Florida
 920 Statutes, is amended to read:

921 945.47 Discharge of inmate from mental health treatment.—

922 (2) At any time that an inmate who has received mental
 923 health treatment while in the custody of the department becomes
 924 eligible for release under supervision or upon end of sentence,
 925 a record of the inmate's mental health treatment may be provided
 926 to the Florida Parole Commission on Offender Review and to the
 927 Department of Children and Families Family Services upon
 928 request. The record shall include, at a minimum, a summary of

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929 the inmate's diagnosis, length of stay in treatment, clinical
 930 history, prognosis, prescribed medication, treatment plan, and
 931 recommendations for aftercare services.

932 Section 39. Subsection (6) of section 945.73, Florida
 933 Statutes, is amended to read:

934 945.73 Inmate training program operation.—

935 (6) The department shall work cooperatively with the
 936 Control Release Authority, the Florida ~~Parole~~ Commission on
 937 Offender Review, or such other authority as may exist or be
 938 established in the future which is empowered by law to effect
 939 the release of an inmate who has successfully completed the
 940 requirements established by ss. 945.71-945.74.

941 Section 40. Subsection (3) of section 947.005, Florida
 942 Statutes, is amended to read:

943 947.005 Definitions.—As used in this chapter, unless the
 944 context clearly indicates otherwise:

945 (3) "Commission" means the Florida ~~Parole~~ Commission on
 946 Offender Review.

947 Section 41. Section 947.01, Florida Statutes, is amended to
 948 read:

949 947.01 Florida ~~Parole~~ Commission on Offender Review;
 950 creation; number of members.—A Florida ~~Parole~~ Commission on
 951 Offender Review is created to consist of six members who are
 952 residents of the state. Effective July 1, 1996, the membership
 953 of the commission shall be three members.

954 Section 42. Section 947.02, Florida Statutes, is amended to
 955 read:

956 947.02 Florida ~~Parole~~ Commission on Offender Review;
 957 members, appointment.—

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958 (1) Except as provided in s. 947.021, the members of the
 959 Florida ~~Parole~~ Commission on Offender Review shall be appointed
 960 by the Governor and Cabinet from a list of eligible applicants
 961 submitted by a parole qualifications committee. The appointments
 962 of members of the commission shall be certified to the Senate by
 963 the Governor and Cabinet for confirmation, and the membership of
 964 the commission shall include representation from minority
 965 persons as defined in s. 288.703.

966 (2) A parole qualifications committee shall consist of five
 967 persons who are appointed by the Governor and Cabinet. One
 968 member shall be designated as chair by the Governor and Cabinet.
 969 The committee shall provide for statewide advertisement and the
 970 receiving of applications for any position or positions on the
 971 commission and shall devise a plan for the determination of the
 972 qualifications of the applicants by investigations and
 973 comprehensive evaluations, including, but not limited to,
 974 investigation and evaluation of the character, habits, and
 975 philosophy of each applicant. Each parole qualifications
 976 committee shall exist for 2 years. If additional vacancies on
 977 the commission occur during this 2-year period, the committee
 978 may advertise and accept additional applications; however, all
 979 previously submitted applications shall be considered along with
 980 the new applications according to the previously established
 981 plan for the evaluation of the qualifications of applicants.

982 (3) Within 90 days before an anticipated vacancy by
 983 expiration of term pursuant to s. 947.03 or upon any other
 984 vacancy, the Governor and Cabinet shall appoint a parole
 985 qualifications committee if one has not been appointed during
 986 the previous 2 years. The committee shall consider applications

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987 for the commission seat, including the application of an
 988 incumbent commissioner if he or she applies, according to ~~the~~
 989 ~~provisions of~~ subsection (2). The committee shall submit a list
 990 of three eligible applicants, which may include the incumbent if
 991 the committee so decides, without recommendation, to the
 992 Governor and Cabinet for appointment to the commission. In the
 993 case of an unexpired term, the appointment must be for the
 994 remainder of the unexpired term and until a successor is
 995 appointed and qualified. If more than one seat is vacant, the
 996 committee shall submit a list of eligible applicants, without
 997 recommendation, containing a number of names equal to three
 998 times the number of vacant seats; however, the names submitted
 999 ~~may shall~~ not be distinguished by seat, and each submitted
 1000 applicant shall be considered eligible for each vacancy.

1001 (4) Upon receiving a list of eligible persons from the
 1002 parole qualifications committee, the Governor and Cabinet may
 1003 reject the list. If the list is rejected, the committee shall
 1004 reinstate the application and examination procedure according
 1005 to ~~the provisions of~~ subsection (2).

1006 (5) Section ~~The provisions of s.~~ 120.525 and chapters 119
 1007 and 286 apply to all activities and proceedings of a parole
 1008 qualifications committee.

1009 Section 43. Section 947.021, Florida Statutes, is amended
 1010 to read:

1011 947.021 Florida Parole Commission on Offender Review;
 1012 expedited appointments.—Whenever the Legislature decreases the
 1013 membership of the commission, all terms of office shall expire,
 1014 notwithstanding any law to the contrary. Under such
 1015 circumstances, the Governor and Cabinet shall expedite the

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1016 appointment of commissioners. Notwithstanding the parole
 1017 qualifications committee procedure in s. 947.02, members shall
 1018 be directly appointed by the Governor and Cabinet. Members
 1019 appointed to the commission may be selected from incumbents.
 1020 Members shall be certified to the Senate by the Governor and
 1021 Cabinet for confirmation, and the membership of the commission
 1022 shall include representation from minority persons as defined in
 1023 s. 288.703.

1024 Section 44. Section 947.045, Florida Statutes, is amended
 1025 to read:

1026 947.045 Federal Grants Trust Fund.—The Federal Grants Trust
 1027 Fund is hereby created, to be administered by the Florida ~~Parole~~
 1028 Commission on Offender Review.

1029 (1) Funds to be credited to the trust fund shall consist of
 1030 receipts from federal grants and shall be used for the various
 1031 purposes for which the federal funds were intended.

1032 (2) Notwithstanding ~~the provisions of~~ s. 216.301 and
 1033 pursuant to s. 216.351, any balance in the trust fund at the end
 1034 of any fiscal year shall remain in the trust fund at the end of
 1035 the year and shall be available for carrying out the purposes of
 1036 the trust fund.

1037 Section 45. Subsection (3) of section 947.141, Florida
 1038 Statutes, is amended to read:

1039 947.141 Violations of conditional release, control release,
 1040 or conditional medical release or addiction-recovery
 1041 supervision.—

1042 (3) Within 45 days after notice to the Florida Parole
 1043 Commission on Offender Review of the arrest of a releasee
 1044 charged with a violation of the terms and conditions of

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1045 conditional release, control release, conditional medical
 1046 release, or addiction-recovery supervision, the releasee must be
 1047 afforded a hearing conducted by a commissioner or a duly
 1048 authorized representative thereof. If the releasee elects to
 1049 proceed with a hearing, the releasee must be informed orally and
 1050 in writing of the following:

1051 (a) The alleged violation with which the releasee is
 1052 charged.

1053 (b) The releasee's right to be represented by counsel.

1054 (c) The releasee's right to be heard in person.

1055 (d) The releasee's right to secure, present, and compel the
 1056 attendance of witnesses relevant to the proceeding.

1057 (e) The releasee's right to produce documents on the
 1058 releasee's own behalf.

