The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS
Senator Sobel, Chair
Senator Hays, Vice Chair

MEETING DATE: Monday, April 1, 2013
TIME: 3:15 —6:00 p.m.
PLACE: *Mallory Horne Committee Room,* 37 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 196** Sobel (Identical H 259)	Families First; Setting forth fees and costs to be applied when petitioning for a dissolution of a domestic partnership or registering a domestic partnership, respectively; requiring that certain fees relating to declarations of domestic partnership and dissolution of domestic partnership filings be deposited in the Displaced Homemaker Trust Fund; requiring two individuals who wish to become partners in a domestic partnership to complete and file a Declaration of Domestic Partnership form with the clerk of the circuit court; providing methods to prove the existence of a registered Declaration Domestic Partnership when the certificate document has been lost or is otherwise unavailable, etc. CF 02/19/2013 Temporarily Postponed CF 03/12/2013 Temporarily Postponed CF 04/01/2013 Fav/CS JU AHS AP RC	Fav/CS Yeas 5 Nays 4
2	**SB 384** Abruzzo (Similar CS/H 19)	Grandparent Visitation Rights; Authorizing the grandparent of a minor child to petition a court for visitation under certain circumstances; authorizing appointment of a guardian ad litem and mediation after a prima facie showing of harm; authorizing grandparent visitation if the court makes specified findings; requiring clear and convincing evidence of demonstrable significant mental or emotional harm to the minor child resulting from a denial of visitation, etc. CF 04/01/2013 Fav/CS JU RC	Fav/CS Yeas 7 Nays 2

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 552** Braynon	Human Trafficking; Authorizing the court to order that the testimony of a child younger than 18 years of age who is a victim or witness be taken outside the courtroom and shown by means of closed circuit television; authorizing the state to use a pseudonym instead of the victim's name to designate the victim of human trafficking, etc. CF 04/01/2013 Favorable CJ JU	Favorable Yeas 9 Nays 0
4	**SB 738** Clemens (Identical H 1089)	Substance Abuse Services; Defining the term "sober house transitional living home" as it relates to the Hal S. Marchman Alcohol and Other Drug Services Act; requiring that an applicant seeking licensure for a proposed facility that would provide specified substance abuse services adhere to local, municipal, or county standards for zoning and occupancy; providing that a local government is not precluded from adopting ordinances that govern facilities that offer certain substance abuse services, etc. CF 04/01/2013 Fav/CS CA AHS AP	Fav/CS Yeas 9 Nays 0
5	**SM 912** Abruzzo (Identical HM 753)	Supportive Housing for the Elderly Program; Urging Congress to adequately restore funding to the Supportive Housing for the Elderly Program, etc. CF 04/01/2013 Favorable CA	Favorable Yeas 9 Nays 0
6	**SB 1650** Gibson (Identical H 1301)	Child Care Facilities; Requiring licensed child care facilities to implement certain additional nutritional practices, etc. CF 04/01/2013 Fav/CS AHS AP	Fav/CS Yeas 9 Nays 0
7	Consideration of proposed committee bill:		
	SPB 7134	Crossover Youth; Creating a pilot project to serve youth in common to the Department of Children and Families and the Department of Juvenile Justice; providing for selection of a county for the project; requiring the Secretary of Children and Families to seek proposals from interested providers; specifying elements to be included in the project; requiring reports to the Governor and the Legislature, etc.	Submitted as Committee Bill

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 472** Bean (Compare CS/H 339)	Developmental Disabilities; Establishing the Developmental Disabilities Savings Program to allow for the advance payment of services for children who have developmental disabilities and who will be ineligible for certain services due to age; providing that the program may not be implemented until certain legal opinions are obtained; establishing the Developmental Disabilities Savings Program Board to administer the savings program, etc. CF 04/01/2013 Fav/CS BI AHS AP	Fav/CS Yeas 9 Nays 0
9	**SB 548** Detert (Compare CS/H 689)	Florida Kidcare Program; Requiring certain children applying for eligibility for a component of Kidcare to be offered the opportunity to be made presumptively eligible for the Kidcare program, etc. CF 04/01/2013 Fav/CS AHS AP	Fav/CS Yeas 9 Nays 0
10	**SB 1322** Gibson (Similar CS/H 411)	Children's Initiatives; Establishing the New Town Success Zone in Duval County and the Parramore Kidz Zone in Orange County; providing for the projects to be managed by corporations not for profit that are not subject to control, supervision, or direction by any department of the state; requiring designated children's initiatives to assist in the creation of community-based service networks and programming that provides certain services for children and families residing in disadvantaged areas of the state, etc. CF 04/01/2013 Favorable CA AP	Favorable Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**SB 1682** Joyner (Identical H 1273)	Religious-exempt Child Care Programs; Providing for a child care program affiliated with a religious congregation or religious boarding school to be exempt from regulation by the Department of Children and Families as a religious-exempt child care program; requiring religious-exempt child care programs to display a certificate of compliance issued by an accrediting agency recognized by the department; requiring a recognized accrediting agency to conduct an initial onsite review; providing timeframes within which child care programs must meet the requirements for training and credentials, etc. CF 04/01/2013 Fav/CS JU AP	Fav/CS Yeas 9 Nays 0
12	**SB 1724** Garcia (Similar CS/H 1109)	Transitional Living Facilities; Creating part XI of ch. 400, F.S., entitled “Transitional Living Facilities”; requiring the licensure of transitional living facilities; providing requirements for transitional living facilities relating to client admission, transfer, and discharge; requiring an individual treatment plan to be developed for each client; providing requirements for the screening of potential employees and monitoring of employees for the protection of clients; providing requirements for the use of physical restraints and chemical restraint medication on clients, etc. CF 04/01/2013 Fav/CS HP AHS AP	Fav/CS Yeas 9 Nays 0
13	**CS/SB 1468** Judiciary / Lee (Similar CS/H 1241)	Appointment of an Attorney for a Dependent Child with Disabilities; Requiring an attorney to be appointed in writing; requiring that the appointment continues in effect until the attorney is permitted to withdraw or is discharged by the court or until the case is terminated; requiring that the attorney be adequately compensated for his or her service; providing a limitation; providing for a conditional implementation, etc. JU 03/18/2013 Fav/CS CF 04/01/2013 Favorable AP	Favorable Yeas 9 Nays 0
14	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 196

INTRODUCER: Children, Families, and Elder Affairs Committee; Senator Sobel and others

SUBJECT: Families First

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Hendon	CF	**Fav/CS**
2.			JU	
3.			AHS	
4.			AP	
5.			RC	
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	x	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 196 creates a process for affording recognition to domestic partnerships and giving statewide application to all rights conferred on the partners as provided in the bill. Specifically, the bill would:

- Provide legislative findings related to establishing and affording recognition to domestic partnerships.
- Create definitions of "correctional facility," "domestic partner," "domestic partnership," "health care facility," and "mutual residence."
- Require individuals seeking to establish a partnership to file a declaration with the clerk of court attesting that each is 18 years of age or older; at least one is a Florida resident; both share a mutual residence; and that formation of the partnership is not prohibited as provided by law.
- Make intentional filing of information that is materially false a first degree misdemeanor.
- Require the Department of Health (DOH) to prepare necessary forms.
- Require the clerks of the court to record and issue certificates confirming the creation of a domestic partnership.

- Prohibit partnerships between individuals who are already married to another person or in another partnership; who are blood relatives or siblings; who lack capacity to consent; and when consent was coerced or fraudulent.
- Establish the legal rights of individuals who are in a domestic partnership.
- Establish fees collected by the clerk of courts when a party files a Declaration of Domestic Partnership or Notice of Termination of Domestic Partnership.

The bill will have an indeterminate fiscal impact on the clerks of court and the state courts system and provides an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 28.24, 382.009, 394.459, 400.022, 406.50, 408.051, 429.28, 429.85, 446.50, 497.005, 497.152, 741.01, 765.105, 765.401, 765.512, 765.517, and 872.04, Florida Statutes. This bill creates sections 741.501, 741.502, 741.503, 741.504, 741.505, 741.506, 741.507, 741.508, 741.509, and 741.510, Florida Statutes.

II. Present Situation:

Marriage

Couples who wish to marry in Florida must obtain a license issued either by a county court judge or clerk of the court, subject to payment of a series of fees.[1] Before a license can be issued, the parties must submit a written affidavit, signed by both parties, providing their social security numbers, or other sworn identification, that indicates their ages; a statement regarding whether they have completed a premarital preparation course; and a statement indicating whether they have read the Family Law Handbook. Subject to limited exceptions, both parties must be at least 18 years, and one party must be male and the other female.[2] Couples must also disclose whether they have children together.[3] A couple must first obtain a marriage license, then solemnize the marriage, whether by civil or religious ceremony.[4] Once the license has been issued, it is recorded by the clerk, then transmitted to the DOH for inclusion in the vital statistics records.[5]

A common law marriage is "[a] marriage that takes legal effect, without license or ceremony, when a couple live together as husband wife, intend to be married, and hold themselves out to others as a married couple."[6] When recognized in Florida, common law marriages were given the "same dignity and recognition" as was accorded to ceremonial marriages.[7] In 1968, the Florida Legislature created s. 741.211, F.S., which abrogated common law marriages entered into after 1968. Notwithstanding the statute, Florida courts continue to recognize common law marriages when validly entered into in another state.[8]

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[1] Sections 28.24(23), 741.01, and 741.02, F.S.
[2] Section 741.04, F.S.
[3] Section 741.01(1), F.S.
[4] Sections741.08, 741.041, F.S;.
[5] Section 382.021, F.S.
[6] BLACK'S LAW DICTIONARY 439 (2d Pocket ed. 2001).
[7] *Budd v. J.Y. Gooch Co*., 157 Fla.716 (1946).
[8] *Johnson v. Lincoln Square Properties*, 571 So.2d 541 (Fla. 2d DCA 1990) (limiting Section 741.211 to marriages occurring in Florida).

In 1997, the Florida Legislature again amended ch.741, F.S., this time to prohibit same-sex marriage. Section 741.212, F.S., states in relevant part:

> (1) Marriages between persons of the same sex … or relationships between persons of the same sex which are treated as marriages…are not recognized for any purpose in this state….
>
> (3) For purposes of interpreting any state statute or rule, the term "marriage" means only a legal union between one man and one woman a husband wife, and the term "spouse" applies only to a member of such a union.

The Legislature passed the bill to implement authority granted states in the Defense of Marriage Act (DOMA), which Congress adopted following a court case in Hawaii that legalized gay marriage. Members of Congress believed at the time that individuals would travel to Hawaii to marry, then return to their home state, where their marriages would be recognized under the Full Faith and Credit Clause of the U.S. Constitution. DOMA included language that removed any obligation of states to give effect to same-sex marriages that were legally entered into in other states.[9] DOMA and Florida's law were challenged by a same-sex couple who legally married in Massachusetts on the theory that both DOMA and the Florida law violated the Full Faith and Credit, Due Process, Equal Protection, Privileges and Immunities, and Commerce clauses of the U.S. Constitution.[10] In rejecting all claims, the court refused also to elevate the ability to marry someone of the same gender to a fundamental right.[11] Thus, Florida's law was upheld and the strategy envisioned by Congress succeeded.

At the same time s. 741.212, F.S. was being challenged in the courts, Florida voters passed Amendment 2, which added a DOMA provision to Florida's constitution. The language states:

> Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.[12]

Thus, the language of the Constitution not only defines marriage as a legal union between a man and a woman, as does s. 741.212, F.S., but it goes further to prohibit any other legal union "that is treated as marriage" or "the substantial equivalent" of marriage. To date, Florida courts have not interpreted those phrases in any case involving the rights or responsibilities of a relationship. However, the Florida Supreme Court has offered an indication of what its analysis might be as part of the Advisory Opinion it provided to the Attorney General on the amendment's compliance with the single-subject requirement of the Florida Constitution and the statutory requirements for the ballot summary.[13] In that opinion, the Court rejected the opponent's claim that the amendment violated the single subject requirement because it impermissibly combined

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[9] House Committee on Governmental Operations, *Staff Analysis of CS/HB 147 – Same Sex Marriage* (March 6, 1997) (on file with the Senate Children, Families, and Elder Affairs Committee).
[10] *Wilson v. Ake, 354 F.Supp.2d 1298,* 1302, (M.D. Fla. 2005).
[11] *Id.* at 1306.
[12] FLA. CONST. art. I, s. 27.
[13] *Advisory Opinion To The Attorney General Re Florida Marriage Protection Amendment,* 926 So.2d 1229 (Fla. 2006). For further discussion of article I, section 27 of the Florida Constitution see the Constitutional Issues section of this report.

two distinct issues - marriage between a man and a woman and legal unions which provide for the benefits and responsibilities of marriage. Under that reading, voters could cast only one vote – for or against – whether or not they had a split opinion about the underlying issues. Proponents argued that the amendment did not have that effect and the Court agreed.

> The proposed amendment does not impermissibly force voters to approve a portion of the proposal which they oppose to obtain a change which they support. Rather, the voter is merely being asked to vote on the singular subject of whether the concept of marriage and the rights and obligations traditionally embodied therein should be limited to the union of one man and one woman. The plain language of the proposed amendment is clear that the legal union of a same-sex couple that is *not* the "substantial equivalent" of marriage is not within the ambit of the constitutional provision.[14]

Civil Unions & Domestic Partnerships

A civil union is a separate legal status available in some states that provides nearly all of the rights and responsibilities provided to married couples under state law, but does not provide any of the federal benefits of marriage.[15] While defined slightly differently in different locations, "domestic partnership" is commonly defined as two adults who are parties to a valid domestic relationship and who meet the requirements for a valid domestic partnership, which typically include that the parties are at least 18 years of age, not married or in another relationship, not related by blood, willing and able to consent, and willing to be jointly responsible for each other's basic food and shelter.[16]

In general, there are few distinctions between civil unions and domestic partnerships. Civil unions generally require solemnization like a marriage. Domestic partnerships often are made available to both same-sex and opposite-sex couples. Depending on the rights conferred, one status may provide more legal rights than the other, but some of the distinctions may be more symbolic than legal. In either case, it is not always certain whether one state will honor a civil union or domestic partnership that is validly created under legislative authority of another state.[17] Domestic partnerships may be formed under the terms of a legislative enactment, however, state laws and local ordinances vary in the extent of the rights and responsibilities conferred. Some are comprehensive with nearly all of the rights and responsibilities of marriage under state law, and some are more limited covering, for example, health care facility visitation, health care decisions, funeral and burial decisions, notification of family members in situations that provide for mandatory or permissible notification, including emergencies, visitation rights at county correctional and juvenile detention centers, pre-need guardian designation, participation in

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[14] *Id.* at 1234.

[15] Nat'l Center for Lesbian Rights, *Marriage, Domestic Partnerships, and Civil Unions: An Overview of Relationship Recognition for Same-Sex Couples Within the United States*, (2012) [hereinafter *Overview*], *available at* http://www.nclrights.org/site/DocServer/Relationship_Recognition.pdf?docID=881 (last visited Feb. 12, 2013). In 2004, the U.S. General Accounting Office identified 1.138 federal rights and responsibilities that turn on marital status. U.S. GENERAL ACCOUNTING OFFICE, GAO-04-353R, DEFENSE OF MARRIAGE ACT: UPDATE TO PRIOR REPORT 1 (2004), *available at* http://www.gao.gov/new.items/d04353r.pdf (last visited Feb. 11, 2013).

[16] Broward County, Fla., Code of Ordinances, Section 16 1/2-152(a) (Nov. 27, 2012); Miami-Dade County, Fla., Code of Ordinances, Section 11A-72 (March 6, 2012); Palm Beach County, Fla., Code of Ordinances, Section 2-6 (Feb. 2, 2013).

[17] *Overview*, *supra* note 14.

education, and benefits of public employees. Currently, ten states and the District of Columbia have relationship recognition laws that cover civil unions and/or domestic partnerships.[18]

In Florida, eighteen jurisdictions formally recognize domestic partnerships, including: Orange, Volusia, Pinellas, Palm Beach, Broward, and Miami-Dade Counties, Gainesville, Coral Gables, Sarasota, Clearwater, St. Petersburg, Gulfport, Tampa, Orlando, Key West, North Miami, Miami Beach, and Tavares.[19] According to Equality Florida, a civil rights organization dedicated to securing full equality for Florida's lesbian, gay, bisexual, and transgender community, 6.7 million Floridians currently live within jurisdictions that grant access to domestic partner benefits and protections either through partnership registries or public employee benefits programs.[20] Eleven of the jurisdictions with domestic partnership registry ordinances report a total of 9,228 couples currently registered.[21]

The terms of the Florida domestic partnership ordinances, like the civil union and domestic partnership laws nationwide, vary widely in the extent of the rights conferred. Early ordinances, such as Miami-Dade's, are more limited.[22] Later-adopted ordinances, beginning with the 2012 enactment by the City of Orlando which has become a model for many of the more recently adopted ordinances, cover the broader range of rights as described above.[23]

In 2000, the Broward County ordinance survived a legal challenge that it encroached upon an area of exclusive state authority in violation of article VII, section 1(g) of the Florida Constitution, which states:

> CHARTER GOVERNMENT. Counties operating under county charters shall have all power of local self-government not inconsistent with general law, or with special law approved by the vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law.…[24]

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[18] Oregon, California, Nevada, New Jersey, Illinois, Delaware, Hawaii. Rhode Island, Maine, D.C., Wisconsin, Nat'l Conference of State Legislatures, *Civil Unions and Domestic Partnership Statutes.*, (updated Nov. 2012) http://www.ncsl.org/issues-research/human-services/civil-unions-and-domestic-partnership-statutes.aspx (last visited Feb. 12, 2013).

[19] Email from Mallory Wells, Public Policy Director, Equality Florida, to the Senate Children, Families, and Elder Affairs Committee staff (Feb. 11, 2013) (on file with the Senate Children, Families, and Elder Affairs Committee).

[20] Equality Fla. Institute Inc., *Legal Handbook for LGBT Floridians and Their Families*, 24, (Jan. 4, 2012) [hereinafter *Handbook]*, *available at* http://eqfl.org/sites/default/files/publications/Legal-Handbook-for-LGBT-Floridians-and-Their-Families.pdf (last visited Feb. 12, 2013).

[21] Ordinances in two jurisdictions are not yet in effect. Data from the remaining jurisdictions were not available in time for this analysis.

[22] The Miami-Dade ordinance extends to county employees and their partners all insurance benefits, leave benefits (including family leave), and other benefits as are available to married employees; and extends to all registered partners health care facility visitation rights and visitation rights at county correctional and juvenile detention centers. .Miami-Dade County, Fla., Code of Ordinances, Sections11A-75, 11A-76, and 11A-77 (March 6, 2012).

[23] Some rights conferred by these later-adopted ordinances have the effect of codifying rights that are already available from other sources. For example, health care decisions may be directed pursuant to ch.765, F.S. Likewise, rules issued by the Centers for Medicare & Medicaid Services prohibit Medicare- and Medicaid-participating hospitals from denying visitation privileges on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, or disability. News Release, U.S. Dept. of Health and Human Services, *Medicare finalizes new rules to require equal visitation rights for all hospital patients* (Nov. 10, 2010) http://www.hhs.gov/news/press/2010pres/11/20101117a.html (last visited Feb. 12, 2013).

[24] *Lowe v. Broward County,* 766 So.2d 1199, 1203 (Fla. 4th DCA 2000).

While the court agreed that the law of domestic relations is one matter reserved for the state, the court found that the Broward ordinance did not legislate within the zone of domestic issues that would be off limits.

> The [ordinance] does not curtail any existing rights incident to a legal marriage, nor does it alter the shape of the marital relationship recognized by Florida law….[T]he Act does not address the panoply of statutory rights and obligations exclusive to the traditional marriage relationship ….The Act does not create a legal relationship that, because of the interest of the state, gives rise to rights and obligations that survive the termination of the relationship. Unlike a traditional marriage, a domestic partnership is purely contractual, based on the mutual agreement of the parties.[25]

Following the same line of analysis, the court also rejected an argument that the ordinance was preempted by s. 741.212, F.S., which prohibits marriage between individuals of the same sex, or "relationships between persons of the same sex which are treated as marriages in any jurisdiction ….”[26] The court found that the statute is directed at same-sex marriage or its equivalent and that the ordinance neither created a "marriage-like" relationship, nor was it limited to individuals of the same sex.[27]

A registry provides an administrative system that establishes recognition of a domestic partnership. However, a domestic partnership may also be created by executing a civil contract between two unmarried people codifying how they wish to define their property and support rights both during a relationship and when it ends. A partnership agreement, which is a binding contract, may include provisions related to support, expenses, and finances; division of assets and liabilities on separation or termination; and rights in each other's estate upon death or disability.[28] In the absence of a domestic partnership agreement, separate legal documents, such as a health care proxy or medical power of attorney, durable power of attorney, joint tenancy agreement or co-tenancy agreement, will, burial instructions or declaration as to remains, or cohabitation agreement may also define a relationship with a partner.

Florida courts have affirmed the validity of domestic partnership agreements. The Fifth District Court of Appeal found that an agreement for support between two unmarried people is valid, unless "inseparably based upon illicit consideration of sexual services." In reaching its holding, the court considered the matter as one of individuals who, in the absence of the recognition of rights that flow naturally from a marital relationship, were exercising their constitutional private property and contract rights, which the court commented would apply to same-sex and opposite-sex unmarried couples alike.[29] The opinion was controversial at the time it was rendered and

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[25] *Id.* at 1205-1206.
[26] Section 741.212, F.S.
[27] *Lowe, supra* note 22, at 1208.
[28] *Handbook, supra* note 18.
[29] *Posik v.Layton*, 695.So.2d 759, 762 (Fla. 5th DCA 1997). *But see Wakeman v. Dixon* 921 So.2d 669 (Fla. 1st DCA 2006, *reh'g denied* Feb. 28, 2006) (finding that an agreement executed between same-sex partners creates no enforceable rights regarding children).

critics contended it ignored the then recently-passed law creating s. 741.211, F.S., which prohibits marriage between same-sex partners.[30]

Unmarried-Partner Households

The U.S. Census reports that:

> Census 2000 enumerated 105 million households in the United States, of which the majority (52 percent) were maintained by married couples (54.5 million. A reflection of changing life styles is mirrored in Census 2000's enumeration of 5.5 million couples who were living together but who were not married, up from 3.2 million in 1990. These unmarried-partner households were selfidentified [sic] on the census form as being maintained by people who were sharing living quarters and who also had a close personal relationship with each other. The majority of these unmarried-partner households had partners of the opposite sex (4.9 million) but about 1 in 9 (594,000) had partners of the same sex.[31]

Of the 6.3 million households in Florida, 56 percent were married couple households. Unmarried-partner households totaled 369,622, or 10.4 percent of all coupled households. The majority of Florida's unmarried-partner households had partners of the opposite sex (328,574, or 9.2 percent of coupled holds), and 41,048 (1.2 percent of coupled households) had partners of the same sex.[32]

III. Effect of Proposed Changes:

Sections 1 amends s. 28.24, F.S., to create a $30 court fee for filing a Declaration of Domestic Partnership.

Sections 2 – 8, 10, 11, and 23 – 27 amend various provisions of the Florida Statutes to add parallel references to "domestic partner" where references to "spouse" or "relative" currently appear. The effect is to establish specific rights of domestic partners with respect to burial and disposition of a partner's remains; visitation in health care facilities; and health care proxy. The effect is to extend the rights of the statute to domestic partnerships; however, the bill does not otherwise change the underlying provision. The new references are added in statutes pertaining to:

- Recognition of brain death (s. 382.009, F.S.)
- Rights of patients under the Baker Act (s. 394.459, F.S.)
- Nursing home residents' rights (s. 400.022, F.S.)
- Disposition of unclaimed bodies (s. 406.50, F.S.)
- Florida Electronic Health Records Exchange Act (s. 408.051, F.S.)
- Assisted living facility residents' rights (s. 429.85, F.S.)

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[30] Brett A. Barfield, *Are Same-Sex Prenuptial Agreements Enforceable in Florida? Posik v. Layton, Law and Policy*, 10 ST. THOMAS L. REV. 407, (Winter, 1998).
[31] U.S. Census Bureau, *Married-Couple and Unmarried-Partner Households: 2000, Census Special Reports* (Feb. 2003), *available at* http://www.census.gov/prod/2003pubs/censr-5.pdf (last visited Feb. 12, 2013).
[32] *Id.*

- Adult day care facility residents' rights (s. 429.85, F.S.)
- Definition of "legally authorized person" as used in ch. 497, F.S., relating to funeral, cemetery, and consumer services (s. 497.005, F.S.)
- Prohibited actions in ch. 497 (s. 497.152, F.S.)
- Review of surrogate or proxy's decision (s. 765.106, F.S.)
- Designation of proxy (s. 765.401, F.S.)
- Persons who may make an anatomical gift (s. 765.512, F.S.)
- Disposition of remains following an anatomical gift (s. 765.517, F.S.)
- Required consent for autopsies (s. 872.04, F.S.)

Section 6 amends s. 446.50, F.S., to create the authority of the Displaced Homemaker Trust Fund to receive funds generated by the fee on filed Declarations of Domestic Partnership.

Section 12 amends s. 741.01, F.S. to create the authority for the Domestic Violence Trust Fund to receive the fee on filed Declarations of Domestic Partnership.

Section 13 creates s. 741.501, F.S., to provide legislative findings related to establishing, recognizing, and conferring rights on domestic partnerships.

Section 14 creates s. 741.502, F.S., to create definitions of "correctional facility," "domestic partner," "domestic partnership," "health care facility," and "mutual residence."

Section 15 creates s. 741.503, F.S., to require DOH to prepare "Declaration of Domestic Partnership," "Certificate of Registered Domestic Partnership," "Notice of Termination of Domestic Partnership," and "Certificate of Termination of Domestic Partnership" forms.

Section 16 creates s. 741.504, F.S., to establish the requirements of a domestic partnership that is recognized by the state. Specifically, the individuals must file a declaration that contains a statement attesting that each is 18 years of age or older, subject to reasonable proof of age by the clerk, which may include a driver license; a statement attesting that at least one party is a resident of the state; a statement that both parties share a mutual residence; a statement that formation of the partnership is not prohibited by law; and each person's mailing address. An individual who intentionally provides materially false information commits a misdemeanor of the first degree. A clerk must file a Declaration of Domestic Partnership if it meets the legal requirements and must issue the partners a certificate.

Section 17 creates s. 741.505, F.S., to set forth circumstances under which a domestic partnership is prohibited. A partnership may not be created if either party is already married to another person or in another partnership; the parties are blood relatives or siblings; either party lacks capacity to consent; or consent was coerced or fraudulent.

Section 18 creates s. 741.506, F.S., to establish the rights of individuals who are in a domestic partnership. These include: the same visitation right in a health care facility as is given to spouses; the same visitation privilege in a correctional facility as is given to spouses; emergency notification if such notice is provided to spouses or relatives; the right to jointly own property by tenancy by the entirety (which is an undivided legal interest currently arising by virtue of

marriage); the same authority to act as health care proxy when a proxy has not otherwise been designated as is available to a spouse; and the same authority a spouse has to act as patient representative for the disposition of a partner's remains as provided in the bill. A violation of the rights may be enforced by court action.

Section 19 creates s. 741.507, F.S., to authorize the clerk of court to collect the following fees in connection with filing a Declaration of Domestic Partnership: a $30 filing fee; $2 for receiving a declaration of domestic partnership; $25 to be deposited in the Domestic Violence Trust Fund; $7.50 for deposit in the Displaced Homemaker Trust Fund; and $25 for deposit into the General Revenue Fund. The bill allows an applicant who cannot afford a lump sum payment to pay the fees in three installments over a 90-day period. The bill also authorizes a $7.50 fee for filing a Notice of Termination of Domestic Partnership.

Section 20 creates s. 741.508, F.S., to allow a domestic partnership to be proved by affidavit if the declaration has not been received or registered; a certificate has been lost; or the certificate cannot be obtained by reason of death or other cause. The affidavit must be made by two witnesses who saw the declaration be executed and before an officer authorized to administer oaths. The affidavit may be filed and recorded with the clerk of the court with the same force and effect as if a certificate had been recorded.

Section 21 creates s. 741.509, F.S., to set forth procedures for terminating a domestic partnership. A domestic partnership may be terminated by filing a Notice of Termination with the clerk of court and paying a filing fee of $10. The notice must be signed by one or both parties and notarized. A partnership will also terminate if one or both parties marries either each other or someone else, or one of the parties dies. The bill requires the clerk to file the notice and issue a Certificate of Termination of Domestic Partnership.

Section 22 creates s. 741.510, F.S., that authorizes a county or municipality to enact a domestic partnership ordinance that is not in conflict with the act.

Section 28 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Whether the bill creates "a legal union that is treated as marriage or the substantial equivalent thereof " in violation of article I, section 27 of the Florida Constitution would be a matter of first impression in the courts. However, *Advisory Opinion To The Attorney General Re Florida Marriage Protection Amendment,* 926 So.2d 1229 (Fla. 2006) discussed above, suggests that a domestic partnership is not per se "the substantial equivalent" of marriage.

> The plain meaning of these words, according to dictionary definition, is clear that the chief purpose of the amendment is to ensure that unions between same-sex couples that are treated *virtually identically* to marriage will not be recognized in Florida.[33]

Stated differently, the case indicates that all non-traditional unions are not prohibited by the constitution, only those that exceed some as yet legally untested threshold on the continuum of relationships approaching marriage.[34] A recent Wisconsin case sets forth an analytical framework that a Florida court might use in making the determination. Similar to the Florida Constitution, the Wisconsin Constitution recognizes only marriage between a man and a woman and prohibits a "legal status identical or substantially similar to that of marriage" for unmarried partners. To determine whether its domestic partnership law created a status that was substantially similar to marriage, a Wisconsin Court of Appeals compared the requirements for eligibility, formation, rights and obligations, and termination that applied to marriage and domestic partnership.[35] The case is not binding precedent in Florida; it serves only as a model Florida could adopt.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill imposes 6 fees or other charges on actions required to create or terminate a domestic partnership. The fees for creating a domestic partnership parallel the fees for marriage. The fee to terminate a domestic partnership is less than the fees required to dissolve a marriage, however, the latter requires court action. In effect, the fees are not newly-created. They will, however, impose on citizens who choose to avail themselves of the law a financial obligation they do not have today.

The fiscal impact on revenues to the State Courts Revenue Trust Fund and the Court Education Trust Fund from civil filing fees cannot be accurately determined due to the unavailability of data needed to establish the increase resulting in the addition of dissolutions of domestic partnerships.

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[33] *Advisory Opinion* at 1237 (emphasis supplied).

[34] Proponents of the bill indicate that it confers approximately 1% of the federal and state rights currently conferred on spouses and recognized by Florida law. E-mail from Mary Meeks, volunteer, Equality Florida, (Mar. 6, 2013) (on file with the Senate Children, Families, and Elder Affairs Committee).

[35] *Apling v.Doyle*, Appeal No. 2011AP1572, Wisconsin Court of Appeals, 4th Dist. (Dec. 20, 2012).

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact on expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantify the increase in judicial workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Children, Families, and Elder Affairs on April 1, 2013:

- The CS substantially revised the bill to reduce the scope of rights created from all conferred in marriage to a list of six. These include: the same visitation right in a health care facility as is given to spouses; the same visitation privilege in a correctional facility as is given to spouses; emergency notification if such notice is provided to spouses or relatives; the right to jointly own property by tenancy by the entirety; the same authority to act as health care proxy when a proxy has not otherwise been designated as is available to a spouse; and the same authority a spouse has to act as patient representative for the disposition of a partner's remains as provided in the bill. A violation of the rights may be enforced by court action. The provisions of the bill, in particular the scope of rights, now mirror the majority of domestic partnership ordinances that have been recently enacted in Florida with the addition of the right to hold property by tenancy of the entirety. The CS also removed the role of the Department of Health as a registrar of records related to domestic partnerships.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/02/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Subsection (23) of section 28.24, Florida
6 Statutes, is amended to read:
7 28.24 Service charges by clerk of the circuit court.—The
8 clerk of the circuit court shall charge for services rendered by
9 the clerk’s office in recording documents and instruments and in
10 performing the duties enumerated in amounts not to exceed those
11 specified in this section. Notwithstanding any other provision
12 of this section, the clerk of the circuit court shall provide

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13 without charge to the state attorney, public defender, guardian
14 ad litem, public guardian, attorney ad litem, criminal conflict
15 and civil regional counsel, and private court-appointed counsel
16 paid by the state, and to the authorized staff acting on behalf
17 of each, access to and a copy of any public record, if the
18 requesting party is entitled by law to view the exempt or
19 confidential record, as maintained by and in the custody of the
20 clerk of the circuit court as provided in general law and the
21 Florida Rules of Judicial Administration. The clerk of the
22 circuit court may provide the requested public record in an
23 electronic format in lieu of a paper format when capable of
24 being accessed by the requesting entity.
25
26 Charges
27
28 (23) Upon receipt of an application for a marriage license
29 or a declaration of domestic partnership, for preparing and
30 administering of oath; issuing, sealing, and recording of the
31 marriage license or registering the domestic partnership; and
32 providing a certified copy.....30.00
33 Section 2. Subsection (2) of section 97.1031, Florida
34 Statutes, is amended to read:
35 97.1031 Notice of change of residence, change of name, or
36 change of party affiliation.—
37 (2) When an elector seeks to change party affiliation, the
38 elector shall notify his or her supervisor of elections or other
39 voter registration official by using a signed written notice
40 that contains the elector's date of birth or voter registration
41 number. When an elector changes his or her name by marriage,

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42 domestic partnership, or other legal process, the elector shall
43 notify his or her supervisor of elections or other voter
44 registration official by using a signed written notice that
45 contains the elector's date of birth or voter's registration
46 number.
47 Section 3. Subsection (16) of section 382.002, Florida
48 Statutes, is amended to read:
49 382.002 Definitions.—As used in this chapter, the term:
50 (16) "Vital records" or "records" means certificates or
51 reports of birth, death, fetal death, marriage, domestic
52 partnership, dissolution of marriage, or notice of termination
53 of domestic partnership, name change filed pursuant to s. 68.07,
54 and data related thereto.
55 Section 4. Subsection (7) of section 382.003, Florida
56 Statutes, is amended to read:
57 382.003 Powers and duties of the department.—The department
58 shall:
59 (7) Approve all forms used in registering, recording,
60 certifying, and preserving vital records, or in otherwise
61 carrying out the purposes of this chapter, and ~~no~~ other forms
62 may not ~~shall~~ be used other than those approved by the
63 department. The department is responsible for the careful
64 examination of the certificates received monthly from the local
65 registrars and marriage certificates, certificates of domestic
66 partnership, ~~and~~ dissolution of marriage, and notice of
67 termination of domestic partnership reports received from the
68 circuit and county courts. A certificate that is complete and
69 satisfactory shall be accepted and given a state file number and
70 considered a state-filed record. If any such certificates are

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71 incomplete or unsatisfactory, the department shall require
72 further information to be supplied as ~~may be~~ necessary to make
73 the record complete and satisfactory. All physicians, midwives,
74 informants, or funeral directors, and all other persons having
75 knowledge of the facts, are required to supply, upon a form
76 approved by the department or upon the original certificate,
77 such information as they may possess regarding any vital record.
78 Section 5. Section 382.021, Florida Statutes, is amended to
79 read:
80 382.021 Department to receive marriage licenses and
81 declarations of domestic partnership.—On or before the 5th day
82 of each month, the county court judge or clerk of the circuit
83 court shall transmit to the department all original marriage
84 licenses, with endorsements, and all declarations of domestic
85 partnership received during the preceding calendar month~~, to the~~
86 ~~department~~. Any marriage licenses or declarations of domestic
87 partnership issued and not returned, or ~~any marriage licenses~~
88 returned but not recorded, shall be reported by the issuing
89 county court judge or clerk of the circuit court to the
90 department at the time of transmitting the recorded licenses or
91 declarations on the forms to be prescribed and furnished by the
92 department. If during any month no marriage licenses or
93 declarations of domestic partnership are issued or returned, the
94 county court judge or clerk of the circuit court shall report
95 such fact to the department upon forms prescribed and furnished
96 by the department.
97 Section 6. Section 382.022, Florida Statutes, is amended to
98 read:
99 382.022 Marriage application; registration of domestic

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100 partnership; fees.—Upon the receipt of each application for the
101 issuance of a marriage license or registering a domestic
102 partnership, the county court judge or clerk of the circuit
103 court shall, pursuant to s. 741.02, or s. 741.509(1)(d), collect
104 and receive a fee of $4 which shall be remitted to the
105 Department of Revenue for deposit to the Department of Health to
106 defray part of the cost of maintaining marriage and domestic
107 partnership records.
108 Section 7. Section 382.023, Florida Statutes, is amended to
109 read:
110 382.023 Department to receive dissolution-of-marriage and
111 notice of termination-of-domestic partnership records; fees. —
112 ~~Clerks of the circuit courts shall collect for their services~~ At
113 the time of the filing of a final judgment of dissolution of
114 marriage or notice of termination of domestic partnership, the
115 clerk of the circuit court shall collect a fee of up to $10.50,
116 of which 43 percent shall be retained by the clerk ~~of the~~
117 ~~circuit court~~ as a part of the cost in the cause in which the
118 judgment is granted or the cost of maintaining the domestic
119 partnership registry required by s. 741.504(2). The remaining 57
120 percent shall be remitted to the Department of Revenue for
121 deposit to the Department of Health to defray part of the cost
122 of maintaining the dissolution-of-marriage and termination-of-
123 domestic-partnership records. A record of each and every
124 judgment of dissolution of marriage granted by the court during
125 the preceding calendar month and a record of each and every
126 notice of termination-of-domestic-partnership filed with the
127 clerk of the circuit court, giving names of parties and such
128 other data as required by forms prescribed by the department,

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129 shall be transmitted to the department, on or before the 10th
130 day of each month, along with an accounting of the funds
131 remitted to the Department of Revenue pursuant to this section.
132 Section 8. Paragraph (a) of subsection (1) and paragraphs
133 (a) and (c) of subsection (2) of section 382.025, Florida
134 Statutes, are amended to read:
135 382.025 Certified copies of vital records; confidentiality;
136 research.—
137 (1) BIRTH RECORDS.—Except for birth records over 100 years
138 old which are not under seal pursuant to court order, all birth
139 records of this state shall be confidential and are exempt from
140 the provisions of s. 119.07(1).
141 (a) Certified copies of the original birth certificate or a
142 new or amended certificate, or affidavits thereof, are
143 confidential and exempt from the provisions of s. 119.07(1) and,
144 upon receipt of a request and payment of the fee prescribed in
145 s. 382.0255, shall be issued only as authorized by the
146 department and in the form prescribed by the department, and
147 only:
148 1. To the registrant, if the registrant is of legal age, is
149 a certified homeless youth, or is a minor who has had the
150 disabilities of nonage removed under s. 743.01 or s. 743.015;
151 2. To the registrant’s parent or guardian or other legal
152 representative;
153 3. Upon receipt of the registrant’s death certificate, to
154 the registrant’s spouse <u>or domestic partner</u> or to the
155 registrant’s child, grandchild, or sibling, if of legal age, or
156 to the legal representative of any of such persons;
157 4. To any person if the birth record is over 100 years old

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158 and not under seal pursuant to court order;
159 5. To a law enforcement agency for official purposes;
160 6. To any agency of the state or the United States for
161 official purposes upon approval of the department; or
162 7. Upon order of any court of competent jurisdiction.
163 (2) OTHER RECORDS.—
164 (a) The department shall authorize the issuance of a
165 certified copy of all or part of any marriage, domestic
166 partnership, dissolution of marriage, notice of termination of
167 domestic partnership, or death or fetal death certificate,
168 excluding that portion which is confidential and exempt from ~~the~~
169 ~~provisions of~~ s. 119.07(1) as provided under s. 382.008, to any
170 person requesting it upon receipt of a request and payment of
171 the fee prescribed by this section. A certification of the death
172 or fetal death certificate which includes the confidential
173 portions shall be issued only:
174 1. To the registrant's spouse, domestic partner, or parent,
175 or to the registrant's child, grandchild, or sibling, if of
176 legal age, or to any person who provides a will that has been
177 executed pursuant to s. 732.502, insurance policy, or other
178 document that demonstrates his or her interest in the estate of
179 the registrant, or to any person who provides documentation that
180 he or she is acting on behalf of any of them;
181 2. To any agency of the state or local government or the
182 United States for official purposes upon approval of the
183 department; or
184 3. Upon order of any court of competent jurisdiction.
185 (c) The department shall issue, upon request and upon
186 payment of an additional fee prescribed by this section, a

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187 commemorative marriage license or certificate of domestic
188 partnership representing that the marriage or domestic
189 partnership of the persons named thereon is recorded in the
190 office of the registrar. The certificate issued under this
191 paragraph must ~~shall~~ be in a form consistent with the need to
192 protect the integrity of vital records but must ~~shall~~ be
193 suitable for display. It may bear the seal of the state printed
194 thereon and may be signed by the Governor.
195 Section 9. Paragraph (i) of subsection (1) of section
196 382.0255, Florida Statutes, is amended to read:
197 382.0255 Fees.—
198 (1) The department is entitled to fees, as follows:
199 (i) Twenty-five dollars for a commemorative certificate of
200 birth, ~~or~~ marriage, or domestic partnership. Fees collected
201 pursuant to this paragraph in excess of expenses shall be used
202 ~~available for use~~ by the Regional Perinatal Intensive Care
203 Centers (RPICC) Program to prevent child abuse and neglect.
204 Funds derived from the issuance of commemorative marriage
205 certificates shall be used ~~available for use~~ by the Improved
206 Pregnancy Outcome Program.
207 Section 10. Paragraph (b) of subsection (5) of section
208 446.50, Florida Statutes, is amended to read:
209 446.50 Displaced homemakers; multiservice programs; report
210 to the Legislature; Displaced Homemaker Trust Fund created.—
211 (5) DISPLACED HOMEMAKER TRUST FUND.—
212 (b) The trust fund shall receive funds generated from an
213 additional fee on marriage license applications, declarations of
214 domestic partnerships, and dissolution of marriage filings as
215 specified in ss. 741.01(3), 741.509, and 28.101, respectively,

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216 and may receive funds from any other public or private source.
217 Section 11. Subsection (3) of section 741.28, Florida
218 Statutes, is amended to read:
219 741.28 Domestic violence; definitions.—As used in ss.
220 741.28-741.31:
221 (3) "Family or household member" means spouses;~~,~~ former
222 spouses;~~,~~ persons related by blood, ~~or~~ marriage, or domestic
223 partnership; persons who are presently residing together as if a
224 family or who have resided together in the past as if a family;~~,~~
225 and persons who are parents of a child in common regardless of
226 whether they have been married. With the exception of persons
227 who have a child in common, the family or household members must
228 be currently residing or have in the past resided together in
229 the same single dwelling unit.
230 Section 12. Section 741.501, Florida Statutes, is created
231 to read:
232 741.501 Legislative findings.—The Legislature finds that:
233 (1) There are a significant number of individuals in this
234 state who live together in important, personal, emotional, and
235 economically committed relationships. Together, these
236 individuals live, serve, and participate in the community, and
237 often rear children and care for family members.
238 (2) These familial relationships, often referred to as
239 domestic partnerships, assist the state by providing a private
240 network of support for the financial, physical, and emotional
241 health of their participants.
242 (3) The state has a strong interest in promoting stable and
243 lasting families, and believes that all families should be
244 provided with the opportunity to obtain necessary legal

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245 protections and status and the ability to achieve their fullest
246 potential.
247 (4) While some public and private institutions recognize
248 domestic partnerships for limited purposes such as health
249 benefits, hospital visitation, and medical decisionmaking for an
250 incapacitated family member, many do not. Historically, legal
251 recognition of marriage by the state is the primary and, in a
252 number of instances, the exclusive source of numerous rights,
253 benefits, and responsibilities available to families under the
254 laws of this state.
255 (5) The status of marriage in this state is limited by Art.
256 I of the State Constitution to the union of one man and one
257 woman and the Legislature does not seek to alter the definition
258 of marriage in any way. The Legislature also finds, however,
259 that recognition of domestic partnerships can provide an
260 alternative mechanism for extending certain important rights and
261 responsibilities to individuals who choose to form long-term,
262 mutually supportive relationships. Such recognition will provide
263 support to these familial relationships without affecting the
264 definition of marriage, without creating or recognizing a legal
265 relationship that is the substantial equivalent of marriage, and
266 without affecting restrictions contained in federal law.
267 (6) The decision to offer or seek a ceremony or blessing
268 over the domestic partnership should be left to the dictates of
269 each religious faith and to the preferences of the persons
270 entering into the partnership. Sections 741.501-741.511 do not
271 require performance of any solemnization ceremony to enter into
272 a binding domestic partnership agreement and do not interfere
273 with the right of each religious faith to choose freely to whom

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274 to grant the religious status, sacrament, or blessing of
275 marriage under the rules and practices of that faith.
276 (7) Because of the material and other support that these
277 familial relationships provide to their participants, these
278 relationships should be formally recognized and made uniform by
279 law. Therefore, the Legislature declares that it is the policy
280 of this state to establish and define the rights and
281 responsibilities of domestic partners.
282 Section 13. Section 741.502, Florida Statutes, is created
283 to read:
284 741.502 Definitions.—As used in ss. 741.501-741.511, the
285 term:
286 (1) "Department" means the Department of Health.
287 (2) "Domestic partnership" means a civil contract entered
288 into between two individuals who are 18 years of age or older
289 and otherwise capable, of which at least one of whom is a
290 resident of this state.
291 (3) "Partner" means an individual joined in a domestic
292 partnership.
293 Section 14. Section 741.503, Florida Statutes, is created
294 to read:
295 741.503 Forms.—
296 (1) Pursuant to s. 382.003(7), the department shall prepare
297 forms entitled:
298 (a) "Declaration of Domestic Partnership" which meet the
299 requirements of s. 741.505.
300 (b) "Certificate of Registered Domestic Partnership."
301 (2) The department shall distribute the Declaration of
302 Domestic Partnership and Certificate of Registered Domestic

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303 Partnership forms to each clerk of the circuit court. The
304 department and each clerk shall make the Declaration of Domestic
305 Partnership form available to the public.
306 Section 15. Section 741.504, Florida Statutes, is created
307 to read:
308 741.504 Court jurisdiction and duties; registry.—
309 (1) The circuit court has jurisdiction over any proceeding
310 relating to the domestic partners' rights and obligations.
311 (2) Each clerk of the circuit court shall maintain a
312 registry of all domestic partnerships entered into in that
313 county and a record of all certificates of domestic partnership
314 issued, which includes the names of the partners and the date of
315 issuance, and a record of all notices of termination of domestic
316 partnership filed, which includes the name of the party filing
317 and the date of filing.
318 (3) The clerk of the circuit court shall transmit to the
319 department all original declarations of domestic partnership in
320 accordance with s. 382.021 and all notices of termination of
321 domestic partnership in accordance with s. 382.023.
322 (4) Notwithstanding s. 382.025 or any other law, the
323 registry of domestic partnerships maintained by a clerk of the
324 circuit court is a public record and subject to full disclosure.
325 Section 16. Section 741.505, Florida Statutes, is created
326 to read:
327 741.505 Domestic partnership requirements.—
328 (1) Two individuals wishing to become partners in a
329 domestic partnership recognized by this state must complete and
330 file a Declaration of Domestic Partnership form with a clerk of
331 the circuit court. The declaration must include:

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332 (a) A statement attesting that each individual is 18 years
333 of age or older and is otherwise capable of entering into a
334 domestic partnership. The clerk may accept any reasonable proof
335 of an individual's age which is satisfactory to the clerk. The
336 clerk may also require proof of age by affidavit of some
337 individual other than the parties seeking to file the form if
338 the clerk deems it necessary.
339 (b) A statement attesting that at least one of the
340 individuals is a resident of this state.
341 (c) Each individual's mailing address.
342 (d) A statement attesting that each individual consents to
343 the jurisdiction of the circuit courts of this state for any
344 proceeding relating to the partners' rights and obligations,
345 even if one or both partners cease to reside or maintain a
346 domicile in this state.
347 (e) The notarized signature of each individual, along with
348 a declaration that the representations made on the form are
349 true, correct, and contain no material omissions of fact to the
350 best knowledge and belief of each individual.
351 (2) Each person signing a Declaration of Domestic
352 Partnership form consents to the jurisdiction of the circuit
353 courts of this state for any proceeding related to the partners'
354 rights and obligations, even if one or both partners cease to
355 reside or maintain a domicile in this state.
356 (3) A person who provides intentionally and materially
357 false information on a Declaration of Domestic Partnership form
358 with the clerk of court commits a misdemeanor of the first
359 degree, punishable as provided in s. 775.082 or s. 775.083.
360 (4) If all legal requirements have been satisfied and there

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361 appears to be no impediment to the domestic partnership, the
362 clerk of the circuit court shall:
363 (a) Return a copy of the registered form to the partners;
364 (b) Register the Declaration of Domestic Partnership in a
365 domestic partnership registry; and
366 (c) Issue a Certificate of Registered Domestic Partnership
367 under his or her hand and seal to the partners in person or at
368 the mailing address provided by the partners.
369 Section 17. Section 741.506, Florida Statutes, is created
370 to read:
371 741.506 Domestic partnership; name change.—Upon entering
372 into a domestic partnership, a partner may retain his or her
373 previous surname, or, if changed, may resume the previous legal
374 name during the domestic partnership.
375 Section 18. Section 741.507, Florida Statutes, is created
376 to read:
377 741.507 Domestic partnership; rights and responsibilities;
378 relationship to federal law.—
379 (1) Any privilege, immunity, right, or benefit granted by
380 statute, administrative or court rule, policy, common law, or
381 any other law to an individual because the individual is or was
382 married, or because the individual is or was an in-law in a
383 specified way to another individual, is granted on equivalent
384 terms, substantive and procedural, to an individual because the
385 individual is or was in a domestic partnership or because the
386 individual is or was, based on a domestic partnership, related
387 in a specified way to another individual.
388 (2) Any responsibility imposed by statute, administrative
389 or court rule, policy, common law, or any other law on an

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390 individual because the individual is or was married, or because
391 the individual is or was an in-law in a specified way to another
392 individual, is imposed on equivalent terms, substantive and
393 procedural, on an individual because the individual is or was in
394 a domestic partnership or because the individual is or was,
395 based on a domestic partnership, related in a specified way to
396 another individual.
397 (3) Any privilege, immunity, right, benefit, or
398 responsibility granted to or imposed by statute, administrative
399 or court rule, policy, common law, or any other law on a spouse
400 with respect to a child of either of the spouses is granted to
401 or imposed on equivalent terms, substantive and procedural, on
402 an individual in a domestic partnership with respect to a child
403 of either of the partners.
404 (4) Any privilege, immunity, right, benefit, or
405 responsibility granted or imposed by statute, administrative or
406 court rule, policy, common law, or any other law to or on a
407 former or surviving spouse with respect to a child of either of
408 the spouses is granted to or imposed on equivalent terms,
409 substantive and procedural, on a former or surviving partner
410 with respect to a child of either of the partners.
411 (5) For purposes of administering the tax laws of this
412 state, partners in a domestic partnership, surviving partners of
413 a domestic partnership, and their children have the same
414 privileges, immunities, rights, benefits, and responsibilities
415 as are granted to or imposed on spouses in a marriage, surviving
416 spouses, and their children.
417 (6) Many of the laws of this state are intertwined with
418 federal law, and the Legislature recognizes that it does not

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419 have the jurisdiction to control or implement federal laws or
420 the privileges, immunities, rights, benefits, and
421 responsibilities related to federal laws.
422 (7) Sections 741.502-741.511 do not require or permit the
423 extension of any benefit under any retirement, deferred
424 compensation, or other employee benefit plan, if the plan
425 administrator reasonably concludes that the extension of
426 benefits would conflict with a condition for the tax
427 qualification of the plan, or a condition for other favorable
428 tax treatment of the plan, under the Internal Revenue Code or
429 adopted regulations.
430 (8) Sections 741.502-741.511 do not require the extension
431 of any benefit under any employee benefit plan that is subject
432 to federal regulation under the Employee Retirement Income
433 Security Act of 1974.
434 Section 19. Section 741.508, Florida Statutes, is created
435 to read:
436 741.508 Domestic partnerships prohibited and void.—
437 (1) The following domestic partnerships are prohibited and
438 void if:
439 (a) Either party to the domestic partnership currently has
440 a different partner, or a wife or husband recognized by this
441 state, living at the time of entering into the domestic
442 partnership.
443 (b) The parties to the domestic partnership are related by
444 lineal consanguinity or are siblings, or if one party is the
445 niece or nephew of the other party.
446 (c) Either party to a domestic partnership is incapable of
447 making the civil contract or consenting to the contract for want

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448 of legal age or sufficient understanding.
449 (2) If the consent of either party is obtained by force or
450 fraud, the domestic partnership is void from the time it is so
451 declared by a judgment of a court having jurisdiction of the
452 domestic partnership.
453 (3) An individual who has filed a Declaration of Domestic
454 Partnership form may not file a new Declaration of Domestic
455 Partnership form or enter a marriage recognized in this state
456 with someone other than the individual's registered partner
457 unless a notice of termination of the most recent domestic
458 partnership has been entered. This prohibition does not apply if
459 the previous domestic partnership ended because one of the
460 partners died.
461 Section 20. Section 741.509, Florida Statutes, is created
462 to read:
463 741.509 Fees.—
464 (1) The clerk of the circuit court shall collect and
465 receive a fee of $2 for receiving a Declaration of Domestic
466 Partnership form completed in accordance with s. 741.505. In
467 addition:
468 (a) A fee of $25 shall be collected and deposited in the
469 Domestic Violence Trust Fund for the purposes provided in s.
470 741.01(2).
471 (b) A fee of $7.50 shall be collected for deposit in the
472 Displaced Homemaker Trust Fund created in s. 446.50.
473 (c) A fee of $25 shall be collected and remitted to the
474 Department of Revenue for deposit, monthly, into the General
475 Revenue Fund.
476 (d) A fee of $4 shall be collected and distributed as

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477 provided in s. 382.022.
478 (2) An applicant for a Certificate of Registered Domestic
479 Partnership who is unable to pay the fees required under
480 subsection (1) in a lump sum may make payment in not more than
481 three installments over a period of 90 days. The clerk shall
482 accept installment payments upon receipt of an affidavit that
483 the applicant is unable to pay the fees in a lump-sum payment.
484 Upon receipt of the third or final installment payment, the
485 Declaration of Domestic Partnership shall be deemed filed, and
486 the clerk shall issue the Certificate of Registered Domestic
487 Partnership and distribute the fees as provided in subsection
488 (1). If the fee is paid in installments, the clerk shall retain
489 $1 from the additional fee imposed pursuant to paragraph (1)(c)
490 as a processing fee.
491 Section 21. Section 741.510, Florida Statutes, is created
492 to read:
493 741.510 Proof domestic partnership where certificate is not
494 available.—If a Declaration of Domestic Partnership has been
495 received in accordance with s. 741.505 and the clerk has not
496 registered such declaration as required by that section, if a
497 Certificate of Registered Domestic Partnership has been lost, or
498 if by reason of death or other cause the certificate cannot be
499 obtained, the domestic partnership may be proved by affidavit
500 before any officer authorized to administer oaths made by two
501 competent witnesses who were present and saw the Declaration of
502 Domestic Partnership executed under s. 741.505, which affidavit
503 may be filed and recorded in the office of clerk of the circuit
504 in which the Declaration of Domestic Partnership was registered,
505 with the same force and effect as if the proper certificate has

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506 been made, returned, and recorded.
507 Section 22. Section 741.511, Florida Statutes, is created
508 to read:
509 741.511 Termination of partnership.—
510 (1)(a) A party to a state-registered domestic partnership
511 may terminate the relationship by filing a notice of termination
512 of the domestic partnership with the clerk of the circuit court
513 and paying the filing fee established under s. 382.023. The
514 notice must be signed by one or both parties and notarized. If
515 the notice is not signed by both parties, the party seeking
516 termination must also file with the clerk an affidavit stating
517 either that the other party has been served in writing in the
518 manner prescribed for the service of summons in a civil action,
519 that a notice of termination is being filed, or that the party
520 seeking termination has not been able to find the other party
521 after reasonable effort and that notice has been made by
522 publication pursuant to paragraph (b).
523 (b) When the other party cannot be found after reasonable
524 effort, the party seeking termination may provide notice by
525 publication as provided in chapter 50 in the county in which the
526 residence most recently shared by the domestic partners is
527 located. Notice must be published at least once.
528 (2) The domestic partnership shall be terminated effective
529 90 days after the date of filing the notice of termination and
530 payment of the filing fee.
531 (3) Upon receipt of a signed, notarized notice of
532 termination, affidavit, if required, and the filing fee, the
533 clerk of the circuit court shall file the notice of termination
534 and provide a certificate of termination of the domestic

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535 partnership to each party named on the notice. The clerk shall
536 maintain a record of each notice of termination filed and each
537 certificate of termination issued in the registry required by s.
538 741.504(2).
539 (4) A domestic partnership is automatically terminated if,
540 subsequent to the registration of the domestic partnership,
541 either party or both parties enter into a marriage that is
542 recognized as valid in this state, either with each other or
543 with another person.
544 Section 23. For the purpose of incorporating the amendment
545 made by this act to section 741.28, Florida Statutes, in a
546 reference thereto, paragraph (b) of subsection (1) of section
547 921.0024, Florida Statutes, is reenacted to read:
548 921.0024 Criminal Punishment Code; worksheet computations;
549 scoresheets.—
550 (1)
551 (b) WORKSHEET KEY:
552
553 Legal status points are assessed when any form of legal status
554 existed at the time the offender committed an offense before the
555 court for sentencing. Four (4) sentence points are assessed for
556 an offender's legal status.
557
558 Community sanction violation points are assessed when a
559 community sanction violation is before the court for sentencing.
560 Six (6) sentence points are assessed for each community sanction
561 violation and each successive community sanction violation,
562 unless any of the following apply:
563 1. If the community sanction violation includes a new

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564 felony conviction before the sentencing court, twelve (12)
565 community sanction violation points are assessed for the
566 violation, and for each successive community sanction violation
567 involving a new felony conviction.
568 2. If the community sanction violation is committed by a
569 violent felony offender of special concern as defined in s.
570 948.06:
571 a. Twelve (12) community sanction violation points are
572 assessed for the violation and for each successive violation of
573 felony probation or community control where:
574 (I) The violation does not include a new felony conviction;
575 and
576 (II) The community sanction violation is not based solely
577 on the probationer or offender’s failure to pay costs or fines
578 or make restitution payments.
579 b. Twenty-four (24) community sanction violation points are
580 assessed for the violation and for each successive violation of
581 felony probation or community control where the violation
582 includes a new felony conviction.
583
584 Multiple counts of community sanction violations before the
585 sentencing court shall not be a basis for multiplying the
586 assessment of community sanction violation points.
587
588 Prior serious felony points: If the offender has a primary
589 offense or any additional offense ranked in level 8, level 9, or
590 level 10, and one or more prior serious felonies, a single
591 assessment of thirty (30) points shall be added. For purposes of
592 this section, a prior serious felony is an offense in the

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593 offender’s prior record that is ranked in level 8, level 9, or
594 level 10 under s. 921.0022 or s. 921.0023 and for which the
595 offender is serving a sentence of confinement, supervision, or
596 other sanction or for which the offender’s date of release from
597 confinement, supervision, or other sanction, whichever is later,
598 is within 3 years before the date the primary offense or any
599 additional offense was committed.
600
601 Prior capital felony points: If the offender has one or more
602 prior capital felonies in the offender’s criminal record, points
603 shall be added to the subtotal sentence points of the offender
604 equal to twice the number of points the offender receives for
605 the primary offense and any additional offense. A prior capital
606 felony in the offender’s criminal record is a previous capital
607 felony offense for which the offender has entered a plea of nolo
608 contendere or guilty or has been found guilty; or a felony in
609 another jurisdiction which is a capital felony in that
610 jurisdiction, or would be a capital felony if the offense were
611 committed in this state.
612
613 Possession of a firearm, semiautomatic firearm, or machine gun:
614 If the offender is convicted of committing or attempting to
615 commit any felony other than those enumerated in s. 775.087(2)
616 while having in his or her possession: a firearm as defined in
617 s. 790.001(6), an additional eighteen (18) sentence points are
618 assessed; or if the offender is convicted of committing or
619 attempting to commit any felony other than those enumerated in
620 s. 775.087(3) while having in his or her possession a
621 semiautomatic firearm as defined in s. 775.087(3) or a machine

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622 gun as defined in s. 790.001(9), an additional twenty-five (25)
623 sentence points are assessed.
624
625 Sentencing multipliers:
626
627 Drug trafficking: If the primary offense is drug trafficking
628 under s. 893.135, the subtotal sentence points are multiplied,
629 at the discretion of the court, for a level 7 or level 8
630 offense, by 1.5. The state attorney may move the sentencing
631 court to reduce or suspend the sentence of a person convicted of
632 a level 7 or level 8 offense, if the offender provides
633 substantial assistance as described in s. 893.135(4).
634
635 Law enforcement protection: If the primary offense is a
636 violation of the Law Enforcement Protection Act under s.
637 775.0823(2), (3), or (4), the subtotal sentence points are
638 multiplied by 2.5. If the primary offense is a violation of s.
639 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points
640 are multiplied by 2.0. If the primary offense is a violation of
641 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement
642 Protection Act under s. 775.0823(10) or (11), the subtotal
643 sentence points are multiplied by 1.5.
644
645 Grand theft of a motor vehicle: If the primary offense is grand
646 theft of the third degree involving a motor vehicle and in the
647 offender’s prior record, there are three or more grand thefts of
648 the third degree involving a motor vehicle, the subtotal
649 sentence points are multiplied by 1.5.
650

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651 Offense related to a criminal gang: If the offender is convicted
652 of the primary offense and committed that offense for the
653 purpose of benefiting, promoting, or furthering the interests of
654 a criminal gang as prohibited under s. 874.04, the subtotal
655 sentence points are multiplied by 1.5.
656
657 Domestic violence in the presence of a child: If the offender is
658 convicted of the primary offense and the primary offense is a
659 crime of domestic violence, as defined in s. 741.28, which was
660 committed in the presence of a child under 16 years of age who
661 is a family or household member as defined in s. 741.28(3) with
662 the victim or perpetrator, the subtotal sentence points are
663 multiplied by 1.5.
664 Section 24. For the purpose of incorporating the amendment
665 made by this act to section 741.28, Florida Statutes, in a
666 reference thereto, paragraph (b) of subsection (2) of section
667 943.171, Florida Statutes, is reenacted to read:
668 943.171 Basic skills training in handling domestic violence
669 cases.—
670 (2) As used in this section, the term:
671 (b) "Household member" has the meaning set forth in s.
672 741.28(3).
673 Section 25. This act shall take effect July 1, 2013.
674
675 ========== T I T L E A M E N D M E N T ==========
676 And the title is amended as follows:
677 Delete everything before the enacting clause
678 and insert:
679 A bill to be entitled

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680 An act relating to families first; amending s. 28.24,
681 F.S.; setting forth fees and costs to be applied when
682 registering a domestic partnership; amending s.
683 97.1031, F.S.; providing notice to the supervisor of
684 elections concerning a change of name due to
685 participation in a domestic partnership; amending s.
686 382.002, F.S.; including domestic partnerships and
687 terminations of domestic partnership as vital records
688 in this state; amending s. 382.003, F.S.; requiring
689 the Department of Health to examine all certificates
690 of domestic partnership forms and notices of
691 termination of domestic partnership reports sent from
692 the courts; amending s. 382.021, F.S.; requiring the
693 clerk of the circuit court to transmit all original
694 declarations of domestic partnership to the Department
695 of Health by a specified date each month; amending s.
696 382.022, F.S.; requiring the clerk of the circuit
697 court to collect a fee after registering a domestic
698 partnership; amending s. 382.023, F.S.; requiring the
699 clerk of the circuit court to collect a fee upon
700 filing a notice of termination of a domestic
701 partnership; requiring the clerk of the circuit court
702 to transmit records of terminations of domestic
703 partnerships to the Department of Health by a
704 specified date each month; amending s. 382.025, F.S.;
705 authorizing the Department of Health to issue a
706 certified copy of certain vital records to a domestic
707 partner; amending s. 382.0255, F.S.; providing that
708 the Department of Health is entitled to a specified

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709 fee for the issuance of a commemorative certificate of
710 domestic partnership; amending s. 446.50, F.S.;
711 requiring that certain fees relating to declarations
712 of domestic partnership be deposited in the Displaced
713 Homemaker Trust Fund; amending s. 741.28, F.S.;
714 redefining the term “family or household member” in
715 the context of domestic violence to include a domestic
716 partnership; creating s. 741.501, F.S.; providing
717 legislative findings; creating s. 741.502, F.S.;
718 defining terms; creating s. 741.503, F.S.; requiring
719 the Department of Health to create and distribute the
720 Declaration of Domestic Partnership and Certificate of
721 Registered Domestic Partnership forms to each clerk of
722 the circuit court; requiring the department and each
723 clerk of the circuit court to make the Declaration of
724 Domestic Partnership form available to the public;
725 creating s. 741.504, F.S.; providing that the circuit
726 court has jurisdiction over domestic partnership
727 proceedings; requiring the clerk of the circuit court
728 to maintain a domestic partnership registry; requiring
729 the clerk of the circuit court to transmit records
730 related to domestic partnerships to the Department of
731 Health as required by law; providing that the registry
732 is a public record; creating s. 741.505, F.S.;
733 requiring two individuals who wish to become partners
734 in a domestic partnership to complete and file a
735 Declaration of Domestic Partnership form with the
736 clerk of the circuit court; specifying the required
737 contents of the completed form; providing that each

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738 partner who signs the form consents to the
739 jurisdiction of the circuit court for certain
740 purposes; providing that if a person files an
741 intentionally and materially false form, he or she
742 commits a misdemeanor of the first degree; providing
743 criminal penalties; requiring the clerk of the circuit
744 court to register the Declaration of Domestic
745 Partnership in a domestic partnership registry and
746 issue a Certificate of Registered Domestic
747 Partnership; creating s. 741.506, F.S.; authorizing
748 the domestic partners to retain surnames; creating s.
749 741.507, F.S.; providing that any privilege or
750 responsibility granted or imposed by statute,
751 administrative or court rule, policy, common law, or
752 any other law to an individual because the individual
753 is or was related to another by marriage, is or was an
754 in-law, or is a child of either of the spouses, is
755 granted on equivalent terms to domestic partners or
756 individuals similarly related to domestic partners;
757 providing that the act does not require or authorize
758 the extension of any benefit under a retirement,
759 deferred compensation, or other employee benefit plan,
760 if the plan administrator reasonably concludes that
761 the extension of benefits to partners would conflict
762 with a condition for tax qualification of the plan, or
763 a condition for other favorable tax treatment of the
764 plan, under the Internal Revenue Code; creating s.
765 741.508, F.S.; specifying prohibited or void domestic
766 partnerships; creating s. 741.509, F.S.; requiring

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767 that the clerk of the circuit court collect certain
768 fees for receiving a Declaration of Domestic
769 Partnership; authorizing the clerk of the circuit
770 court to accept installment payments from individuals
771 who are unable to pay the fees in a lump sum; creating
772 s. 741.510, F.S.; providing methods to prove the
773 existence of a registered Declaration Domestic
774 Partnership when the certificate document has been
775 lost or is otherwise unavailable; creating s. 741.511,
776 F.S.; providing for termination of a domestic
777 partnership; providing for notice; providing for the
778 effective date of the termination; providing for
779 registration of the termination; requiring records of
780 certain terminations to be maintained; providing for
781 automatic termination of partnership if either party
782 enters into a valid marriage; reenacting ss.
783 921.0024(1)(b) and 943.171(2)(b), F.S., relating to
784 the worksheet form for the Criminal Punishment Code
785 and the basic skills training for domestic violence
786 cases, respectively, to incorporate the amendments
787 made to s. 741.28, F.S., in references thereto;
788 providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Subsection (29) is added to section 28.24,
6 Florida Statutes, to read:
7 28.24 Service charges by clerk of the circuit court.—The
8 clerk of the circuit court shall charge for services rendered by
9 the clerk’s office in recording documents and instruments and in
10 performing the duties enumerated in amounts not to exceed those
11 specified in this section. Notwithstanding any other provision
12 of this section, the clerk of the circuit court shall provide

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13 without charge to the state attorney, public defender, guardian
14 ad litem, public guardian, attorney ad litem, criminal conflict
15 and civil regional counsel, and private court-appointed counsel
16 paid by the state, and to the authorized staff acting on behalf
17 of each, access to and a copy of any public record, if the
18 requesting party is entitled by law to view the exempt or
19 confidential record, as maintained by and in the custody of the
20 clerk of the circuit court as provided in general law and the
21 Florida Rules of Judicial Administration. The clerk of the
22 circuit court may provide the requested public record in an
23 electronic format in lieu of a paper format when capable of
24 being accessed by the requesting entity.
25
26 Charges
27
28 (29) Upon receipt of a Declaration of Domestic Partnership,
29 for preparing and administering of oath, and filing and
30 providing a certified copy the domestic partnership,$30.00.
31 Section 2. Subsection (3) of section 382.009, Florida
32 Statutes, is amended to read:
33 382.009 Recognition of brain death under certain
34 circumstances.—
35 (3) The next of kin of the patient and domestic partner
36 shall be notified as soon as practicable of the procedures to
37 determine death under this section. The medical records shall
38 reflect such notice; if such notice has not been given, the
39 medical records shall reflect the attempts to identify and
40 notify the next of kin.
41 Section 3. Paragraph (c) of subsection (5) of section

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42 394.459, Florida Statutes, is amended to read:
43 394.459 Rights of patients.—
44 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—
45 (c) Each facility must permit immediate access to any
46 patient, subject to the patient's right to deny or withdraw
47 consent at any time, by the patient's family members, including
48 the patient's domestic partner, guardian, guardian advocate,
49 representative, Florida statewide or local advocacy council, or
50 attorney, unless such access would be detrimental to the
51 patient. If a patient's right to communicate or to receive
52 visitors is restricted by the facility, written notice of such
53 restriction and the reasons for the restriction shall be served
54 on the patient, the patient's attorney, and the patient's
55 guardian, guardian advocate, or representative; and such
56 restriction shall be recorded on the patient's clinical record
57 with the reasons therefor. The restriction of a patient's right
58 to communicate or to receive visitors shall be reviewed at least
59 every 7 days. The right to communicate or receive visitors shall
60 not be restricted as a means of punishment. Nothing in this
61 paragraph shall be construed to limit the provisions of
62 paragraph (d).
63 Section 4. Paragraphs (c) and (e) of subsection (1) of
64 section 400.022, Florida Statutes, are amended to read:
65 400.022 Residents' rights.—
66 (1) All licensees of nursing home facilities shall adopt
67 and make public a statement of the rights and responsibilities
68 of the residents of such facilities and shall treat such
69 residents in accordance with the provisions of that statement.
70 The statement shall assure each resident the following:

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71 (c) Any entity or individual that provides health, social,
72 legal, or other services to a resident has the right to have
73 reasonable access to the resident. The resident has the right to
74 deny or withdraw consent to access at any time by any entity or
75 individual. Notwithstanding the visiting policy of the facility,
76 the following individuals must be permitted immediate access to
77 the resident:
78 1. Any representative of the federal or state government,
79 including, but not limited to, representatives of the Department
80 of Children and Family Services, the Department of Health, the
81 Agency for Health Care Administration, the Office of the
82 Attorney General, and the Department of Elderly Affairs; any law
83 enforcement officer; members of the state or local ombudsman
84 council; and the resident's individual physician.
85 2. Subject to the resident's right to deny or withdraw
86 consent, immediate family, including the resident's domestic
87 partner, or other relatives of the resident.
88
89 The facility must allow representatives of the State Long-Term
90 Care Ombudsman Council to examine a resident's clinical records
91 with the permission of the resident or the resident's legal
92 representative and consistent with state law.
93 (e) The right to organize and participate in resident
94 groups in the facility and the right to have the resident's
95 family, including the resident's domestic partner, meet in the
96 facility with the families of other residents.
97 Section 5. Section 406.50, Florida Statutes, is amended to
98 read:
99 406.50 Unclaimed dead bodies or human remains; disposition,

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100 procedure.—All public officers, agents, or employees of every
101 county, city, village, town, or municipality and every person in
102 charge of any prison, morgue, hospital, funeral parlor, or
103 mortuary and all other persons coming into possession, charge,
104 or control of any dead human body or remains which are unclaimed
105 or which are required to be buried or cremated at public expense
106 are hereby required to notify, immediately, the anatomical
107 board, whenever any such body, bodies, or remains come into its
108 possession, charge, or control. Notification of the anatomical
109 board is not required if the death was caused by crushing
110 injury, the deceased had a contagious disease, an autopsy was
111 required to determine cause of death, the body was in a state of
112 severe decomposition, or a family member, including a domestic
113 partner, objects to use of the body for medical education and
114 research.
115 (1) The person or entity in charge or control of the dead
116 body or human remains shall make a reasonable effort to
117 determine:
118 (a) The identity of the deceased person and shall further
119 make a reasonable effort to contact any relatives, including a
120 domestic partner, of such deceased person.
121 (b) Whether or not the deceased person is entitled to
122 burial in a national cemetery as a veteran of the armed forces
123 and, if so, shall make arrangements for such burial services in
124 accordance with the provisions of 38 C.F.R. For purposes of this
125 subsection, “a reasonable effort” includes contacting the county
126 veterans service office or regional office of the United States
127 Department of Veterans Affairs.
128 (2) Such dead human bodies as described in this chapter

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129 shall be delivered to the anatomical board as soon as possible
130 after death.
131 (3) Nothing herein shall affect the right of a medical
132 examiner to hold such dead body or remains for the purpose of
133 investigating the cause of death, nor shall this chapter affect
134 the right of any court of competent jurisdiction to enter an
135 order affecting the disposition of such body or remains.
136 (4) In the event more than one legally authorized person
137 claims a body for interment, the requests shall be prioritized
138 in accordance with s. 732.103.
139
140 For purposes of this chapter, the term “anatomical board” means
141 the anatomical board of this state located at the University of
142 Florida Health Science Center, and the term “unclaimed” means a
143 dead body or human remains that is not claimed by a legally
144 authorized person, as defined in s. 497.005, for interment at
145 that person’s expense.
146 Section 6. Paragraph (g) of subsection (2) of section
147 408.051, Florida Statutes, is amended to read:
148 408.051 Florida Electronic Health Records Exchange Act.—
149 (2) DEFINITIONS.—As used in this section, the term:
150 (g) “Patient representative” means a parent of a minor
151 patient, a court-appointed guardian for the patient, a health
152 care surrogate, or a person holding a power of attorney or
153 notarized consent appropriately executed by the patient granting
154 permission to a health care facility or health care provider to
155 disclose the patient’s health care information to that person.
156 In the case of a deceased patient, the term also means the
157 personal representative of the estate of the deceased patient;

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158 the deceased patient's surviving spouse, surviving domestic
159 partner, surviving parent, or surviving adult child; the parent
160 or guardian of a surviving minor child of the deceased patient;
161 the attorney for the patient's surviving spouse, domestic
162 partner, parent, or adult child; or the attorney for the parent
163 or guardian of a surviving minor child.
164 Section 7. Paragraph (g) of subsection (1) of section
165 429.28, Florida Statutes, is amended to read:
166 429.28 Resident bill of rights.—
167 (1) No resident of a facility shall be deprived of any
168 civil or legal rights, benefits, or privileges guaranteed by
169 law, the Constitution of the State of Florida, or the
170 Constitution of the United States as a resident of a facility.
171 Every resident of a facility shall have the right to:
172 (g) Share a room with his or her spouse or domestic partner
173 if both are residents of the facility.
174 Section 8. Paragraph (g) of subsection (1) of section
175 429.85, Florida Statutes, is amended to read:
176 429.85 Residents' bill of rights.—
177 (1) A resident of an adult family-care home may not be
178 deprived of any civil or legal rights, benefits, or privileges
179 guaranteed by law, the State Constitution, or the Constitution
180 of the United States solely by reason of status as a resident of
181 the home. Each resident has the right to:
182 (g) Share a room with the resident's spouse or domestic
183 partner if both are residents of the home.
184 Section 9. Paragraph (b) of subsection (5) of section
185 446.50, Florida Statutes, is amended to read:
186 446.50 Displaced homemakers; multiservice programs; report

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187 to the Legislature; Displaced Homemaker Trust Fund created.—
188 (5) DISPLACED HOMEMAKER TRUST FUND.—
189 (b) The trust fund shall receive funds generated from an
190 additional fee on marriage license applications and dissolution
191 of marriage filings as specified in ss. 741.01(3), 741.507, and
192 28.101, respectively, and may receive funds from any other
193 public or private source.
194 Section 10. Subsection (39) of section 497.005, Florida
195 Statutes, is amended to read:
196 497.005 Definitions.—As used in this chapter, the term:
197 (39) "Legally authorized person" means, in the priority
198 listed:
199 (a) The decedent, when written inter vivos authorizations
200 and directions are provided by the decedent;
201 (b) The person designated by the decedent as authorized to
202 direct disposition pursuant to Pub. L. No. 109-163, s. 564, as
203 listed on the decedent's United States Department of Defense
204 Record of Emergency Data, DD Form 93, or its successor form, if
205 the decedent died while serving military service as described in
206 10 U.S.C. s. 1481(a)(1)-(8) in any branch of the United States
207 Armed Forces, United States Reserve Forces, or National Guard;
208 (c) The surviving spouse or domestic partner, unless the
209 spouse or domestic partner has been arrested for committing
210 against the deceased an act of domestic violence as defined in
211 s. 741.28 that resulted in or contributed to the death of the
212 deceased;
213 (d) A son or daughter who is 18 years of age or older;
214 (e) A parent;
215 (f) A brother or sister who is 18 years of age or older;

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216 (g) A grandchild who is 18 years of age or older;
217 (h) A grandparent; or
218 (i) Any person in the next degree of kinship.
219
220 In addition, the term may include, if no family member exists or
221 is available, the guardian of the dead person at the time of
222 death; the personal representative of the deceased; the attorney
223 in fact of the dead person at the time of death; the health
224 surrogate of the dead person at the time of death; a public
225 health officer; the medical examiner, county commission, or
226 administrator acting under part II of chapter 406 or other
227 public administrator; a representative of a nursing home or
228 other health care institution in charge of final disposition; or
229 a friend or other person not listed in this subsection who is
230 willing to assume the responsibility as the legally authorized
231 person. Where there is a person in any priority class listed in
232 this subsection, the funeral establishment shall rely upon the
233 authorization of any one legally authorized person of that class
234 if that person represents that she or he is not aware of any
235 objection to the cremation of the deceased's human remains by
236 others in the same class of the person making the representation
237 or of any person in a higher priority class.
238 Section 11. Paragraph (e) of subsection (8) of section
239 497.152, Florida Statutes, is amended to read:
240 497.152 Disciplinary grounds.—This section sets forth
241 conduct that is prohibited and that shall constitute grounds for
242 denial of any application, imposition of discipline, or other
243 enforcement action against the licensee or other person
244 committing such conduct. For purposes of this section, the

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245 requirements of this chapter include the requirements of rules
246 adopted under authority of this chapter. No subsection heading
247 in this section shall be interpreted as limiting the
248 applicability of any paragraph within the subsection.
249 (8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF HUMAN
250 REMAINS.—
251 (e) Failing to obtain written authorization from the
252 family, including the domestic partner, or next of kin of the
253 deceased prior to entombment, interment, disinterment,
254 disentombment, or disinurnment of the remains of any human
255 being.
256 Section 12. Subsection (2) of section 741.01, Florida
257 Statutes, is amended to read:
258 741.01 County court judge or clerk of the circuit court to
259 issue marriage license; fee.—
260 (2) The fee charged for each marriage license issued in the
261 state shall be increased by the sum of $25. This fee shall be
262 collected upon receipt of the application for the issuance of a
263 marriage license and remitted by the clerk to the Department of
264 Revenue for deposit in the Domestic Violence Trust Fund. The
265 Executive Office of the Governor shall establish a Domestic
266 Violence Trust Fund for the purpose of collecting and disbursing
267 funds generated from the increase in the marriage license fee
268 and the Declaration of Domestic Partnership fee collected
269 pursuant to s. 741.507. Such funds which are generated shall be
270 directed to the Department of Children and Family Services for
271 the specific purpose of funding domestic violence centers, and
272 the funds shall be appropriated in a “grants-in-aid” category to
273 the Department of Children and Family Services for the purpose

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274 of funding domestic violence centers. From the proceeds of the
275 surcharge deposited into the Domestic Violence Trust Fund as
276 required under s. 938.08, the Executive Office of the Governor
277 may spend up to $500,000 each year for the purpose of
278 administering a statewide public-awareness campaign regarding
279 domestic violence.
280 Section 13. Section 741.501, Florida Statutes, is created
281 to read:
282 741.501 Legislative findings.—The Legislature finds that:
283 (1) There are a significant number of individuals in this
284 state who live together in important and personally,
285 emotionally, and economically committed relationships who are
286 not married under state law. These familial relationships are
287 often referred to as domestic partnerships. The 2010 census
288 indicates that more than 12 percent of Americans identified
289 themselves as living in a domestic partnership.
290 (2) The state has a strong interest in promoting stable and
291 lasting families and believes that all familial relationships,
292 including domestic partnerships, should be provided with
293 important legal protections.
294 (3) The status of marriage in this state is limited by Art.
295 I of the State Constitution to the union of one man and one
296 woman and the Legislature does not seek to alter the definition
297 of marriage in any way. The Legislature also finds, however,
298 that recognition of domestic partnerships can provide an
299 alternative mechanism for extending certain important rights and
300 responsibilities to individuals who choose to form long-term,
301 mutually supportive relationships. Such recognition will provide
302 support to these familial relationships without affecting the

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303 definition of marriage, without creating or recognizing a legal
304 relationship that is the substantial equivalent of marriage, and
305 without affecting restrictions contained in federal law. This
306 law does not alter, affect, or contravene any municipal, county,
307 state, or federal law that defines marriage, nor shall it be
308 interpreted as recognizing or treating a domestic partnership as
309 a marriage.
310 (4) Because of the material and other support that domestic
311 partnerships provide to their participants, these relationships
312 should be formally recognized and made uniform by law.
313 Recognition of these relationships will also promote employee
314 recruitment, employee retention, and employee loyalty for
315 employers within this state; and will promote economic
316 development by attracting companies to this state which value
317 diversity and protections for their employees. Therefore, the
318 Legislature declares that it is the policy of this state to
319 establish and define the rights and responsibilities of domestic
320 partners.
321 Section 14. Section 741.502, Florida Statutes, is created
322 to read:
323 741.502 Definitions.—As used in ss. 741.501-741.510, the
324 term:
325 (1) “Correctional facility” means any penal, correctional,
326 or detention facility operated by the state, one or more
327 counties, a municipality, or a private corporation.
328 (2) “Domestic partner” means a person who enters into a
329 domestic partnership.
330 (3) “Domestic partnership” means a civil contract that
331 meets the requirements of s. 741.505.

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332 (4) “Health care facility” means a facility licensed under
333 chapter 395, chapter 400, or chapter 429 or defined in s.
334 394.455.
335 (5) “Mutual residence” means a residence that is shared,
336 without the necessity that the legal right to possess the
337 property be in the name of both residents and regardless of
338 whether either resident has another dwelling.
339 Section 15. Section 741.503, Florida Statutes, is created
340 to read:
341 741.503 Forms.—The Department of Health shall prepare and
342 adopt the following forms:
343 (1) Declaration of Domestic Partnership.
344 (2) Certificate of Domestic Partnership.
345 (3) Notice of Termination of Domestic Partnership.
346 (4) Certificate of Termination of Domestic Partnership.
347 Section 16. Section 741.504, Florida Statutes, is created
348 to read:
349 741.504 Domestic partnership requirements.—
350 (1) A domestic partnership may be formed by filing a
351 Declaration of Domestic Partnership form with a clerk of the
352 circuit court in any county. The declaration must include:
353 (a) A statement attesting that each party is 18 years of
354 age or older. The clerk may accept any reasonable proof of an
355 individual’s age, but the clerk must accept a driver license or
356 passport.
357 (b) A statement attesting that at least one of the parties
358 is a resident of this state.
359 (c) A statement attesting that both parties share a mutual
360 residence.

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361 (d) A statement attesting that formation of a domestic
362 partnership is not prohibited under s. 741.505.
363 (e) A mailing address for each party.
364 (f) The notarized signature of each party, along with a
365 declaration that the representations made on the form are true
366 and correct and contain no material omissions of fact to the
367 best knowledge and belief of each party.
368 (2) A person who intentionally provides materially false
369 information on a Declaration of Domestic Partnership form
370 commits a misdemeanor of the first degree, punishable as
371 provided in s. 775.082 or s. 775.083.
372 (3) If the Declaration of Domestic Partnership satisfies
373 the requirements of this section, the clerk of the circuit court
374 shall:
375 (a) Record the Declaration of Domestic Partnership in the
376 official records.
377 (b) Issue a Certificate of Domestic Partnership to the
378 partners in person or at the mailing address provided.
379 Section 17. Section 741.505, Florida Statutes, is created
380 to read:
381 741.505 Prohibitions to forming a domestic partnership.—A
382 domestic partnership is prohibited if:
383 (1) Either party is married to a different person, unless
384 the marriage has been legally terminated.
385 (2) Either party is a party to a domestic partnership with
386 a different domestic partner, unless the domestic partnership
387 has been legally terminated.
388 (3) The parties are related by lineal consanguinity or are
389 siblings, or if one party is the niece or nephew of the other

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390 party.
391 (4) Either party is incapable of making the civil contract
392 or of consenting to the contract for want of legal age or
393 sufficient understanding.
394 (5) Consent to formation of the domestic partnership by
395 either party is obtained by force, fraud, or duress.
396 Section 18. Section 741.506, Florida Statutes, is created
397 to read:
398 741.506 Domestic partnership; rights; enforcement.—
399 (1) A health care facility shall provide a domestic partner
400 with the same right of visitation it provides a spouse.
401 (2) A correctional institution shall grant a domestic
402 partner the same visitation privileges it grants a spouse.
403 (3) Any public or private entity that provides notice to a
404 spouse or relative in the event of an emergency shall provide
405 notice to a domestic partner.
406 (4) Domestic partners have the same right to jointly own
407 property by tenancy by the entirety, and all legal attributes
408 thereof, as is afforded to spouses.
409 (5) In the absence of a written designation of a healthcare
410 surrogate, a domestic partner has the same right to serve as
411 proxy, as provided in chapter 765, as a spouse.
412 (6) A decedent’s domestic partner has the authority to act
413 as “patient’s representative” and to direct the disposition of
414 the decedent’s body as provided in chapters 382, 406, 408, 497,
415 765, and 872.
416 (7) A violation of this section may be enforced by private
417 cause of action filed in any court of competent jurisdiction for
418 declaratory relief, injunctive relief, or both. The prevailing

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419 party is entitled to recover attorney fees.
420 Section 19. Section 741.507, Florida Statutes, is created
421 to read:
422 741.507 Fees.—
423 (1) Upon receipt of a Declaration of Domestic Partnership,
424 the clerk of the circuit court shall collect and receive:
425 (a) A fee of $30 as provided in s. 28.24(29).
426 (b) A fee of $2 for receiving the Declaration of Domestic
427 Partnership.
428 (c) A fee of $25 to be remitted to the Department of
429 Revenue for deposit into the Domestic Violence Trust Fund.
430 (d) A fee of $25 to be remitted to the Department of
431 Revenue for monthly deposit into the General Revenue Fund.
432 (e) A fee of $7.50 to be remitted to the Department of
433 Revenue for deposit into the Displaced Homemaker Trust Fund
434 created in s. 446.50.
435 (2) An applicant for a Certificate of Domestic Partnership
436 who cannot pay the fees required under subsection (1) in a lump
437 sum may make payment in not more than three installments over a
438 period of 90 days. The clerk shall accept installment payments
439 upon receipt of an affidavit that the applicant cannot pay the
440 fees in a lump-sum payment. Upon receipt of the third or final
441 installment payment, the Declaration of Domestic Partnership
442 shall be deemed filed, and the clerk shall issue the Certificate
443 of Domestic Partnership and distribute the fees as provided in
444 subsection (1). If the fees are paid in installments, the clerk
445 shall retain $1 from the fee imposed pursuant to paragraph
446 (1)(b) as a processing fee.
447 (3) Upon receipt of a Notice of Termination of Domestic

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448 Partnership, the clerk of the circuit court shall collect and
449 receive a fee of $10.
450 Section 20. Section 741.508, Florida Statutes, is created
451 to read:
452 741.508 Proof of domestic partnership if certificate is not
453 available.—
454 (1) If the Certificate of Domestic Partnership is not
455 available, the domestic partnership may be proved by an
456 affidavit before any officer authorized to administer oaths
457 which is made by two competent witnesses who were present and
458 saw the Declaration of Domestic Partnership executed.
459 (2) The clerk of the circuit court of the county in which
460 the Declaration of Domestic Partnership originally was executed
461 shall file and record the affidavit and shall issue a new
462 certificate, which has the same force and effect as the
463 original.
464 (3) For purposes of this section, a Certificate of Domestic
465 Partnership is not available if:
466 (a) A Declaration of Domestic Partnership was executed in
467 accordance with s. 741.504 but was not recorded;
468 (b) The certificate is lost; or
469 (c) The certificate cannot be obtained by reason of death
470 or other cause.
471 Section 21. Section 741.509, Florida Statutes, is created
472 to read:
473 741.509 Termination of partnership.—
474 (1) A party to a domestic partnership may terminate the
475 partnership by filing a Notice of Termination of Domestic
476 Partnership with the clerk of the circuit court and by paying

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477 the filing fee established under s. 741.507. The notice must be
478 signed by at least one of the parties and notarized. If the
479 notice is not signed by both parties, the party who seeks
480 termination must also file with the clerk an affidavit stating
481 that:
482 (a) Notice has been served on the other party in the manner
483 prescribed for the service of summons in a civil action; or
484 (b) The party who seeks termination has not been able to
485 find the other party after reasonable effort and that notice has
486 been made pursuant to s. 50.011 by publication in a newspaper of
487 general distribution in the county where the domestic partners
488 were last domiciled.
489 (2) The domestic partnership is terminated effective 90
490 days after the date of filing the notice of termination and
491 payment of the filing fee.
492 (3) Upon receipt of a signed, notarized notice of
493 termination, affidavit, if required, and filing fee, the clerk
494 of the circuit court shall file the notice of termination and
495 issue a Certificate of Termination of Domestic Partnership to
496 each party in person or at the mailing address provided on the
497 notice.
498 (4) A domestic partnership is automatically terminated if,
499 subsequent to the registration of the domestic partnership:
500 (a) Either party or both parties enter into a marriage that
501 is recognized as valid in this state, either with each other or
502 with another person; or
503 (b) One party dies, except that the death of a domestic
504 partner does not extinguish the surviving domestic partner's
505 rights with respect to the medical record of, or information

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506 relating to, the decedent and with respect to the disposition of
507 the decedent's body and the decedent's funeral arrangements.
508 (5) If a domestic partnership is automatically terminated,
509 at least one party must file a notice of termination with the
510 clerk of the circuit court within 30 days of the event causing
511 the automatic termination.
512 Section 22. Section 741.510, Florida Statutes, is created
513 to read:
514 741.510 Preemption.—This act does not preempt the authority
515 of a county or municipality to enact a domestic partnership
516 ordinance that is not in conflict with this act.
517 Section 23. Section 765.105, Florida Statutes, is amended
518 to read:
519 765.105 Review of surrogate or proxy's decision.—The
520 patient's family, including the patient's domestic partner, the
521 health care facility, or the attending physician, or any other
522 interested person who may reasonably be expected to be directly
523 affected by the surrogate or proxy's decision concerning any
524 health care decision may seek expedited judicial intervention
525 pursuant to rule 5.900 of the Florida Probate Rules, if that
526 person believes:
527 (1) The surrogate or proxy's decision is not in accord with
528 the patient's known desires or the provisions of this chapter;
529 (2) The advance directive is ambiguous, or the patient has
530 changed his or her mind after execution of the advance
531 directive;
532 (3) The surrogate or proxy was improperly designated or
533 appointed, or the designation of the surrogate is no longer
534 effective or has been revoked;

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535 (4) The surrogate or proxy has failed to discharge duties,
536 or incapacity or illness renders the surrogate or proxy
537 incapable of discharging duties;
538 (5) The surrogate or proxy has abused powers; or
539 (6) The patient has sufficient capacity to make his or her
540 own health care decisions.
541 Section 24. Subsection (1) of section 765.401, Florida
542 Statutes, is amended to read:
543 765.401 The proxy.—
544 (1) If an incapacitated or developmentally disabled patient
545 has not executed an advance directive, or designated a surrogate
546 to execute an advance directive, or the designated or alternate
547 surrogate is no longer available to make health care decisions,
548 health care decisions may be made for the patient by any of the
549 following individuals, in the following order of priority, if no
550 individual in a prior class is reasonably available, willing, or
551 competent to act:
552 (a) The judicially appointed guardian of the patient or the
553 guardian advocate of the person having a developmental
554 disability as defined in s. 393.063, who has been authorized to
555 consent to medical treatment, if such guardian has previously
556 been appointed; however, this paragraph shall not be construed
557 to require such appointment before a treatment decision can be
558 made under this subsection;
559 (b) The patient's spouse <u>or domestic partner</u>;
560 (c) An adult child of the patient, or if the patient has
561 more than one adult child, a majority of the adult children who
562 are reasonably available for consultation;
563 (d) A parent of the patient;

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564 (e) The adult sibling of the patient or, if the patient has
565 more than one sibling, a majority of the adult siblings who are
566 reasonably available for consultation;
567 (f) An adult relative of the patient who has exhibited
568 special care and concern for the patient and who has maintained
569 regular contact with the patient and who is familiar with the
570 patient's activities, health, and religious or moral beliefs; ~~or~~
571 (g) A close friend of the patient; or~~.~~
572 (h) A clinical social worker licensed pursuant to chapter
573 491, or who is a graduate of a court-approved guardianship
574 program. Such a proxy must be selected by the provider's
575 bioethics committee and must not be employed by the provider. If
576 the provider does not have a bioethics committee, then such a
577 proxy may be chosen through an arrangement with the bioethics
578 committee of another provider. The proxy will be notified that,
579 upon request, the provider shall make available a second
580 physician, not involved in the patient's care to assist the
581 proxy in evaluating treatment. Decisions to withhold or withdraw
582 life-prolonging procedures will be reviewed by the facility's
583 bioethics committee. Documentation of efforts to locate proxies
584 from prior classes must be recorded in the patient record.
585 Section 25. Subsections (1) and (3) of section 765.512,
586 Florida Statutes, are amended to read:
587 765.512 Persons who may make an anatomical gift.—
588 (1) Any person who may make a will may make an anatomical
589 gift of his or her body.
590 (a) If the decedent makes an anatomical gift by one of the
591 methods listed in s. 765.514(1), and in the absence of actual
592 notice of contrary indications by the decedent, the document or

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593 entry in the donor registry is legally sufficient evidence of
594 the decedent's informed consent to donate an anatomical gift.
595 (b) An anatomical gift made by a qualified donor and not
596 revoked by the donor, as provided in s. 765.516, is irrevocable
597 after the donor's death. A family member, including a domestic
598 partner, guardian, representative ad litem, or health care
599 surrogate may not modify, deny, or prevent a donor's wish or
600 intent to make an anatomical gift after the donor's death.
601 (3) If the decedent has not made an anatomical gift or
602 designated a health surrogate, a member of one of the classes of
603 persons listed below, in the order of priority listed and in the
604 absence of actual notice of contrary indications by the decedent
605 or actual notice of opposition by a member of a prior class, may
606 give all or any part of the decedent's body for any purpose
607 specified in s. 765.513:
608 (a) The spouse or domestic partner of the decedent;
609 (b) An adult son or daughter of the decedent;
610 (c) Either parent of the decedent;
611 (d) An adult brother or sister of the decedent;
612 (e) An adult grandchild of the decedent;
613 (f) A grandparent of the decedent;
614 (g) A close personal friend, as defined in s. 765.101;
615 (h) A guardian of the person of the decedent at the time of
616 his or her death; or
617 (i) A representative ad litem appointed by a court of
618 competent jurisdiction upon a petition heard ex parte filed by
619 any person, who shall ascertain that no person of higher
620 priority exists who objects to the gift of all or any part of
621 the decedent's body and that no evidence exists of the

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622 decedent's having made a communication expressing a desire that
623 his or her body or body parts not be donated upon death.
624
625 Those of higher priority who are reasonably available must be
626 contacted and made aware of the proposed gift and a reasonable
627 search must be conducted which shows that there would have been
628 no objection to the gift by the decedent.
629 Section 26. Subsection (1) of section 765.517, Florida
630 Statutes, is amended to read:
631 765.517 Rights and duties at death.—
632 (1) The donee, pursuant to s. 765.515(2), may accept or
633 reject an anatomical gift. If the donee accepts a gift to be
634 used for research or education purposes, the donee may authorize
635 embalming and the use of the body in funeral services, subject
636 to the terms of the gift. If the gift is of a part of the body,
637 the donee shall cause the part to be removed without unnecessary
638 mutilation upon the death of the donor and before or after
639 embalming. After removal of the body part, custody of the
640 remainder of the body vests in the surviving spouse, domestic
641 partner, next of kin, or other persons under obligation to
642 dispose of the body.
643 Section 27. Subsection (2) of section 872.04, Florida
644 Statutes, is amended to read:
645 872.04 Autopsies; consent required, exception.—
646 (2) Unless otherwise authorized by statute, no autopsy
647 shall be performed without the written consent by the health
648 care surrogate, as provided in s. 765.202, if one has been
649 designated. If a health care surrogate has not been designated,
650 then written consent may be provided by the spouse, domestic

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651 partner, nearest relative, or, if no such next of kin can be
652 found, the person who has assumed custody of the body for
653 purposes of burial. When two or more persons assume custody of
654 the body for such purposes, then the consent of any one of them
655 shall be sufficient to authorize the autopsy.
656 Section 28. This act shall take effect July 1, 2013.
657
658 ========== T I T L E A M E N D M E N T ==========
659 And the title is amended as follows:
660 Delete everything before the enacting clause
661 and insert:
662 A bill to be entitled
663 An act relating to domestic partners; amending s.
664 28.24, F.S.; authorizing the clerk of the circuit
665 court to collect a filing fee for domestic partner
666 registrations; amending s. 382.009, F.S.; requiring
667 notification of a patient's domestic partner in the
668 event of the brain death of the patient; amending s.
669 394.459, F.S.; providing access to a mental health
670 patient by his or her domestic partner; amending s.
671 400.022, F.S.; requiring that nursing homes allow a
672 domestic partner access to his or her partner who is a
673 resident and requiring that the domestic partner be
674 allowed to meet with the families of other residents;
675 amending s. 406.50, F.S.; requiring notification of a
676 decedent's domestic partner before the decedent's body
677 can be used for medical education or research;
678 amending s. 408.051, F.S.; adding "domestic partner"
679 to the definition of the term "patient

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680 representative”; amending s. 429.28, F.S.; requiring
681 that assisted living facilities allow domestic
682 partners to share a room; amending s. 429.85, F.S.;
683 requiring that adult family-care homes allow domestic
684 partners to share a room; amending s. 446.50, F.S.;
685 providing a cross-reference; amending s. 497.005,
686 F.S.; adding domestic partner to the individuals
687 regarded as legally authorized persons for purposes of
688 making funeral arrangements of a deceased; amending s.
689 497.152, F.S.; prohibiting the disposition or
690 disinterment of a decedent’s body without written
691 authorization from his or her surviving domestic
692 partner; amending s. 741.01, F.S.; directing the
693 Executive Office of the Governor to establish a
694 Domestic Violence Trust Fund for the purpose of
695 collecting and disbursing funds generated from the
696 Declaration of Domestic Partnership fee; creating s.
697 741.501, F.S.; providing legislative findings;
698 creating s. 741.502, F.S.; providing definitions;
699 creating s. 741.503, F.S.; requiring the Department of
700 Health to adopt forms; creating s. 741.504, F.S.;
701 establishing requirements for domestic partnership;
702 providing criminal penalties for providing false
703 information; creating s. 741.505, F.S.; specifying
704 prohibitions to forming domestic partnerships under
705 certain circumstances; creating s. 741.506, F.S.;
706 identifying rights afforded to domestic partners;
707 providing for enforcement of such rights; creating s.
708 741.507, F.S.; providing fees for establishing and

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709 terminating a domestic partnership; creating s.
710 741.508, F.S.; providing methods to prove the
711 existence of a domestic partnership under certain
712 circumstances; creating s. 741.509, F.S.; providing
713 for termination of a domestic partnership; creating s.
714 741.510, F.S.; providing that the act does not preempt
715 the authority of a county or municipality to enact a
716 domestic partnership ordinance unless in conflict with
717 the act; amending s. 765.105, F.S.; including a
718 patient’s domestic partner as one of several specified
719 persons who may seek judicial intervention to question
720 the patient’s health care decision; amending s.
721 765.401, F.S.; adding a domestic partner to the list
722 of individuals who may serve as a health care proxy;
723 amending s. 765.512, F.S.; providing that a domestic
724 partner may make an anatomical gift on behalf of the
725 decedent; amending s. 765.517; adding a domestic
726 partner to the list of people who may receive
727 remainder of body parts after an anatomical gift;
728 amending s. 872.04, F.S.; requiring written
729 authorization of a domestic partner to perform an
730 autopsy on his or her deceased partner if no health
731 care surrogate has been designated; providing an
732 effective date.

By Senator Sobel

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A bill to be entitled

An act relating to families first; amending ss. 28.101 and 28.24, F.S.; setting forth fees and costs to be applied when petitioning for a dissolution of a domestic partnership or registering a domestic partnership, respectively; amending s. 97.1031, F.S.; providing notice to the supervisor of elections concerning a change of name due to participation in a domestic partnership; amending s. 382.002, F.S.; defining the term "dissolution of a domestic partnership" for purposes of vital records; including domestic partnerships and dissolution of domestic partnership as vital records in this state; conforming cross-references; amending s. 382.003, F.S.; requiring the Department of Health to examine all certificates of domestic partnership forms and dissolution of domestic partnership reports sent from the courts; amending s. 382.0085, F.S.; conforming a cross-reference; amending s. 382.021, F.S.; requiring the clerk of the circuit court to transmit all original declarations of domestic partnership to the Department of Health by a specified date each month; amending s. 382.022, F.S.; requiring the clerk of the circuit court to collect a fee after registering a domestic partnership; amending s. 382.023, F.S.; requiring the clerk of the circuit court to collect a fee upon filing a final judgment for a dissolution of domestic partnership; amending s. 382.025, F.S.; authorizing the Department of Health to issue a certified copy of

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certain vital records to a domestic partner; amending s. 382.0255, F.S.; providing that the Department of Health is entitled to a specified fee for the issuance of a commemorative certificate of domestic partnership; amending s. 446.50, F.S.; requiring that certain fees relating to declarations of domestic partnership and dissolution of domestic partnership filings be deposited in the Displaced Homemaker Trust Fund; amending s. 741.28, F.S.; redefining the term "family or household member" in the context of domestic violence to include a domestic partnership; creating s. 741.501, F.S.; providing legislative findings; creating s. 741.502, F.S.; defining terms; creating s. 741.503, F.S.; requiring the Department of Health to create and distribute the Declaration of Domestic Partnership and Certificate of Registered Domestic Partnership forms to each clerk of the circuit court; requiring the department and each clerk of the circuit court to make the Declaration of Domestic Partnership form available to the public; creating s. 741.504, F.S.; providing that the circuit court has jurisdiction over domestic partnership proceedings; requiring the clerk of the circuit court to maintain a domestic partnership registry; providing that the registry is a public record; creating s. 741.505, F.S.; requiring two individuals who wish to become partners in a domestic partnership to complete and file a Declaration of Domestic Partnership form with the clerk of the circuit court; specifying the

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59 required contents of the completed form; providing
60 that each partner who signs the form consents to the
61 jurisdiction of the circuit court for certain
62 purposes; providing that if a person files an
63 intentionally and materially false form, he or she
64 commits a misdemeanor of the first degree; providing
65 criminal penalties; requiring the clerk of the circuit
66 court to register the Declaration of Domestic
67 Partnership in a domestic partnership registry and
68 issue a Certificate of Registered Domestic
69 Partnership; creating s. 741.506, F.S.; authorizing
70 the domestic partners to retain surnames; creating s.
71 741.507, F.S.; providing that any privilege or
72 responsibility granted or imposed by statute,
73 administrative or court rule, policy, common law, or
74 any other law to an individual because the individual
75 is or was related to another by marriage, or is a
76 child of either of the spouses, is granted on
77 equivalent terms to domestic partners or individuals
78 similarly related to domestic partners; providing that
79 the act does not require or permit the extension of
80 any benefit under a retirement, deferred compensation,
81 or other employee benefit plan, if the plan
82 administrator reasonably concludes that the extension
83 of benefits to partners would conflict with a
84 condition for tax qualification of the plan, or a
85 condition for other favorable tax treatment of the
86 plan, under the Internal Revenue Code; creating s.
87 741.508, F.S.; specifying prohibited or void domestic

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88 partnerships; creating s. 741.509, F.S.; requiring
89 that the clerk of the circuit court collect certain
90 fees for receiving a Declaration of Domestic
91 Partnership; authorizing the clerk of the circuit
92 court to accept installment payments from individuals
93 who are unable to pay the fees in a lump sum; creating
94 s. 741.510, F.S.; providing methods to prove the
95 existence of a registered Declaration Domestic
96 Partnership when the certificate document has been
97 lost or is otherwise unavailable; creating s. 741.511,
98 F.S.; providing for termination of a domestic
99 partnership; providing for notice; providing for the
100 effective date of the termination; providing for
101 registration of the termination; requiring records of
102 certain terminations to be maintained; providing for
103 automatic termination of partnership if either party
104 enters into a valid marriage; providing for a
105 reasonable fee for termination; reenacting ss.
106 921.0024(1)(b) and 943.171(2)(b), F.S., relating to
107 the worksheet form for the Criminal Punishment Code
108 and the basic skills training for domestic violence
109 cases, respectively, to incorporate the amendments
110 made to s. 741.28, F.S., in references thereto;
111 providing an effective date.
112
113 Be It Enacted by the Legislature of the State of Florida:
114
115 Section 1. Section 28.101, Florida Statutes, is amended to
116 read:

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117 28.101 Petitions and records of dissolution of marriage and
118 domestic partnership; additional charges.—
119 (1) When a party petitions for a dissolution of marriage or
120 dissolution of domestic partnership, in addition to the filing
121 charges in s. 28.241, the clerk shall collect and receive:
122 (a) A charge of $5. On a monthly basis, the clerk shall
123 transfer the moneys collected pursuant to this paragraph to the
124 Department of Revenue for deposit in the Child Welfare Training
125 Trust Fund created in s. 402.40.
126 (b) A charge of $5. On a monthly basis, the clerk shall
127 transfer the moneys collected pursuant to this paragraph to the
128 Department of Revenue for deposit in the Displaced Homemaker
129 Trust Fund created in s. 446.50. If a petitioner does not have
130 sufficient funds ~~with which~~ to pay this fee and signs an
131 affidavit so stating, all or a portion of the fee shall be
132 waived subject to a subsequent order of the court relative to
133 the payment of the fee.
134 (c) A charge of $55. On a monthly basis, the clerk shall
135 transfer the moneys collected pursuant to this paragraph to the
136 Department of Revenue for deposit in the Domestic Violence Trust
137 Fund. Such funds ~~which are generated~~ shall be directed to the
138 Department of Children and Family Services for the specific
139 purpose of funding domestic violence centers.
140 (d) A charge of $32.50. On a monthly basis, the clerk shall
141 transfer the moneys collected pursuant to this paragraph as
142 follows:
143 1. An amount of $7.50 to the Department of Revenue for
144 deposit in the Displaced Homemaker Trust Fund.
145 2. An amount of $25 to the Department of Revenue for

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146 deposit in the General Revenue Fund.
147 (2) Upon receipt of a final judgment of dissolution of
148 marriage or dissolution of domestic partnership for filing, and
149 in addition to the filing charges in s. 28.241, the clerk may
150 collect and receive a service charge of up to $10.50 pursuant to
151 s. 382.023 for ~~the~~ recording and reporting the ~~of such~~ final
152 judgment ~~of dissolution of marriage~~ to the Department of Health.
153 Section 2. Subsection (23) of section 28.24, Florida
154 Statutes, is amended to read:
155 28.24 Service charges by clerk of the circuit court.—The
156 clerk of the circuit court shall charge for services rendered by
157 the clerk's office in recording documents and instruments and in
158 performing the duties enumerated in amounts not to exceed those
159 specified in this section. Notwithstanding any other provision
160 of this section, the clerk of the circuit court shall provide
161 without charge to the state attorney, public defender, guardian
162 ad litem, public guardian, attorney ad litem, criminal conflict
163 and civil regional counsel, and private court-appointed counsel
164 paid by the state, and to the authorized staff acting on behalf
165 of each, access to and a copy of any public record, if the
166 requesting party is entitled by law to view the exempt or
167 confidential record, as maintained by and in the custody of the
168 clerk of the circuit court as provided in general law and the
169 Florida Rules of Judicial Administration. The clerk of the
170 circuit court may provide the requested public record in an
171 electronic format in lieu of a paper format when capable of
172 being accessed by the requesting entity.
173
174 Charges

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175

176 (23) Upon receipt of an application for a marriage license
177 or a declaration of domestic partnership, for preparing and
178 administering of oath; issuing, sealing, and recording of the
179 marriage license or registering the domestic partnership; and
180 providing a certified copy.....30.00
181 Section 3. Subsection (2) of section 97.1031, Florida
182 Statutes, is amended to read:
183 97.1031 Notice of change of residence, change of name, or
184 change of party affiliation.—
185 (2) When an elector seeks to change party affiliation, the
186 elector shall notify his or her supervisor of elections or other
187 voter registration official by using a signed written notice
188 that contains the elector's date of birth or voter registration
189 number. When an elector changes his or her name by marriage,
190 domestic partnership, or other legal process, the elector shall
191 notify his or her supervisor of elections or other voter
192 registration official by using a signed written notice that
193 contains the elector's date of birth or voter's registration
194 number.
195 Section 4. Present subsections (6) through (17) of section
196 382.002, Florida Statutes, are renumbered as subsections (7)
197 through (18), respectively, a new subsection (6) is added to
198 that section, and present subsections (8), (9), and (16) of that
199 section are amended, to read:
200 382.002 Definitions.—As used in this chapter, the term:
201 (6) "Dissolution of domestic partnership" includes an
202 annulment of domestic partnership.
203 (7) ~~(6)~~ "Dissolution of marriage" includes an annulment of

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204 marriage.
205 (8) ~~(7)~~ "Fetal death" means death prior to the complete
206 expulsion or extraction of a product of human conception from
207 its mother if the 20th week of gestation has been reached and
208 the death is indicated by the fact that after such expulsion or
209 extraction the fetus does not breathe or show any other evidence
210 of life such as beating of the heart, pulsation of the umbilical
211 cord, or definite movement of voluntary muscles.
212 (9) ~~(8)~~ "Final disposition" means the burial, interment,
213 cremation, removal from the state, or other authorized
214 disposition of a dead body or a fetus as described in subsection
215 (8) ~~(7)~~. In the case of cremation, dispersion of ashes or
216 cremation residue is considered to occur after final
217 disposition; the cremation itself is considered final
218 disposition.
219 (10) ~~(9)~~ "Funeral director" means a licensed funeral
220 director or direct disposer licensed pursuant to chapter 497 or
221 other person who first assumes custody of or effects the final
222 disposition of a dead body or a fetus as described in subsection
223 (8) ~~(7)~~.
224 (17) ~~(16)~~ "Vital records" or "records" means certificates or
225 reports of birth, death, fetal death, marriage, domestic
226 partnership, dissolution of marriage or domestic partnership,
227 name change filed pursuant to s. 68.07, and data related
228 thereto.
229 Section 5. Subsection (7) of section 382.003, Florida
230 Statutes, is amended to read:
231 382.003 Powers and duties of the department.—The department
232 shall:

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233 (7) Approve all forms used in registering, recording,
234 certifying, and preserving vital records, or in otherwise
235 carrying out the purposes of this chapter, and ~~no~~ other forms
236 may not ~~shall~~ be used other than those approved by the
237 department. The department is responsible for the careful
238 examination of the certificates received monthly from the local
239 registrars and marriage certificates, certificates of domestic
240 partnership, and dissolution of marriage and domestic
241 partnership reports received from the circuit and county courts.
242 A certificate that is complete and satisfactory shall be
243 accepted and given a state file number and considered a state-
244 filed record. If any such certificates are incomplete or
245 unsatisfactory, the department shall require further information
246 to be supplied as ~~may be~~ necessary to make the record complete
247 and satisfactory. All physicians, midwives, informants, or
248 funeral directors, and all other persons having knowledge of the
249 facts, are required to supply, upon a form approved by the
250 department or upon the original certificate, such information as
251 they may possess regarding any vital record.
252 Section 6. Subsection (9) of section 382.0085, Florida
253 Statutes, is amended to read:
254 382.0085 Stillbirth registration.—
255 (9) This section or s. 382.002(16) ~~s. 382.002(15)~~ may not
256 be used to establish, bring, or support a civil cause of action
257 seeking damages against any person or entity for bodily injury,
258 personal injury, or wrongful death for a stillbirth.
259 Section 7. Section 382.021, Florida Statutes, is amended to
260 read:
261 382.021 Department to receive marriage licenses and

262 declarations of domestic partnership.—On or before the 5th day
263 of each month, the county court judge or clerk of the circuit
264 court shall transmit to the department all original marriage
265 licenses, with endorsements, and all declarations of domestic
266 partnership received during the preceding calendar month~~, to the~~
267 ~~department~~. Any marriage licenses or declarations of domestic
268 partnership issued and not returned, or ~~any marriage licenses~~
269 returned but not recorded, shall be reported by the issuing
270 county court judge or clerk of the circuit court to the
271 department at the time of transmitting the recorded licenses or
272 declarations on the forms to be prescribed and furnished by the
273 department. If during any month no marriage licenses or
274 declarations of domestic partnership are issued or returned, the
275 county court judge or clerk of the circuit court shall report
276 such fact to the department upon forms prescribed and furnished
277 by the department.
278 Section 8. Section 382.022, Florida Statutes, is amended to
279 read:
280 382.022 Marriage application; registration of domestic
281 partnership; fees.—Upon the receipt of each application for the
282 issuance of a marriage license or registering a domestic
283 partnership, the county court judge or clerk of the circuit
284 court shall, pursuant to s. 741.02, collect and receive a fee of
285 $4 which shall be remitted to the Department of Revenue for
286 deposit to the Department of Health to defray part of the cost
287 of maintaining marriage and domestic partnership records.
288 Section 9. Section 382.023, Florida Statutes, is amended to
289 read:
290 382.023 Department to receive dissolution-of-marriage and

291 dissolution-of-domestic-partnership records; fees.—~~Clerks of the~~
292 ~~circuit courts shall collect for their services~~ At the time of
293 the filing of a final judgment of dissolution of marriage or
294 dissolution of domestic partnership, the clerk of the circuit
295 court shall collect a fee of up to $10.50, of which 43 percent
296 shall be retained by the clerk ~~of the circuit court~~ as a part of
297 the cost in the cause in which the judgment is granted. The
298 remaining 57 percent shall be remitted to the Department of
299 Revenue for deposit to the Department of Health to defray part
300 of the cost of maintaining the dissolution-of-marriage and
301 dissolution-of-domestic-partnership records. A record of each
302 and every judgment of dissolution of marriage and dissolution of
303 domestic partnership granted by the court during the preceding
304 calendar month, giving names of parties and such other data as
305 required by forms prescribed by the department, shall be
306 transmitted to the department, on or before the 10th day of each
307 month, along with an accounting of the funds remitted to the
308 Department of Revenue pursuant to this section.
309 Section 10. Paragraph (a) of subsection (1) and paragraphs
310 (a) and (c) of subsection (2) of section 382.025, Florida
311 Statutes, are amended to read:
312 382.025 Certified copies of vital records; confidentiality;
313 research.—
314 (1) BIRTH RECORDS.—Except for birth records over 100 years
315 old which are not under seal pursuant to court order, all birth
316 records of this state shall be confidential and are exempt from
317 the provisions of s. 119.07(1).
318 (a) Certified copies of the original birth certificate or a
319 new or amended certificate, or affidavits thereof, are

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320 confidential and exempt from the provisions of s. 119.07(1) and,
321 upon receipt of a request and payment of the fee prescribed in
322 s. 382.0255, shall be issued only as authorized by the
323 department and in the form prescribed by the department, and
324 only:
325 1. To the registrant, if the registrant is of legal age, is
326 a certified homeless youth, or is a minor who has had the
327 disabilities of nonage removed under s. 743.01 or s. 743.015;
328 2. To the registrant's parent or guardian or other legal
329 representative;
330 3. Upon receipt of the registrant's death certificate, to
331 the registrant's spouse or domestic partner or to the
332 registrant's child, grandchild, or sibling, if of legal age, or
333 to the legal representative of any of such persons;
334 4. To any person if the birth record is over 100 years old
335 and not under seal pursuant to court order;
336 5. To a law enforcement agency for official purposes;
337 6. To any agency of the state or the United States for
338 official purposes upon approval of the department; or
339 7. Upon order of any court of competent jurisdiction.
340 (2) OTHER RECORDS.—
341 (a) The department shall authorize the issuance of a
342 certified copy of all or part of any marriage, domestic
343 partnership, dissolution of marriage or domestic partnership, or
344 death or fetal death certificate, excluding that portion which
345 is confidential and exempt from ~~the provisions of~~ s. 119.07(1)
346 as provided under s. 382.008, to any person requesting it upon
347 receipt of a request and payment of the fee prescribed by this
348 section. A certification of the death or fetal death certificate

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349 which includes the confidential portions shall be issued only:
350 1. To the registrant's spouse, domestic partner, or parent,
351 or to the registrant's child, grandchild, or sibling, if of
352 legal age, or to any person who provides a will that has been
353 executed pursuant to s. 732.502, insurance policy, or other
354 document that demonstrates his or her interest in the estate of
355 the registrant, or to any person who provides documentation that
356 he or she is acting on behalf of any of them;
357 2. To any agency of the state or local government or the
358 United States for official purposes upon approval of the
359 department; or
360 3. Upon order of any court of competent jurisdiction.
361 (c) The department shall issue, upon request and upon
362 payment of an additional fee prescribed by this section, a
363 commemorative marriage license or certificate of domestic
364 partnership representing that the marriage or domestic
365 partnership of the persons named thereon is recorded in the
366 office of the registrar. The certificate issued under this
367 paragraph must ~~shall~~ be in a form consistent with the need to
368 protect the integrity of vital records but must ~~shall~~ be
369 suitable for display. It may bear the seal of the state printed
370 thereon and may be signed by the Governor.
371 Section 11. Paragraph (i) of subsection (1) of section
372 382.0255, Florida Statutes, is amended to read:
373 382.0255 Fees.—
374 (1) The department is entitled to fees, as follows:
375 (i) Twenty-five dollars for a commemorative certificate of
376 birth, ~~or~~ marriage, or domestic partnership. Fees collected
377 pursuant to this paragraph in excess of expenses shall be used

378 ~~available for use~~ by the Regional Perinatal Intensive Care
379 Centers (RPICC) Program to prevent child abuse and neglect.
380 Funds derived from the issuance of commemorative marriage
381 certificates shall be used ~~available for use~~ by the Improved
382 Pregnancy Outcome Program.
383 Section 12. Paragraph (b) of subsection (5) of section
384 446.50, Florida Statutes, is amended to read:
385 446.50 Displaced homemakers; multiservice programs; report
386 to the Legislature; Displaced Homemaker Trust Fund created.—
387 (5) DISPLACED HOMEMAKER TRUST FUND.—
388 (b) The trust fund shall receive funds generated from an
389 additional fee on marriage license applications, declarations of
390 domestic partnerships, and dissolution of marriage and domestic
391 partnership filings as specified in ss. 741.01(3), 741.509, and
392 28.101, respectively, and may receive funds from any other
393 public or private source.
394 Section 13. Subsection (3) of section 741.28, Florida
395 Statutes, is amended to read:
396 741.28 Domestic violence; definitions.—As used in ss.
397 741.28-741.31:
398 (3) "Family or household member" means spouses;~~,~~ former
399 spouses;~~,~~ persons related by blood, ~~or~~ marriage, or domestic
400 partnership; persons who are presently residing together as if a
401 family or who have resided together in the past as if a family;~~,~~
402 and persons who are parents of a child in common regardless of
403 whether they have been married. With the exception of persons
404 who have a child in common, the family or household members must
405 be currently residing or have in the past resided together in
406 the same single dwelling unit.

407 Section 14. Section 741.501, Florida Statutes, is created
408 to read:
409 741.501 Legislative findings.—The Legislature finds that:
410 (1) There are a significant number of individuals in this
411 state who live together in important, personal, emotional, and
412 economically committed relationships. Together, these
413 individuals live, serve, and participate in the community, and
414 often rear children and care for family members.
415 (2) These familial relationships, often referred to as
416 domestic partnerships, assist the state by providing a private
417 network of support for the financial, physical, and emotional
418 health of their participants.
419 (3) The state has a strong interest in promoting stable and
420 lasting families, and believes that all families should be
421 provided with the opportunity to obtain necessary legal
422 protections and status and the ability to achieve their fullest
423 potential.
424 (4) While some public and private institutions recognize
425 domestic partnerships for limited purposes such as health
426 benefits, hospital visitation, and medical decisionmaking for an
427 incapacitated family member, many do not. Historically, legal
428 recognition of marriage by the state is the primary and, in a
429 number of instances, the exclusive source of numerous rights,
430 benefits, and responsibilities available to families under the
431 laws of this state.
432 (5) The status of marriage in this state is limited by Art.
433 I of the State Constitution to the union of one man and one
434 woman and the Legislature does not seek to alter the definition
435 of marriage in any way. The Legislature also finds, however,

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436 that recognition of domestic partnerships can provide an
437 alternative mechanism for extending certain important rights and
438 responsibilities to individuals who choose to form long-term,
439 mutually supportive relationships. Such recognition will provide
440 support to these familial relationships without affecting the
441 definition of marriage, without creating or recognizing a legal
442 relationship that is the substantial equivalent of marriage, and
443 without affecting restrictions contained in federal law.
444 (6) The decision to offer or seek a ceremony or blessing
445 over the domestic partnership should be left to the dictates of
446 each religious faith and to the preferences of the persons
447 entering into the partnership. Sections 741.501-741.511 do not
448 require performance of any solemnization ceremony to enter into
449 a binding domestic partnership agreement and do not interfere
450 with the right of each religious faith to choose freely to whom
451 to grant the religious status, sacrament, or blessing of
452 marriage under the rules and practices of that faith.
453 (7) Because of the material and other support that these
454 familial relationships provide to their participants, these
455 relationships should be formally recognized and made uniform by
456 law. Therefore, the Legislature declares that it is the policy
457 of this state to establish and define the rights and
458 responsibilities of domestic partners.
459 Section 15. Section 741.502, Florida Statutes, is created
460 to read:
461 741.502 Definitions.—As used in ss. 741.501-741.511, the
462 term:
463 (1) "Department" means the Department of Health.
464 (2) "Domestic partnership" means a civil contract entered

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465 into between two individuals who are 18 years of age or older
466 and otherwise capable, of which at least one of whom is a
467 resident of this state.
468 (3) "Partner" means an individual joined in a domestic
469 partnership.
470 Section 16. Section 741.503, Florida Statutes, is created
471 to read:
472 741.503 Forms.—
473 (1) Pursuant to s. 382.003(7), the department shall prepare
474 forms entitled:
475 (a) "Declaration of Domestic Partnership" which meet the
476 requirements of s. 741.505.
477 (b) "Certificate of Registered Domestic Partnership."
478 (2) The department shall distribute the Declaration of
479 Domestic Partnership and Certificate of Registered Domestic
480 Partnership forms to each clerk of the circuit court. The
481 department and each clerk shall make the Declaration of Domestic
482 Partnership form available to the public.
483 Section 17. Section 741.504, Florida Statutes, is created
484 to read:
485 741.504 Court jurisdiction and duties; registry.—
486 (1) The circuit court has jurisdiction over any proceeding
487 relating to the domestic partners' rights and obligations.
488 (2) Each clerk of the circuit court shall maintain a
489 registry of all domestic partnerships entered into in that
490 circuit and a record of all certificates of domestic partnership
491 issued which includes the names of the partners and the date of
492 issuance.
493 (3) Notwithstanding s. 382.025 or any other law, the

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494 registry of domestic partnerships maintained by a clerk of the
495 circuit court is a public record and subject to full disclosure.
496 Section 18. Section 741.505, Florida Statutes, is created
497 to read:
498 741.505 Domestic partnership requirements.—
499 (1) Two individuals wishing to become partners in a
500 domestic partnership recognized by this state must complete and
501 file a Declaration of Domestic Partnership form with a clerk of
502 the circuit court. The declaration must include:
503 (a) A statement attesting that each individual is 18 years
504 of age or older and is otherwise capable of entering into a
505 domestic partnership. The clerk may accept any reasonable proof
506 of an individual's age which is satisfactory to the clerk. The
507 clerk may also require proof of age by affidavit of some
508 individual other than the parties seeking to file the form if
509 the clerk deems it necessary.
510 (b) A statement attesting that at least one of the
511 individuals is a resident of this state.
512 (c) Each individual's mailing address.
513 (d) A statement attesting that each individual consents to
514 the jurisdiction of the circuit courts of this state for any
515 proceeding relating to the partners' rights and obligations,
516 even if one or both partners cease to reside or maintain a
517 domicile in this state.
518 (e) The notarized signature of each individual, along with
519 a declaration that the representations made on the form are
520 true, correct, and contain no material omissions of fact to the
521 best knowledge and belief of each individual.
522 (2) Notwithstanding s. 61.021, each person signing a

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523 Declaration of Domestic Partnership form consents to the
524 jurisdiction of the circuit courts of this state for any
525 proceeding related to the partners' rights and obligations, even
526 if one or both partners cease to reside or maintain a domicile
527 in this state.
528 (3) A person who provides intentionally and materially
529 false information on a Declaration of Domestic Partnership form
530 with the clerk of court commits a misdemeanor of the first
531 degree, punishable as provided in s. 775.082 or s. 775.083.
532 (4) If all legal requirements have been satisfied and there
533 appears to be no impediment to the domestic partnership, the
534 clerk of the circuit court shall:
535 (a) Return a copy of the registered form to the partners;
536 (b) Register the Declaration of Domestic Partnership in a
537 domestic partnership registry; and
538 (c) Issue a Certificate of Registered Domestic Partnership
539 under his or her hand and seal to the partners in person or at
540 the mailing address provided by the partners.
541 Section 19. Section 741.506, Florida Statutes, is created
542 to read:
543 741.506 Domestic partnership; name change.—Upon entering
544 into a domestic partnership, a partner may retain his or her
545 previous surname, or, if changed, may resume the previous legal
546 name during the domestic partnership.
547 Section 20. Section 741.507, Florida Statutes, is created
548 to read:
549 741.507 Domestic partnership; rights and responsibilities;
550 relationship to federal law.—
551 (1) Any privilege, immunity, right, or benefit granted by

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552 statute, administrative or court rule, policy, common law, or
553 any other law to an individual because the individual is or was
554 related to another individual by marriage as an in-law is
555 granted on equivalent terms, substantive and procedural, to an
556 individual who is or was in a domestic partnership or who is or
557 was similarly related as an in-law to an individual
558 participating in a domestic partnership.
559 (2) Any responsibility imposed by statute, administrative
560 or court rule, policy, common law, or any other law on an
561 individual because the individual is or was related to another
562 individual by marriage as an in-law is imposed on equivalent
563 terms, substantive and procedural, on an individual who is or
564 was in a domestic partnership or who is or was similarly related
565 as an in-law to an individual participating in a domestic
566 partnership.
567 (3) Any privilege, immunity, right, benefit, or
568 responsibility granted to or imposed by statute, administrative
569 or court rule, policy, common law, or any other law on a spouse
570 with respect to a child of either of the spouses is granted to
571 or imposed on equivalent terms, substantive and procedural, on
572 an individual in a domestic partnership with respect to a child
573 of either of the partners.
574 (4) Any privilege, immunity, right, benefit, or
575 responsibility granted or imposed by statute, administrative or
576 court rule, policy, common law, or any other law to or on a
577 former or surviving spouse with respect to a child of either of
578 the spouses is granted to or imposed on equivalent terms,
579 substantive and procedural, on a former or surviving partner
580 with respect to a child of either of the partners.

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581 (5) For purposes of administering the tax laws of this
582 state, partners in a domestic partnership, surviving partners of
583 a domestic partnership, and the children of partners in a
584 domestic partnership have the same privileges, immunities,
585 rights, benefits, and responsibilities as are granted to or
586 imposed on spouses in a marriage, surviving spouses, and their
587 children.
588 (6) Many of the laws of this state are intertwined with
589 federal law, and the Legislature recognizes that it does not
590 have the jurisdiction to control or implement federal laws or
591 the privileges, immunities, rights, benefits, and
592 responsibilities related to federal laws.
593 (7) Sections 741.502-741.511 do not require or permit the
594 extension of any benefit under any retirement, deferred
595 compensation, or other employee benefit plan, if the plan
596 administrator reasonably concludes that the extension of
597 benefits would conflict with a condition for the tax
598 qualification of the plan, or a condition for other favorable
599 tax treatment of the plan, under the Internal Revenue Code or
600 adopted regulations.
601 (8) Sections 741.502-741.511 do not require the extension
602 of any benefit under any employee benefit plan that is subject
603 to federal regulation under the Employee Retirement Income
604 Security Act of 1974.
605 Section 21. Section 741.508, Florida Statutes, is created
606 to read:
607 741.508 Domestic partnerships prohibited and void.—
608 (1) The following domestic partnerships are prohibited and
609 void if:

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610 (a) Either party to the domestic partnership currently has
611 a different partner, or a wife or husband recognized by this
612 state, living at the time of entering into the domestic
613 partnership.
614 (b) The parties to the domestic partnership are related by
615 lineal consanguinity or are siblings, or if one party is the
616 niece or nephew of the other party.
617 (c) Either party to a domestic partnership is incapable of
618 making the civil contract or consenting to the contract for want
619 of legal age or sufficient understanding.
620 (2) If the consent of either party is obtained by force or
621 fraud, the domestic partnership is void from the time it is so
622 declared by a judgment of a court having jurisdiction of the
623 domestic partnership.
624 (3) An individual who has filed a Declaration of Domestic
625 Partnership form may not file a new Declaration of Domestic
626 Partnership form or enter a marriage recognized in this state
627 with someone other than the individual's registered partner
628 unless a judgment of dissolution or annulment of the most recent
629 domestic partnership has been entered. This prohibition does not
630 apply if the previous domestic partnership ended because one of
631 the partners died.
632 Section 22. Section 741.509, Florida Statutes, is created
633 to read:
634 741.509 Fees.—
635 (1) The clerk of the circuit court shall collect and
636 receive a fee of $2 for receiving a Declaration of Domestic
637 Partnership form completed in accordance with s. 741.505. In
638 addition:

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639 (a) A fee of $25 shall be collected and deposited in the
640 Domestic Violence Trust Fund for the purposes provided in s.
641 741.01(2).
642 (b) A fee of $7.50 shall be collected for deposit in the
643 Displaced Homemaker Trust Fund created in s. 446.50.
644 (c) A fee of $25 shall be collected and remitted to the
645 Department of Revenue for deposit, monthly, into the General
646 Revenue Fund.
647 (d) A fee of $4 shall be collected and distributed as
648 provided in s. 382.022.
649 (2) An applicant for a Certificate of Registered Domestic
650 Partnership who is unable to pay the fees required under
651 subsection (1) in a lump sum may make payment in not more than
652 three installments over a period of 90 days. The clerk shall
653 accept installment payments upon receipt of an affidavit that
654 the applicant is unable to pay the fees in a lump-sum payment.
655 Upon receipt of the third or final installment payment, the
656 Declaration of Domestic Partnership shall be deemed filed, and
657 the clerk shall issue the Certificate of Registered Domestic
658 Partnership and distribute the fees as appropriate. If the fee
659 is paid in installments, the clerk shall retain $1 from the
660 additional fee imposed pursuant to paragraph (1)(c) as a
661 processing fee.
662 Section 23. Section 741.510, Florida Statutes, is created
663 to read:
664 741.510 Proof domestic partnership where certificate is not
665 available.—If a Declaration of Domestic Partnership has been
666 received in accordance with s. 741.505 and the clerk has not
667 registered such declaration as required by that section, if a

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668 Certificate of Registered Domestic Partnership has been lost, or
669 if by reason of death or other cause the certificate cannot be
670 obtained, the domestic partnership may be proved by affidavit
671 before any officer authorized to administer oaths made by two
672 competent witnesses who were present and saw the Declaration of
673 Domestic Partnership executed under s. 741.505, which affidavit
674 may be filed and recorded in the office of clerk of the circuit
675 in which the Declaration of Domestic Partnership was registered,
676 with the same force and effect as if the proper certificate has
677 been made, returned, and recorded.
678 Section 24. Section 741.511, Florida Statutes, is created
679 to read:
680 741.511 Termination of partnership.—
681 (1)(a) A party to a state-registered domestic partnership
682 may terminate the relationship by filing a notice of termination
683 of the state-registered domestic partnership with the department
684 and paying the filing fee established under subsection (5). The
685 notice must be signed by one or both parties and notarized. If
686 the notice is not signed by both parties, the party seeking
687 termination must also file with the department an affidavit
688 stating either that the other party has been served in writing
689 in the manner prescribed for the service of summons in a civil
690 action, that a notice of termination is being filed, or that the
691 party seeking termination has not been able to find the other
692 party after reasonable effort and that notice has been made by
693 publication pursuant to paragraph (b).
694 (b) When the other party cannot be found after reasonable
695 effort, the party seeking termination may provide notice by
696 publication as provided in chapter 50 in the county in which the

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

697 residence most recently shared by the domestic partners is
698 located. Notice must be published at least once.
699 (2) The state-registered domestic partnership shall be
700 terminated effective 90 days after the date of filing the notice
701 of termination and payment of the filing fee.
702 (3) Upon receipt of a signed, notarized notice of
703 termination, affidavit, if required, and the filing fee, the
704 department shall register the notice of termination and provide
705 a certificate of termination of the state-registered domestic
706 partnership to each party named on the notice. The department
707 shall maintain a record of each notice of termination filed with
708 it and each certificate of termination issued by it. The
709 department shall maintain records of terminations of state-
710 registered domestic partnerships, except for those state-
711 registered domestic partnerships terminated under subsection
712 (4).
713 (4) A state-registered domestic partnership is
714 automatically terminated if, subsequent to the registration of
715 the domestic partnership with the department, either party or
716 both parties enter into a marriage that is recognized as valid
717 in this state, either with each other or with another person.
718 (5) The department shall collect a reasonable fee for
719 filing the declaration set by rule calculated to cover the
720 department's costs, but not to exceed $50. Fees collected under
721 this section shall be deposited into the department's
722 Administrative Trust Fund.
723 Section 25. For the purpose of incorporating the amendment
724 made by this act to section 741.28, Florida Statutes, in a
725 reference thereto, paragraph (b) of subsection (1) of section

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

726 921.0024, Florida Statutes, is reenacted to read:
727 921.0024 Criminal Punishment Code; worksheet computations;
728 scoresheets.—
729 (1)
730 (b) WORKSHEET KEY:
731
732 Legal status points are assessed when any form of legal status
733 existed at the time the offender committed an offense before the
734 court for sentencing. Four (4) sentence points are assessed for
735 an offender's legal status.
736
737 Community sanction violation points are assessed when a
738 community sanction violation is before the court for sentencing.
739 Six (6) sentence points are assessed for each community sanction
740 violation and each successive community sanction violation,
741 unless any of the following apply:
742 1. If the community sanction violation includes a new
743 felony conviction before the sentencing court, twelve (12)
744 community sanction violation points are assessed for the
745 violation, and for each successive community sanction violation
746 involving a new felony conviction.
747 2. If the community sanction violation is committed by a
748 violent felony offender of special concern as defined in s.
749 948.06:
750 a. Twelve (12) community sanction violation points are
751 assessed for the violation and for each successive violation of
752 felony probation or community control where:
753 (I) The violation does not include a new felony conviction;
754 and

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

755 (II) The community sanction violation is not based solely
756 on the probationer or offender's failure to pay costs or fines
757 or make restitution payments.
758 b. Twenty-four (24) community sanction violation points are
759 assessed for the violation and for each successive violation of
760 felony probation or community control where the violation
761 includes a new felony conviction.
762
763 Multiple counts of community sanction violations before the
764 sentencing court shall not be a basis for multiplying the
765 assessment of community sanction violation points.
766
767 Prior serious felony points: If the offender has a primary
768 offense or any additional offense ranked in level 8, level 9, or
769 level 10, and one or more prior serious felonies, a single
770 assessment of thirty (30) points shall be added. For purposes of
771 this section, a prior serious felony is an offense in the
772 offender's prior record that is ranked in level 8, level 9, or
773 level 10 under s. 921.0022 or s. 921.0023 and for which the
774 offender is serving a sentence of confinement, supervision, or
775 other sanction or for which the offender's date of release from
776 confinement, supervision, or other sanction, whichever is later,
777 is within 3 years before the date the primary offense or any
778 additional offense was committed.
779
780 Prior capital felony points: If the offender has one or more
781 prior capital felonies in the offender's criminal record, points
782 shall be added to the subtotal sentence points of the offender
783 equal to twice the number of points the offender receives for

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

784 the primary offense and any additional offense. A prior capital
785 felony in the offender's criminal record is a previous capital
786 felony offense for which the offender has entered a plea of nolo
787 contendere or guilty or has been found guilty; or a felony in
788 another jurisdiction which is a capital felony in that
789 jurisdiction, or would be a capital felony if the offense were
790 committed in this state.
791
792 Possession of a firearm, semiautomatic firearm, or machine gun:
793 If the offender is convicted of committing or attempting to
794 commit any felony other than those enumerated in s. 775.087(2)
795 while having in his or her possession: a firearm as defined in
796 s. 790.001(6), an additional eighteen (18) sentence points are
797 assessed; or if the offender is convicted of committing or
798 attempting to commit any felony other than those enumerated in
799 s. 775.087(3) while having in his or her possession a
800 semiautomatic firearm as defined in s. 775.087(3) or a machine
801 gun as defined in s. 790.001(9), an additional twenty-five (25)
802 sentence points are assessed.
803
804 Sentencing multipliers:
805
806 Drug trafficking: If the primary offense is drug trafficking
807 under s. 893.135, the subtotal sentence points are multiplied,
808 at the discretion of the court, for a level 7 or level 8
809 offense, by 1.5. The state attorney may move the sentencing
810 court to reduce or suspend the sentence of a person convicted of
811 a level 7 or level 8 offense, if the offender provides
812 substantial assistance as described in s. 893.135(4).

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

813

814 Law enforcement protection: If the primary offense is a
815 violation of the Law Enforcement Protection Act under s.
816 775.0823(2), (3), or (4), the subtotal sentence points are
817 multiplied by 2.5. If the primary offense is a violation of s.
818 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points
819 are multiplied by 2.0. If the primary offense is a violation of
820 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement
821 Protection Act under s. 775.0823(10) or (11), the subtotal
822 sentence points are multiplied by 1.5.
823
824 Grand theft of a motor vehicle: If the primary offense is grand
825 theft of the third degree involving a motor vehicle and in the
826 offender's prior record, there are three or more grand thefts of
827 the third degree involving a motor vehicle, the subtotal
828 sentence points are multiplied by 1.5.
829
830 Offense related to a criminal gang: If the offender is convicted
831 of the primary offense and committed that offense for the
832 purpose of benefiting, promoting, or furthering the interests of
833 a criminal gang as prohibited under s. 874.04, the subtotal
834 sentence points are multiplied by 1.5.
835
836 Domestic violence in the presence of a child: If the offender is
837 convicted of the primary offense and the primary offense is a
838 crime of domestic violence, as defined in s. 741.28, which was
839 committed in the presence of a child under 16 years of age who
840 is a family or household member as defined in s. 741.28(3) with
841 the victim or perpetrator, the subtotal sentence points are

842 multiplied by 1.5.
843 Section 26. For the purpose of incorporating the amendment
844 made by this act to section 741.28, Florida Statutes, in a
845 reference thereto, paragraph (b) of subsection (2) of section
846 943.171, Florida Statutes, is reenacted to read:
847 943.171 Basic skills training in handling domestic violence
848 cases.—
849 (2) As used in this section, the term:
850 (b) "Household member" has the meaning set forth in s.
851 741.28(3).
852 Section 27. This act shall take effect July 1, 2013.
853

March 11, 2012

An Open Letter to the Florida Senate Children, Families, & Elder Affairs Committee Regarding Domestic Partnerships

Dear Madam Chairman and members of the committee:

We sympathize with and regret the fact that some Floridians have experienced great personal distress and legal difficulties as a result of not having proper estate planning. Failing to obtain a valid Durable Power of Attorney (DPOA) can produce very unfortunate circumstances to persons of all types. These legal documents are regularly available and drafted by thousands of law firms and lawyers across Florida. The cost of a typical DPOA is modest and in some cases is not much more than the fee to apply for a domestic partnership.

In summary, domestic partnerships are unnecessary, bad public policy, and are dangerous for a number of reasons that may not be immediately obvious.

1) **They mislead the couples entering them into believing they have proper estate planning.**

   When it comes time to apply for Social Security, Medicaid or Medicare for an incapacitated partner, a couple will quickly learn that a domestic partnership is wholly inadequate and does not contain the necessary authority to make application on behalf of another individual. Personal and real property and other intangible assets will not automatically pass to the holder of most domestic partnerships.

2) **Domestic Partnerships are not merely unnecessary, but are affirmatively dangerous because they are used as legal weapons by gay rights activists to advance same-sex marriages.**

   Historically activist courts, at the urging of gay rights activists, have used domestic partnerships as a legal precedent for overriding traditional marriage laws and legalizing same-sex marriages. In state after state where domestic partnerships were created, they were later used by courts or state legislative bodies to strike down valid marriage laws and legalize same-sex marriages. The creation of a domestic partnership is an affirmative legal threat to state Defense of Marriage Acts (DOMA) and to state constitutional amendment provisions which define marriage and prohibit same-sex marriages.

The attached exhibit *The History of Domestic Partnerships Leading to Legalization of Same Sex Marriages* documents and catalogues the consistent pattern and strategy of gay rights activists in states across America to use domestic partnerships as a legal weapon to force the adoption of same-sex marriages.

Homosexual marriages deny children the right to either a mother or a father and are therefore not in the best interest of children. Same-sex marriage laws also force all other statutes in a state to become gender-neutral and impacts children's educational curriculum and textbooks where homosexuality is promoted as natural and morally acceptable alternative to heterosexual marriage. Finally, in a plethora of cases, gay marriage laws have been proven to become a threat to the individual religious liberties and free speech rights of those who have a traditional view of marriage.

For this and many other reasons, we strongly urge this committee to vote No to the creation of any domestic partnership or civil union scheme in Florida.

Sincerely,
John Stemberger
Florida Family Policy Council

History of Domestic Partnerships Leading to Legalization of Same Sex Marriages

California

- **Domestic Partnerships Created: 1999**[1]
- Introduction of The California Domestic Partner Rights and Responsibilities Act of 2003[2]
- **Same-Sex Marriages Legalized: June 16, 2008**[3]

Connecticut

- **Civil Unions Created**: October 1, 2005[4]
- **Same-Sex Marriages Legalized**: November 12, 2008[5]
- All same-sex civil unions were automatically turned into marriages on October 1, 2010[6]

Maine

- **Domestic Partnerships Created**: July 30, 2004[7]
- **Same-Sex Marriages Legalized**: May 6, 2009[8]

Maryland

- **Domestic Partnerships Created**: July 1, 2008[9]
- **Same-Sex Marriages Legalized**: January 1, 2013[10]

Massachusetts

- The court cited the scheme of **local domestic partnerships** as legal authority to strike down laws defining marriage between a man and a woman.[11]
- **Same-Sex Marriages Legalized**: May 17, 2004[12]

New Hampshire

- **Civil Unions Legalized**: May 31, 2007[13] (went into effect on January 1, 2008)
- **Same-Sex Marriages Legalized**: June 3, 2009 (went into effect on January 1, 2010)[14]
- All civil unions became marriages on January 1, 2011[15]

New York

- **Domestic Partnership Law**: February 3, 2006[16]
- **Same-Sex Marriage Legalized**: July 24, 2011[17]

Vermont

- **Civil Unions Legalized**: July 1, 2000[18]
- **Same-Sex Marriages Legalized**: September 1, 2009[19]

Washington

- **Domestic Partnerships Legalized**: April 21, 2007[20]
- **Same-Sex Marriage Legalized**: February 13, 2012[21]
- Domestic Partnerships automatically become legal marriage with few exceptions.[16]

District of Columbia

- **Domestic Partnership Act Created**: 1992[22]
- **Same Sex Marriage Legalized**: December 2009[23]

Prepared by the Florida Family Policy Council
4853 South Orange Avenue, Orlando, FL 32806 | www.FLfamily.org | info@FLfamily.org | 407-251-5130

[1] Domestic Partnership Act of 1999: Kevin Murray, now a state senator, introduced Senate Bill 75 in December 1998. The bill passed, and Davis signed it into law on September 22, 1999. It provided for a public registry, hospital visitation rights, and authorized health insurance coverage for domestic partners of public employees. While modest in scope, Assembly Bill 26 marked the first time a state legislature created a domestic partnership statute without the intervention of the courts.

[2] Assembly Bill 205 of 2003 marked a major shift in the legislature's approach to domestic partnerships. This bill created the presumption that domestic partners were to have all of the rights and responsibilities afforded spouses under state law. It also recognized similar relationships, such as civil unions, created in other states.

[3] The period of granting same-sex marriage licenses began on June 16, 2008 due to a ruling by the Supreme Court of California based on an equal protection argument.

[4] Public Act 05-10 1(1), 14-15). Connecticut's civil union laws were effective October 1, 2005 and were repealed effective October 1, 2010.

[5] The Connecticut Supreme Court ruled 4-3 that denying gays the right to marry was against the equality and liberty rules in the Connecticut Constitution.

[6] On April 22, 2009 lawmakers of Connecticut both in the House (vote 100-44) and Senate (vote 28-7) agreed to repeal all old marriage laws and replace them with genderless quotes and all references to marriage made fully gender-neutral. Governor Jodi Rell, a Republican, signed the law on April 23. On October 1, 2010, civil unions ceased to be provided and existing civil unions were automatically converted into marriages.

[7] P.L. 2003, c. 672, enacted by the Legislature and signed into law on April 28, 2004, establishes the concept of domestic partners in Maine law. Under the law, registered domestic partners are accorded a legal status similar to that of a married person with respect to matters of probate, guardianships, conservatorships, inheritance, protection from abuse, and related matters.

[8] SP0384, LD 1020, item 1, 124th Maine State Legislature, "An Act To End Discrimination in Civil Marriage and Affirm Religious Freedom" was signed into law by Governor John E. Baldacci on May 6, 2009.

[9] Effective July 1, 2008, Senate Bill 566. Maryland enacted two new laws that give additional rights to domestic partners (both same- and opposite-sex). The first adds domestic partners to the list of individuals who may be added to or removed from a deed without incurring recordation and transfer taxes. The second affords domestic partners several new rights, including the right to make hospital visits and funeral arrangements.

[10] Legalized by popular vote. Referendum Question 6, Civil Marriage Protection Act. Same-Sex Marriage enacted January 1, 2013.

[11] City of Boston Ordinance Ch 12-9A Protection of Families; and City of Cambridge Domestic Ordinance.

[12] Same-sex marriage in Massachusetts began on May 17, 2004 as a result of the Supreme Judicial Court of Massachusetts ruling in *Goodridge v. Department of Public Health* that it was unconstitutional under the Massachusetts constitution to allow only heterosexual couples to marry.

[13] On May 31, 2007, Governor John Lynch signed the civil unions Bill HB437 into law.

[14] HOUSE BILL 436-FN-*LOCAL* This bill eliminates the exclusion of same-gender couples from marriage, affirms religious freedom protections of clergy with regard to the solemnization of marriage, and provides a mechanism by which same-gender couples who have entered into a civil union prior to the enactment of this bill may obtain the legal status of marriage.

[15] House Bill 73 61:3 Obtaining Legal Status of Marriage. Amend RSA 457:46, I to read as follows:

I. Notwithstanding the provisions of RSA 457-A, no new civil unions shall be established on or after January 1, 2010. **Two consenting** persons who are parties to a valid civil union entered into prior to January 1, 2010 pursuant to this chapter may apply and receive a marriage license and have such marriage solemnized pursuant to RSA 457.

[16] New York Governor George Pataki signs domestic partnership measure on February 3, 2006. The measure, S.B. 1924, passed quietly through the legislature without attracting media attention.

[17] Bill A08354 enacts The Marriage Equality Act and was signed into law on June 24, 2011. It is a New York State law that allows gender-neutral marriages for both same- and opposite-sex couples.

[18] On December 20, 1999 the Vermont Supreme Court ruled in *Baker v. Vermont* that same-sex couples are "entitled under Chapter I, Article 7, of the Vermont Constitution to the same benefits and protections afforded by Vermont law to married opposite-sex couples".

[19] Amended Bill H275 enacted after Vermont Governor's veto was overridden.

[20] State Registered Domestic Partnerships (SRDP) in Washington were created in 2007 following the *Andersen v. King County* decision, Gov. Gregoire signed Bill on April 21, 2007.

[21] On February 13, 2012, Governor Christine Gregoire signed a same-sex marriage bill [HB 2516].

[22] State Registered Domestic Partnerships (SRDP) in Washington were created in 2007 following the *Andersen v. King County* decision.

[23] Same-sex marriage in the District of Columbia was legalized on December 18, 2009 when mayor Adrian Fenty signed a bill passed by the Council of the District of Columbia.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-2013
Meeting Date

Topic: Families First

Bill Number: SB 196 *(if applicable)*

Name: Joan E. Hendrix

Amendment Barcode: *(if applicable)*

Job Title: Volunteer

Address: 438 Beechwood Dr
Street

Crawfordville Fl 32327
City *State* *Zip*

Phone: 850-926-7473

E-mail: granpetunia@comcast.net

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

Representing: UniteWomen.org Florida

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/13
Meeting Date

Topic: FAMILIES FIRST

Bill Number: 196 *(if applicable)*

Name: PAMELA BURCH FORT

Amendment Barcode: *(if applicable)*

Job Title:

Address: 104 S. MONROE STREET
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone: 850-425-1344

E-mail: TcgLobby@aol.com

Speaking: [✓] For [ ] Against [ ] Information

Representing: ACLU of FLORIDA

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/01/13
Meeting Date

Topic: Domestic partnerships

Bill Number: 196 *(if applicable)*

Name: Mallory Wells

Amendment Barcode: *(if applicable)*

Job Title: Public Policy Director

Address: 737 NW 24th Ave.
Street

Gainesville
City *State* *Zip*

Phone: 407-617-6682

E-mail: mallory@eqfl.org

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

Representing: Equality 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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 1, 2013
Meeting Date

Topic: Families First

Bill Number: SB 196 *(if applicable)*

Name: Mary Meeks

Amendment Barcode: *(if applicable)*

Job Title: Attorney

Address: 13712 Blue Lagoon Way
Street

Orlando, Fl 32828
City *State* *Zip*

Phone: 407 360 7879

E-mail: marybmeeks@aol.com

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

Representing:

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic: DOMESTIC PARTNERSHIP - MARRIAGE (SAME SEX) — Bill Number: SB 196 (if applicable)

Name: JOHN STEMBERGER — Amendment Barcode: (if applicable)

Job Title: PRESIDENT FLORIDA FAMILY ACTION

Address: 4853 S. ORANGE AVENUE (Street) — Phone: 407 251-1957

ORLANDO (City) FLA. (State) 32806 (Zip) — E-mail:

Speaking: ☐ For ☑ Against ☐ Information

Representing: FLORIDA FAMILY ACTION

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-13

Meeting Date

Topic: DOMESTIC REGISTRY — Bill Number: 196 (if applicable)

Name: William (Bill) Bunkley — Amendment Barcode: (if applicable)

Job Title: President

Address: P O Box 341644 (Street) — Phone: 813-264-2977

Tampa (City) FL (State) 33694 (Zip) — E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing: The Florida Ethics & Religious Liberty Commission, Inc.

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

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

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

S-001 (10/20/11)

Wants in - opposition

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/13
Meeting Date

Topic _____ Bill Number 196 *(if applicable)*

Name Michael Sheedy Amendment Barcode _____ *(if applicable)*

Job Title Director Public Policy

Address 201 W. Park Ave Phone 850-205-6824
Street

TLH FL 32301 E-mail _____
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing FL Conference of Catholic Bishops

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

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

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

_____
Meeting Date

Topic Domestic Partnership Bill Bill Number 196 *(if applicable)*

Name Pam Olsen Amendment Barcode _____ *(if applicable)*

Job Title President Florida Prayer Network

Address PO Box 14017 Phone 850-906-9170
Street

TLH FL 32317 E-mail _____
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing _____

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

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

This form is part of the public record for this meeting. S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 384

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

SUBJECT: Grandparent Visitation Rights

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Fav/CS**
2.			JU	
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 384 prescribes a procedure by which a grandparent of a minor child whose parent or parents are deceased, missing, or in a permanent vegetative state may petition for visitation with a grandchild, if the grandparent can demonstrate that the parent is unfit or there has been significant harm to the grandchild. The bill provides a list of factors for the court to consider in assessing best interest of the child and material harm to the parent-child relationship. The bill provides for mediation as a first resort and the court may appoint a guardian ad litem for the child.

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

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

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

The bill is not expected to have a significant fiscal impact on state government and has an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 39.01, 39.509, 39.801, 63.0425, 63.172 and 752.015. This bill creates sections 752.011 and 752.071, of the Florida Statutes. This bill repeals sections 752.01 and 752.07, of the Florida Statutes.

II. Present Situation:

History of Grandparent Visitation Rights

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

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

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

In response, state legislatures began to enact statutes to permit grandparents and sometimes other nonparents to petition for visitation rights. State legislatures passed the first wave of grandparent

[1] Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Courts' Reluctance to Declare Grandparent Visitation Statutes Unconstitutional*, 41 FAM. CT. REV. 14, 16 (Jan. 2003). *Also see* Karen J. McMullen, *The Scarlet "N:" Grandparent Visitation Statutes That Base Standing on Non-Intact Family Status Violate the Equal Protection Clause of the Fourteenth Amendment*, ST. JOHN'S LAW REVIEW, 83 (2009).
[2] *Id*.
[3] *Id*.
[4] See *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).
[5] Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Courts' Reluctance to Declare Grandparent Visitation Statutes Unconstitutional*, 41 FAM. CT. REV. 14, 16 (Jan. 2003).
[6] *Id*.

visitation statutes between 1966 and 1986. By the early 1990s, all of the state legislatures had enacted grandparent visitation laws that expanded grandparents' visitation rights. Today, the statutes generally delineate who may petition the court and under what circumstances and then require the court to determine if visitation is in the child's best interests.[7]

The enactment of grandparent visitation statutes responded primarily to two trends: demographic changes in family composition and an increase in the number of older Americans and the concurrent growth of the senior lobby.[8] Grandparent visitation resonated with the public as well, who responded to sentimental images of grandparents in the popular media and the conclusions of social scientists who focused on the importance of intergenerational family ties. During the 1990s, many Americans also focused on drug abuse problems of parents, significant poverty levels, and increasing numbers of out-of-wedlock children. Also during this period, Americans looked less to traditional social institutions, such as churches, and more toward the legal system as a way to solve their family problems.[9]

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

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

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

Grandparent Visitation Rights in Florida

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

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[7] *Id*.
[8] Karen J. McMullen, *The Scarlet "N:" Grandparent Visitation Statutes That Base Standing on Non-Intact Family Status Violate the Equal Protection Clause of the Fourteenth Amendment*, ST. JOHN'S LAW REVIEW, 83 (2009).
[9] *Id.*
[10] *Id*.
[11] U.S. CONST. amend. XIV, § 1.
[12] Comm. on Judiciary, The Florida Senate, *Grandparent Visitation Rights*, (Interim Report 2009-120) (Oct. 2008). a*vailable at* http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-120ju.pdf. (last visited February 28, 2013).

Chapter 752, Florida Statutes

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

- One or both of the child's parents were deceased;
- The parents were divorced;
- One parent had deserted the child;
- The child was born out of wedlock; or
- One or both parents, who were still married, had prohibited the formation of a relationship between the child and the grandparent(s).[13]

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

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

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

[13] See ch. 93-279, Laws of Fla. (s. 752.01, F.S. (1993)). Subsequent amendments by the Legislature removed some of these criteria. See s. 752.01, F.S. (2008).
[14] *Cranney v. Coronado*, 920 So. 2d 132, 134 (Fla. 2d DCA 2006) (quoting *Sullivan v. Sapp*, 866 So. 2d 28, 37 (Fla. 2004)).
[15] In 1980, Florida's citizens approved the addition of a privacy provision in the state constitution, which provides greater protection than the federal constitution. Specifically, Florida's right to privacy provision states: "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein." FLA. CONST. art. I, s. 23.
[16] *Beagle*, 678 So. 2d at 1276 (quoting *Winfield v. Division of Pari-Mutuel Wagering*, 477 So. 2d 544, 547 (Fla. 1985)).

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

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

Chapter 61, Florida Statutes

The courts have also struck down two grandparent rights provisions in ch. 61, F.S., which governs dissolution of marriage and parental responsibility for minor children. In 2000, the Florida Supreme Court struck down s. 61.13(7), F.S., which granted grandparents custodial rights in custody or dissolution of marriage proceedings.[19] In *Richardson v. Richardson*, 766 So. 2d 1036 (Fla. 2000), the Court recognized that when a custody dispute is between two fit parents, it is proper to use the best interests of the child standard. However, when the dispute is between a fit parent and a third party, there must be a showing of detrimental harm to the child in order for custody to be denied to the parent.[20]

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

Chapter 39, Florida Statutes

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

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[17] *Id*.
[18] See *Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998); *Lonon v. Ferrell*, 739 So. 2d 650 (Fla. 2d DCA 1999); *Saul v. Brunetti*, 753 So. 2d 26 (Fla. 2000).
[19] The subsection read that "[i]n any case where the child is actually residing with a grandparent in a stable relationship, whether the court has awarded custody to the grandparent or not, the court may recognize the grandparents as having the same standing as parents for evaluating what custody arrangements are in the best interest of the child." Section 61.13(7), F.S. (1997).
[20] *Richardson*, 766 So. 2d at 1039.
[21] *Sullivan v. Sapp*, 866 So. 2d 28 (Fla. 2004). Specifically, s. 61.13(2)(b)2.c., F.S. (2001), provided: "The court may award the grandparents visitation rights with a minor child if it is in the child's best interest. Grandparents have legal standing to seek judicial enforcement of such an award. This section does not require that grandparents be made parties or given notice of dissolution pleadings or proceedings, nor do grandparents have legal standing as contestants. . ."
[22] *Id*.
[23] Section 39.509, F.S.

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

Troxel v. Granville

The U.S. Supreme Court ruled on the issue of grandparent visitation and custody rights in 2000 when the Court struck down a Washington state law as unconstitutional as applied. In *Troxel v. Granville*, 530 U.S. 57 (2000), the Court found the Washington law[25] to be "breathtakingly broad" within the context of a "best interest" determination.[26] The Court noted that no consideration had been given to the decision of the parent, the parent's fitness to make decisions had not been questioned, and no weight had been given to the fact that the mother had agreed to some visitation.[27] Based on these observations, the Court found the Washington statute unconstitutional as applied because "the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a better decision could be made."[28]

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

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

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[24] See *T.M. v. Department of Children and Families*, 927 So. 2d 1088 (1st DCA 2006).
[25] The Washington statute provided that "Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances." WA. REV. CODE s. 26.10.160(3).
[26] *Troxel v. Granville*, 530 U.S. at 67.
[27] *Id*.
[28] *Id*.
[29] Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Courts' Reluctance to Declare Grandparent Visitation Statutes Unconstitutional*, 41 FAM. CT. REV. 14, 16 (Jan. 2003)
[30] *Id*.

The Effect of Court Ordered Visitation on Children and Their Families

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

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

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

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

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

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

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[31] David A. Martindale, *Troxel v. Granville: A Nonjusticiable Dispute*, 41 FAM. CT. REV. 88 (Jan. 2003)
[32] Katharine T. Bartlett, *Grandparent Visitation: Best Interests Test in Not in Child's Best Interest*, WEST VIRGINIA LAW REVIEW. 102:723 (2000).
[33] Maegen E. Peek, *Grandparent Visitation Statutes: Do Legislatures Know The Way To Carry The Sleigh Through The Wide And Drifting Law?* FLORIDA LAW REVIEW (Apr. 2001)
[34] *Id*.

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

Harm to a Child

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

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

> any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or **harm** that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions…[36]

Chapter 39, F.S. defines provides that "harm"

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

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

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

[35] *Id*.
[36] Section 39.01(2), F.S.
[37] Section 39.01(32), F.S.
[38] Section 39.201(1) and (2), F.S.

III. Effect of Proposed Changes:

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

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

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

Section 1. of the bill delineates the procedure for filing a petition for visitation as follows:

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

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

- The love, affection, and other emotional ties existing between the child and the grandparent;
- The length and quality of the prior relationship between the minor and the grandparent;
- Whether the grandparent established, or attempted to establish, ongoing personal contact with the minor;
- The reasons the parent made the decision to end contact or visitation that had been previously allowed by the parent;

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

- Whether there has been demonstrable significant mental or emotional harm to the minor as the result of some disruption in the family unit such as a divorce or the death of a parent;
- The existence or threat of mental injury to the child as defined in s. 39.01, F.S.;[40]
- The present mental, physical, and emotional health of the minor;
- The present mental, physical, and emotional health of the grandparent;
- The recommendations of the minor's guardian ad litem, if one is appointed;
- The results of any psychological evaluation of the child;
- The preference of the child, if the child is determined to be of sufficient maturity to express a preference;
- If a parent is deceased, any written testamentary statement by the deceased parent requesting that visitation with the grandparent be granted, although the absence of such a testamentary statement does not provide evidence that the deceased parent would have objected to the requested visitation;
- Whether the parents of the child disagree on whether to allow, or the extent of, grandparent visitation; and
- Such other factors as the court considers necessary in making its determination.

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

- Whether there have been previous disputes between the grandparent and the parent or parents over childrearing or other matters related to the care and upbringing of the minor child;
- Whether visitation would materially interfere with or compromise parental authority;
- Whether visitation can be arranged in a manner that does not materially detract from the parent-child relationship;
- Whether visitation is being sought for the primary purpose of continuing or establishing a relationship with the minor child with the intent that the child benefit from the relationship;
- Whether the requested visitation would expose the child to conduct, moral standards, experiences, or other factors that are inconsistent with influences provided by the parent;
- The nature of the relationship between the parent and the grandparent;
- The reasons that the parent made the decision to end contact or visitation between the minor child and the grandparent which was previously allowed by the parent;
- The psychological toll of visitation disputes on the minor child; and
- