

| Tab 1 | SB 160 by Perry (CO-INTRODUCERS) Hooper; (Identical to H 00573) Peer-to-peer Support for First Responders | | | | | |
|--------------|--|-----|-----|-----------|-------------------|----------------|
| 142354 | A | S | RS | JU, Perry | Delete L.23 - 52: | 11/14 12:31 PM |
| 625854 | SA | S L | FAV | JU, Perry | Delete L.23 - 52: | 11/14 12:31 PM |
| 191422 | A | S | WD | JU, Perry | btw L.52 - 53: | 11/14 12:31 PM |

| Tab 2 | SB 544 by Harrell; (Identical to H 00375) Husband-wife Communications Privilege | | | | | |
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| Tab 3 | SR 546 by Rodriguez; Oppression of the Nicaraguan People/President Daniel Ortega | | | | | |
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| Tab 4 | SB 580 by Bracy; (Similar to H 00349) Uniform Partition of Heirs Property Act | | | | | |
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Simmons, Chair
Senator Rodriguez, Vice Chair

MEETING DATE: Tuesday, November 12, 2019
TIME: 1:30—3:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

MEMBERS: Senator Simmons, Chair; Senator Rodriguez, Vice Chair; Senators Baxley, Gibson, Hutson, and Stargel

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|---|--|----------------------------|
| 1 | SB 160 Perry (Identical H 573) | Peer-to-peer Support for First Responders; Prohibiting a person who is not a health care practitioner and who provides peer-to-peer support to a first responder from testifying or divulging specified information under certain circumstances, etc. CF 10/22/2019 Favorable JU 11/05/2019 Temporarily Postponed JU 11/12/2019 Fav/CS RC | Fav/CS Yeas 6 Nays 0 |
| 2 | SB 544 Harrell (Identical H 375) | Husband-wife Communications Privilege; Providing that the privilege for husband-wife communications does not apply in certain civil or criminal proceedings involving child victims, to the extent that the communications concern certain conduct, etc. JU 11/12/2019 Favorable CJ RC | Favorable Yeas 6 Nays 0 |
| 3 | SR 546 Rodriguez | Oppression of the Nicaraguan People/President Daniel Ortega; Condemning the oppression of the Nicaraguan people under President Daniel Ortega, etc. JU 11/12/2019 Favorable RC | Favorable Yeas 6 Nays 0 |
| 4 | SB 580 Bracy (Similar H 349) | Uniform Partition of Heirs Property Act; Creating the "Uniform Partition of Heirs Property Act"; providing requirements relating to the court determination of heirs property; providing for the determination of property value; providing for buyout of cotenants; providing for sale of property through open-market sale, sealed bids, or auction, etc. JU 11/12/2019 Temporarily Postponed CA RC | Temporarily Postponed |

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 Judiciary

BILL: CS/SB 160

INTRODUCER: Judiciary Committee and Senators Perry and Hooper

SUBJECT: Peer-to-peer Support for First Responders

DATE: November 14, 2019 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------------------|-----------------------------|-----------|-----------------------------|
| 1. | <u>Delia</u> | <u>Hendon</u> | <u>CF</u> | Favorable |
| 2. | <u>Ravelo</u> | <u>Cibula</u> | <u>JU</u> | Fav/CS |
| 3. | <u> </u> | <u> </u> | <u>RC</u> | <u> </u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 160 generally prohibits the disclosure of a first responder's peer support communication made to a first responder peer.

The bill defines a peer support communication as one or more oral communications between a first responder and a first responder peer. The communication must be made with a mutual expectation of confidentiality and for the purpose of discussing physical, emotional, or issues associated with the first responder's employment. The peer support communication may extend for a period of 3 days.

Under the bill, a first responder peer is a first responder in the same agency as the person receiving peer support or a civilian designated by the first responder's agency who has received training in providing physical, moral, or emotional support to first responders.

The bill protects the confidentiality of the communications by prohibiting the person providing support from divulging the communications or from testifying in civil, criminal, administrative, and disciplinary proceedings regarding the communications.

The bill, however, allows peer support communications to be disclosed if: the first responder provides written consent, the first responder files a complaint against the person providing peer support, or if the person providing peer support suspects that the first responder committed, or

intends to commit, a criminal act or has reason to believe that the first responder is a threat to himself or herself or others.

The bill does not limit the disclosure of information obtained by a first responder peer from a source other than a peer support communication.

The bill is effective July 1, 2020.

II. Present Situation:

First Responders

Under Florida law, a first responder is either a (1) law enforcement officer, (2) firefighter, or (3) emergency medical technician or paramedic, employed, or volunteering, with a state or local government. Florida has an estimated 50,000 law enforcement officers,¹ 22,000 firefighters,² and over 60,000 emergency medical technicians and paramedics.³

A study of 1,500 Florida first responders revealed that 60 percent displayed low levels of secondary traumatic stress, 39 percent displayed moderate levels, and 1 percent displayed high levels.⁴ A 2017 study of first responders nationwide found that 84 percent experienced a traumatic event on the job, while 34 percent received a formal diagnosis for a mental health disorder such as depression or post-traumatic stress disorder.⁵ It is estimated that 30 percent of first responders develop behavioral health conditions such as post-traumatic stress disorder and depression, in comparison to 20 percent for the general population.⁶

Peer Support Programs

Some law enforcement agencies offer peer support programs, available either during crisis events or through full-time staff. In 2018, a study published by the *Journal of Police and Criminal Psychology* analyzed 110 different law enforcement agencies' suicide prevention strategies for their employees.⁷ Thirty-one of these agencies had formal peer support programs. These agencies used peers as "para-professionals within the agency to address concerns officers had in using formal mental health/EAP services."⁸ Some of these agencies likewise worked under a policy, or law within their jurisdiction, that assured confidentiality with these services.

¹ Florida Department of Law Enforcement, *Criminal Justice Agency Profile Report 2016*, <https://www.fdle.state.fl.us/CJSTC/Publications/CJAP/CJAP-2016/Statewide-Ratios.aspx> (last visited Oct 29, 2019).

² Bureau of Labor Statistics, United States Department of Labor, *Occupational Employment and Wages, May 2018: 33-2011 Firefighters*, <https://www.bls.gov/OES/Current/oes332011.htm> (last visited Oct 29, 2019).

³ Florida Department of Health, *Emergency Medical Services System*, <http://www.floridahealth.gov/licensing-and-regulation/ems-system/index.html> (last visited Oct 29, 2019).

⁴ University of Central Florida, *UCF Study Examines First Responder Stress & Support Needs UCF Today*, <https://www.ucf.edu/news/ucf-study-examines-first-responder-stress-support-needs/> (last visited Oct 29, 2019).

⁵ University of Phoenix, *Majority of First Responders Face Mental Health Challenges in the Workplace* (Apr. 18, 2017), https://www.phoenix.edu/about_us/media-center/news/uopx-releases-first-responder-mental-health-survey-results.html.

⁶ Abbot, C., Barber, E., Burke, B., Harvey, J., Newland, C., Rose, M., & Young, A., Ambulance Service Manager Program, *Reviving Responders, What's killing our medics?* (Apr. 2015), <http://www.revivingresponders.com/originalpaper>.

⁷ Rajeev Ramchand et al., *Suicide Prevention in U.S. Law Enforcement Agencies: a National Survey of Current Practices*, 34(1) *Journal of Police and Criminal Psychology*, 55–66 (2019).

⁸ *Id.*

Usually, officers apply and train to become a part of the program, and are overseen either by a mental health professional or agency leadership. While the officers can be officially recognized as “peer supporters,” they typically perform their roles informally without routine duties or office hours to provide support.

Similar to peer support, some agencies offer embedded services such as agency-affiliated chaplains and social workers to provide support to employees. Twelve of the 110 agencies studied used a method similar to this.

Large law enforcement agencies may have offices responsible for mental and emotional support for employees. The Psychological Services Section of the Miami-Dade Police Department, for example, offers consultation and referral services to employees.⁹ Officers and staff are on call 24 hours a day for officer-involved shootings, suicide interventions, and other crises. The office likewise supervises Police Chaplain Volunteers who provide support services to employees. Employees may also refer themselves to the county Employee Support Services, who provide a variety personal and mental health services and referrals with strict confidentiality.¹⁰

The Baltimore Police Department¹¹ and New York Police Departments¹² have similar divisions incorporating mental health and suicide prevention programs. New York currently includes a peer-support program with confidentiality protections. While the Baltimore program does not, the Baltimore Police Commissioner has introduced a draft policy proposal to incorporate one.¹³

Privileged Communications

When communications are protected from disclosure, typically, these protections are created by an evidentiary privilege codified in chapter 90, F.S., the Florida Evidence Code. Evidentiary privileges allow individuals to refuse to disclose certain protected information and conversations. These privileges are meant to promote honest communications between individuals involved. The Legislature recognizes the existence of an evidentiary privilege when it “judges that the protection of an interest or relationship is sufficiently important to society to justify the sacrifice of facts that might be needed for the administration of justice.”¹⁴

⁹ Miami-Dade Police Department, *Department Review, 2018 ed.*, 15, <https://www.miamidade.gov/police/library/2018-mdpd-review.pdf>.

¹⁰ Miami-Dade County, *Employee Support Services*, https://www8.miamidade.gov/global/service.page?Mduid_service=ser1544819611878399 (last visited Oct 30, 2019).

¹¹ Baltimore Police Department, *Officer Safety & Wellness Section*, <https://www.baltimorepolice.org/organization/officer-safety-wellness-section> (last visited Oct 30, 2019).

¹² New York City Police Department, *Employee Assistance Unit: Sometimes You Just Need Someone to Listen...*, <https://www1.nyc.gov/site/nypd/careers/human-resources-info/employee-assistance-unit.page> (last visited Oct 30, 2019).

¹³ Baltimore Police Department, *Policy 1711: Draft Peer Support Team Policy* (Aug. 21, 2019), <https://www.powerdms.com/public/BALTIMOREMD/documents/575672>.

¹⁴ 21 FLA. JUR. 2D *Evidence and Witnesses* s. 672 (2019) (citing *Miami Herald Pub. Co. v. Morejon*, 561 So. 2d 577, 581 (Fla. 1990)).

On the other hand, “[t]he public ‘has a right to every man’s evidence.’”¹⁵ As such, evidentiary privileges are not favored, and the privilege not to disclose relevant evidence is an extraordinary exception to the duty to testify.¹⁶

Florida has a few examples of evidentiary privileges that have some similarities to peer support confidentiality.