1059 (f) The releasee's right of access to all evidence used
 1060 against the releasee and to confront and cross-examine adverse
 1061 witnesses.

1062 (g) The releasee's right to waive the hearing.

1063 Section 46. Subsection (1) of section 947.146, Florida
 1064 Statutes, is amended to read:

1065 947.146 Control Release Authority.—

1066 (1) There is created a Control Release Authority which
 1067 shall be composed of the members of the Florida Parole
 1068 Commission on Offender Review and which shall have the same
 1069 chair as the commission. The authority shall use ~~utilize~~ such
 1070 commission staff as it determines is necessary to carry out its
 1071 purposes.

1072 Section 47. Subsection (3) of section 947.181, Florida
 1073 Statutes, is amended to read:

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1074 947.181 Fines, fees, restitution, or other costs ordered to
 1075 be paid as conditions of parole.—

1076 (3) If a defendant is paroled, any restitution ordered
 1077 under s. 775.089 shall be a condition of such parole. The
 1078 Florida Parole Commission on Offender Review may revoke parole
 1079 if the defendant fails to comply with such order.

1080 Section 48. Section 947.185, Florida Statutes, is amended
 1081 to read:

1082 947.185 Application for intellectual disability services as
 1083 condition of parole.—The Florida Parole Commission on Offender
 1084 Review may require as a condition of parole that any inmate who
 1085 has been diagnosed as having an intellectual disability as
 1086 defined in s. 393.063 shall, upon release, apply for services
 1087 from the Agency for Persons with Disabilities.

1088 Section 49. Subsection (2) of section 947.22, Florida
 1089 Statutes, is amended to read:

1090 947.22 Authority to arrest parole violators with or without
 1091 warrant.—

1092 (2) Any parole and probation officer, if when she or he has
 1093 reasonable ground to believe that a parolee, control releasee,
 1094 or conditional releasee has violated the terms and conditions of
 1095 her or his parole, control release, or conditional release in a
 1096 material respect, has the right to arrest the releasee or
 1097 parolee without warrant and bring her or him forthwith before
 1098 one or more commissioners or a duly authorized representative of
 1099 the Florida Parole Commission on Offender Review or Control
 1100 Release Authority; and proceedings shall thereupon be had as
 1101 provided herein when a warrant has been issued by a member of
 1102 the commission or authority or a duly authorized representative

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1103 of the commission or authority.

1104 Section 50. Paragraph (a) of subsection (1) and subsections
1105 (3) and (6) of section 948.09, Florida Statutes, are amended to
1106 read:

1107 948.09 Payment for cost of supervision and rehabilitation.—

1108 (1)(a)1. Any person ordered by the court, the Department of
1109 Corrections, or the Florida parole Commission on Offender Review
1110 to be placed on probation, drug offender probation, community
1111 control, parole, control release, provisional release
1112 supervision, addiction-recovery supervision, or conditional
1113 release supervision under chapter 944, chapter 945, chapter 947,
1114 this chapter ~~948~~, or chapter 958, or in a pretrial intervention
1115 program, must, as a condition of any placement, pay the
1116 department a total sum of money equal to the total month or
1117 portion of a month of supervision times the court-ordered
1118 amount, but not to exceed the actual per diem cost of the
1119 supervision. The department shall adopt rules by which an
1120 offender who pays in full and in advance of regular termination
1121 of supervision may receive a reduction in the amount due. The
1122 rules shall incorporate provisions by which the offender's
1123 ability to pay is linked to an established written payment plan.
1124 Funds collected from felony offenders may be used to offset
1125 costs of the Department of Corrections associated with community
1126 supervision programs, subject to appropriation by the
1127 Legislature.

1128 2. In addition to any other contribution or surcharge
1129 imposed by this section, each felony offender assessed under
1130 this paragraph shall pay a \$2-per-month surcharge to the
1131 department. The surcharge shall be deemed to be paid only after

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1132 the full amount of any monthly payment required by the
1133 established written payment plan has been collected by the
1134 department. These funds shall be used by the department to pay
1135 for correctional probation officers' training and equipment,
1136 including radios, and firearms training, firearms, and attendant
1137 equipment necessary to train and equip officers who choose to
1138 carry a concealed firearm while on duty. ~~Nothing in~~ This
1139 subparagraph does not ~~shall be construed to~~ limit the
1140 department's authority to determine who shall be authorized to
1141 carry a concealed firearm while on duty, or ~~to~~ limit the right
1142 of a correctional probation officer to carry a personal firearm
1143 approved by the department.

1144 (3) Any failure to pay contribution as required under this
1145 section may constitute a ground for the revocation of probation
1146 by the court, the revocation of parole or conditional release by
1147 the Florida Parole Commission on Offender Review, the revocation
1148 of control release by the Control Release Authority, or removal
1149 from the pretrial intervention program by the state attorney.
1150 The Department of Corrections may exempt a person from the
1151 payment of all or any part of the contribution if it finds any
1152 of the following factors to exist:

1153 (a) The offender has diligently attempted, but has been
1154 unable, to obtain employment which provides him or her
1155 sufficient income to make such payments.

1156 (b) The offender is a student in a school, college,
1157 university, or course of career training designed to fit the
1158 student for gainful employment. Certification of such student
1159 status shall be supplied to the Secretary of Corrections by the
1160 educational institution in which the offender is enrolled.

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1161 (c) The offender has an employment handicap, as determined
 1162 by a physical, psychological, or psychiatric examination
 1163 acceptable to, or ordered by, the secretary.

1164 (d) The offender's age prevents him or her from obtaining
 1165 employment.

1166 (e) The offender is responsible for the support of
 1167 dependents, and the payment of such contribution constitutes an
 1168 undue hardship on the offender.

1169 (f) The offender has been transferred outside the state
 1170 under an interstate compact adopted pursuant to chapter 949.

1171 (g) There are other extenuating circumstances, as
 1172 determined by the secretary.

1173 (6) In addition to any other required contributions, the
 1174 department, at its discretion, may require offenders under any
 1175 form of supervision to submit to and pay for urinalysis testing
 1176 to identify drug usage as part of the rehabilitation program.
 1177 Any failure to make such payment, or participate, may be
 1178 considered a ground for revocation by the court, the Florida
 1179 Parole Commission on Offender Review, or the Control Release
 1180 Authority, or for removal from the pretrial intervention program
 1181 by the state attorney. The department may exempt a person from
 1182 such payment if it determines that any of the factors specified
 1183 in subsection (3) exist.

1184 Section 51. Subsection (1) of section 948.10, Florida
 1185 Statutes, is amended to read:

1186 948.10 Community control programs.—

1187 (1) The Department of Corrections shall develop and
 1188 administer a community control program. This complementary
 1189 program shall be rigidly structured and designed to accommodate

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1190 offenders who, in the absence of such a program, would have been
 1191 incarcerated. The program shall focus on the provision of
 1192 sanctions and consequences which are commensurate with the
 1193 seriousness of the crime. The program shall offer the courts and
 1194 the Florida Parole Commission on Offender Review an alternative,
 1195 community-based method to punish an offender in lieu of
 1196 incarceration ~~if when~~ the offender is a member of one of the
 1197 following target groups:

1198 (a) Probation violators charged with technical violations
 1199 or misdemeanor violations.

1200 (b) Parole violators charged with technical violations or
 1201 misdemeanor violations.

1202 (c) Individuals found guilty of felonies, who, due to their
 1203 criminal backgrounds or the seriousness of the offenses, would
 1204 not be placed on regular probation.

1205 Section 52. Subsection (2) of section 949.05, Florida
 1206 Statutes, is amended to read:

1207 949.05 Constitutionality.—

1208 (2) If the method of selecting the commission members as
 1209 herein provided is found to be invalid by reason of the vesting
 1210 of the appointing power in the Governor and ~~the~~ Cabinet, the
 1211 members of the Florida Parole Commission on Offender Review
 1212 herein provided for shall be appointed by the Governor.

1213 Section 53. Subsection (1) of section 951.29, Florida
 1214 Statutes, is amended to read:

1215 951.29 Procedure for requesting restoration of civil rights
 1216 of county prisoners convicted of felonies.—

1217 (1) With respect to a person who has been convicted of a
 1218 felony and is serving a sentence in a county detention facility,

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1219 the administrator of the county detention facility shall provide
1220 to the prisoner, at least 2 weeks before discharge, if possible,
1221 an application form obtained from the Florida Parole Commission
1222 on Offender Review which the prisoner must complete in order to
1223 begin the process of having his or her civil rights restored.

1224 Section 54. Subsection (6) of section 957.06, Florida
1225 Statutes, is amended to read:

1226 957.06 Powers and duties not delegable to contractor.—A
1227 contract entered into under this chapter does not authorize,
1228 allow, or imply a delegation of authority to the contractor to:

1229 (6) Make recommendations to the Florida Parole Commission
1230 on Offender Review with respect to the denial or granting of
1231 parole, control release, conditional release, or conditional
1232 medical release. However, the contractor may submit written
1233 reports to the Florida Parole Commission on Offender Review and
1234 must respond to a written request by the Florida Parole
1235 Commission on Offender Review for information.

1236 Section 55. Paragraph (c) of subsection (8) of section
1237 958.045, Florida Statutes, is amended to read:

1238 958.045 Youthful offender basic training program.—

1239 (8)

1240 (c) The department shall work cooperatively with the
1241 Control Release Authority or the Florida Parole Commission on
1242 Offender Review to effect the release of an offender who has
1243 successfully completed the requirements of the basic training
1244 program.

1245 Section 56. Subsection (1) of section 960.001, Florida
1246 Statutes, is amended to read:

1247 960.001 Guidelines for fair treatment of victims and

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1248 witnesses in the criminal justice and juvenile justice systems.—

1249 (1) The Department of Legal Affairs, the state attorneys,
1250 the Department of Corrections, the Department of Juvenile
1251 Justice, the Florida Parole Commission on Offender Review, the
1252 State Courts Administrator and circuit court administrators, the
1253 Department of Law Enforcement, and every sheriff's department,
1254 police department, or other law enforcement agency as defined in
1255 s. 943.10(4) shall develop and implement guidelines for the use
1256 of their respective agencies, which guidelines are consistent
1257 with the purposes of this act and s. 16(b), Art. I of the State
1258 Constitution and are designed to implement ~~the provisions of~~ s.
1259 16(b), Art. I of the State Constitution and to achieve the
1260 following objectives:

1261 (a) *Information concerning services available to victims of*
1262 *adult and juvenile crime.*—As provided in s. 27.0065, state
1263 attorneys and public defenders shall gather information
1264 regarding the following services in the geographic boundaries of
1265 their respective circuits and shall provide such information to
1266 each law enforcement agency with jurisdiction within such
1267 geographic boundaries. Law enforcement personnel shall ensure,
1268 through distribution of a victim's rights information card or
1269 brochure at the crime scene, during the criminal investigation,
1270 and in any other appropriate manner, that victims are given, as
1271 a matter of course at the earliest possible time, information
1272 about:

1273 1. The availability of crime victim compensation, if when
1274 applicable;

1275 2. Crisis intervention services, supportive or bereavement
1276 counseling, social service support referrals, and community-

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1277 based victim treatment programs;

1278 3. The role of the victim in the criminal or juvenile

1279 justice process, including what the victim may expect from the

1280 system as well as what the system expects from the victim;

1281 4. The stages in the criminal or juvenile justice process

1282 which are of significance to the victim and the manner in which

1283 information about such stages can be obtained;

1284 5. The right of a victim, who is not incarcerated,

1285 including the victim's parent or guardian if the victim is a

1286 minor, the lawful representative of the victim or of the

1287 victim's parent or guardian if the victim is a minor, and the

1288 next of kin of a homicide victim, to be informed, to be present,

1289 and to be heard when relevant, at all crucial stages of a

1290 criminal or juvenile proceeding, to the extent that this right

1291 does not interfere with constitutional rights of the accused, as

1292 provided by s. 16(b), Art. I of the State Constitution;

1293 6. In the case of incarcerated victims, the right to be

1294 informed and to submit written statements at all crucial stages

1295 of the criminal proceedings, parole proceedings, or juvenile

1296 proceedings; and

1297 7. The right of a victim to a prompt and timely disposition

1298 of the case in order to minimize the period during which the

1299 victim must endure the responsibilities and stress involved to

1300 the extent that this right does not interfere with the

1301 constitutional rights of the accused.

1302 (b) *Information for purposes of notifying victim or*

1303 *appropriate next of kin of victim or other designated contact of*

1304 *victim.*—In the case of a homicide, pursuant to chapter 782; or a

1305 sexual offense, pursuant to chapter 794; or an attempted murder

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1306 or sexual offense, pursuant to chapter 777; or stalking,

1307 pursuant to s. 784.048; or domestic violence, pursuant to s.

1308 25.385:

1309 1. The arresting law enforcement officer or personnel of an

1310 organization that provides assistance to a victim or to the

1311 appropriate next of kin of the victim or other designated

1312 contact must request that the victim or appropriate next of kin

1313 of the victim or other designated contact complete a victim

1314 notification card. However, the victim or appropriate next of

1315 kin of the victim or other designated contact may choose not to

1316 complete the victim notification card.

1317 2. Unless the victim or the appropriate next of kin of the

1318 victim or other designated contact waives the option to complete

1319 the victim notification card, a copy of the victim notification

1320 card must be filed with the incident report or warrant in the

1321 sheriff's office of the jurisdiction in which the incident

1322 report or warrant originated. The notification card shall, at a

1323 minimum, consist of:

1324 a. The name, address, and phone number of the victim; or

1325 b. The name, address, and phone number of the appropriate

1326 next of kin of the victim; or

1327 c. The name, address, and telephone ~~phone~~ number of a

1328 designated contact other than the victim or appropriate next of

1329 kin of the victim; and

1330 d. Any relevant identification or case numbers assigned to

1331 the case.

1332 3. The chief administrator, or a person designated by the

1333 chief administrator, of a county jail, municipal jail, juvenile

1334 detention facility, or residential commitment facility shall

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 1335 make a reasonable attempt to notify the alleged victim or
 1336 appropriate next of kin of the alleged victim or other
 1337 designated contact within 4 hours following the release of the
 1338 defendant on bail or, in the case of a juvenile offender, upon
 1339 the release from residential detention or commitment. If the
 1340 chief administrator, or designee, is unable to contact the
 1341 alleged victim or appropriate next of kin of the alleged victim
 1342 or other designated contact by telephone, the chief
 1343 administrator, or designee, must send to the alleged victim or
 1344 appropriate next of kin of the alleged victim or other
 1345 designated contact a written notification of the defendant's
 1346 release.

