

Tab 1	CS/SB 262 by JU, Albritton (CO-INTRODUCERS) Harrell, Montford, Rader; (Similar to H 00421) Child Welfare					
140426	A	S	WD	RC, Brandes	btw L.481 - 482:	03/06 10:33 AM

Tab 2	SR 682 by Diaz (CO-INTRODUCERS) Stargel, Rodriguez, Simpson; Venezuela/Juan Guaidó
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Tab 3	SB 82 by Bradley; (Similar to CS/H 00145) Vegetable Gardens					
406426	A	S	RCS	RC, Bradley	btw L.30 - 31:	03/06 10:33 AM

Tab 4	SB 186 by Lee (CO-INTRODUCERS) Book; (Similar to H 00577) Public Records/Victim of Mass Violence
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Tab 5	SB 7012 by IT; (Similar to H 07027) Vaping					
162468	A	S	L RCS	RC, Simpson	Delete L.112:	03/06 10:33 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Benacquisto, Chair
Senator Gibson, Vice Chair

MEETING DATE: Wednesday, March 6, 2019
TIME: 9:00—10:15 a.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

MEMBERS: Senator Benacquisto, Chair; Senator Gibson, Vice Chair; Senators Book, Bradley, Brandes, Braynon, Farmer, Flores, Hutson, Lee, Montford, Passidomo, Rodriguez, Simmons, Simpson, Stargel, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 262 Judiciary / Albritton (Similar H 421)	Child Welfare; Providing for the name of a child's guardian ad litem or attorney ad litem to be entered on court orders in dependency proceedings; requiring cooperation between certain parties and the court to achieve permanency for a child as soon as possible; requiring the court during an adjudicatory hearing to advise parents in plain language of certain requirements to achieve permanency with their child, etc. CF 02/04/2019 Favorable JU 02/19/2019 Fav/CS RC 03/06/2019 Favorable	Favorable Yeas 17 Nays 0
2	SR 682 Diaz	Venezuela/Juan Guaidó; Expressing solidarity with the people of Venezuela in their pursuit of a strong and stable democratic government under which they may enjoy the political freedoms and economic security that are the hallmarks of democracy, etc. RC 03/06/2019 Favorable	Favorable Yeas 17 Nays 0
3	SB 82 Bradley (Similar CS/H 145)	Vegetable Gardens; Prohibiting local governments from regulating vegetable gardens on residential properties except as otherwise provided by law; specifying that such regulations are void and unenforceable, etc. CA 01/08/2019 Favorable RC 03/06/2019 Fav/CS	Fav/CS Yeas 17 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, March 6, 2019, 9:00—10:15 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 186 Lee (Similar H 577, H 7017)	Public Records/Victim of Mass Violence; Defining the term "killing of a victim of mass violence"; expanding an existing exemption from public records requirements for a photograph or a video or audio recording held by an agency which depicts or records the killing of a law enforcement officer to include a photograph or a video or audio recording held by an agency which depicts or records the killing of a victim of mass violence; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 02/11/2019 Favorable GO 02/19/2019 Favorable RC 03/06/2019 Favorable	Favorable Yeas 17 Nays 0
5	SB 7012 Innovation, Industry, and Technology (Similar H 7027)	Vaping; Implementing s. 20, Art. X of the State Constitution, as amended by Amendment 9 (2018); prohibiting vaping in an enclosed indoor workplace, except as otherwise provided; providing exceptions to the prohibition against vaping and smoking in an enclosed indoor workplace; requiring the proprietor or other person in charge of an enclosed indoor workplace to develop and implement a policy regarding specified smoking and vaping prohibitions, etc. RC 03/06/2019 Fav/CS	Fav/CS Yeas 17 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 262

INTRODUCER: Judiciary Committee and Senator Albritton

SUBJECT: Child Welfare

DATE: March 5, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Hendon</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 262 aims to speed up the dependency process for abused children removed from their home to achieve permanency within 1 year. Permanency can be reunification with parents, placement with a permanent guardian, often a relative, or adoption. The bill makes changes such as requiring updated parent contact information, making referrals to services for parents within 7 days, requiring parents to notify the court of any barriers to completing their case plan, and to clearly inform parents that if they do not complete their case plan within 1 year, they may have their parental rights terminated.

The bill could have an insignificant fiscal impact on the state and has an effective date of October 1, 2019.

II. Present Situation:

A child protective investigation begins with a report by any person to the Florida Abuse Hotline. The state is required to maintain a 24-hour/day, 7-day/week capacity for receiving reports of maltreatments. The reports are sent out to child protective investigators (CPIs) across the state to investigate.¹

¹ Department of Children and Families, *Abuse Hotline, Frequently Asked Questions*, see <http://www.myflfamilies.com/service-programs/abuse-hotline/frequently-asked-questions> (last visited Feb. 13, 2019).

The CPI receiving the report is most commonly a DCF employee, but in six counties the local sheriff performs the investigative function. The DCF child protective services are delivered through 6 regional offices, using more than 1,500 investigators and 300 supervisors.² The sheriffs' offices employ 387 CPIs and 70 supervisors.

Court hearings are required whenever a child is removed from his or her home. The attorneys in these cases are either department employees or employees of the Attorney General's Office under contract to DCF or, in one case, a state attorney's office.

The community-based care lead agencies and their subcontractors are the primary providers of services to children and families in the child welfare system. There are currently 19 lead agencies having contracts covering all 20 judicial circuits.³ The lead agencies and their subcontractors employ case managers and supervisors to oversee the provision of services to children and their parents in the child welfare system. A parent's case plan may order a variety of services to improve their capacity as a care-giver. Many of the services are not directly provided by the lead agencies or the case management subcontractors, but by substance abuse, mental health, and other specialized community based providers.

III. Effect of Proposed Changes:

Section 1 amends section 39.001, F.S., relating to the purposes and intent of ch. 39, F.S., the state's laws on dependency, to require that the name of a child's guardian ad litem or attorney ad litem be entered on all orders of the court. The bill restates current law that permanency for the child should occur within 1 year.

Section 2 amends s. 39.0136, F.S., regarding continuances in dependency cases, to state that all parties and the court must work to ensure the timely performance of their case plan. Though current law limits continues to 60 days in any 12-month period, the bill expressly states that this limitation applies even to continuances that result from the court's own motion.

Additionally, the bill requires the department to provide parents with the contact information for their case manager, and requires a new case manager to reach out to the parents quickly and diligently. The turnover rate amongst case managers is high, and the resulting disruptions can extend the time in care for dependent children. Case managers are either employees of the community-based care lead agency or a contracted provider.

Section 3 amends s. 39.402, F.S., relating to placement of an abused child in a shelter. The bill clarifies that cases may not be continued more than 60 days, including continuances initiated by the court. The bill requires the court to advise the parents in plain language what is expected of them to achieve permanency with the child. Specifically, the bill requires the court to tell the parents that they must complete their case plan within 1 year, provide updated contact

² Office of Child Welfare, Department of Children and Families, *Child Protective Investigator and Child Protective Investigator Supervisor Educational Qualifications, Turnover, and Working Conditions Status Report* (Oct. 1, 2016), <https://www.dcf.state.fl.us/programs/childwelfare/docs/2016LMRs/CPI%20CPI%20Supv%20Workforce%20Report.pdf>.

³ Department of Children and Families, *Community Based Care Lead Agency Map*, <http://www.myflfamilies.com/service-programs/community-based-care/cbc-map> (last visited Feb. 13, 2019).

information to their attorney and case manager, and notify the court of any barriers to completing the case plan.

Additionally, the bill requires the parents of a dependent child who is in out-of-home care to provide the court with the name and “location information” for relatives who might care for the child.

Section 4 amends 39.507, F.S., regarding adjudicatory hearings at which the court determines that a child is dependent. Specifically, the bill requires the court to advise the parents in plain language that the parents must complete their case plan within 1 year, provide updated contact information to their attorney and case manager, and notify the court of any barriers to completing the case plan.

Section 5 amends s. 39.521, F.S., relating to disposition hearings, to clarify that the department must provide copies of the case plan to all parties in the dependency case.

Section 6 amends s. 39.522, F.S. regarding postdisposition change of custody. The bill limits the circumstances in which a court may change the conditions of protective supervision or a placement of a child. Changes to these matters may occur only before a child’s permanency placement is approved at a permanency hearing. Additionally, the bill provides that these proceedings to change the conditions of protective supervision or a placement of a child may be initiated by a motion, as opposed to by a petition as under current law.

Section 7 amends s. 39.6011, relating to case plans, to require that a case plan include written notice to the parents that it is their responsibility to comply with the case plan so that permanency with the child occurs within 1 year after removal or adjudication of the child as dependent. The case plan must also advise the parents that they must notify the parties and the court of any barriers that would prevent them from completing their case plans. The bill requires the department to explain the provisions of the case plan to all persons involved and provide necessary contact information. Moreover, the department must make referrals for services for parents within 7 days after the case plan is approved.

Section 8 amends s. 39.6012, F.S., regarding case plan tasks, to require case plans to include strategies for the parents to use in overcoming any barriers to completing the case plan. The case plan must also explain to the parents that they must notify the parties and the court of certain barriers to the parents’ completion of their case plan.

Section 9 amends s. 39.6013, F.S., relating to case plan amendments, to correct a cross-reference.

Section 10 amends s. 39.621, F.S., regarding permanency, to require the court to hold permanency status hearings every 60 days for children who will need more than 1 year to achieve the permanency goal of adoption or reunification. These hearings must continue every 60 days until the child reaches the permanency goal or the court determines it is in the child’s best interest to change the goal.

Section 11 amends s. 39.806, F.S., relating to termination of parental rights, to clarify that parents who do not materially complete their case plan, “by their action or inaction,” can have their parental rights terminated.

Section 12 amends s. 39.811, F.S., regarding when a dependency case is disposed by a termination of parental rights, to require the court to enter a written order within 30 days after such disposition.

Section 13 provides an effective date of October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill 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.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may increase costs to the state court system, the Guardian ad Litem program, and the Department of Children and Families. One aspect of the bill that could increase costs to the state is the requirement that the court hold hearings every 60 days regarding a child

who is in out-of-home care and will not achieve certain permanency goals within one year. However, if the bill results in children spending less time in dependency, then the state would realize a savings in the budget of the state court system and the department.

The Department of Children and Families states that the bill will have a “workload impact” on the Department and an “indeterminate” fiscal impact.⁴ The Office of the State Courts Administrator has not supplied cost information for this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.001, 39.0136, 39.402, 39.507, 39.521, 39.522, 39.6011, 39.6012, 39.6013, 39.621, 39.806, and 39.811.

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 February 19, 2019:

The committee substitute changes the underlying bill by:

- Removing language that added a “purpose” to the list of purposes for this state’s dependency statutes;
- Changing several references to from “reunification with the child” to “permanency with the child;” and
- Eliminating the requirement that notice from the parents to the court of barriers to the parents’ completion of their case plan be *in writing*.

- B. **Amendments:**

None.

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

⁴ Department of Children and Families, *2019 Agency Bill Analysis (SB 262)* (Jan. 14, 2019) (on file with the Senate Committee on Judiciary).



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/06/2019	.	
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	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 481 and 482
insert:

Section 13. Subsection (16) of section 409.2554, Florida Statutes, is amended to read:

409.2554 Definitions; ss. 409.2551-409.2598.—As used in ss. 409.2551-409.2598, the term:

(16) "Title IV-D Standard Parenting Time Plan" means a document that may be agreed to and signed by the parents before a notary public to govern the relationship between the parents



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12 and to provide the parent who owes support a reasonable minimum
13 amount of time with his or her child. The plan set forth in s.
14 409.25633 includes timetables that specify the time, including
15 overnights and holidays, that a child may spend with each
16 parent.

17 Section 14. Subsection (2) of section 409.2557, Florida
18 Statutes, is amended to read:

19 409.2557 State agency for administering child support
20 enforcement program.—

21 (2) The department in its capacity as the state Title IV-D
22 agency has the authority to take actions necessary to carry out
23 the public policy of ensuring that children are maintained from
24 the resources of their parents to the extent possible. The
25 department's authority includes, but is not limited to, the
26 establishment of paternity or support obligations, the
27 establishment of a Title IV-D Standard Parenting Time Plan or
28 any other parenting time plan agreed to and signed by the
29 parents before a notary public, and the modification,
30 enforcement, and collection of support obligations.

31 Section 15. Paragraphs (e), (f), and (h) of subsection (2),
32 subsection (4), paragraph (c) of subsection (5), and paragraphs
33 (a), (c), and (d) of subsection (7) of section 409.2563, Florida
34 Statutes, are amended to read:

35 409.2563 Administrative establishment of child support
36 obligations.—

37 (2) PURPOSE AND SCOPE.—

38 (e) The administrative procedure set forth in this section
39 concerns only the establishment of child support obligations
40 and, if agreed to and signed by both parents before a notary



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41 public, a parenting time plan or Title IV-D Standard Parenting
42 Time Plan. This section does not grant jurisdiction to the
43 department or the Division of Administrative Hearings to hear or
44 determine issues of dissolution of marriage, separation, alimony
45 or spousal support, termination of parental rights, dependency,
46 disputed paternity, except for a determination of paternity as
47 provided in s. 409.256, or change of time-sharing. If both
48 parents have agreed to and signed a parenting time plan before
49 the establishment of the administrative support order, the
50 department or the Division of Administrative Hearings shall
51 incorporate the agreed-upon parenting time plan into the
52 administrative support order. This paragraph notwithstanding,
53 the department and the Division of Administrative Hearings may
54 make findings of fact that are necessary for a proper
55 determination of a parent's support obligation as authorized by
56 this section.

57 (f) If there is no support order for a child in a Title IV-
58 D case whose paternity has been established or is presumed by
59 law, or whose paternity is the subject of a proceeding under s.
60 409.256, the department may establish a parent's child support
61 obligation pursuant to this section, s. 61.30, and other
62 relevant provisions of state law. The administrative support
63 order must include a parenting time plan or Title IV-D Standard
64 Parenting Time Plan as agreed to and signed by both parents
65 before a notary public. The parent's obligation determined by
66 the department may include any obligation to pay retroactive
67 support and any obligation to provide for health care for a
68 child, whether through insurance coverage, reimbursement of
69 expenses, or both. The department may proceed on behalf of:



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- 70 1. An applicant or recipient of public assistance, as
71 provided by ss. 409.2561 and 409.2567;
- 72 2. A former recipient of public assistance, as provided by
73 s. 409.2569;
- 74 3. An individual who has applied for services as provided
75 by s. 409.2567;
- 76 4. Itself or the child, as provided by s. 409.2561; or
- 77 5. A state or local government of another state, as
78 provided by chapter 88.
- 79 (h) Pursuant to paragraph (e), neither the department nor
80 the Division of Administrative Hearings has jurisdiction to
81 change child custody or rights of parental contact. The
82 department or the Division of Administrative Hearings shall
83 incorporate a parenting time plan or Title IV-D Standard
84 Parenting Time Plan as agreed to and signed by both parents
85 before a notary public into the administrative support order.
86 Either parent may at any time file a civil action in a circuit
87 having jurisdiction and proper venue for a determination of
88 child custody and rights of parental contact.
- 89 (4) NOTICE OF PROCEEDING TO ESTABLISH ADMINISTRATIVE
90 SUPPORT ORDER.—To commence a proceeding under this section, the
91 department shall provide to the parent from whom support is not
92 being sought and serve the parent from whom support is being
93 sought with a notice of proceeding to establish administrative
94 support order, a copy of the Title IV-D Standard Parenting Time
95 Plan, and a blank financial affidavit form. The notice must
96 state all of the following:
- 97 (a) The names of both parents, the name of the caregiver,
98 if any, and the name and date of birth of the child or



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99 children.†

100 (b) That the department intends to establish an
101 administrative support order as defined in this section.†

102 (c) That the department will incorporate a parenting time
103 plan or Title IV-D Standard Parenting Time Plan, as agreed to
104 and signed by both parents before a notary public, into the
105 administrative support order.†

106 (d) That both parents must submit a completed financial
107 affidavit to the department within 20 days after receiving the
108 notice, as provided by paragraph (13) (a).†

109 (e) That both parents, or parent and caregiver if
110 applicable, are required to furnish to the department
111 information regarding their identities and locations, as
112 provided by paragraph (13) (b).†

113 (f) That both parents, or parent and caregiver if
114 applicable, are required to promptly notify the department of
115 any change in their mailing addresses to ensure receipt of all
116 subsequent pleadings, notices, and orders, as provided by
117 paragraph (13) (c).†

118 (g) That the department will calculate support obligations
119 based on the child support guidelines schedule in s. 61.30 and
120 using all available information, as provided by paragraph
121 (5) (a), and will incorporate such obligations into a proposed
122 administrative support order.†

123 (h) That the department will send by regular mail to both
124 parents, or parent and caregiver if applicable, a copy of the
125 proposed administrative support order, the department's child
126 support worksheet, and any financial affidavits submitted by a
127 parent or prepared by the department.†



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128 (i) That the parent from whom support is being sought may
129 file a request for a hearing in writing within 20 days after the
130 date of mailing or other service of the proposed administrative
131 support order or will be deemed to have waived the right to
132 request a hearing.†

133 (j) That if the parent from whom support is being sought
134 does not file a timely request for hearing after service of the
135 proposed administrative support order, the department will issue
136 an administrative support order that incorporates the findings
137 of the proposed administrative support order, and any agreed-
138 upon parenting time plan. The department will send by regular
139 mail a copy of the administrative support order and any
140 incorporated parenting time plan to both parents, or parent and
141 caregiver if applicable.†

142 (k) That after an administrative support order is rendered
143 incorporating any agreed-upon parenting time plan, the
144 department will file a copy of the order with the clerk of the
145 circuit court.†

146 (l) That after an administrative support order is rendered,
147 the department may enforce the administrative support order by
148 any lawful means. The department does not have jurisdiction to
149 enforce any parenting time plan that is incorporated into an
150 administrative support order.†

151 (m) That either parent, or caregiver if applicable, may
152 file at any time a civil action in a circuit court having
153 jurisdiction and proper venue to determine parental support
154 obligations, if any, and that a support order issued by a
155 circuit court supersedes an administrative support order
156 rendered by the department.†



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157 (n) That neither the department nor the Division of
158 Administrative Hearings has jurisdiction to change child custody
159 or rights of parental contact or time-sharing, and these issues
160 may be addressed only in circuit court. The department or the
161 Division of Administrative Hearings may incorporate, if agreed
162 to and signed by both parents before a notary public, a
163 parenting time plan or Title IV-D Standard Parenting Time Plan
164 when the administrative support order is established.

165 1. The parent from whom support is being sought may request
166 in writing that the department proceed in circuit court to
167 determine his or her support obligations.

168 2. The parent from whom support is being sought may state
169 in writing to the department his or her intention to address
170 issues concerning custody or rights to parental contact in
171 circuit court.

172 3. If the parent from whom support is being sought submits
173 the request authorized in subparagraph 1., or the statement
174 authorized in subparagraph 2. to the department within 20 days
175 after the receipt of the initial notice, the department shall
176 file a petition in circuit court for the determination of the
177 parent's child support obligations, and shall send to the parent
178 from whom support is being sought a copy of its petition, a
179 notice of commencement of action, and a request for waiver of
180 service of process as provided in the Florida Rules of Civil
181 Procedure.

182 4. If, within 10 days after receipt of the department's
183 petition and waiver of service, the parent from whom support is
184 being sought signs and returns the waiver of service form to the
185 department, the department shall terminate the administrative



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186 proceeding without prejudice and proceed in circuit court.

187 5. In any circuit court action filed by the department
188 pursuant to this paragraph or filed by a parent from whom
189 support is being sought or other person pursuant to paragraph
190 (m) or paragraph (o), the department shall be a party only with
191 respect to those issues of support allowed and reimbursable
192 under Title IV-D of the Social Security Act. It is the
193 responsibility of the parent from whom support is being sought
194 or other person to take the necessary steps to present other
195 issues for the court to consider.~~+~~

196 (o) That if the parent from whom support is being sought
197 files an action in circuit court and serves the department with
198 a copy of the petition within 20 days after being served notice
199 under this subsection, the administrative process ends without
200 prejudice and the action must proceed in circuit court.~~;~~~~and~~

201 (p) Information provided by the Office of State Courts
202 Administrator concerning the availability and location of self-
203 help programs for those who wish to file an action in circuit
204 court but who cannot afford an attorney.

205

206 The department may serve the notice of proceeding to establish
207 an administrative support order and agreed-upon parenting time
208 plan or Title IV-D Standard Parenting Time Plan by certified
209 mail, restricted delivery, return receipt requested.

210 Alternatively, the department may serve the notice by any means
211 permitted for service of process in a civil action. For purposes
212 of this section, an authorized employee of the department may
213 serve the notice and execute an affidavit of service. Service by
214 certified mail is completed when the certified mail is received



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215 or refused by the addressee or by an authorized agent as
216 designated by the addressee in writing. If a person other than
217 the addressee signs the return receipt, the department shall
218 attempt to reach the addressee by telephone to confirm whether
219 the notice was received, and the department shall document any
220 telephonic communications. If someone other than the addressee
221 signs the return receipt, the addressee does not respond to the
222 notice, and the department is unable to confirm that the
223 addressee has received the notice, service is not completed and
224 the department shall attempt to have the addressee served
225 personally. The department shall provide the parent from whom
226 support is not being sought or the caregiver with a copy of the
227 notice by regular mail to the last known address of the parent
228 from whom support is not being sought or caregiver.

229 (5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.—

230 (c) The department shall provide a notice of rights with
231 the proposed administrative support order, which notice must
232 inform the parent from whom support is being sought that:

233 1. The parent from whom support is being sought may, within
234 20 days after the date of mailing or other service of the
235 proposed administrative support order, request a hearing by
236 filing a written request for hearing in a form and manner
237 specified by the department;

238 2. If the parent from whom support is being sought files a
239 timely request for a hearing, the case shall be transferred to
240 the Division of Administrative Hearings, which shall conduct
241 further proceedings and may enter an administrative support
242 order;

243 3. A parent from whom support is being sought who fails to



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244 file a timely request for a hearing shall be deemed to have
245 waived the right to a hearing, and the department may render an
246 administrative support order pursuant to paragraph (7) (b);

247 4. The parent from whom support is being sought may consent
248 in writing to entry of an administrative support order without a
249 hearing;

250 5. The parent from whom support is being sought may, within
251 10 days after the date of mailing or other service of the
252 proposed administrative support order, contact a department
253 representative, at the address or telephone number specified in
254 the notice, to informally discuss the proposed administrative
255 support order and, if informal discussions are requested timely,
256 the time for requesting a hearing will be extended until 10 days
257 after the department notifies the parent that the informal
258 discussions have been concluded; and

259 6. If an administrative support order that establishes a
260 parent's support obligation and incorporates either a parenting
261 time plan or Title IV-D Standard Parenting Time Plan agreed to
262 and signed by both parents before a notary public is rendered,
263 whether after a hearing or without a hearing, the department may
264 enforce the administrative support order by any lawful means.
265 The department does not have the jurisdiction or authority to
266 enforce a parenting time plan.

267 (7) ADMINISTRATIVE SUPPORT ORDER.—

268 (a) If a hearing is held, the administrative law judge of
269 the Division of Administrative Hearings shall issue an
270 administrative support order that will include a parenting time
271 plan or Title IV-D Standard Parenting Time Plan agreed to and
272 signed by both parents before a notary public, or a final order



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273 denying an administrative support order, which constitutes final
274 agency action by the department. The Division of Administrative
275 Hearings shall transmit any such order to the department for
276 filing and rendering.

277 (c) If the parent from whom support is being sought waives
278 the right to a hearing, or consents in writing to the entry of
279 an order without a hearing, the department may render an
280 administrative support order that will include a parenting time
281 plan or Title IV-D Standard Parenting Time Plan agreed to and
282 signed by both parents before a notary public.

283 (d) The department shall send by regular mail a copy of the
284 administrative support order that will include a parenting time
285 plan or Title IV-D Standard Parenting Time Plan agreed to and
286 signed by both parents before a notary public, or the final
287 order denying an administrative support order, to both parents,
288 or a parent and caregiver if applicable. The parent from whom
289 support is being sought shall be notified of the right to seek
290 judicial review of the administrative support order in
291 accordance with s. 120.68.

292 Section 16. Subsections (1), (3), and (6) of section
293 409.25633, Florida Statutes, are amended to read:

294 409.25633 Title IV-D Standard Parenting Time Plans.—The
295 best interest of the child is the primary consideration of the
296 parenting plan, and special consideration should be given to the
297 age and needs of each child. There is no presumption for or
298 against the father or mother of the child or for or against any
299 specific time-sharing schedule when a parenting time plan is
300 created.

301 (1) A Title IV-D Standard Parenting Time Plan shall be



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302 presented to the parents in any administrative action taken by
303 the Title IV-D program to establish or modify child support or
304 to determine paternity. If the parents agree to the Title IV-D
305 Standard Parenting Time Plan or to another parenting time plan,
306 the plan must be signed by the parents before a notary public
307 and incorporated into the administrative order. If the parents
308 do not agree to a Title IV-D Standard Parenting Time Plan or if
309 an agreed-upon parenting time plan is not included, the
310 Department of Revenue must enter an administrative support order
311 and refer the parents to the court of appropriate jurisdiction
312 to establish a parenting time plan. The department must note on
313 the referral that an administrative support order has been
314 entered. If a parenting time plan is not included in the
315 administrative support order entered pursuant to s. 409.2563,
316 the department must provide information to the parents on the
317 process to establish such a plan.

318 (3) The parent who owes support is entitled to parenting
319 time with the child. If the parents do not have a signed,
320 agreed-upon parenting time plan, the following Title IV-D
321 Standard Parenting Time Plan must be incorporated into an
322 administrative support order if agreed to and signed by the
323 parents before a notary public:

324 (a) *Every other weekend.*—The second and fourth full weekend
325 of the month from 6 p.m. on Friday through 6 p.m. on Sunday. The
326 weekends may begin upon the child's release from school on
327 Friday and end on Sunday at 6 p.m. or when the child returns to
328 school on Monday morning. The weekend time may be extended by
329 holidays that fall on Friday or Monday;

330 (b) *One evening per week.*—One weekday beginning at 6 p.m.



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331 and ending at 8 p.m. or, if both parents agree, from when the
332 child is released from school until 8 p.m.;

333 (c) *Thanksgiving break.*—In even-numbered years, the
334 Thanksgiving break from 6 p.m. on the Wednesday before
335 Thanksgiving until 6 p.m. on the Sunday following Thanksgiving.
336 If both parents agree, the Thanksgiving break parenting time may
337 begin upon the child's release from school and end upon the
338 child's return to school the following Monday;

339 (d) *Winter break.*—In odd-numbered years, the first half of
340 winter break, from the child's release from school, beginning at
341 6 p.m. or, if both parents agree, upon the child's release from
342 school, until noon on December 26. In even-numbered years, the
343 second half of winter break from noon on December 26 until 6
344 p.m. on the day before school resumes or, if both parents agree,
345 upon the child's return to school;

346 (e) *Spring break.*—In even-numbered years, the week of
347 spring break from 6 p.m. the day the child is released from
348 school until 6 p.m. the night before school resumes. If both
349 parents agree, the spring break parenting time may begin upon
350 the child's release from school and end upon the child's return
351 to school the following Monday; and

352 (f) *Summer break.*—For 2 weeks in the summer beginning at 6
353 p.m. the first Sunday following the last day of school.

354 (6) If, after the incorporation of an agreed-upon parenting
355 time plan signed by both parents before a notary public into an
356 administrative support order, a parent becomes concerned about
357 the safety of the child during the child's time with the other
358 parent, a modification of the parenting time plan may be sought
359 through a court of appropriate jurisdiction.



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360 Section 17. Subsections (1) and (2) of section 409.2564,
361 Florida Statutes, are amended to read:

362 409.2564 Actions for support.—

363 (1) In each case in which regular support payments are not
364 being made as provided herein, the department shall institute,
365 within 30 days after determination of the obligor's reasonable
366 ability to pay, action as is necessary to secure the obligor's
367 payment of current support, any arrearage that may have accrued
368 under an existing order of support, and, if a parenting time
369 plan was not incorporated into the existing order of support,
370 include either a signed, notarized, and agreed-upon parenting
371 time plan or a signed and notarized Title IV-D Standard
372 Parenting Time Plan, if appropriate. The department shall notify
373 the program attorney in the judicial circuit in which the
374 recipient resides setting forth the facts in the case, including
375 the obligor's address, if known, and the public assistance case
376 number. Whenever applicable, the procedures established under
377 chapter 88, Uniform Interstate Family Support Act, chapter 61,
378 Dissolution of Marriage; Support; Time-sharing, chapter 39,
379 Proceedings Relating to Children, chapter 984, Children and
380 Families in Need of Services, and chapter 985, Delinquency;
381 Interstate Compact on Juveniles, may govern actions instituted
382 under this act, except that actions for support under chapter
383 39, chapter 984, or chapter 985 brought pursuant to this act
384 shall not require any additional investigation or supervision by
385 the department.

386 (2) The order for support entered pursuant to an action
387 instituted by the department under subsection (1) shall require
388 that the support payments be made periodically to the department



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389 through the depository. An order for support entered under
390 subsection (1) must include either a signed, notarized, and
391 agreed-upon parenting time plan or a signed and notarized Title
392 IV-D Standard Parenting Time Plan, if appropriate. Upon receipt
393 of a payment made by the obligor pursuant to any order of the
394 court, the depository shall transmit the payment to the
395 department within 2 working days, except those payments made by
396 personal check which shall be disbursed in accordance with s.
397 61.181. Upon request, the depository shall furnish to the
398 department a certified statement of all payments made by the
399 obligor. Such statement shall be provided by the depository at
400 no cost to the department.

401

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

403 And the title is amended as follows:

404 Delete line 59

405 and insert:

406 rights; amending s. 409.2554, F.S.; revising the
407 definition of "Title IV-D Standard Parenting Time
408 Plan"; amending ss. 409.2557, 409.2563, 409.25633, and
409 409.2564, F.S.; requiring that certain parenting time
410 plans be signed before a notary public; providing an
411 effective date.

By the Committee on Judiciary; and Senator Albritton

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1 A bill to be entitled
 2 An act relating to child welfare; amending s. 39.001,
 3 F.S.; providing for the name of a child's guardian ad
 4 litem or attorney ad litem to be entered on court
 5 orders in dependency proceedings; amending s. 39.0136,
 6 F.S.; requiring cooperation between certain parties
 7 and the court to achieve permanency for a child as
 8 soon as possible; requiring the Department of Children
 9 and Families to ensure that parents have the
 10 information necessary to contact their case manager;
 11 requiring that a new case manager who is assigned to a
 12 case notify the parent and provide updated contact
 13 information; specifying that continuances and
 14 extensions of time by the court on its own motion may
 15 not exceed a certain period of time; amending s.
 16 39.402, F.S.; specifying that time limitations
 17 governing placement of a child in a shelter do not
 18 include continuances requested by the court; requiring
 19 the court to advise parents in plain language what is
 20 expected of them to achieve reunification with their
 21 child; expanding the requirements that parents must
 22 meet to achieve reunification with their child;
 23 amending s. 39.507, F.S.; requiring the court during
 24 an adjudicatory hearing to advise parents in plain
 25 language of certain requirements to achieve permanency
 26 with their child; expanding the requirements that
 27 parents must meet to achieve reunification with their
 28 child; amending s. 39.521, F.S.; requiring the
 29 department to serve copies of the case plan and the

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30 family functioning assessment on the parents of the
 31 child and provide copies of the plan and assessment to
 32 the other parties; amending s. 39.522, F.S.;
 33 specifying that a postdisposition hearing, if needed,
 34 must occur before a child achieves a permanency
 35 placement; amending s. 39.6011, F.S.; requiring that
 36 the written notice in a case plan include certain
 37 responsibilities and actions required of the parents
 38 and inform the parent that a breach of the case plan
 39 by the parent's action or inaction may result in an
 40 earlier filing of a petition for termination of
 41 parental rights; requiring the department to ensure
 42 that the parent has certain contact information and to
 43 explain certain strategies included in the case plan;
 44 providing a timeframe for referrals for services;
 45 amending s. 39.6012, F.S.; expanding the tasks and
 46 services a case plan must describe; amending s.
 47 39.6013, F.S.; conforming a cross-reference; amending
 48 s. 39.621, F.S.; requiring the court to hold
 49 permanency hearings within specified timeframes;
 50 requiring that the case plan be updated at a
 51 permanency hearing unless the child will achieve
 52 permanency within a specified timeframe; amending s.
 53 39.806, F.S.; specifying that grounds for termination
 54 of parental rights may be established when a case plan
 55 is materially breached by a parent or parents' action
 56 or inaction; amending s. 39.811, F.S.; requiring the
 57 court to enter a written order of disposition within a
 58 specified timeframe following termination of parental

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rights; providing an effective date.

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

Section 1. Subsection (7) of section 39.001, Florida Statutes, is amended, and paragraph (j) is added to subsection (3) of that section, to read:

39.001 Purposes and intent; personnel standards and screening.-

(3) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of the Legislature that the children of this state be provided with the following protections:

(j) The ability to contact their guardian ad litem or attorney ad litem, if appointed, by having that individual's name entered on all orders of the court.

(7) PARENTAL, CUSTODIAL, AND GUARDIAN RESPONSIBILITIES.—Parents, custodians, and guardians are deemed by the state to be responsible for providing their children with sufficient support, guidance, and supervision. The state further recognizes that the ability of parents, custodians, and guardians to fulfill those responsibilities can be greatly impaired by economic, social, behavioral, emotional, and related problems. It is therefore the policy of the Legislature that it is the state's responsibility to ensure that factors impeding the ability of caregivers to fulfill their responsibilities are identified through the dependency process and that appropriate recommendations and services to address those problems are considered in any judicial or nonjudicial proceeding. The Legislature also recognizes that time is of the essence for

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establishing permanency for a child in the dependency system. Therefore, parents must take action to comply with the case plan so permanency with the child may occur within the shortest period of time possible, but no later than 1 year after removal or adjudication of the child, including by notifying the parties and the court of barriers to case plan compliance.

Section 2. Section 39.0136, Florida Statutes, is amended to read:

39.0136 Time limitations; continuances.-

(1) The Legislature finds that time is of the essence for establishing permanency for a child in the dependency system. Time limitations are a right of the child which may not be waived, extended, or continued at the request of any party except as provided in this section.

(2) (a) All parties and the court must work together to ensure that permanency is achieved as soon as possible for every child through timely performance of their responsibilities under this chapter.

(b) The department shall ensure that parents have the information necessary to contact their case manager. When a new case manager is assigned to a case, the case manager must make a timely and diligent effort to notify the parent and provide updated contact information.

(3)-(2) The time limitations in this chapter do not include:

(a) Periods of delay resulting from a continuance granted at the request of the child's counsel or the child's guardian ad litem or, if the child is of sufficient capacity to express reasonable consent, at the request or with the consent of the child. The court must consider the best interests of the child

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117 when determining periods of delay under this section.

118 (b) Periods of delay resulting from a continuance granted
119 at the request of any party if the continuance is granted:

120 1. Because of an unavailability of evidence that is
121 material to the case if the requesting party has exercised due
122 diligence to obtain evidence and there are substantial grounds
123 to believe that the evidence will be available within 30 days.
124 However, if the requesting party is not prepared to proceed
125 within 30 days, any other party may move for issuance of an
126 order to show cause or the court on its own motion may impose
127 appropriate sanctions, which may include dismissal of the
128 petition.

129 2. To allow the requesting party additional time to prepare
130 the case and additional time is justified because of an
131 exceptional circumstance.

132 (c) Reasonable periods of delay necessary to accomplish
133 notice of the hearing to the child's parent or legal custodian;
134 however, the petitioner shall continue regular efforts to
135 provide notice to the parents during the periods of delay.

136 (4)(3) Notwithstanding subsection (3) (2), in order to
137 expedite permanency for a child, the total time allowed for
138 continuances or extensions of time, including continuances or
139 extensions by the court on its own motion, may not exceed 60
140 days within any 12-month period for proceedings conducted under
141 this chapter. A continuance or extension of time may be granted
142 only for extraordinary circumstances in which it is necessary to
143 preserve the constitutional rights of a party or if substantial
144 evidence exists to demonstrate that without granting a
145 continuance or extension of time the child's best interests will

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146 be harmed.

147 (5)(4) Notwithstanding subsection (3) (2), a continuance or
148 an extension of time is limited to the number of days absolutely
149 necessary to complete a necessary task in order to preserve the
150 rights of a party or the best interests of a child.

151 Section 3. Paragraph (f) of subsection (14) and subsections
152 (15) and (18) of section 39.402, Florida Statutes, are amended
153 to read:

154 39.402 Placement in a shelter.—

155 (14) The time limitations in this section do not include:

156 (f) Continuances or extensions of time may not total more
157 than 60 days for all parties and the court on its own motion
158 within any 12-month period during proceedings under this
159 chapter. A continuance or extension beyond the 60 days may be
160 granted only for extraordinary circumstances necessary to
161 preserve the constitutional rights of a party or when
162 substantial evidence demonstrates that the child's best
163 interests will be affirmatively harmed without the granting of a
164 continuance or extension of time.

165 (15) The department, at the conclusion of the shelter
166 hearing, shall make available to parents or legal custodians
167 seeking voluntary services, any referral information necessary
168 for participation in such identified services to allow the
169 parents or legal custodians to begin the services as soon as
170 possible. The parents' or legal custodians' participation in the
171 services ~~may shall~~ not be considered an admission or other
172 acknowledgment of the allegations in the shelter petition.

173 (18) The court shall advise the parents in plain language
174 what is expected of them to achieve reunification with their

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175 child, including that:

176 (a) Parents must take action to comply with the case plan
 177 so permanency with the child may occur within the shortest
 178 period of time possible, but no later than 1 year after removal
 179 or adjudication of the child.

180 (b) Parents must stay in contact with their attorney and
 181 their case manager and provide updated contact information if
 182 the parents' phone number, address, or e-mail address changes.

183 (c) Parents must notify the parties and the court of
 184 barriers to completing case plan tasks within a reasonable time
 185 after discovering such barriers.

186 (d) If the parents fail to substantially comply with the
 187 case plan, their parental rights may be terminated and that the
 188 child's out-of-home placement may become permanent.

189 Section 4. Paragraph (c) of subsection (7) of section
 190 39.507, Florida Statutes, is amended to read:

191 39.507 Adjudicatory hearings; orders of adjudication.—

192 (7)

193 (c) If a court adjudicates a child dependent and the child
 194 is in out-of-home care, the court shall inquire of the parent or
 195 parents whether the parents have relatives who might be
 196 considered as a placement for the child. The parent or parents
 197 shall provide the court and all parties with identification and
 198 location information for such relatives. The court shall advise
 199 the parents in plain language that:

200 1. Parents must take action to comply with the case plan so
 201 permanency with the child may occur within the shortest period
 202 of time possible, but no later than 1 year after removal or
 203 adjudication of the child.

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204 2. Parents must stay in contact with their attorney and
 205 their case manager and provide updated contact information if
 206 the parents' phone number, address, or e-mail address changes.

207 3. Parents must notify the parties and the court of
 208 barriers to completing case plan tasks within a reasonable time
 209 after discovering such barriers.

210 4. If the parents fail to substantially comply with the
 211 case plan, their parental rights may be terminated and that the
 212 child's out-of-home placement may become permanent. ~~The parent~~
 213 ~~or parents shall provide to the court and all parties~~
 214 ~~identification and location information of the relatives.~~

215 Section 5. Paragraph (a) of subsection (1) of section
 216 39.521, Florida Statutes, is amended to read:

217 39.521 Disposition hearings; powers of disposition.—

218 (1) A disposition hearing shall be conducted by the court,
 219 if the court finds that the facts alleged in the petition for
 220 dependency were proven in the adjudicatory hearing, or if the
 221 parents or legal custodians have consented to the finding of
 222 dependency or admitted the allegations in the petition, have
 223 failed to appear for the arraignment hearing after proper
 224 notice, or have not been located despite a diligent search
 225 having been conducted.

226 (a) A written case plan and a family functioning assessment
 227 prepared by an authorized agent of the department must be
 228 approved by the court. The department must file the case plan
 229 and the family functioning assessment with the court, serve
 230 copies ~~a copy of the case plan~~ on the parents of the child, and
 231 provide copies ~~a copy of the case plan to the representative of~~
 232 ~~the guardian ad litem program, if the program has been~~

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233 ~~appointed, and a copy~~ to all other parties:

234 1. Not less than 72 hours before the disposition hearing,
235 if the disposition hearing occurs on or after the 60th day after
236 the date the child was placed in out-of-home care. All such case
237 plans must be approved by the court.

238 2. Not less than 72 hours before the case plan acceptance
239 hearing, if the disposition hearing occurs before the 60th day
240 after the date the child was placed in out-of-home care and a
241 case plan has not been submitted pursuant to this paragraph, or
242 if the court does not approve the case plan at the disposition
243 hearing. The case plan acceptance hearing must occur within 30
244 days after the disposition hearing to review and approve the
245 case plan.

246 Section 6. Subsection (1) of section 39.522, Florida
247 Statutes, is amended to read:

248 39.522 Postdisposition change of custody.—The court may
249 change the temporary legal custody or the conditions of
250 protective supervision at a postdisposition hearing, without the
251 necessity of another adjudicatory hearing.

252 (1) At any time before a child achieves the permanency
253 placement approved at the permanency hearing, a child who has
254 been placed in the child's own home under the protective
255 supervision of an authorized agent of the department, in the
256 home of a relative, in the home of a legal custodian, or in some
257 other place may be brought before the court by the department or
258 by any other interested person, upon the filing of a motion
259 ~~petition~~ alleging a need for a change in the conditions of
260 protective supervision or the placement. If the parents or other
261 legal custodians deny the need for a change, the court shall

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262 hear all parties in person or by counsel, or both. Upon the
263 admission of a need for a change or after such hearing, the
264 court shall enter an order changing the placement, modifying the
265 conditions of protective supervision, or continuing the
266 conditions of protective supervision as ordered. The standard
267 for changing custody of the child shall be the best interest of
268 the child. When applying this standard, the court shall consider
269 the continuity of the child's placement in the same out-of-home
270 residence as a factor when determining the best interests of the
271 child. If the child is not placed in foster care, then the new
272 placement for the child must meet the home study criteria and
273 court approval pursuant to this chapter.

274 Section 7. Present subsections (4) through (8) of section
275 39.6011, Florida Statutes, are redesignated as subsections (5)
276 through (9), respectively, paragraph (e) of subsection (2) and
277 present subsection (6) of that section are amended, and a new
278 subsection (4) is added to that section, to read:

279 39.6011 Case plan development.—

280 (2) The case plan must be written simply and clearly in
281 English and, if English is not the principal language of the
282 child's parent, to the extent possible in the parent's principal
283 language. Each case plan must contain:

284 (e) A written notice to the parent that it is the parent's
285 responsibility to take action to comply with the case plan so
286 permanency with the child may occur within the shortest period
287 of time possible, but no later than 1 year after removal or
288 adjudication of the child; the parent must notify the parties
289 and the court of barriers to completing case plan tasks within a
290 reasonable time after discovering such barriers if the parties

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291 are not actively working to overcome them; failure of the parent
 292 to substantially comply with the case plan may result in the
 293 termination of parental rights; ~~7~~ and ~~that~~ a material breach of
 294 the case plan by the parent's action or inaction may result in
 295 the filing of a petition for termination of parental rights
 296 sooner than the compliance period set forth in the case plan.

297 (4) Before signing the case plan, the department shall
 298 explain the provisions of the plan to all persons involved in
 299 its implementation, including, when appropriate, the child. The
 300 department shall ensure that the parent has contact information
 301 for all entities necessary to complete the tasks in the plan.
 302 The department shall explain the strategies included in the plan
 303 which the parent can use to overcome barriers to case plan
 304 compliance and shall explain that if a barrier is discovered and
 305 the parties are not actively working to overcome such barrier,
 306 the parent must notify the parties and the court within a
 307 reasonable time after discovering such barrier.

308 (7)(6) After the case plan has been developed, the
 309 department shall adhere to the following procedural
 310 requirements:

311 (a) If the parent's substantial compliance with the case
 312 plan requires the department to provide services to the parents
 313 or the child and the parents agree to begin compliance with the
 314 case plan before the case plan's acceptance by the court, the
 315 department shall make the appropriate referrals for services
 316 that will allow the parents to begin the agreed-upon tasks and
 317 services immediately.

318 (b) All other referrals for services must be completed as
 319 soon as possible, but no later than 7 days after the date of the

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320 case plan approval, unless the case plan specifies that a task
 321 may not be undertaken until another specified task has been
 322 completed or otherwise approved by the court.

323 ~~(c)(b)~~ After the case plan has been agreed upon and signed
 324 by the parties, a copy of the plan must be given immediately to
 325 the parties, including the child if appropriate, and to other
 326 persons as directed by the court.

327 1. A case plan must be prepared, but need not be submitted
 328 to the court, for a child who will be in care no longer than 30
 329 days unless that child is placed in out-of-home care a second
 330 time within a 12-month period.

331 2. In each case in which a child has been placed in out-of-
 332 home care, a case plan must be prepared within 60 days after the
 333 department removes the child from the home and shall be
 334 submitted to the court before the disposition hearing for the
 335 court to review and approve.

336 3. After jurisdiction attaches, all case plans must be
 337 filed with the court, and a copy provided to all the parties
 338 whose whereabouts are known, not less than 3 business days
 339 before the disposition hearing. The department shall file with
 340 the court, and provide copies to the parties, all case plans
 341 prepared before jurisdiction of the court attached.

342 Section 8. Paragraph (b) of subsection (1) of section
 343 39.6012, Florida Statutes, is amended to read:

344 39.6012 Case plan tasks; services.—

345 (1) The services to be provided to the parent and the tasks
 346 that must be completed are subject to the following:

347 (b) The case plan must describe each of the tasks with
 348 which the parent must comply and the services to be provided to

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349 the parent, specifically addressing the identified problem,
350 including:

- 351 1. The type of services or treatment.
- 352 2. The date the department will provide each service or
353 referral for the service if the service is being provided by the
354 department or its agent.
- 355 3. The date by which the parent must complete each task.
- 356 4. The frequency of services or treatment provided. The
357 frequency of the delivery of services or treatment provided
358 shall be determined by the professionals providing the services
359 or treatment on a case-by-case basis and adjusted according to
360 their best professional judgment.
- 361 5. The location of the delivery of the services.
- 362 6. The staff of the department or service provider
363 accountable for the services or treatment.
- 364 7. A description of the measurable objectives, including
365 the timeframes specified for achieving the objectives of the
366 case plan and addressing the identified problem.
- 367 8. Strategies to overcome barriers to case plan compliance
368 and an explanation that the parent must notify the parties and
369 the court within a reasonable time after discovering a barrier
370 that the parties are not actively working to overcome such
371 barrier.

372 Section 9. Subsection (8) of section 39.6013, Florida
373 Statutes, is amended to read:

374 39.6013 Case plan amendments.—

- 375 (8) Amendments must include service interventions that are
376 the least intrusive into the life of the parent and child, must
377 focus on clearly defined objectives, and must provide the most

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378 efficient path to quick reunification or permanent placement
379 given the circumstances of the case and the child's need for
380 safe and proper care. A copy of the amended plan must be
381 immediately given to the persons identified in s. 39.6011(7)(c)
382 ~~s. 39.6011(6)(b)~~.

383 Section 10. Present subsections (7) through (10) of section
384 39.621, Florida Statutes, are redesignated as subsections (8)
385 through (11), respectively, present subsections (9), (10), and
386 (11) of that section are amended, and a new subsection (7) is
387 added to that section, to read:

388 39.621 Permanency determination by the court.—

389 (7) If the court determines that the child's goal is
390 appropriate but the child will be in out-of-home care for more
391 than 12 months before achieving permanency, in those cases where
392 the goal is reunification or adoption, the court must hold
393 permanency status hearings for the child every 60 days until the
394 child reaches the specified permanency goal or the court
395 determines it is in the child's best interest to change the
396 permanency goal.

397 (10)(9) The case plan must list the tasks necessary to
398 finalize the permanency placement and shall be updated at the
399 permanency hearing unless the child will achieve permanency
400 within 60 days after the hearing if necessary. If a concurrent
401 case plan is in place, the court may choose between the
402 permanency goal options presented and shall approve the goal
403 that is in the child's best interest.

404 (11)(10) The permanency placement is intended to continue
405 until the child reaches the age of majority and may not be
406 disturbed absent a finding by the court that the circumstances

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407 of the permanency placement are no longer in the best interest
408 of the child.

409 (a) If, after a child is residing in the permanent
410 placement approved at the permanency hearing, a parent who has
411 not had his or her parental rights terminated makes a motion for
412 reunification or increased contact with the child, the court
413 shall hold a hearing to determine whether the dependency case
414 should be reopened and whether there should be a modification of
415 the order.

416 (b) At the hearing, the parent must demonstrate that the
417 safety, well-being, and physical, mental, and emotional health
418 of the child is not endangered by the modification.

419 (c) ~~(11)~~ The court shall base its decision concerning any
420 motion by a parent for reunification or increased contact with a
421 child on the effect of the decision on the safety, well-being,
422 and physical and emotional health of the child. Factors that
423 must be considered and addressed in the findings of fact of the
424 order on the motion must include:

425 1. ~~(a)~~ The compliance or noncompliance of the parent with
426 the case plan;

427 2. ~~(b)~~ The circumstances which caused the child's dependency
428 and whether those circumstances have been resolved;

429 3. ~~(c)~~ The stability and longevity of the child's placement;

430 4. ~~(d)~~ The preferences of the child, if the child is of
431 sufficient age and understanding to express a preference;

432 5. ~~(e)~~ The recommendation of the current custodian; and

433 6. ~~(f)~~ The recommendation of the guardian ad litem, if one
434 has been appointed.

435 Section 11. Paragraph (e) of subsection (1) of section

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436 39.806, Florida Statutes, is amended to read:

437 39.806 Grounds for termination of parental rights.—

438 (1) Grounds for the termination of parental rights may be
439 established under any of the following circumstances:

440 (e) When a child has been adjudicated dependent, a case
441 plan has been filed with the court, and:

442 1. The child continues to be abused, neglected, or
443 abandoned by the parent or parents. The failure of the parent or
444 parents to substantially comply with the case plan for a period
445 of 12 months after an adjudication of the child as a dependent
446 child or the child's placement into shelter care, whichever
447 occurs first, constitutes evidence of continuing abuse, neglect,
448 or abandonment unless the failure to substantially comply with
449 the case plan was due to the parent's lack of financial
450 resources or to the failure of the department to make reasonable
451 efforts to reunify the parent and child. The 12-month period
452 begins to run only after the child's placement into shelter care
453 or the entry of a disposition order placing the custody of the
454 child with the department or a person other than the parent and
455 the court's approval of a case plan having the goal of
456 reunification with the parent, whichever occurs first; or

457 2. The parent or parents have materially breached the case
458 plan by their action or inaction. Time is of the essence for
459 permanency of children in the dependency system. In order to
460 prove the parent or parents have materially breached the case
461 plan, the court must find by clear and convincing evidence that
462 the parent or parents are unlikely or unable to substantially
463 comply with the case plan before time to comply with the case
464 plan expires.

Page 16 of 17

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

590-02492-19

2019262c1

465 3. The child has been in care for any 12 of the last 22
466 months and the parents have not substantially complied with the
467 case plan so as to permit reunification under s. 39.522(2)
468 unless the failure to substantially comply with the case plan
469 was due to the parent's lack of financial resources or to the
470 failure of the department to make reasonable efforts to reunify
471 the parent and child.

472 Section 12. Subsection (5) of section 39.811, Florida
473 Statutes, is amended to read:

474 39.811 Powers of disposition; order of disposition.—

475 (5) If the court terminates parental rights, the court
476 shall enter a written order of disposition within 30 days after
477 conclusion of the hearing briefly stating the facts upon which
478 its decision to terminate the parental rights is made. An order
479 of termination of parental rights, whether based on parental
480 consent or after notice served as prescribed in this part,
481 permanently deprives the parents of any right to the child.

482 Section 13. This act shall take effect October 1, 2019.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 22, 2019

I respectfully request that **Senate Bill #262**, relating to Child Welfare, be placed on the:

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

Senator Ben Albritton
Florida Senate, District 26

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.6.19

Meeting Date

262

Bill Number (if applicable)

Topic CHILD WELFARE

Amendment Barcode (if applicable)

Name JEANNE BOGGS

Job Title DIR. POLICY & ADVOCACY

Address 411 E. COLLEGE AVE

Phone 850.561.1102

Street

TALLAHASSEE FL 32301

Email jeanne@flchildren.org

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing FLORIDA COALITION FOR CHILDREN

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.5.19

Meeting Date

262

Bill Number (if applicable)

Topic Child Welfare/ Permanency for children

Amendment Barcode (if applicable)

Name Alan Abramowitz

Job Title Executive Director

Address 600 S. Calhoun St.

Phone 850.922.7213

Street

Tallahassee, FL 32399

Email alan.abramowitz@ga1.fl.gov

City

State

Zip

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

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

Representing Guardian ad Litem

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

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

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SR 682

INTRODUCER: Senator Diaz

SUBJECT: Venezuela/Juan Guaidó

DATE: March 5, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cantella	Phelps	RC	Favorable

I. Summary:

SR 682 expresses solidarity with the people of Venezuela in their pursuit of a strong and stable democratic government under which they may enjoy the political freedoms and economic security that are the hallmarks of democracy and calls for the recognition of Juan Guaidó as Venezuela’s new president.

Legislative resolutions have no force of law and are not subject to the approval or veto powers of the Governor.

II. Present Situation:

The government of Venezuela is “a multiparty, constitutional republic[.]”¹ Nicolás Maduro was elected President in 2013 after the death of Hugo Chávez.² Maduro won that election “by 1.5 percent margin amid allegations of pre- and post-election fraud, including government interference, the use of state resources by the ruling party, and voter manipulation.”³

On May 20, 2018, Maduro won reelection for a second six-year term with 67.7 percent of the vote amidst high voter abstention.⁴ As a result, “most Venezuelans and much of the international community considered Maduro’s May 2018 reelection illegitimate.”⁵ Juan Guaidó, the leader of the opposition-controlled National Assembly of Venezuela, has declared himself interim president after asserting election was fraudulently conducted to ensure Maduro would win a

¹ U.S. Department of State, Bureau of Democracy, Human Rights and Labor. *Venezuela 2016 Human Rights Report, Executive Summary*, p. 1, <https://www.state.gov/documents/organization/265834.pdf> (last visited March 1, 2019).

² Congressional Research Service Insight Report, *Venezuela: Background and U.S. Relations*, available at <https://crsreports.congress.gov/product/pdf/R/R44841> (last visited March 4, 2019)

³ See n. 1. *supra*

⁴ Congressional Research Service Insight Report, *Venezuela’s 2018 Presidential Elections*, available at <https://webcache.googleusercontent.com/search?q=cache:p67-ogCAUbsJ:https://fas.org/sgp/crs/row/IN10902.pdf+&cd=1&hl=en&ct=clnk&gl=u> (last visited March. 1, 2019).

⁵ Congressional Research Service In Focus Report, *Venezuela: Political Crisis and U.S. Policy* available at <https://crsreports.congress.gov/product/pdf/IF/IF10230> (last visited March 4, 2019)

second six-year term.⁶ Guaidó cited Title V, Chapter II, Article 233 of the Constitution of the Bolivarian Republic of Venezuela, which states that if the president fails at his or her duties, or if there is an absence in leadership, the National Assembly's chief will take temporary charge of the nation.⁷

The United States, along with 53 other countries, have recognized Guaidó as the new interim President of Venezuela.⁸ President Trump released a statement on January 23, 2019 “officially recognizing the President of the Venezuelan National Assembly, Juan Guaidó, as the Interim President of Venezuela” and stating that the United States would press to restore Venezuela’s democracy and would “continue to hold the illegitimate Maduro regime directly responsible for any threats it may pose to the safety of the Venezuelan people.”⁹ U.S. Senator Marco Rubio joined President Trump in recognizing Juan Guaidó as the Provisional President of Venezuela.¹⁰ Consequently, Maduro cut diplomatic ties with the United States and told American diplomats to leave the country.

III. Effect of Proposed Changes:

SR 682 expresses solidarity with the people of Venezuela in their pursuit of a strong and stable democratic government under which they may enjoy the political freedoms and economic security that are the hallmarks of democracy and calls for the recognition of Juan Guaidó as Venezuela’s new president.

Legislative resolutions have no force of law and are not subject to the approval or veto powers of the Governor.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁶ Alex Ward, *Why thousands of protesters and Trump are demanding Venezuela’s president step down*, Vox (Jan. 23, 2019), <https://www.vox.com/world/2019/1/23/18193533/venezuela-maduro-protest-guaido-pence-trump-23-enero> (last visited March 4, 2019).

⁷ *Id.*

⁸ See n. 5, *supra*

⁹ White House statement, *Recognizing Venezuelan National Assembly President Juan Guaido as the Interim President of Venezuela*, January 23, 2019, available at <https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-recognizing-venezuelan-national-assembly-president-juan-guaido-interim-president-venezuela/> (last visited March 1, 2019).

¹⁰ US Senator Marco Rubio, *Rubio Welcomes US Recognition of Juan Guaidó as Venezuela’s Provisional President*, available at <https://www.rubio.senate.gov/public/index.cfm/press-releases?ID=36541F7F-8677-4FA1-85FF-E5E89A2A699A> (last visited March 4, 2019).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes:

This bill creates the following sections of the Florida Statutes:

This bill repeals the following sections of the Florida Statutes:

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Diaz

36-01686-19

2019682__

Senate Resolution

A resolution expressing solidarity with the people of Venezuela in their pursuit of a strong and stable democratic government under which they may enjoy the political freedoms and economic security that are the hallmarks of democracy.

WHEREAS, Venezuela was once a rich and prosperous country with a stable democratic form of government, recognized as South America's economic powerhouse because of its bountiful natural resources, and

WHEREAS, since 1998, when Hugo Chávez first came into power, and continuing today under the brutal dictatorship of Nicolás Maduro, Venezuela has become a shadow of its former self, crippled by an economic collapse that has resulted in shortages of food and the suspension of essential services, and

WHEREAS, the current dictatorship has robbed the Venezuelan people of their freedom of press, freedom of speech, and the right to peaceful assembly, and

WHEREAS, United States Senator Marco Rubio and President Donald J. Trump have joined other world leaders in calling for the recognition of Juan Guaidó as Venezuela's new president in light of his promise to re-establish the Constitution of Venezuela, which would guarantee and promote political rights, including the right to assemble for political purposes, for the people of Venezuela, and

WHEREAS, democracy is a necessary condition for the peace, stability, and development of Venezuela and the well-being of the Venezuelan people, NOW, THEREFORE,

Page 1 of 2

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36-01686-19

2019682__

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

That the Senate expresses solidarity with the people of Venezuela in their pursuit of a strong and stable democratic government under which they may enjoy the political freedoms and economic security that are the hallmarks of democracy.

BE IT FURTHER RESOLVED that the Senate calls for the recognition of Juan Guaidó as Venezuela's new president.

Page 2 of 2

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The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 19, 2019

I respectfully request that **Senate Resolution # 682**, relating to Venezuela/Juan Guaido, be placed on the:

- Committee agenda at your earliest possible convenience.
- Next committee agenda.

A handwritten signature in black ink, appearing to read "Manny Diaz, Jr.", written over a horizontal line.

Senator Manny Diaz, Jr.
Florida Senate, District 36

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 82

INTRODUCER: Rules Committee and Senator Bradley

SUBJECT: Vegetable Gardens

DATE: March 7, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Peacock</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 82 prohibits a county, municipality, or other political subdivision of the state from regulating vegetable gardens on residential properties. Additionally, any such local ordinance or regulation regarding vegetable gardens on residential properties is void and unenforceable. The bill also defines the term “vegetable garden.”

However, local governments may still adopt a local ordinance or regulation of a general nature which does not specifically regulate vegetable gardens, including, but not limited to, regulations and ordinances relating to water use during drought conditions, fertilizer use, or control of invasive species.

II. Present Situation:

Florida Constitution

The Florida Constitution establishes and describes the duties, powers, structure, and function of government in Florida, and establishes the basic law of the state.

Article I, section 2 of the Florida Constitution’s Declaration of Rights provides that “All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, *and to acquire, possess and protect property...*”

Article I, section 23 of the Florida Constitution's Right to Privacy provides that "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life..." The Florida Constitution's right to privacy is perceived to provide greater protection than the United States Constitution.¹

Home Rule and Preemption

Counties

A county without a charter has such power of self-government as provided by general² or special law, and may enact county ordinances not inconsistent with general law.³ Counties operating under county charters shall have all the powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.⁴ General law authorizes counties "the power to carry on county government"⁵ and to "perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."⁶

Municipalities

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,⁷ acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.⁸ Chapter 166, F.S., provides municipalities with broad home rule powers, respecting expressed limits on municipal powers established by the Florida Constitution, applicable laws, and county charters.⁹

Section 166.221, F.S., authorizes municipalities to levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter.

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies it precludes a local government from exercising authority in that particular area.¹⁰ Florida law recognizes two types of preemption: express and

¹ Overton and Giddings, *The Right to Privacy in Florida in the Age of Technology and the Twenty-First Century: A Need for Protection from Private and Commercial Intrusion*, Florida State University Law Review, Volume 25, Issue 1, Article 3, (1997), available at <https://ir.law.fsu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1394&context=lr>.

² Chapter 125, Part I, F.S.

³ FLA. CONST. art. VIII, s. 1(f).

⁴ FLA. CONST. art. VIII, s. 1(g).

⁵ Section 125.01(1), F.S.

⁶ Section 125.01(1)(w), F.S.

⁷ Section 166.011, F.S.

⁸ Florida House of Representatives, Publications, The Local Government Formation Manual 2017-2018, p. 16, available at <http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2017&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf>.

⁹ Section 166.021(4), F.S.

¹⁰ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹¹ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.¹² In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.¹³

In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.¹⁴ Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.¹⁵ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.¹⁶ Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.¹⁷

Village of Miami Shores Court Case

Residents of the Village of Miami Shores brought an action challenging the constitutionality of a zoning ordinance that prohibited the residents from growing vegetables in their front yard.¹⁸ Violators of the ordinance faced fines of \$50 per day. The residents claimed the ordinance violated their constitutional rights to acquire, possess, and protect property; and their right to privacy. In its opinion, the Court held that even constitutionally protected property rights are not absolute and are subject to the fair exercise of the State's powers including the power to promote the general welfare of the people through regulation. As a result, using a rational basis standard of review,¹⁹ the Court found that the ordinance was rationally related to the Village code's design standards and landscaping regulations. The ordinance was upheld, and the prohibition remains in place.

On February 9, 2018, the Florida Supreme Court denied the petition for review of the case.²⁰

III. Effect of Proposed Changes:

The bill provides that except as otherwise provided by law, a county, municipality, or other political subdivision may not regulate vegetable gardens on residential properties. Additionally, any such ordinance or regulation regarding vegetable gardens on residential properties is void and unenforceable.

¹¹ See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

¹² *Mulligan*, 934 So.2d at 1243.

¹³ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

¹⁴ See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

¹⁵ *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

¹⁶ *Id.*

¹⁷ *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

¹⁸ *Ricketts v. Village of Miami Shores*, 232 So. 3d 1095 (Fla. 3d DCA 2017).

¹⁹ The rational basis standard of review is a deferential standard that requires the reviewing court to uphold the enactment if it is "fairly debatable" whether the purpose of the law is legitimate and whether the methods adopted in the law serve that legitimate purpose. *Membreno & Florida Ass'n of Vendors, Inc. v. City of Hialeah*, 188 So. 3d 13, 25 (Fla. 3d DCA 2016).

²⁰ *Ricketts v. Village of Miami Shores*, 2018 WL 794717 (Fla. 2018).

However, the section does not preclude the adoption of a local ordinance or regulation of a general nature that does not specifically regulate vegetable gardens, including, but not limited to, regulations and ordinances relating to water use during drought conditions, fertilizer use, or control of invasive species.

The bill defines the term “vegetable garden” as a plot of ground where herbs, fruits, flowers, or vegetables are cultivated for human ingestion.

The bill also provides that it is the Legislature’s intent to encourage the development of sustainable cultivation of vegetables and fruits at all levels of production, including for personal consumption, as an important state interest.

The bill takes effect July 1, 2019.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Occupants of residential properties will be able to cultivate a vegetable garden without government intrusion.

C. Government Sector Impact:

Counties, municipalities, and other political subdivisions of the state are prohibited from regulating vegetable gardens on residential properties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 604.71 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.)

CS by Rules Committee on March 6, 2019:

The committee substitute defines the term “vegetable garden.”

B. Amendments:

None.



406426

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2019	.	
	.	
	.	
	.	

The Committee on Rules (Bradley) recommended the following:

Senate Amendment (with title amendment)

Between lines 30 and 31
insert:

(4) As used in this section, the term "vegetable garden"
means a plot of ground where herbs, fruits, flowers, or
vegetables are cultivated for human ingestion.

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

And the title is amended as follows:

Delete line 8



12 and insert:
13 exceptions; providing applicability; defining the term
14 "vegetable garden"; providing an

By Senator Bradley

5-00379-19

201982__

1 A bill to be entitled
 2 An act relating to vegetable gardens; creating s.
 3 604.71, F.S.; providing legislative intent;
 4 prohibiting local governments from regulating
 5 vegetable gardens on residential properties except as
 6 otherwise provided by law; specifying that such
 7 regulations are void and unenforceable; specifying
 8 exceptions; providing applicability; providing an
 9 effective date.

10

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

12

13 Section 1. Section 604.71, Florida Statutes, is created to
 14 read:

15

604.71 Local regulation of vegetable gardens.-

16

(1) The Legislature intends to encourage the development of
 17 sustainable cultivation of vegetables and fruits at all levels
 18 of production, including for personal consumption, as an
 19 important interest of the state.

20

(2) Except as otherwise provided by law, a county,
 21 municipality, or other political subdivision of this state may
 22 not regulate vegetable gardens on residential properties. Any
 23 such local ordinance or regulation regulating vegetable gardens
 24 on residential properties is void and unenforceable.

25

(3) This section does not preclude the adoption of a local
 26 ordinance or regulation of a general nature that does not
 27 specifically regulate vegetable gardens, including, but not
 28 limited to, regulations and ordinances relating to water use
 29 during drought conditions, fertilizer use, or control of

Page 1 of 2

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5-00379-19

201982__

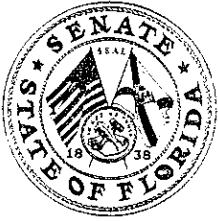
30 invasive species.

31

Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Finance and Tax
Innovation, Industry, and Technology
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR ROB BRADLEY
5th District

January 9, 2019

Senator Lizbeth Benacquisto, Chairman
Senate Committee on Rules
400 Senate Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Madam Chairman:

I respectfully request that Senate Bill 82, pertaining to vegetable gardens, be placed on the Rules committee agenda at your earliest convenience. The bill was reported favorably by the Committee on Community Affairs earlier this week,

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Bradley".

Rob Bradley

cc: John B. Phelps, Staff Director

REPLY TO:

- 1279 Kingsley Avenue, Suite 107, Orange Park, Florida 32073 (904) 278-2085
- 414 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

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)

3/6/19

Meeting Date

SB 82

Bill Number (if applicable)

Topic Vegetable Gardens

Amendment Barcode (if applicable)

Name Demetrius Minor

Job Title Director of Coalitions

Address Street

Phone

City

State

Zip

Email

Speaking: For Against Information

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

Representing Americans For Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/19

Meeting Date

8882

Bill Number (if applicable)

Topic Vegetable Gardens

Amendment Barcode (if applicable)

Name Mrs. Logan Padgett

Job Title Director of Communications & Public Affairs

Address 100 N. Duval St.
Street

Phone 850-386-3131

FL FL 32301
City State Zip

Email lpadgett@jamesmadison.org

Speaking: For Against Information

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

Representing The James Madison Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/2019

Meeting Date

SB 82

Bill Number (if applicable)

Topic VEGETABLE GARDENS

Amendment Barcode (if applicable)

Name Christian R. Camara -- Institute for Justice

Job Title Legislative Fellow

Address 901 N Glebe Road, Suite 900

Phone 305.721.1600

Street

Arlington

VA

22203

Email Christian@ChamberConsultantsFL.com

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Institute for Justice

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/19

Meeting Date

SB0082

Bill Number (if applicable)

Topic Vegetable Gardens

Amendment Barcode (if applicable)

Name Nicolette Springer

Job Title Legislative Analyst

Address Street

Phone

City

State

Zip

Email

Speaking: [] For [] Against [] Information

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

Representing League of Women Voters of Florida

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

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

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 186

INTRODUCER: Senators Lee and Book

SUBJECT: Public Records/Victim of Mass Violence

DATE: March 5, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Erickson</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 186 amends s. 406.136, F.S., and transfers this section to s. 119.071, F.S. The bill expands an existing public records exemption to make confidential and exempt from public disclosure any photographs and video and audio recordings that depict or record the killing of a victim of mass violence. Currently, s. 406.136, F.S., makes confidential and exempt only the photographs and video and audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties. The current exemption and the exemption created by the bill only apply to such photographs or recordings held by an agency.

The bill defines the term “killing of a victim of mass violence” as “all acts or events that cause or otherwise relate to the death of a person, not including the perpetrator, who is killed in an incident in which three or more people, not including the perpetrator, are killed by an intentional act of violence by another person.”

The bill specifies who may obtain such photographs and recordings, the process of obtaining these materials pursuant to a court order when good cause is shown, and factors a court must consider in determining good cause.

The bill provides that it is a third degree felony for any custodian of such photographs and recordings to willfully and knowingly violate the exemption requirements. The Legislature’s Office of Economic and Demographic Research preliminarily estimates this penalty provision will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds).

The exemption is retroactive and applies to all such photographs or recordings held by an agency. However, the exemption does not overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of the act, which restrict or limit access to any such photographs or recordings.

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

The bill provides that the exemptions in s. 119.071(4)(d), F.S., are subject to the Open Government Sunset Review Act, and stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill expands an existing public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill is effective upon becoming a law.

II. Present Situation:

Public Records Law

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states “[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.”⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

When creating or expanding a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹⁴ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

specified exceptions.¹⁷ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁸ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁹

Exemption for Photographs and Recordings Depicting the Killing of a Law Enforcement Officer

In 2011, the Legislature enacted s. 406.136, F.S., to make confidential and exempt from public disclosure those photographs and video and audio recordings that depict or record the killing of *a person*.²⁰ In 2016, the Legislature elected not to reenact the exemption as originally enacted but rather to narrow the exemption so that it applies only to photographs and video and audio recordings that depict the killing of *a law enforcement officer who was acting in accordance with his or her official duties*.²¹ These photographs and video and audio recordings are confidential and exempt from public record disclosure requirements, except that the exemption permits a surviving spouse to view or copy any such photograph or video recording and listen to or copy any such audio recording.²² If there is no surviving spouse, the deceased's surviving parents may access the records, and if there are no surviving parents, an adult child of the deceased may access the records.²³ The surviving relative who has the authority to access the records may designate in writing an agent to obtain them.²⁴

In addition, a local governmental entity or a state or federal agency, in furtherance of its official duties and pursuant to a written request, may view or copy any such photograph or video recording and listen to or copy any such audio recording. Unless otherwise required in the performance of the entity's or agency's duties, the identity of the deceased must remain confidential and exempt.²⁵

Persons other than those covered by these exceptions may only have access to such photographs and recordings if they obtain a court order. Upon a showing of good cause, a court may issue an order authorizing any person to view or copy any such photograph or video recording and listen to or copy any such audio recording. The court may prescribe any restrictions or stipulations that the court deems appropriate. In determining good cause, the court must consider:

¹⁷ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Chapter 2011-115, Laws of Fla. (creating s. 406.136, F.S., effective July 1, 2011). "Killing of a person" was defined to mean all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death. Section 406.136(1), F.S. (2015).

²¹ Chapter 2016-214, Laws of Fla. The term "killing of a law enforcement officer who was acting in accordance with his or her official duties" is defined to mean all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death. Section 406.136(1), F.S.

²² Section 406.136(2), F.S.

²³ *Id.*

²⁴ Section 406.136(3)(a), F.S.

²⁵ Section 406.136(3)(b), F.S.

- Whether such disclosure is necessary for the public evaluation of governmental performance;
- The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
- The availability of similar information in other public records, regardless of form.²⁶

In all cases, the viewing, copying, listening to, or other handling of any such photograph or recording must be under the direct supervision of the custodian of the record or the custodian's designee.²⁷

If a petition is filed with the court to view, listen to, or copy such photograph or recording, a surviving spouse must be given reasonable notice that the petition has been filed, a copy of the petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter. If there is no surviving spouse, notice must be given to the parents of the deceased and, if the deceased has no living parent, then to the adult children of the deceased.²⁸

It is a third degree felony for any custodian of such photographs or recordings to willfully and knowingly violate these provisions.²⁹ The same penalty applies to anyone who willfully and knowingly violates a court order issued under these provisions.³⁰

The exemption does not apply to photographs or video or audio recordings submitted as part of a criminal or administrative proceeding; however, nothing prohibits a court in such proceedings, upon good cause shown, from restricting or otherwise controlling the disclosure of a killing, crime scene, or similar photograph or video or audio recording in the same manner as previously described.³¹

The exemption is retroactive and applies to all such photographs or recordings, regardless of whether the killing of the person occurred before, on, or after July 1, 2011. However, the exemption does not overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of the act, which restrict or limit access to any such photographs or recordings.³²

Exemptions Which May Apply to Murder Victims

Several existing public records exemptions may apply to certain records or information relating to murder victims:

²⁶ Section 406.136(4), F.S.

²⁷ Section 406.136(4)(c), F.S.

²⁸ Section 406.136(5), F.S.

²⁹ Section 406.136(6)(a), F.S. A third degree felony is punishable by a term of imprisonment up to 5 years, a fine up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

³⁰ Section 406.136(6)(b), F.S.

³¹ Section 406.136(6)(c), F.S.

³² Section 406.136(7), F.S.

- Active criminal intelligence information³³ and active criminal investigative information³⁴ are exempt from public disclosure;³⁵
- The address of a victim of an incident of mass violence is exempt from public disclosure;³⁶ and
- A photograph or video or audio recording of an autopsy held by a medical examiner is confidential and exempt from public disclosure.³⁷

III. Effect of Proposed Changes:

The bill amends s. 406.136, F.S., and transfers this section to s. 119.071, F.S.³⁸ The bill expands an existing public records exemption to make confidential and exempt photographs and video and audio recordings that depict or record *the killing of a victim of mass violence*. Currently, s. 406.136, F.S., makes confidential and exempt the photographs and video and audio recordings that depict or record *the killing of a law enforcement officer who was acting in accordance with his or her official duties*. The current exemption and the exemption created by the bill only apply to such photographs or recordings held by an agency.

The bill defines the term “killing of a victim of mass violence” as “all acts or events that cause or otherwise relate to the death of a person, not including the perpetrator, who is killed in an incident in which three or more people, not including the perpetrator, are killed by an intentional act of violence by another person.”³⁹

³³ Section 119.011(3)(a), F.S., defines “criminal intelligence information” as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Such information is “active” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. Section 119.011(3)(d)1., F.S.

³⁴ Section 119.011(3)(b), F.S., defines “criminal investigative information” as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Such information is “active” as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. Section 119.011(3)(d)2., F.S.

³⁵ Criminal intelligence information and criminal investigative information does not include the name, sex, age, and address of a person arrested or of the victim of a crime. Section 119.011(3)(c) 2., F.S.

³⁶ Section 119.071(2)(o), F.S. For purposes of this paragraph, the term “incident of mass violence” means an incident in which four or more people, not including the perpetrator, are severely injured or killed by an intentional and indiscriminate act of violence of another. *Id.*

³⁷ Section 406.135(2), F.S. The exemption contains an exception for the surviving spouse (and other designated persons if the spouse is deceased) and a local governmental entity, or a state or federal agency, in furtherance of its official duties, without a court order. Section 406.135(2) and (3), F.S. The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording of an autopsy and may prescribe any restrictions or stipulations that the court deems appropriate. Section 406.135(4)(a), F.S. A criminal or administrative proceeding is exempt from s. 406.135, F.S., but unless otherwise exempted, is subject to all other provisions of ch. 119, F.S., provided however that this section does not prohibit a court in such proceedings upon good cause shown from restricting or otherwise controlling the disclosure of an autopsy, crime scene, or similar photograph or video or audio recordings in the manner prescribed in this section. Section 406.135(7), F.S.

³⁸ Specifically, s. 406.136, F.S., is transferred, renumbered as s. 119.071(2)(p), F.S., and amended.

³⁹ This definition differs from the definition of “incident of mass violence” in s. 119.071(2)(o), F.S., which exempts from public disclosure the address of a victim of an incident of mass violence. *See* Footnote 36 of this analysis.

The bill also retains provisions relevant to the current exemption and applies them to the new exemption, including:

- Specifying who may obtain such photographs and recordings, the process of obtaining these materials pursuant to a court order when good cause is shown, and factors a court must consider in determining good cause;
- Providing that it is a third degree felony for any custodian of such photographs and recordings to willfully and knowingly violate the exemption requirements;
- Specifying that the exemption is retroactive and applies to all such photographs or recordings; and
- Providing that the exemption does not overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of this act, which restrict or limit access to such photographs or recordings.⁴⁰

The bill provides a public necessity statement as required by the State Constitution. The statement includes legislative findings regarding photographs and video and audio recordings that depict or record the killing of a victim of mass violence. These findings indicate:

- Such photographs and recordings render a graphic and often disturbing visual or aural representation of the deceased which, if heard, viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased and detract from the memory of the deceased;
- Widespread unauthorized dissemination of such photographs and recordings would subject the immediate family of the deceased to continuous injury;
- Dissemination of such photographs and recordings is harmful to the public because terrorists will use them to attract followers, bring attention to their cause, and inspire others to kill, and such dissemination may also educe violent acts by the mentally ill or morally corrupt;
- There continues to be other types of available information, such as crime scene reports, which are available and which are less intrusive and injurious to the immediate family of the deceased and continue to provide for public oversight; and
- The exemption should be given retroactive application because it is remedial in nature.

The bill provides for repeal of the exemption on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill is effective upon becoming a law.⁴¹

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴⁰ See “Present Situation” section of this analysis for a detailed discussion of these provisions.

⁴¹ The bill also directs the Division of Law Revision to replace the phrase “the effective date of this act” wherever it occurs in this act with the date this act becomes a law.

B. Public Records/Open Meetings Issues:***Voting Requirement***

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. Because the bill expands a public record exemption, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law.

There are substantial legislative findings in the statement of public necessity in support of the public records exemption. Further, upon a showing of good cause, a court may issue an order authorizing any person to view or copy any such photograph or video or audio recording (subject to any restrictions or stipulations that the court deems appropriate). For these reasons, the bill appears to be no broader than necessary to accomplish its stated purpose.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

The bill expands an existing public records exemption to make confidential and exempt photographs or video or audio recordings that depict or record the killing of a victim of mass violence.

The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on agencies relating to training and redaction of exempt information. However, costs may be minimal if they can be absorbed by the agencies because training and redaction of exempt information are part of the day-to-day responsibilities of agencies.

The bill provides that it is a third degree felony for any custodian of photographs and video and audio recordings that depict or record the killing of a victim of mass violence to willfully and knowingly violate the exemption requirements.

The Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research preliminarily estimates this penalty provision will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill expands an existing public records exemption to make confidential and exempt photographs or video or audio recordings that depict or record the killing of a victim of mass violence. The bill defines the term "killing of a victim of mass violence" as "all acts or events that cause or otherwise relate to the death of a person, not including the perpetrator, who is killed in an incident in which *three or more people*, not including the perpetrator, are *killed* by an intentional act of violence by another person."

In 2018, the Legislature created s. 119.071(2)(o), F.S., which provides a public record exemption for the address of a victim of an incident of mass violence.⁴² For purposes of this paragraph, the term "incident of mass violence" means an "incident in which *four or more people*, not including the perpetrator, are severely *injured or killed* by an intentional and indiscriminate act of violence of another."

⁴² Chapter 2018- 2, Laws of Fla. The term "victim" is defined to mean a person killed or injured during an incident of mass violence, not including the perpetrator.

The legislature may want to consider conforming the definitions related to mass violence in subsection (o) and (p) to be consistent.

VIII. Statutes Affected:

This bill substantially amends section 406.136 of the Florida Statutes, and transfers this section to section 119.071 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Lee

20-01583A-19

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A bill to be entitled

An act relating to public records; transferring, renumbering, and amending s. 406.136, F.S.; defining the term "killing of a victim of mass violence"; expanding an existing exemption from public records requirements for a photograph or a video or audio recording held by an agency which depicts or records the killing of a law enforcement officer to include a photograph or a video or audio recording held by an agency which depicts or records the killing of a victim of mass violence; providing criminal penalties; providing retroactive applicability; providing for future legislative review and repeal of the exemption; conforming provisions to changes made by the act; providing a statement of public necessity; providing a directive to the Division of Law Revision; providing an effective date.

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

Section 1. Section 406.136, Florida Statutes, is transferred, renumbered as paragraph (p) of subsection (2) of section 119.071, Florida Statutes, and amended, to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(p)1.~~(1)~~ As used in this paragraph ~~section~~, the term:

a. "Killing of a law enforcement officer who was acting in accordance with his or her official duties" means all acts or

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events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.

b. "Killing of a victim of mass violence" means all acts or events that cause or otherwise relate to the death of a person, not including the perpetrator, who is killed in an incident in which three or more people, not including the perpetrator, are killed by an intentional act of violence by another person.

2.~~(2)~~ A photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that a surviving spouse of the decedent may view and copy any such photograph or video recording or listen to or copy any such audio recording. If there is no surviving spouse, ~~then~~ the surviving parents shall have access to such records. If there is no surviving spouse or parent, ~~the then an~~ adult children ~~child~~ shall have access to such records.

3.a.~~(3)(a)~~ The deceased's surviving relative, with whom authority rests to obtain such records, may designate in writing an agent to obtain such records.

b.~~(b)~~ A local governmental entity, or a state or federal agency, in furtherance of its official duties, pursuant to a written request, may view or copy a photograph or video recording or may listen to or copy an audio recording of the killing of a law enforcement officer who was acting in

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59 accordance with his or her official duties or the killing of a
60 victim of mass violence, and, unless otherwise required in the
61 performance of ~~its their~~ duties, the identity of the deceased
62 shall remain confidential and exempt.

63 ~~c.(e)~~ The custodian of the record, or his or her designee,
64 may not permit any other person to view or copy such photograph
65 or video recording or listen to or copy such audio recording
66 without a court order.

67 4.a.(4)(a) The court, upon a showing of good cause, may
68 issue an order authorizing any person to view or copy a
69 photograph or video recording that depicts or records the
70 killing of a law enforcement officer who was acting in
71 accordance with his or her official duties or the killing of a
72 victim of mass violence, or to listen to or copy an audio
73 recording that depicts or records the killing of a law
74 enforcement officer who was acting in accordance with his or her
75 official duties or the killing of a victim of mass violence, and
76 may prescribe any restrictions or stipulations that the court
77 deems appropriate.

78 ~~b.(b)~~ In determining good cause, the court shall consider:

79 ~~(I)1-~~ Whether such disclosure is necessary for the public
80 evaluation of governmental performance;

81 ~~(II)2-~~ The seriousness of the intrusion into the family's
82 right to privacy and whether such disclosure is the least
83 intrusive means available; and

84 ~~(III)3-~~ The availability of similar information in other
85 public records, regardless of form.

86 ~~c.(e)~~ In all cases, the viewing, copying, listening to, or
87 other handling of a photograph or video or audio recording that

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88 depicts or records the killing of a law enforcement officer who
89 was acting in accordance with his or her official duties or the
90 killing of a victim of mass violence must be under the direct
91 supervision of the custodian of the record or his or her
92 designee.

93 ~~5.(5)~~ A surviving spouse shall be given reasonable notice
94 of a petition filed with the court to view or copy a photograph
95 or video recording that depicts or records the killing of a law
96 enforcement officer who was acting in accordance with his or her
97 official duties or the killing of a victim of mass violence, or
98 to listen to or copy any such audio recording, a copy of such
99 petition, and reasonable notice of the opportunity to be present
100 and heard at any hearing on the matter. If there is no surviving
101 spouse, ~~then~~ such notice must be given to the parents of the
102 deceased and, if the deceased has no surviving living parent,
103 ~~then~~ to the adult children of the deceased.

104 6.a.(6)(a) Any custodian of a photograph or video or audio
105 recording that depicts or records the killing of a law
106 enforcement officer who was acting in accordance with his or her
107 official duties or the killing of a victim of mass violence who
108 willfully and knowingly violates this paragraph section commits
109 a felony of the third degree, punishable as provided in s.
110 775.082, s. 775.083, or s. 775.084.

111 ~~b.(b)~~ Any person who willfully and knowingly violates a
112 court order issued pursuant to this paragraph section commits a
113 felony of the third degree, punishable as provided in s.
114 775.082, s. 775.083, or s. 775.084.

115 ~~c.(e)~~ A criminal or administrative proceeding is exempt
116 from this paragraph section but, unless otherwise exempted, is

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117 subject to all other provisions of chapter 119, ~~provided~~
 118 however, ~~that~~ this paragraph section does not prohibit a court
 119 in a criminal or administrative proceeding upon good cause shown
 120 from restricting or otherwise controlling the disclosure of a
 121 killing, crime scene, or similar photograph or video or audio
 122 recording recordings in the manner prescribed in this paragraph
 123 herein.

124 ~~7.(7)~~ This exemption in this paragraph shall be given
 125 retroactive application and shall apply to all photographs or
 126 video or audio recordings that depict or record the killing of a
 127 law enforcement officer who was acting in accordance with his or
 128 her official duties or the killing of a victim of mass violence,
 129 regardless of whether the killing of the person occurred before,
 130 on, or after the effective date of this act July 1, 2011.

131 However, nothing in this paragraph herein is intended to, nor
 132 may be construed to, overturn or abrogate or alter any existing
 133 orders duly entered into by any court of this state, as of the
 134 effective date of this act, which restrict or limit access to
 135 any photographs or video or audio recordings that depict or
 136 record the killing of a law enforcement officer who was acting
 137 in accordance with his or her official duties or the killing of
 138 a victim of mass violence.

139 ~~8.(8)~~ This paragraph section only applies only to such
 140 photographs and video and audio recordings held by an agency ~~as~~
 141 ~~defined in s. 119.011~~.

142 9. This paragraph is subject to the Open Government Sunset
 143 Review Act in accordance with s. 119.15 and shall stand repealed
 144 on October 2, 2024, unless reviewed and saved from repeal
 145 through reenactment by the Legislature.

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146 Section 2. (1) The Legislature finds that it is a public
 147 necessity that photographs and video and audio recordings that
 148 depict or record the killing of a victim of mass violence be
 149 made confidential and exempt from s. 119.07(1), Florida
 150 Statutes, and s. 24(a), Article I of the State Constitution. The
 151 Legislature finds that photographs and video and audio
 152 recordings that depict or record the killing of a victim of mass
 153 violence render a graphic and often disturbing visual or aural
 154 representation of the deceased. Such photographs and video and
 155 audio recordings provide a view of the deceased in the final
 156 moments of life, in which they are often bruised, bloodied,
 157 broken, baring bullet wounds or other wounds, lacerated,
 158 dismembered, or decapitated. As such, photographs and video and
 159 audio recordings that depict or record the killing of a victim
 160 of mass violence are highly sensitive representations of the
 161 deceased which, if heard, viewed, copied, or publicized, could
 162 result in trauma, sorrow, humiliation, or emotional injury to
 163 the immediate family of the deceased and detract from the memory
 164 of the deceased. The Legislature recognizes that the existence
 165 of the Internet and the proliferation of personal computers and
 166 cellular telephones throughout the world encourages and promotes
 167 the wide dissemination of such photographs and video and audio
 168 recordings 24 hours a day and that widespread unauthorized
 169 dissemination of such photographs and video and audio recordings
 170 would subject the immediate family of the deceased to continuous
 171 injury.

172 (2) In addition to the emotional and mental injury that
 173 these photographs and video and audio recordings may cause
 174 family members, the Legislature is also concerned that

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175 dissemination of photographs and video and audio recordings that
176 depict or record the killing of a victim of mass shooting is
177 harmful to the public. The Legislature is gravely concerned and
178 saddened by the horrific mass killings perpetrated at the Pulse
179 nightclub in Orlando, at the Fort Lauderdale-Hollywood
180 International Airport, and at Marjory Stoneman Douglas High
181 School. The Legislature is concerned that, if these photographs
182 and video and audio recordings are released, terrorists will use
183 them to attract followers, bring attention to their causes, and
184 inspire others to kill. The Legislature also finds that
185 dissemination of these photographs and video and audio
186 recordings may also educe violent acts by persons who have a
187 mental illness or who are morally corrupt.

188 (3) The Legislature further recognizes that other types of
189 information, such as crime scene reports, continue to be
190 available which are less intrusive and injurious to the
191 immediate family of the deceased and continue to provide for
192 public oversight. The Legislature further finds that the
193 exemption provided in this act should be given retroactive
194 application because it is remedial in nature.

195 Section 3. The Division of Law Revision is directed to
196 replace the phrase "the effective date of this act" wherever it
197 occurs in this act with the date this act becomes a law.

198 Section 4. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 20, 2019

I respectfully request that **Senate Bill # 186**, relating to Public Records/ Victim of Mass Violence, be placed on the:

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

A handwritten signature in cursive script that reads "Tom Lee".

Senator Tom Lee
Florida Senate, District 20

THE FLORIDA SENATE

APPEARANCE RECORD

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

03-06-19

Meeting Date

SB 0186

Bill Number (if applicable)

Topic PUBLIC RECORDS/VICTIM OF MASS VIOLENCE

Amendment Barcode (if applicable)

Name CAPTAIN MATT BUTLER

Job Title ORANGE COUNTY SHERIFF'S OFFICE

Address 2500 W. COLONIAL DR.

Phone 407-254-7000

Street

ORLANDO

FL

32804

Email MATT.BUTLER@OCFL.MET

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing ORANGE COUNTY SHERIFF'S OFFICE

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.

S-001 (10/14/14)

APPEARANCE RECORD

3/6/19

Meeting Date

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

SB 186

Bill Number (if applicable)

Topic Public Records Exemption

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tally FL 32302

City

State

Zip

Email scott.mccoy@spccenter.org

Speaking: [] For [x] Against [] Information

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

Representing SPLC Action Fund

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

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

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 7012

INTRODUCER: Rules Committee and Innovation, Industry and Technology Committee

SUBJECT: Vaping

DATE: March 6, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
<u>Oxamendi</u>	<u>Imhof</u>		IT Submitted as Comm. Bill/Fav
1. <u>Oxamendi</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7012 implements Amendment 9 to the Florida Constitution, which was approved by the voters of Florida on November 6, 2018, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces. The use of e-cigarettes is commonly referred to as vaping.

The bill permits the use of vapor-generating electronic devices in the enclosed indoor workplace of “vapor-generating device retailer” or “retail vape shop”, which is defined as “any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and components, parts, and accessories for such products, in which the sale of other products or services is merely incidental.” The bill also permits vaping at the same locations currently authorized to permit tobacco smoking, i.e., private residences whenever not being used for certain commercial purposes, stand-alone bars, designated rooms in hotels and other public lodging establishments, retail tobacco shops, facilities owned or leased by a membership association, smoking cessation programs, medical or scientific research, and customs smoking rooms in airport in-transit lounges.

The bill amends the state’s preemption of tobacco smoking regulation in s. 386.209, F.S., to adopt and implement the grant of authority to local governments by Amendment 9 to adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

The effective date of the bill is July 1, 2019.

II. Present Situation:

The Florida Clean Indoor Air Act (act), part II of ch. 386, F.S., regulates tobacco smoking in Florida. The legislative purpose of the act is to protect people from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution.¹

Florida Constitution

Tobacco Smoking

On November 5, 2002, the voters of Florida approved Amendment 6 to the Florida Constitution, to prohibit tobacco smoking in enclosed indoor workplaces.

Codified as s. 20, Art. X, Florida Constitution, the section defines an “enclosed indoor workplace,” in part, as “any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers ... without regard to whether work is occurring at any given time.”

The term “work” is defined by the section as “any persons providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not.”

The section provides limited exceptions for private residences “whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof,” retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments, and stand-alone bars.

Vaping

On November 6, 2018, the voters of Florida approved Amendment 9 to the Florida Constitution, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces.² The use of e-cigarettes is commonly referred to as vaping.

Amendment 9 adds vapor-generating electronic devices to the current prohibition against tobacco smoking in enclosed indoor workplaces. The amendment makes exceptions for the same enclosed indoor workplace locations where tobacco smoking is permitted and further permits tobacco smoking and the use of vapor-generating electronic devices in a “vapor-generating electronic device retailer.”

The amendment defines a “vapor-generating electronic device retailer” to mean “any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and components, parts, and accessories for such products, in which the sale of other products or services is merely incidental.”

¹ Section 386.202, F.S.

² Amendment 9 also bans offshore oil and natural gas drilling on lands beneath state waters. *See* FLA. CONST. art II, s. 7.

A vapor-generating electronic device is defined as “any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance.” The definition includes electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, and other similar devices or products, replacement cartridge for such devices, and other containers of a solution or other substance intended to be used with or within the devices.

Section 20, Art. X, Florida Constitution, as amended, directs the Legislature to implement the “amendment in a manner consistent with its broad purpose and stated terms.” The implementing legislation must have an effective date of no later than July 1 of the year following approval (July 1, 2019). The implementing legislation must also provide civil penalties for violations; provide for administrative enforcement; and require and authorize agency rules for implementation and enforcement. The Legislature may enact legislation more restrictive of tobacco smoking or vaping than that provided in the State Constitution.

Under the amendment, local governments may adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

Florida Clean Indoor Air Act

The Legislature implemented the tobacco smoking ban by enacting ch. 2003-398, L.O.F., effective July 1, 2003, which amended pt. II of ch. 386, F.S., and created s. 561.695, F.S., of the Beverage Law. Part II of ch. 386, F.S., is known as the Florida Clean Indoor Air Act (act).

The act implements the constitutional amendment’s prohibition. Specifically, s. 386.204, F.S., prohibits smoking in an enclosed indoor workplace, unless the act provides an exception. An “enclosed indoor workplace” is:

any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include, without limitation, uncovered openings; screened or otherwise partially covered openings; or open or closed windows, jalousies, doors, or the like. A place is “predominantly” bounded by physical barriers during any time when both of the following conditions exist:

- (a) It is more than 50 percent covered from above by a physical barrier that excludes rain, and
- (b) More than 50 percent of the combined surface area of its sides is covered by closed physical barriers. In calculating the percentage of side surface area covered by closed physical barriers, all solid surfaces that block air flow, except railings, must be considered as closed physical barriers. This section applies to all such enclosed indoor workplaces and enclosed parts thereof without regard to whether work is occurring at any given time.
- (c) The term does not include any facility owned or leased by and used exclusively for noncommercial activities performed by the members and guests of a membership association, including social gatherings, meetings,

dining, and dances, if no person or persons are engaged in work as defined in [s. 386.203(12), F.S.]³

The act adopts and implements the amendment's definitions and adopts the constitution's exceptions for private residences whenever not being used for certain commercial purposes;⁴ stand-alone bars;⁵ designated smoking rooms in hotels and other public lodging establishments;⁶ and retail tobacco shops, including businesses that manufacture, import, or distribute tobacco products and tobacco loose leaf dealers.⁷

The act permits tobacco smoking in any facility owned or leased by and used exclusively for noncommercial activities performed by the members and guests of a membership association,⁸ including social gatherings, meetings, dining, and dances, if no person or persons are engaged in work. It also permits tobacco smoking in an enclosed indoor workplace, to the extent that tobacco smoking is an integral part of a smoking cessation program approved by the department, or medical or scientific research conducted therein, provided each room in which tobacco smoking is permitted must comply with specified signage requirements.⁹

A customs smoking room in an airport in-transit lounge under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland Security may also permit tobacco smoking, provided it complies with ventilation and work restrictions specified in s. 386.205.¹⁰

Section 386.207, F.S., provides for enforcement of the act by the Department of Health (DOH) and the Department of Business and Professional Regulation (DBPR) within each department's specific areas of regulatory authority. Sections 386.207(1) and 386.2125, F.S., grant rulemaking authority to the DOH and the DBPR and require that the departments consult with the State Fire Marshal during the rulemaking process.

Section 386.207(3), F.S., provides penalties for violations of the act by proprietors or persons in charge of an enclosed indoor workplace licensed by the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.¹¹ The penalty for a first violation is a fine of not less than \$250 and not more than \$750. The act provides fines for subsequent violations in the amount of not less than \$500 and not more than \$2,000.

Penalties for individuals who violate the act are provided in s. 386.208, F.S.. A person who violates the smoking prohibition commits a noncriminal violation and is subject to a fine in the

³ Section 386.203(5), F.S.

⁴ Section 386.2045(1), F.S. *See also* definition of the term "private residence" in s. 386.203(1), F.S.

⁵ Section 386.2045(4), F.S. *See also* definition of the term "stand-alone bar" in s. 386.203(11), F.S.

⁶ Section 386.2045(3), F.S. *See also* definition of the term "designated guest smoking room" in s. 386.203(4), F.S.

⁷ Section 386.2045(2), F.S. *See also* definition of the term "retail tobacco shop" in s. 386.203(8), F.S.

⁸ Section 386.203(13), F.S., defines a "membership association" as "a charitable, nonprofit, or veterans' organization that holds a current exemption under s. 501(c)(3), (4), (7), (8), (10), or (19) or s. 501(d) of the Internal Revenue Code."

⁹ Section 386.2045(5), F.S.

¹⁰ Section 386.2045(6), F.S.

¹¹ The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(8), F.S.

amount of not more than \$100 for a first violation and not more than \$500 for a subsequent violation.

Smoking Prohibited Near School Property

Section 386.212(1), F.S., prohibits smoking by any person under 18 years of age in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. The prohibition does not apply to any person occupying a moving vehicle or within a private residence.

Enforcement

Section 386.212(2), F.S., authorizes law enforcement officers to issue citations in the form as prescribed by a county or municipality to any person violating the provisions of s. 386, F.S., and prescribes the information that must be included in the citation.

The issuance of a citation under s. 386.212(2), F.S., constitutes a civil infraction punishable by a maximum civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco “alternative to suspension” program.¹²

If a person fails to comply with the directions on the citation, the person would waive his or her right to contest the citation and an order to show cause may be issued by the court.¹³

Regulation of Tobacco Smoking Preempted to State

Section 386.209, F.S., provides that the act expressly preempts regulation of tobacco smoking to the state and supersedes any municipal or county ordinance on the subject. The state preemption does not apply to local regulation of the use of e-cigarettes.

The state’s preemption of tobacco smoking regulation, s. 386.209, F.S., permits school districts to further restrict smoking by persons on school district property.

Vaping

Health Risks Associated with Secondhand E-Cigarette Vapor

Little is known about the health risks associated with electronic cigarettes (also referred to as “e-cigarettes,” “nicotine dispensing devices,” and “vapor-generating electronic devices”) and the health risks associated with passive (secondhand) exposure to the vapor from e-cigarettes, including the chemicals in the aerosol from e-cigarettes. A recent review of scientific literature found that the majority of scientific studies determined that secondhand exposure to vapor from

¹² Section 386.212(3), F.S.

¹³ Section 386.212(4), F.S.

e-cigarettes may pose a health risk to bystanders.¹⁴ Measurable traces of cancer-causing chemicals, such as formaldehyde and acetaldehyde, have been found in e-cigarette vapor.¹⁵

Florida Law and Nicotine Dispensing Devices

Section 877.112, F.S., provides for the regulation of nicotine dispensing devices and nicotine products, such as electronic cigarettes (e-cigarettes).

The term “nicotine dispensing device”, as defined in s. 877.112(1)(a), F.S., and the term “vapor-generating electronic device” as defined in s. 20, Art. X, Florida Constitution, are substantively identical.

Section 877.112, F.S., extends the current prohibitions related to the sale tobacco products to prohibit the sale, gifting, possession, or use of nicotine dispensing devices and nicotine products to and by persons under 18 years of age.

A “nicotine dispensing device” is:

any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.¹⁶

A “nicotine product” is any product that contains nicotine, including liquid nicotine intended for human consumption, whether inhaled, chewed, absorbed, dissolved or ingested by any means. The definition does not include a tobacco product under Florida law, a drug or device under federal law, or a product that contains incidental nicotine.¹⁷

The sale or giving of nicotine products or nicotine dispensing devices to any person under 18 years of age is prohibited and punishable as a second degree misdemeanor, which is punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed \$500. It is a complete defense to a violation if an underage person falsely misrepresented his or her age, the underage person had the appearance to a prudent person to 18 years of age or older, and the person carefully checked, and relied on, the driver license or identification card of the recipient.¹⁸

¹⁴ See Hess, Isabel MR., Lachireddy, K., & Capon, A. *A Systematic Review of the Health Risks From Passive Exposure to Electronic Cigarette Vapor*. 26 PUBLIC HEALTH RES. PRACT. 2 (2016). The study is available at: <http://www.phrp.com.au/issues/april-2016-volume-26-issue-2/a-systematic-review-of-the-health-risks-from-passive-exposure-to-electronic-cigarette-vapour/> (Last visited January 25, 2019).

¹⁵ See Farsalinos, Konstantinos E and Riccardo Polosa. “Safety evaluation and risk assessment of electronic cigarettes as tobacco cigarette substitutes: a systematic review” *Therapeutic advances in drug safety* vol. 5,2 (2014): 67-86. The study is available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4110871/> (Last visited January 25, 2019).

¹⁶ Section 877.112(1)(a), F.S.

¹⁷ Section 877.112(1)(b), F.S.

¹⁸ Section 877.112(5), F.S.

It is a noncriminal violation for persons under 18 years of age to possess, purchase, or misrepresent their age or military service to obtain nicotine products or nicotine dispensing devices.¹⁹ The penalty for a violation is 16 hours of community service or a \$25 fine for a first violation, and attendance at a school-approved anti-tobacco and nicotine program, if available. A second violation within 12 weeks of the first violation requires a \$25 fine. A third violation within 12 weeks of the first violation requires the suspension or revocation of the person's driver license, as provided in s. 322.056, F.S.²⁰

III. Effect of Proposed Changes:

The bill amends part II of ch. 386, F.S., to add the use vapor-generating electronic devices or vaping to the current prohibition against tobacco smoking in enclosed indoor workplaces.

Definitions

As provided in s. 20, Art. X, Florida Constitution, by Amendment 9, the bill permits the use of vapor-generating electronic devices in the enclosed indoor workplace of "vapor-generating device retailer" or "retail vape shop", which is defined as "any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and components, parts, and accessories for such products, in which the sale of other products or services is merely incidental."

The bill amends s. 386.203, F.S., to adopt and implement the definition for "vapor-generating electronic device" provided in s. 20, Art. X, Florida Constitution, by Amendment 9.

The bill clarifies that the definition for a "vapor-generating electronic device retailer" also applies to a "retail vape shop."

The bill also defines the terms "vape" or "vaping" as "to inhale or exhale vapor produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a nicotine product or any other substance." The bill also provides that the terms "vape" or "vaping" do not include the mere possession of a vapor-generating electronic device.

"Vapor" is defined by the bill to mean "aerosolized or vaporized nicotine or other aerosolized or vaporized substance produced by a vapor-generating electronic device or exhaled by the person using such a device."

Exempted Locations

The bill permits vaping at the same locations currently authorized to permit tobacco smoking, i.e., private residences whenever not being used for certain commercial purposes, stand-alone bars, designated rooms in hotels and other public lodging establishments, retail tobacco shops,

¹⁹ Sections 877.112(6) and (7), F.S.

²⁰ Section 877.112(8), F.S.

facilities owned or leased by a membership association, and customs smoking rooms in airport in-transit lounges.

The bill amends s. 561.695, F.S., relating to the tobacco smoking exception for stand-alone bars, to permit the use of vapor-generating devices or “vaping” at these authorized locations.

Penalties

The bill also applies the existing civil penalties in s. 386.207, F.S., to violations of the vaping prohibition by the proprietors or persons in charge of an enclosed indoor workplace licensed by the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

Section 386.208, F.S., is reenacted by the bill to incorporate the existing noncriminal fines applicable to persons who violate the smoking or vaping prohibition.

Preemption

The bill amends the state’s preemption of tobacco smoking regulation in s. 386.209, F.S., to adopt and implement the authority for local governments under Amendment 9 to adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

Effective Date

The effective date of the bill is July 1, 2019.

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:

On November 6, 2018, the voters of Florida approved Amendment 9 to the State Constitution, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces in the same manner as the

prohibition against tobacco smoking in enclosed indoor workplaces. Section 20, Art. X, Florida Constitution, as amended by Amendment 9, directs the Legislature to implement the “amendment in a manner consistent with its broad purpose and stated terms.” The implementing legislation must have an effective date of no later than July 1 of the year following approval (July 1, 2019). The implementing legislation must also provide civil penalties for violations; provide for administrative enforcement; and require and authorize agency rules for implementation and enforcement. The Legislature may enact legislation more restrictive of tobacco smoking or vaping than that provided in the State Constitution.

Section 20, Art. X, Florida Constitution, prohibits tobacco smoking and vaping in an enclosed indoor workplace. The constitutional prohibition provides limited exceptions for private residences “whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof,” retail tobacco shops, vapor-generating electronic device retailers (vape shops), designated smoking guest rooms at hotels and other public lodging establishments, and stand-alone bars.

CS/SB 7012 and s. 386.204, F.S., permit tobacco smoking and vaping in the locations authorized under s. 20, Art. X, Florida Constitution, and also permit tobacco smoking and vaping in facilities owned or leased by a membership association, smoking cessation programs, medical or scientific research, and customs smoking rooms in airport in-transit lounges.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 386.202, 386.204, 386.2045, 386.205, 386.206, 386.207, 386.209, 386.211, 386.212, 386.2125, and 561.695.

This bill reenacts section 386.208 of the Florida Statutes.

IX. Additional Information:

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

CS by Rules on March 6, 2019:

The CS provides that the terms “vape” or “vaping” do not include the mere possession of a vapor-generating electronic device.

- B. **Amendments:**

None.

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



162468

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2019	.	
	.	
	.	
	.	

The Committee on Rules (Simpson) recommended the following:

Senate Amendment

Delete line 112
and insert:
any other substance. The term does not include the mere
possession of a vapor-generating electronic device.

By the Committee on Innovation, Industry, and Technology

580-02188-19

20197012__

1 A bill to be entitled
 2 An act relating to vaping; implementing s. 20, Art. X
 3 of the State Constitution, as amended by Amendment 9
 4 (2018); renaming part II of ch. 386, F.S.; expanding
 5 its application to include vaping in indoor areas;
 6 amending s. 386.202, F.S.; revising legislative
 7 intent; amending s. 386.203, F.S.; defining and
 8 redefining terms; amending s. 386.204, F.S.;
 9 prohibiting vaping in an enclosed indoor workplace,
 10 except as otherwise provided; amending s. 386.2045,
 11 F.S.; providing exceptions to the prohibition against
 12 vaping and smoking in an enclosed indoor workplace;
 13 amending s. 386.205, F.S.; revising requirements for
 14 customs smoking rooms; amending s. 386.206, F.S.;
 15 requiring the proprietor or other person in charge of
 16 an enclosed indoor workplace to develop and implement
 17 a policy regarding specified smoking and vaping
 18 prohibitions; authorizing the proprietor or other
 19 person to post signs to indicate that smoking and
 20 vaping are prohibited; requiring specified signs to be
 21 posted in airport terminals and in enclosed indoor
 22 workplaces under certain circumstances; amending s.
 23 386.207, F.S.; making technical changes; reenacting s.
 24 386.208, F.S., relating to penalties; amending s.
 25 386.209, F.S.; clarifying that the preemption to the
 26 state of the regulation of smoking does not preclude
 27 the adoption of an ordinance on the use of vapor-
 28 generating devices; amending s. 386.211, F.S.;
 29 revising requirements for public announcements in mass

Page 1 of 16

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

580-02188-19

20197012__

30 transportation terminals; amending s. 386.212, F.S.;
 31 prohibiting vaping near school property; providing
 32 civil penalties; amending s. 386.2125, F.S.;
 33 authorizing the Department of Business and
 34 Professional Regulation, in consultation with the
 35 State Fire Marshal, to adopt certain rules; providing
 36 requirements for assessing a vaping cessation program
 37 for approval; amending s. 561.695, F.S.; conforming
 38 provisions to changes made by the act to allow a
 39 vendor that operates a stand-alone bar to authorize
 40 tobacco smoking and vaping in the licensed premises;
 41 providing requirements, enforcement, and penalties for
 42 stand-alone bars that authorize vaping; providing an
 43 effective date.

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

45
 46 Section 1. Part II of chapter 386, Florida Statutes,
 47 entitled "INDOOR AIR: TOBACCO SMOKE," is renamed "INDOOR AIR:
 48 SMOKING AND VAPING."

49 Section 2. Section 386.202, Florida Statutes, is amended to
 50 read:

51
 52 386.202 Legislative intent.—The purpose of this part is to
 53 protect people from the health hazards of secondhand tobacco
 54 smoke and vapor and to implement the Florida health initiative
 55 in s. 20, Art. X of the State Constitution. It is the intent of
 56 the Legislature to not inhibit, or otherwise obstruct, medical
 57 or scientific research, or smoking or vaping cessation programs
 58 approved by the Department of Health.

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59 Section 3. Present subsections (7), (8), (9), (10), (11),
60 and (12) of section 386.203, Florida Statutes, are redesignated
61 as subsections (8), (9), (10), (11), (12), and (17),
62 respectively, new subsections (7), (13), (14), (15), and (16)
63 are added to that section, and present subsections (4), (5), and
64 (13) of that section are amended, to read:

65 386.203 Definitions.—As used in this part:

66 (4) “Designated ~~smoking~~ guest rooms at public lodging
67 establishments” means the sleeping rooms and directly associated
68 private areas, such as bathrooms, living rooms, and kitchen
69 areas, if any, rented to guests for their exclusive transient
70 occupancy in public lodging establishments, including hotels,
71 motels, vacation rentals, transient apartments, transient
72 lodging establishments, roominghouses, boardinghouses, bed and
73 breakfast inns, and the like; and designated by the person or
74 persons having management authority over such public lodging
75 establishment as rooms in which smoking or vaping may be
76 authorized permitted.

77 (5) “Enclosed indoor workplace” means any place where one
78 or more persons engages in work, and which place is
79 predominantly or totally bounded on all sides and above by
80 physical barriers, regardless of whether such barriers consist
81 of or include, without limitation, uncovered openings; screened
82 or otherwise partially covered openings; or open or closed
83 windows, жалousies, doors, or the like. A place is
84 “predominantly” bounded by physical barriers during any time
85 when both of the following conditions exist:

86 (a) It is more than 50 percent covered from above by a
87 physical barrier that excludes rain, and

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88 (b) More than 50 percent of the combined surface area of
89 its sides is covered by closed physical barriers. In calculating
90 the percentage of side surface area covered by closed physical
91 barriers, all solid surfaces that block air flow, except
92 railings, must be considered as closed physical barriers. This
93 section applies to all such enclosed indoor workplaces and
94 enclosed parts thereof without regard to whether work is
95 occurring at any given time.

96 ~~(e)~~

97 The term does not include any facility owned or leased by and
98 used exclusively for noncommercial activities performed by the
99 members and guests of a membership association, including social
100 gatherings, meetings, dining, and dances, if no person or
101 persons are engaged in work as defined in this section
102 subsection (12).

103 (7) “Membership association” means a charitable, nonprofit,
104 or veterans’ organization that holds a current exemption under
105 s. 501(c) (3), (4), (7), (8), (10), or (19) or s. 501(d) of the
106 Internal Revenue Code.

107 (13) “Vape” or “vaping” means to inhale or exhale vapor
108 produced by a vapor-generating electronic device or to possess a
109 vapor-generating electronic device while that device is actively
110 employing an electronic, a chemical, or a mechanical means
111 designed to produce vapor or aerosol from a nicotine product or
112 any other substance.

113 (14) “Vapor” means aerosolized or vaporized nicotine or
114 other aerosolized or vaporized substance produced by a vapor-
115 generating electronic device or exhaled by the person using such
116 a device.

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117 (15) "Vapor-generating electronic device" means any product
 118 that employs an electronic, a chemical, or a mechanical means
 119 capable of producing vapor or aerosol from a nicotine product or
 120 any other substance, including, but not limited to, an
 121 electronic cigarette, electronic cigar, electronic cigarillo,
 122 electronic pipe, or other similar device or product, any
 123 replacement cartridge for such device, and any other container
 124 of a solution or other substance intended to be used with or
 125 within an electronic cigarette, electronic cigar, electronic
 126 cigarillo, electronic pipe, or other similar device or product.

127 (16) "Vapor-generating electronic device retailer" or
 128 "retail vape shop" means any enclosed indoor workplace dedicated
 129 to or predominantly for the retail sale of vapor-generating
 130 electronic devices and components, parts, and accessories for
 131 such products, in which the sale of other products or services
 132 is merely incidental.

133 ~~(13) "Membership association" means a charitable,~~
 134 ~~nonprofit, or veterans' organization that holds a current~~
 135 ~~exemption under s. 501(c)(3), (4), (7), (8), (10), or (19) or s.~~
 136 ~~501(d) of the Internal Revenue Code.~~

137 Section 4. Section 386.204, Florida Statutes, is amended to
 138 read:

139 386.204 Prohibition.—A person may not smoke or vape in an
 140 enclosed indoor workplace, except as otherwise provided in s.
 141 386.2045.

142 Section 5. Section 386.2045, Florida Statutes, is amended
 143 to read:

144 386.2045 Enclosed indoor workplaces; specific exceptions.—
 145 Notwithstanding s. 386.204, tobacco smoking or vaping, or both,

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146 may be authorized ~~permitted~~ in each of the following places:

147 (1) ~~Private residence.~~—A private residence whenever it is
 148 not being used commercially to provide child care, adult care,
 149 or health care, or any combination thereof as defined in s.
 150 386.203(1).

151 (2) A retail tobacco shop.—~~An enclosed indoor workplace~~
 152 ~~dedicated to or predominantly for the retail sale of tobacco,~~
 153 ~~tobacco products, and accessories for such products, as defined~~
 154 ~~in s. 386.203(8).~~

155 (3) A retail vape shop.

156 (4) ~~(3) A designated SMOKING GUEST ROOM.~~—~~A designated~~
 157 ~~smoking guest room at a public lodging establishment as defined~~
 158 ~~in s. 386.203(4).~~

159 (5) ~~(4) A stand-alone bar.~~—~~A business that meets the~~
 160 ~~definition of a stand-alone bar as defined in s. 386.203(11) and~~
 161 ~~that otherwise complies with all applicable provisions of the~~
 162 ~~Beverage Law and this part.~~

163 (6) ~~(5) SMOKING CESSATION PROGRAM, MEDICAL OR SCIENTIFIC~~
 164 ~~RESEARCH.~~—~~An enclosed indoor workplace, to the extent that~~
 165 ~~tobacco smoking or vaping is an integral part of a smoking or~~
 166 ~~vaping cessation program approved by the department, or medical~~
 167 ~~or scientific research conducted therein. Each room in which~~
 168 ~~tobacco smoking or vaping, or both, are authorized is permitted~~
 169 ~~must comply with the signage requirements in s. 386.206.~~

170 (7) ~~(6) Customs smoking room.~~—~~A customs smoking room in an~~
 171 ~~airport in-transit lounge under the authority and control of the~~
 172 ~~Bureau of Customs and Border Protection of the United States~~
 173 ~~Department of Homeland Security subject to the restrictions~~
 174 ~~contained in s. 386.205.~~

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175 Section 6. Section 386.205, Florida Statutes, is amended to
176 read:

177 386.205 Customs smoking rooms.—A customs smoking room may
178 be designated by the person in charge of an airport in-transit
179 lounge under the authority and control of the Bureau of Customs
180 and Border Protection of the United States Department of
181 Homeland Security. A customs smoking room may ~~only~~ be designated
182 only in an airport in-transit lounge under the authority and
183 control of the Bureau of Customs and Border Protection of the
184 United States Department of Homeland Security. A customs smoking
185 room may not be designated in an elevator, restroom, or any
186 common area as defined by s. 386.203. Each customs smoking room
187 must conform to the following requirements:

188 (1) Work, other than essential services ~~defined in s.~~
189 ~~386.203(6)~~, may ~~must~~ not be performed in the room at any ~~given~~
190 time.

191 (2) Tobacco smoking and vaping are prohibited ~~must not be~~
192 ~~permitted in the room~~ while any essential services are being
193 performed in the room.

194 (3) Each customs smoking room must be enclosed by physical
195 barriers that are impenetrable by secondhand tobacco smoke and
196 vapor and must prevent the escape of ~~the secondhand tobacco~~
197 smoke and vapor into the enclosed indoor workplace.

198 (4) Each customs smoking room must exhaust tobacco smoke
199 and vapor directly to the outside and away from air intake
200 ducts, and be maintained under negative pressure, with respect
201 to surrounding spaces, sufficient to contain ~~the tobacco~~ smoke
202 and vapor within the room.

203 (5) Each customs smoking room must comply with the signage

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204 requirements in s. 386.206.

205 Section 7. Section 386.206, Florida Statutes, is amended to
206 read:

207 386.206 Posting of signs; requiring policies.—

208 (1) The proprietor or other person in charge of an enclosed
209 indoor workplace must develop and implement a policy regarding
210 the smoking and vaping prohibitions established in this part.
211 The policy may include, but is not limited to, procedures to be
212 taken when the proprietor or other person in charge witnesses or
213 is made aware of a violation of s. 386.204 in the enclosed
214 indoor workplace and must include a policy which prohibits an
215 employee from smoking or vaping, or both, in the enclosed indoor
216 workplace. In order to increase public awareness, the person in
217 charge of an enclosed indoor workplace may, at his or her
218 discretion, post signs to indicate that smoking or vaping, or
219 both, are prohibited ~~“NO SMOKING” signs as deemed appropriate.~~

220 (2) The person in charge of an airport terminal that
221 includes a designated customs smoking room must conspicuously
222 post, or cause to be posted, signs stating that ~~no~~ smoking and
223 vaping are prohibited ~~is permitted~~ except in the designated
224 customs smoking room located in the customs area of the airport.
225 Each sign posted pursuant to this subsection ~~section~~ must have
226 letters of reasonable size ~~which~~ ~~that~~ can be easily read. The
227 color, design, and precise locations at which such signs are
228 posted shall be left to the discretion of the person in charge
229 of the premises.

230 (3) The proprietor or other person in charge of an enclosed
231 indoor workplace where a smoking or vaping cessation program,
232 medical research, or scientific research is conducted or

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 233 performed must conspicuously post, or cause to be posted, signs
 234 stating that smoking or vaping, or both, as applicable, are
 235 ~~authorized is permitted~~ for such purposes in designated areas in
 236 the enclosed indoor workplace. Each sign posted pursuant to this
 237 ~~subsection section~~ must have letters of reasonable size which
 238 can be easily read. The color, design, and precise locations at
 239 which such signs are posted shall be left to the discretion of
 240 the person in charge of the premises.

241 Section 8. Section 386.207, Florida Statutes, is amended to
 242 read:

243 386.207 Administration; enforcement; civil penalties.—

244 (1) The department or the Division of Hotels and
 245 Restaurants or the Division of Alcoholic Beverages and Tobacco
 246 of the Department of Business and Professional Regulation shall
 247 enforce this part based upon each department's specific areas of
 248 regulatory authority and to implement such enforcement shall
 249 adopt, in consultation with the State Fire Marshal, rules
 250 specifying procedures to be followed by enforcement personnel in
 251 investigating complaints and notifying alleged violators and
 252 rules specifying procedures by which appeals may be taken by
 253 aggrieved parties.

254 (2) Public agencies responsible for the management and
 255 maintenance of government buildings shall report observed
 256 violations to the department. The State Fire Marshal shall
 257 report to the department observed violations of this part found
 258 during its periodic inspections conducted under its regulatory
 259 authority.

260 (3) The department or the Division of Hotels and
 261 Restaurants or the Division of Alcoholic Beverages and Tobacco

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 262 of the Department of Business and Professional Regulation, upon
 263 notification of observed violations of this part, shall issue to
 264 the proprietor or other person in charge of such enclosed indoor
 265 workplace a notice to comply with this part. If the person fails
 266 to comply within 30 days after receipt of the notice, the
 267 department or the Division of Hotels and Restaurants or the
 268 Division of Alcoholic Beverages and Tobacco of the Department of
 269 Business and Professional Regulation shall assess against the
 270 person a civil penalty ~~against the person~~ of not less than \$250
 271 and not more than ~~to exceed~~ \$750 for the first violation and not
 272 less than \$500 and not more than ~~to exceed~~ \$2,000 for each
 273 subsequent violation. The imposition of the fine must be in
 274 accordance with chapter 120. If a person refuses to comply with
 275 this part, after having been assessed such penalty, the
 276 department or the Division of Hotels and Restaurants or the
 277 Division of Alcoholic Beverages and Tobacco of the Department of
 278 Business and Professional Regulation may file a complaint in the
 279 circuit court of the county in which the enclosed indoor
 280 workplace is located to require compliance.

281 (4) All fine moneys collected pursuant to this section
 282 shall be used by the department for children's medical services
 283 programs pursuant to ~~the provisions of~~ part I of chapter 391.

284 Section 9. Section 386.208, Florida Statutes, is reenacted
 285 to read:

286 386.208 Penalties.—Any person who violates s. 386.204
 287 commits a noncriminal violation as defined in s. 775.08(3),
 288 punishable by a fine of not more than \$100 for the first
 289 violation and not more than \$500 for each subsequent violation.
 290 Jurisdiction shall be with the appropriate county court.

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291 Section 10. Section 386.209, Florida Statutes, is amended
292 to read:

293 386.209 Regulation of smoking preempted to state.—This part
294 expressly preempts regulation of smoking to the state and
295 supersedes any municipal or county ordinance on the subject;
296 however, school districts may further restrict smoking by
297 persons on school district property. This section does not
298 preclude the adoption of municipal or county ordinances that
299 impose more restrictive regulation on the use of vapor-
300 generating devices than is provided in this part.

301 Section 11. Section 386.211, Florida Statutes, is amended
302 to read:

303 386.211 Public announcements in mass transportation
304 terminals.—Announcements about the Florida Clean Indoor Air Act
305 shall be made regularly over public address systems in terminals
306 of public transportation carriers located in metropolitan
307 statistical areas with populations over 230,000 according to the
308 latest census. These announcements shall be made at least every
309 30 minutes and shall be made in appropriate languages. Each
310 announcement must include a statement to the effect that Florida
311 is a clean indoor air state and that smoking and vaping are
312 prohibited is not allowed except as provided in this part.

313 Section 12. Section 386.212, Florida Statutes, is amended
314 to read:

315 386.212 Smoking and vaping prohibited near school property;
316 penalty.—

317 (1) It is unlawful for any person under 18 years of age to
318 smoke tobacco or vape in, on, or within 1,000 feet of the real
319 property comprising a public or private elementary, middle, or

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320 secondary school between the hours of 6 a.m. and midnight. This
321 section does not apply to any person occupying a moving vehicle
322 or within a private residence.

323 (2) A law enforcement officer may issue a citation in such
324 form as prescribed by a county or municipality to any person
325 violating ~~the provisions of~~ this section. Any such citation must
326 contain:

- 327 (a) The date and time of issuance.
- 328 (b) The name and address of the person cited.
- 329 (c) The date and time the civil infraction was committed.
- 330 (d) The statute violated.
- 331 (e) The facts constituting the violation.
- 332 (f) The name and authority of the law enforcement officer.
- 333 (g) The procedure for the person to follow to pay the civil
334 penalty, to contest the citation, or to appear in court.
- 335 (h) The applicable civil penalty if the person elects not
336 to contest the citation.
- 337 (i) The applicable civil penalty if the person elects to
338 contest the citation.

339 (3) Any person issued a citation pursuant to this section
340 shall be deemed to be charged with a civil infraction punishable
341 by a maximum civil penalty not to exceed \$25, or 50 hours of
342 community service or, where available, successful completion of
343 a school-approved anti-tobacco or anti-vaping "alternative to
344 suspension" program.

345 (4) Any person who fails to comply with the directions on
346 the citation shall be deemed to waive his or her right to
347 contest the citation and an order to show cause may be issued by
348 the court.

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349 Section 13. Section 386.2125, Florida Statutes, is amended
350 to read:

351 386.2125 Rulemaking.—The department and the Department of
352 Business and Professional Regulation, may shall, in consultation
353 with the State Fire Marshal, ~~have the authority to~~ adopt rules
354 pursuant to ss. 120.536(1) and 120.54 to implement the
355 provisions of this part within each agency's specific areas of
356 regulatory authority. Whenever assessing a smoking or vaping
357 cessation program for approval, the department shall consider
358 whether the smoking or vaping cessation program limits, to the
359 extent possible, any ~~the~~ potential for exposure to secondhand
360 tobacco smoke or vapor for, if any, to nonparticipants in the
361 enclosed indoor workplace.

362 Section 14. Section 561.695, Florida Statutes, is amended
363 to read:

364 561.695 Stand-alone bar enforcement; qualification;
365 penalties.—

366 (1) The division shall designate as a stand-alone bar the
367 licensed premises of a vendor that operates a business that
368 meets the definition of a stand-alone bar in s. 386.203 ~~s.~~
369 ~~386.203(11)~~ upon receipt of the vendor's election to authorize
370 ~~permit~~ tobacco smoking or vaping, or both, in the licensed
371 premises.

372 (2) ~~Upon this act becoming a law and until the annual~~
373 ~~renewal of a vendor's license~~, A licensed vendor who makes the
374 required election under subsection (1) before the annual renewal
375 of its license may authorize permit tobacco smoking or vaping,
376 or both, on the licensed premises and must post a notice of such
377 intention at the same location at which the vendor's current

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378 alcoholic beverage license is posted. The notice shall affirm
379 the vendor's intent to comply with the conditions and
380 qualifications of a stand-alone bar imposed pursuant to part II
381 of chapter 386 and the Beverage Law.

382 (3) Only the licensed vendor may provide or serve food on
383 the licensed premises of a stand-alone bar. Other than customary
384 bar snacks as defined by rule of the division, the licensed
385 vendor may not provide or serve food to a person on the licensed
386 premises without requiring the person to pay a separately stated
387 charge for the food that reasonably approximates the retail
388 value of the food.

389 (4) A licensed vendor operating a stand-alone bar must
390 conspicuously post signs at each entrance to the establishment
391 stating that smoking and vaping are authorized ~~is permitted~~ in
392 the establishment. The color and design of such signs shall be
393 left to the discretion of the person in charge of the premises.

394 (5) After the initial designation, to continue to qualify
395 as a stand-alone bar, the licensee must provide to the division
396 annually, on or before the licensee's annual renewal date, an
397 affidavit that certifies, with respect to the preceding 12-month
398 period, the following:

399 (a) No more than 10 percent of the gross revenue of the
400 business is from the sale of food consumed on the licensed
401 premises as defined in s. 386.203(12) ~~s. 386.203(11)~~.

402 (b) Other than customary bar snacks as defined by rule of
403 the division, the licensed vendor does not provide or serve food
404 to a person on the licensed premises without requiring the
405 person to pay a separately stated charge for food that
406 reasonably approximates the retail value of the food.

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407 (c) The licensed vendor conspicuously posts signs at each
 408 entrance to the establishment stating that smoking or vaping, or
 409 both, are authorized is permitted in the establishment.

410
 411 The division shall establish by rule the format of the affidavit
 412 required by this subsection. A licensed vendor shall not
 413 knowingly make a false statement on the affidavit required by
 414 this subsection. In addition to the penalties provided in
 415 subsection (7), a licensed vendor who knowingly makes a false
 416 statement on the affidavit required by this subsection may be
 417 subject to suspension or revocation of the vendor's alcoholic
 418 beverage license under s. 561.29.

419 (6) The Division of Alcoholic Beverages and Tobacco shall
 420 have the power to enforce ~~the provisions of~~ part II of chapter
 421 386 and to audit a licensed vendor that operates a business that
 422 meets the definition of a stand-alone bar ~~as provided in s.~~
 423 386.203 ~~s. 386.203(11)~~ for compliance with this section.

424 (7) Any vendor that operates a business that meets the
 425 definition of a stand-alone bar ~~as provided in s. 386.203 which~~
 426 ~~s. 386.203(11) who violates the provisions of~~ this section or
 427 part II of chapter 386 ~~is shall be~~ subject to the following
 428 penalties:

429 (a) For the first violation, the vendor shall be subject to
 430 a warning or a fine of up to \$500, or both;

431 (b) For the second violation within 2 years after the first
 432 violation, the vendor shall be subject to a fine of not less
 433 than \$500 or more than \$2,000;

434 (c) For the third or subsequent violation within 2 years
 435 after the first violation, the vendor shall receive a suspension

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436 of the right to maintain a stand-alone bar in which tobacco
 437 smoking or vaping, or both, are authorized is permitted, not to
 438 exceed 30 days, and shall be subject to a fine of not less than
 439 \$500 or more than \$2,000; and

440 (d) For the fourth or subsequent violation, the vendor
 441 shall receive a 60-day suspension of the right to maintain a
 442 stand-alone bar in which tobacco smoking or vaping, or both, are
 443 authorized is permitted and shall be subject to a fine of not
 444 less than \$500 or more than \$2,000 or revocation of the right to
 445 maintain a stand-alone bar in which tobacco smoking or vaping,
 446 or both, are authorized is permitted.

447 (8) The division shall adopt rules governing the
 448 designation process, criteria for qualification, required
 449 recordkeeping, auditing, and all other rules necessary for the
 450 effective enforcement and administration of this section and
 451 part II of chapter 386. The division is authorized to adopt
 452 emergency rules pursuant to s. 120.54(4) to implement ~~the~~
 453 ~~provisions of~~ this section.

454 Section 15. This act shall take effect July 1, 2019.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/19

Meeting Date

7012

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name MATTHEW GUNTHER

Job Title GRAPHIC DESIGNER

Address 5010 GIBSON AVE.

Phone (813) 541-9946

Street

TAMPA FL 33617

City

State

Zip

Email matt@moonmountain.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/2019

Meeting Date

SB 7012

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name TD Bowen

Job Title _____

Address 15812 DAWSON RIDGE DR

Phone 813-992-0878

Street

TAMPA

FL

33619

Email TD@MoonMountain.com

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/19 Meeting Date

7012 Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Jonathan Risteen

Job Title Small Business owner

Address 141 Flamingo Rd Street

Phone 407 489 5944

Edgewater FL 32141 City State Zip

Email info@gentlemansdraw.com

Speaking: For Against Information

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

Representing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/19 Meeting Date

7012 Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Delorse Orlando

Job Title Treasurer - Florida Smoke Free Assoc.

Address 2812 Edenwood St. Street

Phone 727-692-6452

Clearwater, FL 33759 City State Zip

Email delorse@flsmokefree.org

Speaking: For Against Information

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

Representing

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

03-06-19

Meeting Date

7012

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name NICK ORLANDO

Job Title VICE PRESIDENT

Address 2812 EDENWOOD ST.

Street

Phone 813-784-3578

CLEARWATER

City

FL.

State

33759

Zip

Email NORLANDO13@GMAIL

Speaking: For Against Information

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

Representing FLORIDA SMOKE FREE ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3-6-19

Meeting Date

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

SB 7012

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Joshua Unger

Job Title

Address 1970 Hillview Street

Phone 941 306 9380

Street

SARASOTA FL 34239

Email J. Unger1225@AOL.com

City

State

Zip

Speaking: For Against Information

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

Representing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

CourtSmart Tag Report

Room: EL 110
Caption: Senate Rules Committee

Case No.:
Judge:

Type:

Started: 3/6/2019 8:59:21 AM
Ends: 3/6/2019 9:50:49 AM Length: 00:51:29

8:59:20 AM Meeting called to order by Chair Benacquisto
8:59:27 AM Roll call
8:59:51 AM Quorum present
9:00:05 AM CS/SB 262 introduced by Senator Albritton
9:01:12 AM Questions? None
9:02:12 AM Public testimony
9:02:24 AM Jeanne Boggs of Florida Coalition for Children waives in support
9:02:33 AM Alan Abramowitz of Guardian ad Litem waives in support
9:02:38 AM Back on the bill
9:02:39 AM Debate? None.
9:02:44 AM Senator Albritton waives his close
9:02:45 AM Roll call
9:02:49 AM CS/SB 262 reported favorably
9:03:31 AM SR 682 introduced by Senator Diaz
9:04:33 AM Questions? None
9:05:32 AM No public testimony
9:05:38 AM Debate?
9:05:44 AM Senator Rodriguez in debate
9:05:58 AM Senator Diaz recognized to close
9:06:05 AM Senator Diaz asks for additional Senate co-sponsorship to SR 682
9:06:15 AM Roll call
9:06:21 AM SR 682 reported favorably
9:06:42 AM Senator Simpson introduces SB 7012
9:07:13 AM Questions? None
9:07:36 AM Late filed Amendment by Senator Simpson
9:07:56 AM Questions? None
9:07:59 AM Debate? None
9:08:05 AM Senator Simpson waives his close
9:08:10 AM Amendment adopted
9:08:15 AM Back on the bill
9:08:22 AM Public testimony
9:08:25 AM Matthew Gunther waives in support
9:08:37 AM TD Bowen waives in support
9:08:41 AM Jonathan Risteen waives in support
9:08:43 AM Delorse Orlando, Treasurer of Florida Smoke Free Association, waives in support
9:08:45 AM Nick Orlando, Vice President of Florida Smoke Free Association, waives in support
9:08:48 AM Joshua Unger waives in support
9:08:50 AM Debate? None
9:08:53 AM Senator Simpson waives his close
9:08:58 AM Roll call
9:09:03 AM SB 7012 reported favorably
9:09:39 AM Senator Bradley recognized
9:09:49 AM Senator Bradley introduces SB 82
9:10:08 AM Amendment 406426
9:10:27 AM Questions? None
9:10:35 AM Debate? None
9:10:37 AM Senator Bradley waives his close
9:10:38 AM Amendment adopted
9:10:41 AM Back on the bill
9:10:43 AM Public testimony
9:10:47 AM Demetrius Minor of Americans for Prosperity waives in support
9:10:57 AM Logan Podgett of The James Madison Institute waives in support

9:11:21 AM Christian R. Camara of Institute for Justice waives in support
9:11:23 AM Nicolette Springer of League of Women Voters of Florida waives in opposition
9:11:24 AM Debate?
9:11:26 AM Vice Chair Gibson recognized
9:11:35 AM Vice Chair Gibson in debate
9:11:49 AM Senator Passidomo in debate
9:12:04 AM No further debate
9:12:16 AM Senator Bradley recognized to close
9:12:24 AM Senator Bradley closes
9:12:57 AM Roll call
9:13:30 AM SB 82 reported favorably
9:13:58 AM Senator Lee in another meeting
9:14:07 AM Senator Bradley motions to vote favorably after yay on CS/SB 262
9:14:31 AM Senator Thurston motions to vote favorably after yay on CS/SB 262
9:15:00 AM Senator Farmer notions to vote favorably after yay on CS/SB 262
9:15:01 AM Committee in informal recess
9:17:16 AM Committee back in order
9:18:16 AM Senator Lee recognized
9:18:23 AM Senator Lee introduces SB 186
9:20:07 AM Questions?
9:21:10 AM Senator Thurston asks a question
9:21:31 AM Senator Lee is recognized to respond
9:22:11 AM Senator Lee responds
9:22:27 AM Senator Thurston asks a question
9:22:44 AM Senator Brandes asks a question
9:24:17 AM Senator Lee responds
9:24:28 AM Senator Bradley asks a question
9:25:31 AM Senator Lee responds
9:27:33 AM Senator Bradley asks a question
9:28:47 AM Senator Lee responds
9:30:02 AM Senator Bradley asks a question
9:31:01 AM Senator Lee responds
9:32:03 AM Senator Bradley asks a question
9:33:02 AM Senator Lee responds
9:35:11 AM Questions? None
9:35:23 AM Captain Matt Butler of Orange County Sheriff's Office waives in support
9:35:44 AM Scott McCoy of SPLC Action Fund speaks on SB 186
9:36:13 AM Debate?
9:36:15 AM Senator Brandes with potential recommendations
9:37:37 AM Debate?
9:37:43 AM Senator Bradley in debate
9:39:45 AM Senator Stargel in debate
9:41:27 AM Senator Thurston in debate
9:42:30 AM Senator Rodriguez in debate
9:43:49 AM Senator Farmer in debate
9:45:49 AM Senator Simmons in debate
9:47:37 AM Senator Lee recognized to close
9:47:47 AM Senator Lee to close
9:49:36 AM Roll call
9:49:40 AM SB 186 reported favorably
9:50:07 AM Senator Lee motions to vote favorably after yay on CS/SB 262, SR 682, SB 82 and SB 7012
9:50:37 AM Meeting adjourned