Domestic Violence Advocate-Victim Privilege

Under the domestic violence advocate-victim privilege, a victim of domestic violence has a “privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a domestic violence advocate or any record made in the course of advising, counseling, or assisting the victim.”¹⁷ A victim advocate must be an employee of a domestic violence program or volunteer who has at least 30 hours of training in assisting victims of domestic violence.

Sexual assault counselor-victim privilege

Under the sexual assault counselor-victim privilege, a victim of a sexual assault has a “privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a sexual assault counselor or trained volunteer or any record made in the course of advising, counseling, or assisting the victim.”¹⁸ A sexual assault counselor must be an employee of a rape crisis center or a trained volunteer. A trained volunteer must be supervised by a rape crisis center and have at least 30 hours of training in assisting victims of sexual violence and other related topics.

Psychotherapist-Patient Privilege

Under the psychotherapist patient privilege, “a patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment of the patient’s mental or emotional condition.”¹⁹

Privilege with Respect to Communications to Clergy

“A person has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication by the person to a member of the clergy in his or her capacity as spiritual adviser.”²⁰ A communication is confidential if it is made privately for the “purpose of seeking spiritual counsel and advice from the member of the clergy in the usual course of his or her practice or discipline and not intended for further disclosure except to other persons present in furtherance of the communication.”²¹

¹⁵ *Miami Herald Pub. Co. v. Morejon*, 561 So. 2d 577, 581 (Fla. 1990) (quoting 8 Wigmore, *Evidence* § 2192, at 70 (McNaughten rev.1961)).

¹⁶ *Id.*

¹⁷ Section 90.5036, F.S.

¹⁸ Section 90.5035, F.S.

¹⁹ Section 90.503, F.S.

²⁰ Section 90.505(2), F.S.

²¹ Section 90.505(1)(b), F.S.

Florida law, however, does not offer an evidentiary privilege or confidentiality for peer support communications not involving health care practitioners. As such, first responder agencies may offer confidentiality for services administrated internally, but that confidentiality would not supersede state or federal laws requiring disclosure.

When dealing with civil claims or defenses based on a state law, the Federal courts can interpret the privilege of evidence and witnesses in accordance with state law.²² This does not apply, however, to cases based solely on federal claims, or to cases based on both state and federal claims.²³

The Florida Supreme Court and Evidentiary Privileges

The Florida Evidence Code as enacted by the Legislature contains both procedural and substantive law for the courts to apply. However, rules of evidence that are procedural in nature, even those passed by the Legislature, must be approved by Supreme Court. Occasionally, the Court rejects the legislative changes.

In 2000, for example, the Court refused to adopt a recently enacted hearsay exception, noting that applying the statute would go against long standing rules of evidence and violate a defendant's right of confrontation.²⁴ A concurring opinion by Justice Lewis also found that the statute was an unacceptable rule of procedure, and therefore infringed on the Court's ability to adopt rules under Article V, § 2(a), of the Florida Constitution. In 2014, the Court refused to adopt a statute that was not part of the evidence code requiring certain qualifications for medical negligence expert witnesses on the grounds that the statute was procedural.²⁵

Peer Support Laws

Several states including Oregon, Hawaii, Colorado, Washington, and Mississippi offer evidentiary privileges for peer support personnel covering communications between first responders and peer support personnel. Oregon,²⁶ Hawaii,²⁷ Colorado,²⁸ and Washington²⁹ require peer supporters to be trained in providing emotional and moral support to first responders and must be designated by the agency for their role(s). Peer supporters in Mississippi must be a law enforcement officer, fireman, or emergency medical technician with a peer support certification from the State Board of Health or the Department of Public Safety.³⁰

In four of the five example states, all but Washington, the peer support privilege does not cover admissions to criminal conduct, information relating to the abuse of spouses, children, or the elderly, or threats of suicide or homicide. Mississippi adds that the privilege does not apply if the

²² [Fed. R. Evid. 501](#)

²³ *Von Bulow by Auersperg v. Von Bulow*, 811 F.2d 136, 141 (2d Cir. 1987).

²⁴ *In re Amendments to the Fla. Evidence Code*, 782 So. 2d 339, 341 (Fla. 2000). The statute in question stripped the former testimony of witnesses hearsay exception of the requirement that the witness be unavailable.

²⁵ *In re: Amendments to the Fla. Evidence Code*, 144 So. 3d 536, 537 (Fla. 2014).

²⁶ Or. Rev. Stat. Ann. § 181A.835.

²⁷ Haw. Rev. Stat. Ann. § 78-52.

²⁸ Colo. Rev. Stat. § 13-90-107.

²⁹ Wash. Rev. Code Ann. § 5.60.060. The Washington peer support privilege also applies to jail staff.

³⁰ Miss. Code Ann. § 13-1-22.1.

peer supporter was a witness, party, or responder to the incident that lead to the peer support event, which is Washington's only exception to the privilege.

Mississippi is the only state of the five example states that makes it a criminal act to reveal or attempt to coerce another to reveal the privileged communication.³¹

III. Effect of Proposed Changes:

The bill allows first responders to have confidential peer support communications with first responder peers. As defined by the bill, first responders include law enforcement officers, fire fighters, emergency medical technicians, public communications officers, dispatchers, and 911 operators and other phone system operators whose job duties include providing support or services to first responders. A first responder peer must either be a first responder in the same agency as the person receiving peer support or a civilian designated by the first responder's agency who has received training in providing physical, moral, or emotional support to first responders. The bill excludes health care practitioners from being first responder peers for the purpose of the confidentiality protection. However, existing laws may protect the confidentiality of communications with a health care practitioner.

A peer support communication is one or more oral communication between a first responder and a first responder peer. The communication must be made with a mutual expectation of confidentiality and for the purpose of discussing physical, emotional, or issues associated with the first responder's employment. The peer support communication may extend for a period of 3 days.

The first responder peer generally may not testify in any civil, criminal, administrative, or disciplinary proceeding regarding information obtained during their peer support or otherwise divulge confidential peer support communications. However, a first responder peer may testify or divulge information if:

- The first responder peer is a defendant in a civil, criminal, administrative, or disciplinary proceeding arising from a complaint filed by the first responder.
- The first responder agrees, in writing, to allow the person to testify or divulge information related to the peer-to-peer support.
- The first responder peer has reason to fear for the safety of the first responder, another person, or society. The first responder peer may relay information based on this fear to the potential victims, appropriate family members, or law enforcement or other authorities. If a first responder peer discloses information based on the above, there is no liability or cause of action based on the disclosure.
- The communications by the first responder cause the first responder peer to suspect that the first responder has committed, or intends to commit, a criminal act.

The bill does not limit the disclosure, discovery, or admissibility of information, testimony, or evidence that is obtained by a first responder peer from a source other than a peer support communication.

³¹ A misdemeanor in Mississippi is punishable by up to 6 months in jail and a \$500 fine.

The bill is effective July 1, 2020

IV. **Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or received states-shared revenues.

B. Public Records/Open Meetings Issues:

Article 1, s. 24 of the Florida Constitution requires exemptions from public records to state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law. The Legislature may adopt exemptions from public records and public meetings by a general law that is passed by two-thirds vote of each house.

To the extent that peer support communications are made in a record, those records may be public records that must be disclosed under the public records law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill exempts communications between a first responder and a first responder peer from being used in any criminal proceeding. The Confrontation Clause of the 6th amendment to the United State Constitution grants criminal defendants a right to confront their accusers. Criminal defendants have a right to cross examine prosecution witnesses for bias and impeachment purposes.

There is conflicting case law on this. Criminal defendants have a right to confront, and impeach, witnesses based on their juvenile records if they are relevant, despite any law regarding strict confidentiality of those records.³² However, criminal defendants are not entitled to inspect confidential records, and courts must use a balancing approach to protect the interests of the defendant and verify any relevant exculpatory evidence while likewise protecting the confidentiality of the information.³³

³² *Davis v. Alaska*, 415 U.S. 308, 320, 94 S. Ct. 1105, 1112 (1974).

³³ *Pennsylvania v. Ritchie*, 480 U.S. 39, 60, 107 S. Ct. 989, 1002-03 (1987).

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

None.

B. Private Sector Impact:

The bill may limit the availability of evidence in civil trials against first responder agencies.

C. Government Sector Impact:

The bill may limit the availability of information to first responder agencies when engaging in disciplinary functions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 111.09 of the Florida Statutes.

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

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

CS by Judiciary on November 12, 2019:

The committee substitute differs from the underlying bill by:

- Restricting peer support communications to oral communications made with a mutual expectation of confidentiality which may extend for a period of 3 days.
- Limiting who may provide peer support to other first responders within the same agency or agency designated individuals who have been trained in providing physical, emotional, or moral support to first responders.
- Allowing suspected criminal activity to be disclosed by the person providing peer support.
- Clarifying that the confidentiality protections do not apply to disclosures or information obtained outside of a peer support communication.

B. Amendments:

None.

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



142354

LEGISLATIVE ACTION

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|------------|---|-------|
| Senate | . | House |
| Comm: RS | . | |
| 11/14/2019 | . | |
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The Committee on Judiciary (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete lines 23 - 52

and insert:

(b) "First responder peer" means a person who is not a health care practitioner and who is a:

1. First responder from the same employing agency as the person seeking peer support; or

2. Civilian designated by the first responder's employing agency who has received training in providing physical, moral, or emotional support to first responders.



142354

12 (c) "Health care practitioner" has the same meaning as
13 provided in s. 456.001.

14 (d) "Peer support communication" means oral communications,
15 made with a mutual expectation of confidentiality, between a
16 first responder and a first responder peer for the purpose of
17 discussing physical or emotional conditions or issues associated
18 with being a first responder.

19 (2) A first responder peer may not divulge a peer support
20 communication or information obtained from a peer support
21 communication or testify regarding information obtained from a
22 peer support communication in any civil, criminal,
23 administrative, or disciplinary proceeding, except in the
24 following circumstances:

25 (a) The first responder peer is a defendant in a civil,
26 criminal, administrative, or disciplinary proceeding arising
27 from a complaint filed by the first responder, in which case
28 such information may be divulged but is limited to the scope of
29 the proceeding.

30 (b) The first responder agrees, in writing, to allow the
31 first responder peer to testify about or divulge information
32 related to the peer support communications.

33 (c) The first responder admitted to committing a criminal
34 act involving violence against another person or sexual abuse,
35 or domestic abuse. There is no liability on the part of, and no
36 cause of action of any nature may arise against, the first
37 responder peer for disclosing information under this paragraph.

38 (d) There are articulable facts or circumstances that would
39 lead a reasonable, prudent person to fear for the safety of the
40 first responder, another person, or society, and the first



142354

41 responder peer communicates the information only to the
42 potential victims, appropriate family members, or a law
43 enforcement agency or other appropriate authorities. There is no
44 liability on the part of, and no cause of action of any nature
45 may arise against, the first responder peer for disclosing
46 information under this paragraph.

47 (3) This section does not limit the disclosure, discovery,
48 or admissibility of information, testimony, or evidence that is
49 obtained by a first responder peer from a source other than a
50 peer support communication.

51

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

53 And the title is amended as follows:

54 Delete lines 4 - 9

55 and insert:

56 prohibiting a first responder peer from testifying or
57 divulging specified information under certain
58 circumstances; providing exceptions; prohibiting
59 liability and a cause of action under certain
60 circumstances; providing construction; providing



625854

LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: FAV | . | |
| 11/14/2019 | . | |
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| | . | |
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The Committee on Judiciary (Perry) recommended the following:

1 **Senate Substitute for Amendment (142354) (with title**
2 **amendment)**

3
4 Delete lines 23 - 52

5 and insert:

6 prohibiting a first responder peer from testifying or
7 divulging specified information under certain
8 circumstances; providing exceptions; prohibiting
9 liability and a cause of action under certain
10 circumstances; providing construction; providing
11



625854

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

13 And the title is amended as follows:

14 Delete lines 4 - 9

15 and insert:

16 (b) "First responder peer" means a person who is not a
17 health care practitioner and who is a:1. First
18 responder from the same employing agency as the person
19 seeking peer support; or2. Civilian designated by the
20 first responder's employing agency who has received
21 training in providing physical, moral, or emotional
22 support to first responders.(c) "Health care
23 practitioner" has the same meaning as provided in s.
24 456.001.(d) "Peer support communication" means one or
25 more oral communications, made with a mutual
26 expectation of confidentiality, between a first
27 responder and a first responder peer for the purpose
28 of discussing physical or emotional conditions or
29 issues associated with being a first responder and
30 which may extend for a period of 3 days.(2) A first
31 responder peer may not divulge a peer support
32 communication or information obtained from a peer
33 support communication or testify regarding information
34 obtained from a peer support communication in any
35 civil, criminal, administrative, or disciplinary
36 proceeding, except in the following circumstances:(a)
37 The first responder peer is a defendant in a civil,
38 criminal, administrative, or disciplinary proceeding
39 arising from a complaint filed by the first responder,
40 in which case such information may be divulged but is



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41 limited to the scope of the proceeding.(b) The first
42 responder agrees, in writing, to allow the first
43 responder peer to testify about or divulge information
44 related to the peer support communications.(c) The
45 communications by the first responder cause the first
46 responder peer to suspect that the first responder has
47 committed a criminal act or intends to commit a
48 criminal act. There is no liability on the part of,
49 and no cause of action of any nature may arise
50 against, the first responder peer for disclosing
51 information under this paragraph.(d) There are
52 articulable facts or circumstances that would lead a
53 reasonable, prudent person to fear for the safety of
54 the first responder, another person, or society, and
55 the first responder peer communicates the information
56 only to the potential victims, appropriate family
57 members, or a law enforcement agency or other
58 appropriate authorities. There is no liability on the
59 part of, and no cause of action of any nature may
60 arise against, the first responder peer for disclosing
61 information under this paragraph.(3) This section does
62 not limit the disclosure, discovery, or admissibility
63 of information, testimony, or evidence that is
64 obtained by a first responder peer from a source other
65 than a peer support communication.



191422

LEGISLATIVE ACTION

| | | |
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| Senate | . | House |
| Comm: WD | . | |
| 11/14/2019 | . | |
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The Committee on Judiciary (Perry) recommended the following:

Senate Amendment

Between lines 52 and 53
insert:

(d) The first responder admits during such peer-to-peer support to committing a criminal act. There is no liability on the part of, and no cause of action of any nature may arise against, the person for disclosing information under this paragraph.

By Senator Perry

8-00235A-20

2020160__

A bill to be entitled

An act relating to peer-to-peer support for first responders; creating s. 111.09, F.S.; defining terms; prohibiting a person who is not a health care practitioner and who provides peer-to-peer support to a first responder from testifying or divulging specified information under certain circumstances; providing exceptions; prohibiting liability and a cause of action under certain circumstances; providing an effective date.

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

Section 1. Section 111.09, Florida Statutes, is created to read:

111.09 Peer-to-peer support for first responders.-

(1) For purposes of this section, the term:

(a) "First responder" has the same meaning as provided in s. 112.1815 and includes public safety communications officers, dispatchers, and 911 or other phone system operators whose job duties include providing support or services to first responders.

(b) "Health care practitioner" has the same meaning as provided in s. 456.001.

(c) "Peer-to-peer support" means any conversation or communication between a first responder and a person who is not a health care practitioner but who has experience working as or with a first responder regarding any physical or emotional conditions or issues associated with the first responder's

Page 1 of 2

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

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employment.

(2) A person who is not a health care practitioner and who provides peer-to-peer support to a first responder may not testify in any civil, criminal, administrative, or disciplinary proceeding or otherwise divulge information obtained during such peer-to-peer support, except when any of the following occur:

(a) The person providing peer-to-peer support is a defendant in a civil, criminal, administrative, or disciplinary proceeding arising from a complaint filed by the first responder, in which case such information may be divulged but is limited to the scope of the proceeding.

(b) The first responder agrees, in writing, to allow the person to testify about or divulge information related to the peer-to-peer support.

(c) There are articulable facts or circumstances that would lead a reasonable, prudent person to fear for the safety of the first responder, another person, or society, and the person providing peer-to-peer support communicates the information only to the potential victims, appropriate family members, or law enforcement or other appropriate authorities. There is no liability on the part of, and no cause of action of any nature may arise against, the person for disclosing information under this paragraph.

Section 2. This act shall take effect July 1, 2020.

Page 2 of 2

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



625854

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: FAV | . | |
| 11/14/2019 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Judiciary (Perry) recommended the following:

1 **Senate Substitute for Amendment (142354) (with title**
2 **amendment)**

3
4 Delete lines 23 - 52

5 and insert:

6 prohibiting a first responder peer from testifying or
7 divulging specified information under certain
8 circumstances; providing exceptions; prohibiting
9 liability and a cause of action under certain
10 circumstances; providing construction; providing
11



625854

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

13 And the title is amended as follows:

14 Delete lines 4 - 9

15 and insert:

16 (b) "First responder peer" means a person who is not a
17 health care practitioner and who is a:1. First
18 responder from the same employing agency as the person
19 seeking peer support; or2. Civilian designated by the
20 first responder's employing agency who has received
21 training in providing physical, moral, or emotional
22 support to first responders.(c) "Health care
23 practitioner" has the same meaning as provided in s.
24 456.001.(d) "Peer support communication" means one or
25 more oral communications, made with a mutual
26 expectation of confidentiality, between a first
27 responder and a first responder peer for the purpose
28 of discussing physical or emotional conditions or
29 issues associated with being a first responder and
30 which may extend for a period of 3 days.(2) A first
31 responder peer may not divulge a peer support
32 communication or information obtained from a peer
33 support communication or testify regarding information
34 obtained from a peer support communication in any
35 civil, criminal, administrative, or disciplinary
36 proceeding, except in the following circumstances:(a)
37 The first responder peer is a defendant in a civil,
38 criminal, administrative, or disciplinary proceeding
39 arising from a complaint filed by the first responder,
40 in which case such information may be divulged but is



625854

41 limited to the scope of the proceeding.(b) The first
42 responder agrees, in writing, to allow the first
43 responder peer to testify about or divulge information
44 related to the peer support communications.(c) The
45 communications by the first responder cause the first
46 responder peer to suspect that the first responder has
47 committed a criminal act or intends to commit a
48 criminal act. There is no liability on the part of,
49 and no cause of action of any nature may arise
50 against, the first responder peer for disclosing
51 information under this paragraph.(d) There are
52 articulable facts or circumstances that would lead a
53 reasonable, prudent person to fear for the safety of
54 the first responder, another person, or society, and
55 the first responder peer communicates the information
56 only to the potential victims, appropriate family
57 members, or a law enforcement agency or other
58 appropriate authorities. There is no liability on the
59 part of, and no cause of action of any nature may
60 arise against, the first responder peer for disclosing
61 information under this paragraph.(3) This section does
62 not limit the disclosure, discovery, or admissibility
63 of information, testimony, or evidence that is
64 obtained by a first responder peer from a source other
65 than a peer support communication.



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: October 23, 2019

I respectfully request that **Senate Bill #160**, relating to Peer-to-peer Support for First Responders, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry".

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE

APPEARANCE RECORD

12 Nov 2019

Meeting Date

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

SB160

Bill Number (if applicable)

Topic Peer-to-Peer Support for First Responders

Amendment Barcode (if applicable)

Name Melina Rayna Svanhild Farley-Barnett

Job Title Legislative Director

Address 2689 SE 69 Ter

Phone 352-226-7477

Street

Trenton

FL

State

32693

Zip

Email

Speaking: For Against Information

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

Representing FL NOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/19

Meeting Date

160

Bill Number (if applicable)

Topic Peer To Peer Support

Amendment Barcode (if applicable)

Name George Wallace

Job Title

Address 5501 NE 5 Place

Phone 352 895 7285

Street

Ocala

FL

34470

Email hogdawg84@gmail.com

City

State

Zip

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

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

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

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

11/12/2019

Meeting Date

SB 160

Bill Number (if applicable)

Topic Peer-to-peer Support for 1st Responders

Amendment Barcode (if applicable)

Name Chase Mitchell

Job Title Senior Management Analyst

Address PL 27, The Capitol

Phone 850.413.2890

Street

Tallahassee FL 32399

City

State

Zip

Email Chase.mitchell@myflorida.cfo.com

Speaking: [] For [] Against [] Information

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

Representing State Fire Marshal & CFO Jimmy Patronis

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

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

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

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 Judiciary

BILL: SB 544

INTRODUCER: Senator Harrell

SUBJECT: Husband-Wife Communications Privilege

DATE: November 8, 2019

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|----------------|-----------|------------------|
| 1. | <u>Davis</u> | <u>Cibula</u> | <u>JU</u> | Favorable |
| 2. | _____ | _____ | <u>CJ</u> | _____ |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 544 amends the Florida Evidence Code to create an additional situation where communications between a husband and wife are not privileged from disclosure in a legal proceeding. In its most general terms, the husband-wife privilege prevents the disclosure of confidential communications that are made between spouses during the marriage. The privilege may be claimed by either spouse and protects communications made during the marriage, even after the marriage relationship ends.

The Evidence Code contains three exceptions where the husband-wife privilege does not exist. This bill supplies a fourth exception. The bill provides that the marital privilege does not apply to a communication concerning the commission or attempted commission of sexual abuse, physical abuse, or neglect of a minor in a civil or criminal proceeding.

The bill takes effect July 1, 2020.

II. Present Situation:

Marital Privilege

Historical Overview

As English common law¹ developed rules of evidence centuries ago, protections were created to prevent the disclosure of certain confidential communications in legal proceedings. One such protection that developed was the marital privilege, or husband-wife privilege, which protected from disclosure communications made between spouses during a marriage. In *Henderson v.*

¹ Common law is generally understood to be the body of law developed in England from judicial decisions, rather than from statutes or constitutions. These principles were adopted in the colonies and supplemented with local laws and cases to produce what would become the Americanized version of the common law. BLACK'S LAW DICTIONARY (11th ed. 2019).

Chaires,² an 1889 decision, the Florida Supreme Court noted, “No rule of law is better established than that which forbids disclosures by husband or wife as witnesses of matters or conversations occurring between them during coverture. The books abound in cases to support the rule.” The Court further recognized that “the rule holds good even after death or divorce.”³

In a 1977 decision, *Kerlin v. State*,⁴ the Florida Supreme Court reflected on its earlier 19th century opinion, *Mercer v. State*,⁵ which explained the rationale for the marital privilege. The Court stated that the rationale or public policy of the privilege rests in “the preservation of the peace, good order and limitless confidence between the heads of the family so as to promote a well-ordered, civilized society.”⁶

The *Kerlin* Court observed that even at common law, however, the marital privilege was not absolute. It was subject to exceptions and limitations that grew from the need to avoid a harsh injustice to the spouse who could not testify if the rule were strictly enforced. Quoting from a treatise, *Wigmore on Evidence*, the Court restated that “Anyone could see that an absolute privilege in a husband to close the mouth of the wife in testimony against him would be a vested license to injure her in secret with complete immunity.”⁷

The Privilege Described in Statute

Sections 90.504(1) and (2), F.S., state that a spouse, during and after the marriage, has a privilege to refuse to disclose, and prevent another from disclosing, communications made in confidence between them while they were married. It may be claimed by either spouse or by the guardian or conservator of a spouse. The privilege extends to protect communications made during the marriage even after the marriage relationship ends by death or dissolution. This is intended to preserve harmony in the marriage and prohibit a spouse from being forced to testify against the other spouse. The privilege is limited to confidential communications such that there is no privilege that permits a spouse the ability to “generally” refuse to testify as a witness against his or her spouse.⁸

When the Husband-Wife Privilege Does Not Exist

Section 90.504(3), F.S., establishes three situations where the privilege, if honored, would obstruct justice and defeat social policy. Accordingly, in these situations the marital privilege does not exist and the communications are not privileged:

- (a) In a proceeding brought by or on behalf of one spouse *against* the other spouse. (This proceeding would likely be a divorce or child custody matter when the spouses are adverse parties. The ability to resolve the conflict could be frustrated if one spouse were able to invoke the privilege and prevent the other spouse from giving testimony as to relevant facts.)⁹

² *Henderson v. Chaires*, 6 So. 164, 166 (1889).

³ *Id.*

⁴ *Kerlin v. State*, 352 So. 2d 45 (1977).

⁵ *Mercer v. State*, 24 So. 154 (1898).

⁶ *Kerlin*, 352 So. 2d at 48.

⁷ *Kerlin*, 352 So. 2d at 49.

⁸ Charles W. Ehrhardt, *Florida Evidence*, s. 504.1 (2019 Edition).

⁹ Law Revision Council Note—1976, West’s F.S.A., s. 90.504, *Husband-Wife Privilege*.

- (b) In a criminal proceeding in which one spouse is charged with a crime committed at any time against the person or property of the other spouse, or the person or property of a child of either spouse. (Section 39.204, F.S.,¹⁰ also provides that the husband-wife communication privilege does not apply to any communication involving known or suspected child abuse, abandonment, or neglect. No social policy is furthered by suppressing the testimony and allowing the marital privilege to impede justice.¹¹)
- (c) In a criminal proceeding in which the communication is offered in evidence by a defendant-spouse who is one of the spouses between whom the communication was made. (If a criminal defendant calls his or her spouse to testify as a witness, the privilege to avoid testifying may not be asserted by the witness-spouse.¹² The assertion of the privilege would possibly suppress evidence that is favorable to the defendant that he or she is entitled to offer. The privilege would not serve to benefit the marriage relationship under these circumstances.¹³)

Potential Gap in Current Statutes

While the three situations discussed above prohibit the assertion of the marital privilege because it would obstruct justice, prosecuting attorneys have pointed to a situation where the exceptions, as written, do not protect additional minor children who are harmed by the spouse seeking to assert the privilege.

Under s. 90.504(3)(b), F.S., unless the child harmed is *the child of either one of the spouses*, the communication between the spouses involving the abuse is protected in a criminal proceeding. If the child harmed is in any other familial relationship to one spouse, for example a grandchild, the statute prohibits the assertion of the privilege and the communication is protected from disclosure. The offending spouse has the ability to invoke the privilege and prevent the other spouse from testifying.

Although s. 39.204, F.S., provides that the marital privilege does not apply in a case of suspected child abuse, abandonment, or neglect, the exception to the privilege in s. 90.504(3)(b), F.S., is narrower and specifically addresses a criminal proceeding. Some prosecuting attorneys believe that the differences between the statutes allow a defendant to argue that, in a criminal case, s. 39.204, F.S., is limited by s. 90.504(3)(b), F.S., to communications regarding the abuse of a child of either spouse.

¹⁰ Section 39.204, F.S., is set forth below:

Abrogation of privileged communications in cases involving child abuse, abandonment, or neglect.—The privileged quality of communication between husband and wife and between any professional person and his or her patient or client, and any other privileged communication except that between attorney and client or the privilege provided in s. 90.505, as such communication relates both to the competency of the witness and to the exclusion of confidential communications, shall not apply to any communication involving the perpetrator or alleged perpetrator in any situation involving known or suspected child abuse, abandonment, or neglect and shall not constitute grounds for failure to report as required by s. 39.201 regardless of the source of the information requiring the report, failure to cooperate with law enforcement or the department in its activities pursuant to this chapter, or failure to give evidence in any judicial proceeding relating to child abuse, abandonment, or neglect.

¹¹ Ehrhardt, s. 504.5.

¹² *Id.*

¹³ Law Revision Council Note—1976, West's F.S.A., s. 90.504, *Husband-Wife Privilege*.

III. Effect of Proposed Changes:

The bill creates a fourth exception to the husband-wife communication privilege in s. 90.504, F.S. Under the bill, the privilege does not exist in a civil or criminal proceeding when the communication between the spouses involves committing or attempting to commit upon any minor child, any act of:

- Sexual abuse;
- Physical abuse; or
- Neglect.

By stating that the husband-wife privilege does not exist in civil or criminal proceedings, the statutes clarify that there is no evidentiary privilege for someone who harms a child, regardless of the type of proceeding.

Hypotheticals where this new exception could apply in civil proceedings are set forth below.

- If a camp counselor abuses a child and the counselor admits committing the abuse to his or her spouse. The child's parents sue the counselor for damages. The new exception to the privilege would allow the counselor's spouse to testify about the abuse allegations.
- If the spouse of the counselor brings an action to limit or terminate the counselor's right to have unsupervised contact with their own children because of the known abuse to the victim. The spouse would be permitted to testify about the counselor's abuse communications.
- If the state petitions a court under the Jimmy Ryce Act, involving an involuntary civil commitment proceeding, the communication could be used to indefinitely commit someone who is to be released from prison and is a high risk to sexually reoffend.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 90.504 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:

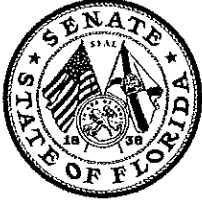
None.

By Senator Harrell

25-00621A-20

2020544__

1 A bill to be entitled
2 An act relating to husband-wife communications
3 privilege; amending s. 90.504, F.S.; providing that
4 the privilege for husband-wife communications does not
5 apply in certain civil or criminal proceedings
6 involving child victims, to the extent that the
7 communications concern certain conduct; providing an
8 effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Paragraph (d) is added to subsection (3) of
13 section 90.504, Florida Statutes, to read:
14 90.504 Husband-wife privilege.—
15 (3) There is no privilege under this section:
16 (d) In a civil or criminal proceeding when the
17 communication between spouses concerns committing or attempting
18 to commit any act of sexual abuse of any minor child, physical
19 abuse of any minor child, or neglect of any minor child.
20 Section 2. This act shall take effect July 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Appropriations Subcommittee on Health
and Human Services, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Children, Families, and Elder Affairs
Military and Veterans Affairs and Space

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR GAYLE HARRELL

25th District

November 8, 2019

Senator David Simmons
404 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Simmons,

I respectfully request that **SB 544 – Husband-Wife communications Privilege** be placed on the next available agenda for the Judiciary Committee Meeting. Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

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

Senator Gayle Harrell
Senate District 25

Cc: Tom Cibula, Staff Director
Joyce Butler, Committee Administrative Assistant

REPLY TO:

- 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
- 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
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 Judiciary

BILL: SR 546

INTRODUCER: Senator Rodriguez

SUBJECT: Oppression of the Nicaraguan People/President Daniel Ortega

DATE: November 8, 2019

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Stallard | Cibula | JU | Favorable |
| 2. | | | RC | |

I. Summary:

SR 546 is a resolution condemning the oppression of the Nicaraguan people under President Daniel Ortega. The resolution specifies that this oppression includes a violent crackdown on 2018 protests that were sparked by reforms to the social security system. As part of this crackdown, captured protestors were abused and tortured in various ways, including being raped and electrically shocked and having their fingernails removed. Moreover, the Ortega regime has since raided offices of the news media, prosecuted journalists, and expelled human rights monitors and foreign journalists.

The resolution also identifies abuses that are broader than, and in some cases preceded, the crackdown on the 2018 protests. Since taking office in 2006, President Ortega has increasingly consolidated state power in himself, suppressed opposition leaders and critics, and manipulated election laws.

II. Present Situation:

Overview

Since the Nicaraguan government's violent response to widespread protests in 2018, it has continued to violate the rights of its citizens, and has come under the condemnation of the United States, the United Nations, Human Rights Watch, Amnesty International, and others.

The government has subjected its citizens to torture, extrajudicial killings, and unlawful detention, and has denied their rights to public assembly, free speech, and a fair trial.

The Ortega Regime

Governmental power in Nicaragua is consolidated in the hands of President Daniel Ortega, who has been in power intermittently since the Marxist revolution he led in 1979.¹ President Ortega returned to power with his election in 2006, followed by re-election in 2011 and 2016, with the latter two elections marred by “widespread irregularities.”² In addition to holding onto the presidency through questionable elections, President Ortega has gradually taken control of the judicial and legislative branches of government.³

2018-Present: Crackdown and Crisis

President Ortega’s governance had increasingly run afoul of Western democratic ideals by the time widespread protests broke out in 2018. However, it was and is his government’s continued response to those protests that has drawn outrage and condemnation from a diverse group of nations and organizations, including the United States, the United Nations, Human Rights Watch, and Amnesty International.

The 2018 protests were sparked by the Ortega regime’s announcement that it was slashing social security benefits.⁴ The regime responded violently to the protests, leaving “hundreds dead and thousands wounded,” and engaging in a “campaign to exile, jail, or kill anyone considered to be in opposition” to the regime.⁵

Many persons arrested during or since the demonstrations have been physically or psychologically abused, even tortured. For instance, some detainees have been beaten, raped, waterboarded, subjected to mock execution, and forced to confess.⁶

Moreover, prosecutions of the detainees have violated the Nicaraguan Constitution.⁷ For example, detainees have been held without being brought before a judge for longer than the 48 hours allowed under the Constitution.⁸ Also, many have been deprived of their right to confer freely and privately with counsel.⁹

¹ The Central Intelligence Agency, *The World Factbook, Nicaragua*, <https://www.cia.gov/library/publications/the-world-factbook/geos/nu.html> (last visited Nov. 7, 2019).

² *Id.*

³ The United States Dept. of State, Bureau of Western Hemisphere Affairs, *U.S. Relations with Nicaragua* (Jan. 22, 2019), available at <https://www.state.gov/u-s-relations-with-nicaragua/>.

⁴ Rocio Cara Labrador, Council on Foreign Relations, *Nicaragua in Crisis: What to Know* (Nov. 26, 2018), <https://www.cfr.org/in-brief/nicaragua-crisis-what-know>.

⁵ The United States Dept. of State, Bureau of Western Hemisphere Affairs, *U.S. Relations with Nicaragua* (Jan. 22, 2019), <https://www.state.gov/u-s-relations-with-nicaragua/>.

⁶ Human Rights Watch, *Crackdown in Nicaragua: Torture, Ill-Treatment, and Prosecutions of Protestors and Opponents*, (June 19, 2019), <https://www.hrw.org/report/2019/06/19/crackdown-nicaragua/torture-ill-treatment-and-prosecutions-protesters-and>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

However, the oppression has not been reserved for detainees. As nondetained Nicaraguans have attempted to continue to speak out against the Ortega regime, the regime has continued to trample their rights to free speech, a free press, and free assembly.¹⁰

In response to the Nicaraguan crisis, the United Nations and others have attempted to monitor the situation and broker a resolution.¹¹ However, the crisis continues, and the regime has expelled the United Nations Office of the High Commissioner for Human Rights from the country.¹²

III. Effect of Proposed Changes:

SR 546 is a resolution condemning the oppression of the Nicaraguan people under President Daniel Ortega. The resolution specifies that this oppression includes a violent crackdown on 2018 protests that were sparked by reforms to the social security system. As part of this crackdown, captured protestors were abused and tortured in various ways, including being raped and electrically shocked and having their fingernails removed. Moreover, the regime has since raided offices of the news media, prosecuted journalists, and expelled human rights monitors and foreign journalists.

The resolution also identifies abuses that are broader than, and in some cases preceded, the crackdown on the 2018 protests. Since taking office in 2006, President Ortega has increasingly consolidated state power in himself, suppressed opposition leaders and critics, and manipulated election laws.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This resolution does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁰ *Id.*

¹¹ Amnesty International, *Nicaragua: UN Human Rights Council takes important step to address human rights crisis* (Mar. 21, 2019), <https://www.amnesty.org/en/latest/news/2019/03/nicaragua-importante-medida-del-consejo-de-derechos-humanos/>.

¹² *Id.*

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment and General Government
Ethics and Elections
Rules

SENATOR JOSE JAVIER RODRIGUEZ
37th District

November 06, 2019

Chair Simmons
Committee on Judiciary
404 S. Monroe Street
Tallahassee, FL 32399-1100
Sent via email to Simmons.David@flsenate.gov

Chair Simmons,

I respectfully request that you place SR 546: Oppression of the Nicaraguan People/President Daniel Ortega on the agenda of the Committee on Judiciary at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in black ink, appearing to read "JR", written over a white background.

Senator José Javier Rodríguez
District 37

CC:

Tom Cibula, Staff Director
Joyce Butler, Administrative Assistant
Valerie Clarke, Legislative Assistant to Senator Simmons
Carolyn Grzan, Legislative Assistant to Senator Simmons
Diane Suddes, Legislative Assistant to Senator Simmons

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 854-0365
- 220 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
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 Judiciary

BILL: SB 580

INTRODUCER: Senator Bracy

SUBJECT: Uniform Partition of Heirs Property Act

DATE: November 8, 2019

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|--------------------|
| 1. | <u>Elsesser</u> | <u>Cibula</u> | <u>JU</u> | <u>Pre-meeting</u> |
| 2. | _____ | _____ | <u>CA</u> | _____ |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 580 adopts the Uniform Partition of Heirs Property Act by the Uniform Law Commission. The bill provides special procedures for the partition of “heirs property,” which generally includes inherited real property owned by relatives as tenants in common. A partition involves a legal action by a cotenant to force the sale or division of real property.

The bill essentially provides a right of first refusal, allowing heirs property cotenants to purchase the property interests of cotenants seeking partition before the property is divided or sold. The bill requires a court to determine the fair market value of the property, either through court-ordered appraisal or based on the agreement of the parties, before the court proceeds to partition. The bill generally requires partitions by sale to be made in an open-market sale by a court appointed real estate broker, instead of an auction as the statutes currently require.

II. Present Situation:

In Florida, when a person dies intestate, i.e. without a will, and the decedent has no surviving spouse, the decedent’s real property is distributed per stripes to heirs in the following order: to the decedent’s descendants (typically children or grandchildren); if no descendants, then to the decedent’s parents; if no surviving parents, then to any siblings.¹ When multiple people receive property in this manner, they own the property as tenants in common.²

“[T]he distinguishing feature of a tenancy in common is unity of possession,”³ and as such, “[t]enants in common each own a proportional undivided interest in the property rather than the whole.”⁴

¹ Sections 732.102-104, F.S.

² See s. 689.15, F.S. (stating that transfers of property create tenancies in common absent an instrument stating otherwise).

³ *In re Estate of Cleeves*, 509 So. 2d 1256, 1259 (Fla. 2d DCA 1987).

⁴ *In re Willoughby*, 212 B.R. 1011, 1015 (Bankr. M.D. Fla. 1997).

Tenants in common do not have a right to survivorship, i.e. when a tenant in common dies, his or her property interest does not transfer to the other tenants in common, but rather transfers to the deceased tenants' heirs (by will or through intestate succession).⁵ Therefore, as heirs beget heirs, the amount of tenants in common can increase.⁶

The interests of the decedent's property can be spread further, as a tenant in common "may freely transfer or encumber his or her undivided [...] interest without transferring or encumbering the undivided one-half interest owned by the other."⁷ A tenant in common's interest "is like any other asset that person owns as far as the person's creditors is concerned," i.e. a "creditor may levy and execute on the interest. Similarly, a judgment lien will attach to the undivided interest of one tenant in common without attaching to the undivided interest of the other tenant in common."⁸ Additionally, a developer may acquire properties owing back taxes through tax deed sales.⁹

A single heir can sell his or her fractional interest or lose it to a creditor; the purchaser or creditor then becomes a tenant in common and can petition the court for a partition sale to receive their fractional interest: "As a general rule tenants in common are entitled to partition as a matter of right."¹⁰

A cotenant seeking partition of property must, in a complaint, describe the property to be partitioned and name all interested parties "to the best knowledge and belief of [the] plaintiff."¹¹ If the names of any interested parties are unknown, "the action may proceed as though such unknown persons were named in the complaint."¹²

A court may order partition "if it appears that the parties are entitled to it."¹³ If the court determines a plaintiff's interest in the property, it can order a partition of that interest, "leaving for future adjustment in the same action the interest of any other defendants" whose interests were not determined in the action.¹⁴

If the court orders partition, it must appoint three commissioners to make the partition.¹⁵ If the commissioners determine that the property is indivisible and cannot be divided without prejudice to one or more of the owners, and the court "is satisfied" that the determination is correct, "the court may order the land to be sold at public auction to the highest bidder by the commissioners

⁵ See, e.g., *In re Suggs Estate*, 405 So. 2d 1360, 1361 (Fla. 5th DCA 1981).

⁶ See The Florida Bar Journal, *The Disproportionate Impact of Heirs Property in Florida's Low Income Communities of Color* (available at <https://www.floridabar.org/the-florida-bar-journal/the-disproportionate-impact-of-heirs-property-in-floridas-low-income-communities-of-color/>), last visited November 7, 2019).

⁷ *Willoughby*, 212 B.R. 1011, 1015.

⁸ *Id.* at 1015-16.

⁹ Sections 197.502 and 197.542, F.S.

¹⁰ *Condrey v. Condrey*, 92 So. 2d 423, 427 (Fla. 1957); Section 64.031, F.S. However, the right of a tenant in common to partition of realty may be waived by the tenant in common, or he may be estopped to enforce the right by agreement not to partition, either express or implied. *Id.*

¹¹ Section 64.041, F.S.

¹² *Id.*

¹³ Section 64.051, F.S.

¹⁴ *Id.*

¹⁵ Section 64.061, F.S.

or the clerk and the money arising from such sale paid into the court to be divided among the parties in proportion to their interest.”¹⁶ Every party is required to pay the costs of the process, including attorneys’ fees, proportionate to each party’s interest in the property.¹⁷ The court may order these costs and fees be paid out of the proceeds of the property sale.¹⁸

III. Effect of Proposed Changes:

This bill provides procedures for the partition of “heirs property.” Heirs property is real property held by tenants in common where there is no existing agreement governing the partition of the property, one or more of the cotenants acquired his or her property interest from a relative, and either (1) twenty percent of the property is owned by cotenants who are relatives (or twenty percent of the owners are relatives) or twenty percent of the property is owned by cotenants who received their interests from a relative.

Under the bill, if a cotenant seeks partition of property, the court must determine whether the property is heirs property. If the court determines the property is heirs property, a plaintiff seeking partition must within 10 days post a conspicuous sign on the property naming the court in which the partition action has commenced.

If the court determines that the property is heirs property, it shall order an appraisal of the property, unless the cotenants have agreed to the property’s value or the court determines that the cost of an appraisal would outweigh the appraisal’s “evidentiary value.”

If the court orders an appraisal, it must appoint a disinterested licensed appraiser to determine the property’s fair market value and file a sworn or verified appraisal with the court. After the appraisal is filed, the court shall notify all known parties as to the property’s value and inform the parties that the appraisal is available for review and that each party may object to the appraisal within 30 days of the notice.

If an appraisal is filed, the court must conduct a hearing to determine the value of the property not sooner than 30 days after the notice has been sent to the interested parties. The court must determine the value of the property before proceeding to the partition action. The court must give notice to the parties of the market value.¹⁹

If any cotenant requested partition by sale, the bill essentially grants a right of first refusal to the other cotenants, requiring that the court notice any other cotenants who did not request the sale, informing them that they may buy all of the interest of the cotenant who requested the sale. The value of each tenant’s interest is proportional to his or her fractional interest in the property. Within 45 days of the notice of the requested partition by sale, the other cotenants may give notice that they elect to purchase the interest of the cotenant seeking the sale. The court shall notify the parties if only one other cotenant gives notice that he or she wishes to purchase the interest of the party seeking sale. If multiple cotenants give notice that they wish to purchase the

¹⁶ Section 64.071, F.S.

¹⁷ Section 64.081, F.S.

¹⁸ *Id.*

¹⁹ The bill does not set a timeline for the notice of the fair market value determination as it does for the notice of appraised value.

interest of the party seeking partition by sale, the court must allocate the right to purchase that interest proportional to each cotenant's existing fractional ownership of the property. If one or more cotenants give notice of their desire to purchase the interest of a party seeking partition by sale, the court must set a payment due date at least 60 days from the date that the court gave notice of the desire to purchase.

The court must reallocate the property interests if the parties pay their apportioned price within the time limit set by the court; if one or more of the parties do not pay within that timeframe, the court must notice the other cotenants of the price of the remaining interests not purchased, and those other cotenants have 20 days to purchase the remaining interest. If none of the parties pay within the time frame set by the court, the court must proceed with the partition action as if none of the interests were purchased.

Within 45 days after the initial complaint requesting partition by sale, any cotenant entitled to purchase an interest may request that the court authorize the sale of the interests of any defendants named in the complaint who did not file an appearance to the action. The court may grant the request if the court has determined a fair market value of the non-appearing party's interest under the procedures outlined by the bill.

If the interests of the cotenants who requested partition are not purchased or if there remains one or more parties who request partition in kind after the buyout outlined in the bill, the court must order a partition in kind unless the court finds that a partition in kind will result in manifest injustice, considering a list of factors including: whether physical division is practicable, whether the division would result in inequitably valued parcels, a party's sentimental attachment to the property, the degree to which parties have contributed their pro-rated share of property taxes, and any other relevant factors. If the court does not order partition in kind, it may order partition by sale or dismiss the partition action.

If the court orders a sale of property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or auction would be in the best interests of the tenants. The court must appoint a licensed real estate broker within 10 days to sell the property in a commercially reasonable manner. For an open-market sale, the broker must report an offer at the court-determined property value within 7 days after receiving the offer.

The bill adds an additional requirement for commissioners appointed under s. 64.061, F.S., requiring that they be "disinterested and impartial and not a party or a participant in the action."

The bill does not contain an attorney fee provisions, so parties are still responsible for their own costs and fees proportional to their interest in the property, per s. 64.081, F.S.

Under the federal Agricultural Improvement Act of 2018, entities in states having adopted the Uniform Partition of Heirs Property Act are given preference in receiving loans from the U.S. Secretary of Agriculture to assist in the resolution of interests on farmland with multiple owners.²⁰ Additionally, farm operators in states having adopted the Uniform Partition of Heirs

²⁰ Agricultural Improvement Act, Pub. Law 115-334, 132 Stat. 4670.

Property Act are eligible to receive a “farm number,” a prerequisite to participate in certain programs provided by the Secretary of Agriculture under the Agricultural Improvement Act.²¹

The bill takes effect July 1, 2020, and applies prospectively.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires a court to determine the market value of heirs property before commencing partition proceedings and requires partition by sale to be conducted on the open market by a licensed real estate broker, rather than at auction (unless a court determines that auction or sealed bids would be more economically advantageous). This may affect the sale price of heirs property partitioned by sale.

C. Government Sector Impact:

The new procedures for the partition of heirs property appear likely to result in a slight increase in judicial workloads.

²¹ *Id.* at 5015.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially affects the following sections of the Florida Statutes: 64.011, 64.022, 64.031, 64.041, 64.051, 64.061, 64.071, 64.081, 64.091.

This bill creates the following sections of the Florida Statutes: 64.201, 64.202, 64.203, 64.204, 64.205, 64.206, 64.207, 64.208, 64.209, 64.210, 64.211, 64.212, 64.213.

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 Bracy

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1 A bill to be entitled
 2 An act relating to the Uniform Partition of Heirs
 3 Property Act; designating part I of ch. 64, F.S.,
 4 entitled "General Provisions"; creating part II of ch.
 5 64, F.S., entitled "Uniform Partition of Heirs
 6 Property Act"; creating s. 64.201, F.S.; providing a
 7 short title; creating s. 64.202, F.S.; defining terms;
 8 creating s. 64.203, F.S.; providing applicability;
 9 providing requirements relating to the court
 10 determination of heirs property; specifying the
 11 relation of the act to other law; creating s. 64.204,
 12 F.S.; providing for service and notice; creating s.
 13 64.205, F.S.; providing for appointment and
 14 qualifications of commissioners; creating s. 64.206,
 15 F.S.; providing for the determination of property
 16 value; creating s. 64.207, F.S.; providing for buyout
 17 of cotenants; creating s. 64.208, F.S.; providing for
 18 alternatives to partition; creating s. 64.209, F.S.;
 19 providing factors to be considered in determining
 20 whether partition in kind may be ordered; creating s.
 21 64.210, F.S.; providing for sale of property through
 22 open-market sale, sealed bids, or auction; creating s.
 23 64.211, F.S.; providing requirements for reporting of
 24 an open-market sale of property; creating s. 64.212,
 25 F.S.; providing for uniformity of application and
 26 construction; creating s. 64.213, F.S.; specifying the
 27 relation of the act to the Electronic Signatures in
 28 Global and National Commerce Act; providing an
 29 effective date.

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30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Sections 64.011, 64.022, 64.031, 64.041, 64.051,
 34 64.061, 64.071, 64.081, and 64.091, Florida Statutes, are
 35 designated as part I of chapter 64, Florida Statutes, and
 36 entitled "General Provisions."
 37 Section 2. Part II of chapter 64, Florida Statutes,
 38 consisting of sections 64.201, 64.202, 64.203, 64.204, 64.205,
 39 64.206, 64.207, 64.208, 64.209, 64.210, 64.211, 64.212, and
 40 64.213, is created to read:
 41 PART II
 42 UNIFORM PARTITION OF HEIRS PROPERTY ACT
 43 64.201 Short title.—This part may be cited as the "Uniform
 44 Partition of Heirs Property Act".
 45 64.202 Definitions.—As used in this part, the term:
 46 (1) "Ascendant" means an individual who precedes another
 47 individual in lineage, in the direct line of ascent from the
 48 other individual.
 49 (2) "Collateral" means an individual who is related to
 50 another individual under the law of intestate succession of this
 51 state but who is not the other individual's ascendant or
 52 descendant.
 53 (3) "Descendant" means an individual who follows another
 54 individual in lineage, in the direct line of descent from the
 55 other individual.
 56 (4) "Determination of value" means a court order
 57 determining the fair market value of heirs property under s.
 58 64.206 or s. 64.210 or adopting the valuation of the property

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59 agreed to by all cotenants.

60 (5) "Heirs property" means real property held in tenancy in
 61 common which satisfies all of the following requirements as of
 62 the filing of a partition action:

63 (a) There is no agreement in a record binding all the
 64 cotenants which governs the partition of the property;

65 (b) One or more of the cotenants acquired title from a
 66 relative, whether living or deceased; and

67 (c) Any of the following applies:

68 1. Twenty percent or more of the interests are held by
 69 cotenants who are relatives;

70 2. Twenty percent or more of the interests are held by an
 71 individual who acquired title from a relative, whether living or
 72 deceased; or

73 3. Twenty percent or more of the cotenants are relatives.

74 (6) "Partition by sale" means a court-ordered sale of the
 75 entire heirs property, whether by open-market sale, sealed bids,
 76 or auction conducted under s. 64.210.

77 (7) "Partition in kind" means the division of heirs
 78 property into physically distinct and separately titled parcels.

79 (8) "Record" means information that is inscribed on a
 80 tangible medium or that is stored in an electronic or other
 81 medium and is retrievable in perceivable form.

82 (9) "Relative" means an ascendant, descendant, or
 83 collateral or an individual otherwise related to another
 84 individual by blood, marriage, adoption, or law of this state
 85 other than this part.

86 64.203 Applicability; relation to other law.-

87 (1) This part applies to partition actions filed on or

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88 after July 1, 2020.

89 (2) In an action to partition real property under part I of
 90 this chapter, the court shall determine whether the property is
 91 heirs property. If the court determines that the property is
 92 heirs property, the property must be partitioned under this part
 93 unless all of the cotenants otherwise agree in a record.

94 (3) This part supplements part I of this chapter and, if an
 95 action is governed by this part, replaces provisions of part I
 96 of this chapter that are inconsistent with this part.

97 64.204 Service; notice by posting.-

98 (1) This part does not limit or affect the method by which
 99 service of a complaint in a partition action may be made.

100 (2) If the plaintiff in a partition action seeks notice by
 101 publication and the court determines that the property may be
 102 heirs property, the plaintiff, not later than 10 days after the
 103 court's determination, shall post, and maintain while the action
 104 is pending, a conspicuous sign on the property that is the
 105 subject of the action. The sign must state that the action has
 106 commenced and must identify the name and address of the court
 107 and the common designation by which the property is known. The
 108 court may require the plaintiff to publish on the sign the name
 109 of the plaintiff and the known defendants.

110 64.205 Commissioners.-If the court appoints commissioners
 111 pursuant to s. 64.061, each commissioner, in addition to the
 112 requirements and disqualifications applicable to commissioners
 113 in part I of this chapter, must be disinterested and impartial
 114 and not a party to or a participant in the action.

115 64.206 Determination of value.-

116 (1) Except as otherwise provided in subsections (2) and

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117 (3), if the court determines that the property that is the
 118 subject of a partition action is heirs property, the court shall
 119 determine the fair market value of the property by ordering an
 120 appraisal pursuant to subsection (4).

121 (2) If all cotenants have agreed to the value of the
 122 property or to another method of valuation, the court shall
 123 adopt that value or the value produced by the agreed method of
 124 valuation.

125 (3) If the court determines that the evidentiary value of
 126 an appraisal is outweighed by the cost of the appraisal, the
 127 court, after an evidentiary hearing, shall determine the fair
 128 market value of the property and send notice to the parties of
 129 the value.

130 (4) If the court orders an appraisal, the court shall
 131 appoint a disinterested real estate appraiser licensed in this
 132 state to determine the fair market value of the property
 133 assuming sole ownership of the fee simple estate. On completion
 134 of the appraisal, the appraiser shall file a sworn or verified
 135 appraisal with the court.

136 (5) If an appraisal is conducted pursuant to subsection
 137 (4), not later than 10 days after the appraisal is filed, the
 138 court shall send notice to each party with a known address,
 139 stating:

140 (a) The appraised fair market value of the property.

141 (b) That the appraisal is available at the clerk's office.

142 (c) That a party may file with the court an objection to
 143 the appraisal not later than 30 days after the notice is sent,
 144 stating the grounds for the objection.

145 (6) If an appraisal is filed with the court pursuant to

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146 subsection (4), the court shall conduct a hearing to determine
 147 the fair market value of the property not sooner than 31 days
 148 after a copy of the notice of the appraisal is sent to each
 149 party under subsection (5), whether or not an objection to the
 150 appraisal is filed under paragraph (5)(c). In addition to the
 151 court-ordered appraisal, the court may consider any other
 152 evidence of value offered by a party.

153 (7) After a hearing under subsection (6), but before
 154 considering the merits of the partition action, the court shall
 155 determine the fair market value of the property and send notice
 156 to the parties of the value.

157 64.207 Cotenant buyout.—

158 (1) If any cotenant requested partition by sale, after the
 159 determination of value under s. 64.206, the court shall send
 160 notice to the parties that any cotenant except a cotenant that
 161 requested partition by sale may buy all the interests of the
 162 cotenants that requested partition by sale.

163 (2) Not later than 45 days after the notice is sent under
 164 subsection (1), any cotenant, except a cotenant that requested
 165 partition by sale, may give notice to the court that it elects
 166 to buy all the interests of the cotenants that requested
 167 partition by sale.

168 (3) The purchase price for each of the interests of a
 169 cotenant that requested partition by sale is the value of the
 170 entire parcel determined under s. 64.206 multiplied by the
 171 cotenant's fractional ownership of the entire parcel.

172 (4) After expiration of the period in subsection (2), the
 173 following rules apply:

174 (a) If only one cotenant elects to buy all the interests of

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175 the cotenants that requested partition by sale, the court shall
176 notify all the parties of that fact.

177 (b) If more than one cotenant elects to buy all the
178 interests of the cotenants that requested partition by sale, the
179 court shall allocate the right to buy those interests among the
180 electing cotenants based on each electing cotenant's existing
181 fractional ownership of the entire parcel divided by the total
182 existing fractional ownership of all cotenants electing to buy
183 and send notice to all the parties of that fact and of the price
184 to be paid by each electing cotenant.

185 (c) If no cotenant elects to buy all the interests of the
186 cotenants that requested partition by sale, the court shall send
187 notice to all the parties of that fact and resolve the partition
188 action under s. 64.208(1) and (2).

189 (5) If the court sends notice to the parties under
190 paragraph (4) (a) or paragraph (4) (b), the court shall set a
191 date, not sooner than 60 days after the date the notice was
192 sent, by which electing cotenants must pay their apportioned
193 price into the court. After this date, the following rules
194 apply:

195 (a) If all electing cotenants timely pay their apportioned
196 price into court, the court shall issue an order reallocating
197 all the interests of the cotenants and disburse the amounts held
198 by the court to the persons entitled to them.

199 (b) If no electing cotenant timely pays its apportioned
200 price, the court shall resolve the partition action under s.
201 64.208(1) and (2) as if the interests of the cotenants that
202 requested partition by sale were not purchased.

203 (c) If one or more but not all of the electing cotenants

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204 fail to pay their apportioned price on time, the court shall
205 give notice to the electing cotenants that paid their
206 apportioned price of the interest remaining and the price for
207 all that interest.

208 (6) Not later than 20 days after the court gives notice
209 pursuant to paragraph (5) (c), any cotenant that paid may elect
210 to purchase all of the remaining interest by paying the entire
211 price into the court. After the 20-day period, the following
212 rules apply:

213 (a) If only one cotenant pays the entire price for the
214 remaining interest, the court shall issue an order reallocating
215 the remaining interest to that cotenant. The court shall issue
216 promptly an order reallocating the interests of all of the
217 cotenants and disburse the amounts held by it to the persons
218 entitled to them.

219 (b) If no cotenant pays the entire price for the remaining
220 interest, the court shall resolve the partition action under s.
221 64.208(1) and (2) as if the interests of the cotenants that
222 requested partition by sale were not purchased.

223 (c) If more than one cotenant pays the entire price for the
224 remaining interest, the court shall reapportion the remaining
225 interest among those paying cotenants, based on each paying
226 cotenant's original fractional ownership of the entire parcel
227 divided by the total original fractional ownership of all
228 cotenants that paid the entire price for the remaining interest.
229 The court shall issue promptly an order reallocating all of the
230 cotenants' interests, disburse the amounts held by it to the
231 persons entitled to them, and promptly refund any excess payment
232 held by the court.

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233 (7) Not later than 45 days after the court sends notice to
 234 the parties pursuant to subsection (1), any cotenant entitled to
 235 buy an interest under this section may request the court to
 236 authorize the sale as part of the pending action of the
 237 interests of cotenants named as defendants and served with the
 238 complaint but that did not appear in the action.

239 (8) If the court receives a timely request under subsection
 240 (7), the court, after hearing, may deny the request or authorize
 241 the requested additional sale on such terms as the court
 242 determines are fair and reasonable, subject to the following
 243 limitations:

244 (a) A sale authorized under this subsection may occur only
 245 after the purchase prices for all interests subject to sale
 246 under subsections (1) through (6) have been paid into court and
 247 those interests have been reallocated among the cotenants as
 248 provided in those subsections.

249 (b) The purchase price for the interest of a nonappearing
 250 cotenant is based on the court's determination of value under s.
 251 64.206.

252 64.208 Partition alternatives.—

253 (1) If all the interests of all cotenants that requested
 254 partition by sale are not purchased by other cotenants pursuant
 255 to s. 64.207, or, if after conclusion of the buyout under s.
 256 64.207, a cotenant remains that has requested partition in kind,
 257 the court shall order partition in kind unless the court, after
 258 consideration of the factors listed in s. 64.209, finds that
 259 partition in kind will result in manifest prejudice to the
 260 cotenants as a group. In considering whether to order partition
 261 in kind, the court shall approve a request by two or more

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262 parties to have their individual interests aggregated.

263 (2) If the court does not order partition in kind under
 264 subsection (1), the court shall order partition by sale pursuant
 265 to s. 64.210 or, if no cotenant requested partition by sale, the
 266 court shall dismiss the action.

267 (3) If the court orders partition in kind pursuant to
 268 subsection (1), the court may require that one or more cotenants
 269 pay one or more other cotenants amounts so that the payments,
 270 taken together with the value of the in-kind distributions to
 271 the cotenants, will make the partition in kind just and
 272 proportionate in value to the fractional interests held.

273 (4) If the court orders partition in kind, the court shall
 274 allocate to the cotenants that are unknown, unlocatable, or the
 275 subject of a default judgment, if their interests were not
 276 bought out pursuant to s. 64.207, a part of the property
 277 representing the combined interests of these cotenants as
 278 determined by the court and this part of the property shall
 279 remain undivided.

280 64.209 Considerations for partition in kind.—

281 (1) In determining under s. 64.208(1) whether partition in
 282 kind would result in manifest prejudice to the cotenants as a
 283 group, the court shall consider the following:

284 (a) Whether the heirs property practicably can be divided
 285 among the cotenants.

286 (b) Whether partition in kind would apportion the property
 287 in such a way that the aggregate fair market value of the
 288 parcels resulting from the division would be materially less
 289 than the value of the property if it were sold as a whole,
 290 taking into account the condition under which a court-ordered

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291 sale likely would occur.

292 (c) Evidence of the collective duration of ownership or
 293 possession of the property by a cotenant and one or more
 294 predecessors in title or predecessors in possession to the
 295 cotenant who are or were relatives of the cotenant or each
 296 other.

297 (d) A cotenant's sentimental attachment to the property,
 298 including any attachment arising because the property has
 299 ancestral or other unique or special value to the cotenant.

300 (e) The lawful use being made of the property by a cotenant
 301 and the degree to which the cotenant would be harmed if the
 302 cotenant could not continue the same use of the property.

303 (f) The degree to which the cotenants have contributed
 304 their pro rata share of the property taxes, insurance, and other
 305 expenses associated with maintaining ownership of the property
 306 or have contributed to the physical improvement, maintenance, or
 307 upkeep of the property.

308 (g) Any other relevant factor.

309 (2) The court may not consider any one factor in subsection
 310 (1) to be dispositive without weighing the totality of all
 311 relevant factors and circumstances.

312 64.210 Open-market sale, sealed bids, or auction.—

313 (1) If the court orders a sale of heirs property, the sale
 314 must be an open-market sale unless the court finds that a sale
 315 by sealed bids or an auction would be more economically
 316 advantageous and in the best interest of the cotenants as a
 317 group.

318 (2) If the court orders an open-market sale and the
 319 parties, not later than 10 days after the entry of the order,

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320 agree on a real estate broker licensed in this state to offer
 321 the property for sale, the court shall appoint the broker and
 322 establish a reasonable commission. If the parties do not agree
 323 on a broker, the court shall appoint a disinterested real estate
 324 broker licensed in this state to offer the property for sale and
 325 shall establish a reasonable commission. The broker shall offer
 326 the property for sale in a commercially reasonable manner at a
 327 price no lower than the determination of value and on the terms
 328 and conditions established by the court.

329 (3) If the broker appointed under subsection (2) obtains
 330 within a reasonable time an offer to purchase the property for
 331 at least the determination of value:

332 (a) The broker shall comply with the reporting requirements
 333 in s. 64.211; and

334 (b) The sale may be completed in accordance with the laws
 335 of this state other than this part.

336 (4) If the broker appointed under subsection (2) does not
 337 obtain within a reasonable time an offer to purchase the
 338 property for at least the determination of value, the court,
 339 after hearing, may:

340 (a) Approve the highest outstanding offer, if any;

341 (b) Redetermine the value of the property and order that
 342 the property continue to be offered for an additional time; or

343 (c) Order that the property be sold by sealed bids or at an
 344 auction.

345 (5) If the court orders a sale by sealed bids or an
 346 auction, the court shall set terms and conditions of the sale.
 347 If the court orders an auction, the auction must be conducted
 348 under part I of this chapter.

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2020580

349 (6) If a purchaser is entitled to a share of the proceeds
 350 of the sale, the purchaser is entitled to a credit against the
 351 price in an amount equal to the purchaser's share of the
 352 proceeds.

353 64.211 Report of open-market sale.—

354 (1) Unless required to do so within a shorter time by part
 355 I of this chapter, a broker appointed under s. 64.210(2) to
 356 offer heirs property for open-market sale shall file a report
 357 with the court not later than 7 days after receiving an offer to
 358 purchase the property for at least the value determined under s.
 359 64.206 or s. 64.210.

360 (2) The report required by subsection (1) must contain the
 361 following information:

362 (a) A description of the property to be sold to each buyer.

363 (b) The name of each buyer.

364 (c) The proposed purchase price.

365 (d) The terms and conditions of the proposed sale,
 366 including the terms of any owner financing.

367 (e) The amounts to be paid to lienholders.

368 (f) A statement of contractual or other arrangements or
 369 conditions of the broker's commission.

370 (g) Other material facts relevant to the sale.

371 64.212 Uniformity of application and construction.—In
 372 applying and construing this uniform act, consideration must be
 373 given to the need to promote uniformity of the law with respect
 374 to its subject matter among states that enact it.

375 64.213 Relation to Electronic Signatures in Global and
 376 National Commerce Act.—This part modifies, limits, and
 377 supersedes the Electronic Signatures in Global and National

11-00510A-20

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378 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
 379 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
 380 or authorize electronic delivery of any of the notices described
 381 in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

382 Section 3. This act shall take effect July 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Criminal Justice
Finance and Tax
Innovation, Industry, and Technology

SENATOR RANDOLPH BRACY

11th District

November 4, 2019

The Honorable Chairman David Simmons
404 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Simmons:

I write to respectfully ask that the following bill be placed on the agenda of the Senate Judiciary Committee:

- SB 580, Uniform Partition of Heirs Property Act: This bill provides simple due process protections (notice, appraisal, and right of first refusal) for heir property tenants-in-common to prevent a forced sale when one co-tenant desires to sell his/her interest in the property.

Your consideration is tremendously appreciated. Please don't hesitate to let me know if you have any questions or concerns regarding the aforementioned legislation.

Sincerely,

A handwritten signature in cursive script that reads "Randolph Bracy".

Senator Randolph Bracy

REPLY TO:

- 6965 Piazza Grande Avenue, Suite 211, Orlando, Florida 32835 (407) 297-2045 FAX: (888) 263-3814
- 213 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

11-12-19

Meeting Date

580

Bill Number (if applicable)

Topic

Partition

Amendment Barcode (if applicable)

Name

Pete Dunbar

Job Title

Address

215 S. Monroe Suite 815

Phone

999-4100

Street

Tallahassee FL

32312

Email

pdunbar@deadhead.com

City

State

Zip

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing

RPPTL

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/19

Meeting Date

580

Bill Number (if applicable)

Topic ~~SA 58~~ HEIRS PROPERTY

Amendment Barcode (if applicable)

Name ENNIS JACOBS

Job Title ATTORNEY

Address P.O. Box 1101

Phone 850 491-2710

Street TALL City FL State 32302 Zip

Email JACOBS LAW FIRM @GMAIL.COM

Speaking: For Against Information

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

Representing CLIENTS / SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/19 Meeting Date

589 Bill Number (if applicable)

Topic Uniform Property of Heirs Act

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Exec. Director

Address 579 E. Call St.

Phone 850-321-9386

Tallahassee, FL 32301

Email fcfepl@yahoo.com

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

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

Representing Florida Center for Fiscal & Economic Policy

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

11/12/19
Meeting Date

580
Bill Number (if applicable)

Topic HEIRS PROPERTY

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 9830 ELM ST

Phone 941-323-2404

Street

MC
City

MD
State

21842
Zip

Email cullenasea@aol.com

Speaking: For Against Information

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

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/13

Meeting Date

SB 580

Bill Number (if applicable)

Topic Uniform Partition of Heirs Property

Amendment Barcode (if applicable)

Name Lindsay Cross

Job Title Government Relations Director

Address 1700 N Monroe #11-286

Phone

Street

Tallahassee

City

FL

State

32303

Zip

Email lindsay@fcvoters.org

Speaking: [] For [] Against [] Information

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

Representing Florida Conservation Voters

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/19

Meeting Date

580

Bill Number (if applicable)

Topic Uniform Partition of Heirs Property

Amendment Barcode (if applicable)

Name TRAVIS MOORE

Job Title

Address P.O. Box 2020 Street

Phone 727.421.6902

St. Petersburg FL 33731 City State Zip

Email travis@moore-relations.com

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

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

Representing Defenders of Wildlife

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

11/12/19

Meeting Date

580

Bill Number (if applicable)

Topic Heirs Property Act

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Policy Director

Address P.O. Box 10788

Phone 334-224-4309

Street

Tallahassee

FL

32302

Email Scott.McCoy@spcenter.org

City

State

Zip

Speaking: For Against Information

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

Representing Southern Poverty Law Center

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Judiciary Committee

Judge:

Started: 11/12/2019 1:36:02 PM

Ends: 11/12/2019 2:43:16 PM Length: 01:07:15

1:36:01 PM Meeting called to order by Chair Simmons
1:36:03 PM Roll call by Administrative Assistant Joyce Butler
1:36:14 PM Quorum present
1:36:17 PM Comments from Chair Simmons
1:37:04 PM Introduction of Tab 2 by Chair Simmons
1:37:13 PM Explanation of SB 544, Husband-wife Communications Privilege by Senator Harrell
1:39:45 PM Comments from Chair Simmons
1:39:53 PM Question from Senator Stargel
1:39:59 PM Response from Senator Harrell
1:40:48 PM Follow-up question from Senator Stargel
1:40:55 PM Response from Senator Harrell
1:41:21 PM Additional question from Senator Stargel
1:41:30 PM Response from Senator Harrell
1:42:31 PM Senator Stargel in debate
1:43:33 PM Senator Harrell in closure
1:44:11 PM Roll call on SB 544 by Administrative Assistant Joyce Butler
1:45:11 PM SB 544 reported favorably
1:45:24 PM Introduction of Tab 1 by Chair Simmons
1:45:43 PM Explanation of SB 160, Peer-to peer Support for First Responders by Senator Perry
1:46:11 PM Comments from Chair Simmons
1:46:30 PM Amendment Barcode No. 191422 withdrawn
1:47:03 PM Introduction of Amendment Barcode No. 625854 by Chair Simmons
1:47:30 PM Explanation of Amendment by Senator Perry
1:49:06 PM Question from Senator Rodriguez
1:49:19 PM Response from Senator Perry
1:50:48 PM Follow-up question from Senator Rodriguez
1:50:58 PM Response from Senator Perry
1:52:21 PM Follow-up question from Senator Rodriguez
1:52:31 PM Response from Senator Perry
1:54:34 PM Follow-up question from Senator Rodriguez
1:54:44 PM Response from Senator Perry
1:55:31 PM Question from Senator Rodriguez
1:55:40 PM Response from Senator Perry
1:56:40 PM Question from Senator Gibson
1:56:49 PM Response from Senator Perry
1:57:30 PM Follow-up question from Senator Gibson
1:57:38 PM Response from Senator Perry
1:58:50 PM Melina Ravna Svanchild Farley-Barrett, Legislative Director, FL NOW waives in support
1:59:09 PM Speaker George Wallace in support
2:00:28 PM Chase Mitchell, Senior Management Analyst waives in support
2:01:24 PM Closure waived on Amendment
2:01:32 PM Amendment Barcode No. 625854 adopted

2:01:54 PM Amendment Barcode No. 142354 is out of order per the Chair
2:02:26 PM Senator Rodriguez in debate
2:05:10 PM Senator Baxley in debate
2:10:32 PM Comments from Chair Simmons
2:10:47 PM Closure by Senator Perry
2:12:21 PM Comments from Chair Simmons regarding technical correction
2:13:29 PM Roll call by Administrative Assistant Joyce Butler
2:13:45 PM CS/SB 160 reported favorably
2:14:02 PM Comments from Chair Simmons
2:15:47 PM Introduction of Tab 4 by Chair Simmons
2:16:19 PM Explanation of SB 580, Uniform Partition of Heirs Property Act by Senator Bracy
2:20:09 PM Question from Senator Gibson
2:20:15 PM Response from Senator Bracy
2:21:19 PM Follow-up question from Senator Gibson
2:21:28 PM Response from Senator Bracy
2:22:00 PM Follow-up question from Senator Gibson
2:22:09 PM Response from Senator Bracy
2:23:37 PM Additional question from Senator Gibson
2:23:44 PM Response from Senator Bracy
2:24:32 PM Speaker Pete Dunbar, RPPTL for information
2:28:14 PM Question from Senator Gibson
2:28:20 PM Response from Mr. Dunbar
2:30:17 PM Speaker Ennis Jacobs, Attorney, Tallahassee, FL in support
2:33:08 PM Speaker Karen Woodall, Executive Director, Florida Center for Fiscal Economic Policy
in support
2:36:29 PM David Cullen, Sierra Club Florida waives in support
2:36:38 PM Lindsay Cross, Government Relations Director, Florida Conservation Voters waives in
support
2:36:50 PM Speaker Travis Moore, Defenders of Wildlife in support
2:38:15 PM Scott McCoy, Policy Director, Southern Poverty Law Center waives in support
2:38:33 PM Comments from Chair Simmons
2:39:01 PM Comments from Chair Bracy
2:39:10 PM SB 580 TP'd
2:39:41 PM Introduction of Tab 3 by Chair Simmons
2:39:53 PM Explanation of SR 546, Oppression of the Nicaraguan People/President Daniel Ortega
by Senator Rodriguez
2:41:28 PM Comments from Chair Simmons
2:41:41 PM Closure waived
2:41:49 PM Roll call by Administrative Assistant Joyce Butler
2:41:59 PM SR 546 reported favorably
2:42:11 PM Chair Simmons states SB 580 is TP'd
2:42:40 PM Comments from Chair Simmons
2:42:47 PM Senator Baxley moves to adjourn, without objection, meeting adjourned