1347 4. Unless otherwise requested by the victim or the
 1348 appropriate next of kin of the victim or other designated
 1349 contact, the information contained on the victim notification
 1350 card must be sent by the chief administrator, or designee, of
 1351 the appropriate facility to the subsequent correctional or
 1352 residential commitment facility following the sentencing and
 1353 incarceration of the defendant, and unless otherwise requested
 1354 by the victim or the appropriate next of kin of the victim or
 1355 other designated contact, he or she must be notified of the
 1356 release of the defendant from incarceration as provided by law.

1357 5. If the defendant was arrested pursuant to a warrant
 1358 issued or taken into custody pursuant to s. 985.101 in a
 1359 jurisdiction other than the jurisdiction in which the defendant
 1360 is being released, and the alleged victim or appropriate next of
 1361 kin of the alleged victim or other designated contact does not
 1362 waive the option for notification of release, the chief
 1363 correctional officer or chief administrator of the facility

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 1364 releasing the defendant shall make a reasonable attempt to
 1365 immediately notify the chief correctional officer of the
 1366 jurisdiction in which the warrant was issued or the juvenile was
 1367 taken into custody pursuant to s. 985.101, and the chief
 1368 correctional officer of that jurisdiction shall make a
 1369 reasonable attempt to notify the alleged victim or appropriate
 1370 next of kin of the alleged victim or other designated contact,
 1371 as provided in this paragraph, that the defendant has been or
 1372 will be released.

1373 (c) *Information concerning protection available to victim*
 1374 *or witness.*—A victim or witness shall be furnished, as a matter
 1375 of course, with information on steps that are available to law
 1376 enforcement officers and state attorneys to protect victims and
 1377 witnesses from intimidation. Victims of domestic violence shall
 1378 also be given information about the address confidentiality
 1379 program provided under s. 741.403.

1380 (d) *Notification of scheduling changes.*—Each victim or
 1381 witness who has been scheduled to attend a criminal or juvenile
 1382 justice proceeding shall be notified as soon as possible by the
 1383 agency scheduling his or her appearance of any change in
 1384 scheduling which will affect his or her appearance.

1385 (e) *Advance notification to victim or relative of victim*
 1386 *concerning judicial proceedings; right to be present.*—Any
 1387 victim, parent, guardian, or lawful representative of a minor
 1388 who is a victim, or relative of a homicide victim shall receive
 1389 from the appropriate agency, at the address found in the police
 1390 report or the victim notification card if such has been provided
 1391 to the agency, prompt advance notification, unless the agency
 1392 itself does not have advance notification, of judicial and

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1393 postjudicial proceedings relating to his or her case, including
 1394 all proceedings or hearings relating to:

- 1395 1. The arrest of an accused;
- 1396 2. The release of the accused pending judicial proceedings
 1397 or any modification of release conditions; and
- 1398 3. Proceedings in the prosecution or petition for
 1399 delinquency of the accused, including the filing of the
 1400 accusatory instrument, the arraignment, disposition of the
 1401 accusatory instrument, trial or adjudicatory hearing, sentencing
 1402 or disposition hearing, appellate review, subsequent
 1403 modification of sentence, collateral attack of a judgment, and,
 1404 when a term of imprisonment, detention, or residential
 1405 commitment is imposed, the release of the defendant or juvenile
 1406 offender from such imprisonment, detention, or residential
 1407 commitment by expiration of sentence or parole and any meeting
 1408 held to consider such release.

1409

1410 A victim, a victim's parent or guardian if the victim is a
 1411 minor, a lawful representative of the victim or of the victim's
 1412 parent or guardian if the victim is a minor, or a victim's next
 1413 of kin may not be excluded from any portion of any hearing,
 1414 trial, or proceeding pertaining to the offense based solely on
 1415 the fact that such person is subpoenaed to testify, unless, upon
 1416 motion, the court determines such person's presence to be
 1417 prejudicial. The appropriate agency with respect to notification
 1418 under subparagraph 1. is the arresting law enforcement agency,
 1419 and the appropriate agency with respect to notification under
 1420 subparagraphs 2. and 3. is the Attorney General or state
 1421 attorney, unless the notification relates to a hearing

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1422 concerning parole, in which case the appropriate agency is the
 1423 Florida Parole Commission on Offender Review. The Department of
 1424 Corrections, the Department of Juvenile Justice, or the sheriff
 1425 is the appropriate agency with respect to release by expiration
 1426 of sentence or any other release program provided by law. ~~A~~ Any
 1427 victim may waive notification at any time, and such waiver shall
 1428 be noted in the agency's files.

1429 (f) *Information concerning release from incarceration from*
 1430 *a county jail, municipal jail, juvenile detention facility, or*
 1431 *residential commitment facility.*—The chief administrator, or a
 1432 person designated by the chief administrator, of a county jail,
 1433 municipal jail, juvenile detention facility, or residential
 1434 commitment facility shall, upon the request of the victim or the
 1435 appropriate next of kin of a victim or other designated contact
 1436 of the victim of any of the crimes specified in paragraph (b),
 1437 make a reasonable attempt to notify the victim or appropriate
 1438 next of kin of the victim or other designated contact before
 1439 ~~prior to~~ the defendant's or offender's release from
 1440 incarceration, detention, or residential commitment if the
 1441 victim notification card has been provided pursuant to paragraph
 1442 (b). If prior notification is not successful, a reasonable
 1443 attempt must be made to notify the victim or appropriate next of
 1444 kin of the victim or other designated contact within 4 hours
 1445 following the release of the defendant or offender from
 1446 incarceration, detention, or residential commitment. If the
 1447 defendant is released following sentencing, disposition, or
 1448 furlough, the chief administrator or designee shall make a
 1449 reasonable attempt to notify the victim or the appropriate next
 1450 of kin of the victim or other designated contact within 4 hours

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1451 following the release of the defendant. If the chief
 1452 administrator or designee is unable to contact the victim or
 1453 appropriate next of kin of the victim or other designated
 1454 contact by telephone, the chief administrator or designee must
 1455 send to the victim or appropriate next of kin of the victim or
 1456 other designated contact a written notification of the
 1457 defendant's or offender's release.

1458 (g) *Consultation with victim or guardian or family of*
 1459 *victim.*—

1460 1. In addition to being notified of ~~the provisions of~~ s.
 1461 921.143, the victim of a felony involving physical or emotional
 1462 injury or trauma or, in a case in which the victim is a minor
 1463 child or in a homicide, the guardian or family of the victim
 1464 shall be consulted by the state attorney in order to obtain the
 1465 views of the victim or family about the disposition of any
 1466 criminal or juvenile case brought as a result of such crime,
 1467 including the views of the victim or family about:

- 1468 a. The release of the accused pending judicial proceedings;
- 1469 b. Plea agreements;
- 1470 c. Participation in pretrial diversion programs; and
- 1471 d. Sentencing of the accused.

1472 2. Upon request, the state attorney shall permit the
 1473 victim, the victim's parent or guardian if the victim is a
 1474 minor, the lawful representative of the victim or of the
 1475 victim's parent or guardian if the victim is a minor, or the
 1476 victim's next of kin in the case of a homicide to review a copy
 1477 of the presentence investigation report before ~~prior to~~ the
 1478 sentencing hearing if one was completed. Any confidential
 1479 information that pertains to medical history, mental health, or

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1480 substance abuse and any information that pertains to any other
 1481 victim shall be redacted from the copy of the report. Any person
 1482 who reviews the report pursuant to this paragraph must maintain
 1483 the confidentiality of the report and may ~~shall~~ not disclose its
 1484 contents to any person except statements made to the state
 1485 attorney or the court.

1486 3. ~~If when~~ an inmate has been approved for community work
 1487 release, the Department of Corrections shall, upon request and
 1488 as provided in s. 944.605, notify the victim, the victim's
 1489 parent or guardian if the victim is a minor, the lawful
 1490 representative of the victim or of the victim's parent or
 1491 guardian if the victim is a minor, or the victim's next of kin
 1492 if the victim is a homicide victim.

1493 (h) *Return of property to victim.*—Law enforcement agencies
 1494 and the state attorney shall promptly return a victim's property
 1495 held for evidentiary purposes unless there is a compelling law
 1496 enforcement reason for retaining it. The trial or juvenile court
 1497 exercising jurisdiction over the criminal or juvenile proceeding
 1498 may enter appropriate orders to implement ~~the provisions of~~ this
 1499 subsection, including allowing photographs of the victim's
 1500 property to be used as evidence at the criminal trial or the
 1501 juvenile proceeding in place of the victim's property if when no
 1502 substantial evidentiary issue related thereto is in dispute.

1503 (i) *Notification to employer and explanation to creditors*
 1504 *of victim or witness.*—A victim or witness who so requests shall
 1505 be assisted by law enforcement agencies and the state attorney
 1506 in informing his or her employer that the need for victim and
 1507 witness cooperation in the prosecution of the case may
 1508 necessitate the absence of that victim or witness from work. A

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1509 victim or witness who, as a direct result of a crime or of his
 1510 or her cooperation with law enforcement agencies or a state
 1511 attorney, is subjected to serious financial strain shall be
 1512 assisted by such agencies and state attorney in explaining to
 1513 the creditors of such victim or witness the reason for such
 1514 serious financial strain.

1515 (j) *Notification of right to request restitution.*—Law
 1516 enforcement agencies and the state attorney shall inform the
 1517 victim of the victim's right to request and receive restitution
 1518 pursuant to s. 775.089 or s. 985.437, and of the victim's rights
 1519 of enforcement under ss. 775.089(6) and 985.0301 in the event an
 1520 offender does not comply with a restitution order. The state
 1521 attorney shall seek the assistance of the victim in the
 1522 documentation of the victim's losses for the purpose of
 1523 requesting and receiving restitution. In addition, the state
 1524 attorney shall inform the victim if and when restitution is
 1525 ordered. If an order of restitution is converted to a civil lien
 1526 or civil judgment against the defendant, the clerks shall make
 1527 available at their office, as well as on their website,
 1528 information provided by the Secretary of State, the court, or
 1529 The Florida Bar on enforcing the civil lien or judgment.

1530 (k) *Notification of right to submit impact statement.*—The
 1531 state attorney shall inform the victim of the victim's right to
 1532 submit an oral or written impact statement pursuant to s.
 1533 921.143 and shall assist in the preparation of such statement if
 1534 necessary.

1535 (l) *Local witness coordination services.*—The requirements
 1536 for notification provided for in paragraphs (c), (d), and (i)
 1537 may be performed by the state attorney or public defender for

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1538 their own witnesses.

1539 (m) *Victim assistance education and training.*—Victim
 1540 assistance education and training shall be offered to persons
 1541 taking courses at law enforcement training facilities and to
 1542 state attorneys and assistant state attorneys so that victims
 1543 may be promptly, properly, and completely assisted.

1544 (n) *General victim assistance.*—Victims and witnesses shall
 1545 be provided with such other assistance, such as transportation,
 1546 parking, separate pretrial waiting areas, and translator
 1547 services in attending court, as is practicable.

1548 (o) *Victim's rights information card or brochure.*—A victim
 1549 of a crime shall be provided with a victim's rights information
 1550 card or brochure containing essential information concerning the
 1551 rights of a victim and services available to a victim as
 1552 required by state law.

1553 (p) *Information concerning escape from a state correctional*
 1554 *institution, county jail, juvenile detention facility, or*
 1555 *residential commitment facility.*—In any case where an offender
 1556 escapes from a state correctional institution, private
 1557 correctional facility, county jail, juvenile detention facility,
 1558 or residential commitment facility, the institution of
 1559 confinement shall immediately notify the state attorney of the
 1560 jurisdiction where the criminal charge or petition for
 1561 delinquency arose and the judge who imposed the sentence of
 1562 incarceration. The state attorney shall thereupon make every
 1563 effort to notify the victim, material witness, parents or legal
 1564 guardian of a minor who is a victim or witness, or immediate
 1565 relatives of a homicide victim of the escapee. The state
 1566 attorney shall also notify the sheriff of the county where the

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 1567 criminal charge or petition for delinquency arose. The sheriff
 1568 shall offer assistance upon request. When an escaped offender is
 1569 subsequently captured or is captured and returned to the
 1570 institution of confinement, the institution of confinement shall
 1571 again immediately notify the appropriate state attorney and
 1572 sentencing judge pursuant to this section.

(q) *Presence of victim advocate during discovery
 deposition; testimony of victim of a sexual offense.*—At the
 1574 request of the victim or the victim's parent, guardian, or
 1575 lawful representative, the victim advocate designated by state
 1576 attorney's office, sheriff's office, or municipal police
 1577 department, or one representative from a not-for-profit victim
 1578 services organization, including, but not limited to, rape
 1579 crisis centers, domestic violence advocacy groups, and alcohol
 1580 abuse or substance abuse groups shall be permitted to attend and
 1581 be present during any deposition of the victim. The victim of a
 1582 sexual offense shall be informed of the right to have the
 1583 courtroom cleared of certain persons as provided in s. 918.16
 1584 when the victim is testifying concerning that offense.

(r) *Implementing crime prevention in order to protect the
 safety of persons and property, as prescribed in the State
 Comprehensive Plan.*—By preventing crimes that create victims or
 1588 further harm former victims, crime prevention efforts are an
 1589 essential part of providing effective service for victims and
 1590 witnesses. Therefore, the agencies identified in this subsection
 1591 may participate in and expend funds for crime prevention, public
 1592 awareness, public participation, and educational activities
 1593 directly relating to, and in furtherance of, existing public
 1594 safety statutes. Furthermore, funds may not be expended for the
 1595

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 1596 purpose of influencing public opinion on public policy issues
 1597 that have not been resolved by the Legislature or the
 1598 electorate.

(s) *Attendance of victim at same school as defendant.*—If
 1600 ~~when~~ the victim of an offense committed by a juvenile is a
 1601 minor, the Department of Juvenile Justice shall request
 1602 information to determine if the victim, or any sibling of the
 1603 victim, attends or is eligible to attend the same school as the
 1604 offender. However, if the offender is subject to a presentence
 1605 investigation by the Department of Corrections, the Department
 1606 of Corrections shall make such request. If the victim or any
 1607 sibling of the victim attends or is eligible to attend the same
 1608 school as that of the offender, the appropriate agency shall
 1609 notify the victim's parent or legal guardian of the right to
 1610 attend the sentencing or disposition of the offender and request
 1611 that the offender be required to attend a different school.

(t) *Use of a polygraph examination or other truth-telling
 device with victim.*—A ~~No~~ law enforcement officer, prosecuting
 1614 attorney, or other government official may not shall ask or
 1615 require an adult, youth, or child victim of an alleged sexual
 1616 battery as defined in chapter 794 or other sexual offense to
 1617 submit to a polygraph examination or other truth-telling device
 1618 as a condition of proceeding with the investigation of such an
 1619 offense. The refusal of a victim to submit to such an
 1620 examination does shall not prevent the investigation, charging,
 1621 or prosecution of the offense.

(u) *Presence of victim advocates during forensic medical
 examination.*—At the request of the victim or the victim's
 1623 parent, guardian, or lawful representative, a victim advocate
 1624

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1625 from a certified rape crisis center shall be permitted to attend
1626 any forensic medical examination.

1627 Section 57. Subsection (3) of section 960.17, Florida
1628 Statutes, is amended to read:

1629 960.17 Award constitutes debt owed to state.—

1630 (3) The ~~Florida Parole~~ Commission on Offender Review shall
1631 make the payment of the debt to the state a condition of parole
1632 under chapter 947, unless the commission finds reasons to the
1633 contrary. If the commission does not order payment, or orders
1634 only partial payment, it shall state on the record the reasons
1635 therefor.

1636 Section 58. Subsection (1) of section 985.04, Florida
1637 Statutes, is amended to read:

1638 985.04 Oaths; records; confidential information.—

1639 (1) Except as provided in subsections (2), (3), (6), and
1640 (7) and s. 943.053, all information obtained under this chapter
1641 in the discharge of official duty by any judge, any employee of
1642 the court, any authorized agent of the department, the Florida
1643 ~~Parole~~ Commission on Offender Review, the Department of
1644 Corrections, the juvenile justice circuit boards, any law
1645 enforcement agent, or any licensed professional or licensed
1646 community agency representative participating in the assessment
1647 or treatment of a juvenile is confidential and may be disclosed
1648 only to the authorized personnel of the court, the department
1649 and its designees, the Department of Corrections, the Florida
1650 ~~Parole~~ Commission on Offender Review, law enforcement agents,
1651 school superintendents and their designees, any licensed
1652 professional or licensed community agency representative
1653 participating in the assessment or treatment of a juvenile, and

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1654 others entitled under this chapter to receive that information,
1655 or upon order of the court. Within each county, the sheriff, the
1656 chiefs of police, the district school superintendent, and the
1657 department shall enter into an interagency agreement for the
1658 purpose of sharing information about juvenile offenders among
1659 all parties. The agreement must specify the conditions under
1660 which summary criminal history information is to be made
1661 available to appropriate school personnel, and the conditions
1662 under which school records are to be made available to
1663 appropriate department personnel. Such agreement shall require
1664 notification to any classroom teacher of assignment to the
1665 teacher's classroom of a juvenile who has been placed in a
1666 probation or commitment program for a felony offense. The
1667 agencies entering into such agreement must comply with s.
1668 943.0525, and must maintain the confidentiality of information
1669 that is otherwise exempt from s. 119.07(1), as provided by law.

1670 Section 59. Subsection (2) of section 985.045, Florida
1671 Statutes, is amended to read:

1672 985.045 Court records.—

1673 (2) The clerk shall keep all official records required by
1674 this section separate from other records of the circuit court,
1675 except those records pertaining to motor vehicle violations,
1676 which shall be forwarded to the Department of Highway Safety and
1677 Motor Vehicles. Except as provided in ss. 943.053 and
1678 985.04(6)(b) and (7), official records required by this chapter
1679 are not open to inspection by the public, but may be inspected
1680 only upon order of the court by persons deemed by the court to
1681 have a proper interest therein, except that a child and the
1682 parents, guardians, or legal custodians of the child and their

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20141636__

1683 attorneys, law enforcement agencies, the Department of Juvenile
1684 Justice and its designees, the Florida Parole Commission on
1685 Offender Review, the Department of Corrections, and the Justice
1686 Administrative Commission shall always have the right to inspect
1687 and copy any official record pertaining to the child. Public
1688 defender offices shall have access to official records of
1689 juveniles on whose behalf they are expected to appear in
1690 detention or other hearings before an appointment of
1691 representation. The court may permit authorized representatives
1692 of recognized organizations compiling statistics for proper
1693 purposes to inspect, and make abstracts from, official records
1694 under whatever conditions upon the use and disposition of such
1695 records the court may deem proper and may punish by contempt
1696 proceedings any violation of those conditions.

1697 Section 60. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-20-14

Meeting Date

Topic Renaming Parole Commission

Bill Number 1636
(if applicable)

Name Tena (Tina) Pate

Amendment Barcode _____
(if applicable)

Job Title Chair - Florida Parole Commission

Address 4070 Esplanade Way

Phone 921-2816

Street

Tallahassee FL 32311

City

State

Zip

E-mail TenaPate@FPC.State.FL.us

Speaking: For Against Information

Representing Florida Parole Commission

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 856

INTRODUCER: Senator Detert

SUBJECT: Uniform Fraudulent Transfer Act

DATE: March 19, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Malcolm</u>	<u>Hrdlicka</u>	<u>CM</u>	Favorable
2.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
3.	<u>Malcolm</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 856 amends the Florida Uniform Fraudulent Transfer Act to expand the protection against a creditor's clawback action for charitable contributions received in good faith by qualified religious or charitable organizations. The bill protects charitable contributions made by a debtor who makes such a contribution without receiving equivalent value in exchange for the contribution while the debtor was insolvent or became insolvent as a result of making the contribution. The bill aligns this exemption with similar provisions in the Federal Bankruptcy Code.

II. Present Situation:

According to the National Conference of Commissioners on Uniform State Laws, the Uniform Fraudulent Transfer Act (UFTA) has been enacted by 43 states, as well as the District of Columbia and the U.S. Virgin Islands.¹ Florida adopted the UFTA in 1987.² Chapter 726, F.S., the Florida Uniform Fraudulent Transfer Act (FUFTA), gives a present or future creditor the ability to reach assets that a debtor has transferred to another person or entity in order to shield the assets from being used to satisfy a debt to the creditor.

For present and future creditors, s. 726.105, F.S., provides that a transfer made or an obligation incurred by a debtor is fraudulent if the debtor made the transfer or incurred the obligation:

- (1)(a) With actual intent to hinder, delay, or defraud any creditor; or
- (1)(b) Without receiving reasonably equivalent value in exchange for the transfer or obligation, and either the debtor:

¹ Uniform Law Commission, Legislative Fact Sheet – Fraudulent Transfer Act, *available at* <http://uniformlaws.org/LegislativeFactSheet.aspx?title=Fraudulent%20Transfer%20Act> (last visited Feb. 25, 2014).

² Chapter 87-79, L.O.F. The short title for ch. 726, F.S., is the “Uniform Fraudulent Transfer Act.”

- While engaged, or about to engage, in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
- Intending to incur, or believing, or with reasonably believing that he or she would incur debts beyond his or her ability to pay as they became due.³

For present creditors only, s. 726.106(1), F.S., provides that a transfer made or an obligation incurred by a debtor is fraudulent if the debtor made the transfer or incurred the obligation without receiving reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent or became insolvent because of the transfer or obligation.

For the fraudulent transfers described above, the FUFTA provides a statutory remedy for creditors primarily through a “clawback” action in which a creditor may have a debtor’s transfer or obligation voided and surrendered back to the creditor.⁴ Clawback actions under the FUFTA are permitted in federal district and bankruptcy courts to allow receivers to bring suits “against Ponzi scheme investors to the extent that the investors have received payments in excess of the amounts invested and those payments are avoidable as fraudulent transfers.”⁵ This remedy is subject to a 4-year statute of limitations, unless otherwise specified in s. 726.110, F.S.⁶

The FUFTA also provides protections for an innocent third party transferee. A transfer from a debtor is not voidable when the transferee is “a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee”⁷ In addition to this “good faith and value” exception, in 2013, the Legislature amended the FUFTA to add specific protections for transfers received by charitable organizations, which generally do not give value in exchange for contributions and thus would not qualify for the “good faith and value” exception.⁸

The 2013 law protects charitable contributions that would otherwise be considered fraudulent transfers under s. 726.105(1)(b), F.S. The protections provided under the 2013 law do not apply if the charitable transfer occurred in the 2 years preceding commencement of a clawback action, insolvency proceedings, or a petition for bankruptcy, unless the transfer was consistent with the debtor’s charitable contribution practices or the transfer was received in good faith and the contribution amount did not exceed 15 percent of the debtors gross annual income.⁹

The 2013 law did not include protections for charitable contributions that would otherwise be considered fraudulent transfers under s. 726.106(1), F.S. As a result of the 2013 law, a charitable organization is protected against a clawback action under FUFTA for transfers under s. 726.105(1)(b), F.S., but is not protected against a clawback action for similar transfers under s. 726.106(1), F.S.

³ Section 726.105, F.S.

⁴ See s. 726.108, F.S.

⁵ *Wiand v. Dancing \$, LLC*, 919 F. Supp. 2d 1296, 1300 (M.D. Fla. 2013).

⁶ Section 726.110, F.S.

⁷ Section 726.109(1), F.S.

⁸ Chapter 2013-189, L.O.F.; s. 726.109(7), F.S.

⁹ Section 726.109(7)(b), F.S.

Federal Bankruptcy Code

Like the FUFTA, the Federal Bankruptcy Code¹⁰ (bankruptcy code) allows certain fraudulent transfers made by a debtor to be voided. However, unlike the FUFTA, which relies on individual creditors to bring actions to void the transfer, the code empowers the bankruptcy trustee to bring the action to void the fraudulent transfers for the benefit of all the debtor's creditors.

Section 548 of the bankruptcy code deals exclusively with fraudulent transfers and allows a bankruptcy trustee to void fraudulent transactions.¹¹ The elements that must be established to void a fraudulent transfer under this provision are substantially similar to those that are required under the FUFTA. Section 548 also parallels the innocent transferee protections in the FUFTA by providing a "good faith and value" defense that is nearly identical to the defense provided by the FUFTA and that is available to a transferee that takes in good faith for reasonably equivalent value.¹² Additionally, like the 2013 amendment to the FUFTA, the bankruptcy code also provides that a transfer or contribution to a charitable or religious organization is not voidable as a fraudulent transfer, even if it does not meet the "good faith and value" defense.¹³

Unlike the FUFTA, however, the charitable transfer exemption under the bankruptcy code encompasses transfers identical to those identified in s. 726.106(1), F.S., in which the debtor did not receive reasonably equivalent value in exchange for the transfer and the debtor was insolvent at the time of the transfer or became insolvent because of the transfer.¹⁴ Consequently, the bankruptcy code affords broader protections to charitable organizations against clawback actions than the FUFTA.

III. Effect of Proposed Changes:

Section 726.106(1), F.S., identifies a fraudulent transfer as one in which the debtor made the transfer without receiving equivalent value in exchange for the transfer and the debtor was insolvent at the time or the debtor became insolvent due to the transfer.

Section 1 amends s. 726.109, F.S., to expand the exemption for charitable contributions received by a qualified religious or charitable entity in good faith to include otherwise fraudulent transfers under s. 726.106(1), F.S. This addition makes the charitable contribution exemption under the FUFTA the same as that provided under the bankruptcy code.

A charitable contribution may still be subject to a clawback action if it is received within 2 years of the commencement of an action under the FUFTA, a bankruptcy petition, or an insolvency proceeding, unless the transfer was consistent with the debtor's practices in making charitable contributions or the transfer did not exceed 15 percent of the debtor's gross annual income.

Section 2 provides that the act will take effect upon becoming law.

¹⁰ 11 U.S.C. s. 101 et. seq.

¹¹ 11 U.S.C. s. 548(a)(1).

¹² 11 U.S.C. s. 548(c); *see* s. 726.109(1), F.S.

¹³ 11 U.S.C. s. 548(a)(2); *see* s. 726.109(7), F.S.

¹⁴ *Id.*

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:

Under the bill, creditors would not be able to void certain fraudulent transfers that they currently are able to void under the FUFTA. Thus, fewer assets may be available to make creditors whole in certain circumstances. However, charities may feel more secure about contributions they receive.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 726.109 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Detert

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A bill to be entitled

An act relating to the Uniform Fraudulent Transfer Act; amending s. 726.109, F.S.; providing that certain transfers of charitable contributions to charitable or religious organizations are exempt from s. 726.106(1), F.S.; providing an effective date.

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

Section 1. Paragraph (a) of subsection (7) of section 726.109, Florida Statutes, is amended to read:

726.109 Defenses, liability, and protection of transferee.—

(7) (a) The transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer under s. 726.105(1) (b) or s. 726.106(1).

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



The Florida Senate

Committee Agenda Request

To: Senator John Thrasher, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 12, 2014

I respectfully request that **Senate Bill #856**, relating to Uniform Fraudulent Transfer Act, 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

COMMITTEE ON RULES



Location

402 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5350

Senator John Thrasher, *Chair*

Senator Christopher L. "Chris" Smith, *Vice Chair*

Professional Staff: John B. Phelps, *Staff Director*

Senate's Website: www.flsenate.gov

Chronology of Ethics Complaint against Senator Soto

- May 23, 2012 - State Representative Darren Soto files a Full and Public Disclosure of Financial Interests CE Form 6 for 2011 with the Division of Elections.
- October 29, 2012 – Mr. William McBride files a complaint with the Commission on Ethics alleging that Representative Soto failed to list bank accounts and balances at the time of his filing as required by law.
- November 7, 2012 – Ethics Commission Executive Director Virilindia Doss finds sufficient cause to initiate an investigation of the complaint.
- December 12, 2012 – The Report of Investigation is released. The report states that Senator Soto immediately filed a corrected Form 6X when made aware of the error.
- January 13, 2013 – The Advocate recommends that there is probable cause to believe Representative Soto violated Article II, Section 8, Florida Constitution by filing an inaccurate 2011 CE Form 6.
- March 13, 2013 – The Ethics Commission finds probable cause to believe Representative (now Senator) Soto violated Article II, Section 8, Florida Constitution by filing an inaccurate 2011 CE Form 6.
- April 18, 2013 – The Advocate for the Commission on Ethics and Senator Soto enter into a Joint Stipulation of Fact, Law, and Recommended Order in which Senator Soto admits the violation.
- June 12, 2013 – The Ethics Commission adopts the Joint Stipulation of Fact, Law, and Recommended Order.
- June 12, 2013 – The Executive Director of the Ethics Commission writes Senate President Gaetz informing the Senate of the Commission's action.
- June 2013 – President Gaetz refers the matter to Senator Thrasher, Chair of the Rules Committee, for further consideration.

THE FLORIDA SENATE

COMMITTEE ON RULES



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Senator John Thrasher, *Chair*

Senator Christopher L. "Chris" Smith, *Vice Chair*

Professional Staff: John B. Phelps, *Staff Director*

Senate's Website: www.flsenate.gov

Chronology of Ethics Complaint against Senator Sachs

- January 17, 2013 – As required by Rule 1.361(3) Senator Sachs completes Form S-056 to inform the Rules Committee of the formation of a Committee of Continuous Existence (CCE) entitled "Moving Florida Forward."
- June 3, 2013 – In response to the passage of ethics reform legislation, Senator Sachs' attorney Mark Herron submits to the Bureau of Elections the required documents to establish the "Moving Florida Forward" Political Committee.
- August 8, 2013 – By letter to the Bureau of Election Records, Senator Sachs' attorney Mark Herron informed the Division of Elections that the Committee of Continuous Existence (CCE) entitled "Moving Florida Forward" would terminate its existence effective August 15, 2013.
- January 23, 2014 – Complaint received from Mr. Timothy Stevens of Deerfield Beach, FL, alleging that Senator Sachs failed to disclose to the Rules Committee the formation of the "Moving Florida Forward" Political Committee as required by Rule 1.361(3).
- January 28, 2014 – Senator Sachs submits Form S-056 informing the Rules Committee of the formation of the "Moving Florida Forward" Political Committee as required by Rule 1.361(3).
- February 18, 2014 – Letter received from Senator Sachs' attorney Mark Herron explaining that the Rules Committee was not informed after the "Moving Florida Forward" Political Committee was established because of a misdirected mailing.

CourtSmart Tag Report

Room: EL 110
Caption: Senate Rules Committee

Case:
Judge:

Type:

Started: 3/20/2014 10:31:23 AM
Ends: 3/20/2014 11:35:45 AM Length: 01:04:23

10:31:24 AM Senator Thrasher calls the meeting to order
10:31:32 AM Roll Call
10:31:51 AM quorum present
10:32:00 AM CS/CS/SB 208 by Hukill
10:32:14 AM Senator Hukill explains the bill
10:33:13 AM Brian Pitts Justice 2 Jesus speaks
10:34:11 AM Brewster Bevis Associated Industries of Florida waives in support
10:34:21 AM Ian Anderson waives in support
10:34:29 AM G G Calloway waives in support
10:34:35 AM Cheryl Coxwell International Speedway Corporation waives in support
10:34:46 AM Senator Hukill closes on the bill
10:34:59 AM roll call
10:35:06 AM CS/CS/SB 208 reported favorably
10:35:35 AM SM 476 by Senator Hays
10:35:46 AM Senator Hays explains the bill
10:37:05 AM Brian Pitts speaks
10:38:43 AM Tim Nungesser waives in support
10:38:54 AM Senator Smith in debate
10:40:33 AM Senator Hays closes on the bill
10:41:37 AM roll call
10:41:42 AM SM 476 reported favorably
10:42:19 AM SB 856 by Senator Detert
10:42:26 AM Senator Detert explains the bill
10:43:07 AM Senator Detert waives close
10:43:13 AM roll call
10:43:18 AM SB 856 reported favorably
10:43:49 AM SM 658 by Stargel
10:44:02 AM Senator Stargel explains the bill
10:44:30 AM Brian Pitts speaks
10:46:22 AM Tim Nungesser waives in support
10:46:28 AM Frank Miners waives in support
10:46:37 AM Senator Stargel closes on the bill
10:46:54 AM roll call
10:46:57 AM SM 658 reported favorably
10:48:35 AM SB 1636 by Criminal Justice
10:49:35 AM Dave Murzin explains the bill
10:50:04 AM Tina Pate waives in support Parole Commission
10:50:23 AM Senator Negron in debate
10:53:07 AM Dave Murzin waives close
10:53:15 AM roll call
10:53:18 AM SB 1636 reported favorably
10:53:58 AM Senator Margolis with remarks
10:54:23 AM SJR 1188 by Senator Lee
10:54:37 AM Senator Lee explains the bill
10:57:19 AM Senator Smith with a question to Senator Latvala
10:57:34 AM Senator Latvala responds
10:57:52 AM Senator Smith with a follow up
10:58:10 AM Senator Lee responds
10:59:31 AM Senator Sobel with a question
11:00:00 AM Senator Lee responds
11:00:40 AM Senator Sobel with a follow up
11:01:23 AM Senator Lee responds

11:03:53 AM Senator Smith with a question
11:04:41 AM Senator Lee responds
11:06:03 AM Senator Margolis with a question
11:07:11 AM Senator Lee responds
11:08:42 AM Senator Latvala in debate
11:11:11 AM Senator Ring in debate
11:12:12 AM Senator Sobel in debate
11:13:08 AM Senator Margolis in debate
11:14:13 AM Senator Smith in debate
11:16:01 AM Senator Richter in debate
11:16:45 AM Senator Thrasher in debate
11:18:02 AM Senator Lee closes on bill
11:20:42 AM Without objection CS adopted
11:20:50 AM roll call
11:20:55 AM SJR 1188 reported favorably
11:21:29 AM SB 520 by Senator Richter
11:21:38 AM Senator Richter explains the bill
11:21:56 AM Senator Diaz de la Portilla with a question
11:22:05 AM Senator Richter responds
11:22:28 AM Senator Diaz de la Portilla with a follow up
11:22:42 AM Senator Richter responds
11:22:56 AM Brian Pitts Justice 2 Jesus speaks
11:23:16 AM Casey Stoutamire Florida Dental Association waives in support
11:23:52 AM Senator Richter waives close
11:24:00 AM roll call
11:24:02 AM SB 520 reported favorably
11:24:31 AM SB 358 by Senator Ring
11:24:49 AM Senator Ring explains the bill
11:25:49 AM Amendment 293046
11:26:03 AM Amendment explained
11:26:07 AM Senator Smith with a question
11:26:17 AM Senator Ring responds
11:26:50 AM Senator Sobel with a question
11:27:12 AM Senator Ring with a response
11:27:34 AM Senator Smith with a question
11:27:40 AM Senator Ring responds
11:27:57 AM Brian Pitts waives in support of the amendment
11:28:08 AM Senator Ring closes on the amendemnt
11:28:25 AM amendment adopted
11:28:29 AM back on the bill
11:28:33 AM Senator Sobel in debate
11:29:11 AM Senator Smith in debate
11:29:58 AM Senator Sobel moves CS
11:30:08 AM Senator Ring closes on the bill
11:30:17 AM roll call
11:30:32 AM SB 358 reported favorably
11:30:53 AM Senator Thrasher explains Ethics Commission report on Senator Soto
11:32:21 AM roll call consent decree
11:32:36 AM report reported favorably for submission to the full Senate
11:33:07 AM Senator Thrasher explains complaint relating to Senator Sachs
11:34:14 AM roll call on consent decree
11:34:22 AM report favorably for submission to the full Senate
11:35:11 AM Senator Smith moves we rise



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ELEANOR SOBEL

33rd District

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Ethics and Elections, *Vice Chair*
Health Policy, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health
and Human Services
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Regulated Industries
Rules

SELECT COMMITTEE:
Select Committee on Patient Protection
and Affordable Care Act, *Vice Chair*

March 19, 2014

Senator Thrasher
Chair of Rules Committee
400 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chair Thrasher:

This letter is to request that I be excused to leave a half hour earlier during the Rules Committee on Thursday 3/20/14.

Thank you for your consideration of this request.

Respectfully,

A handwritten signature in cursive script that reads "Eleanor Sobel".

Eleanor Sobel
State Senator, 33rd District

REPLY TO:

- The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
- 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore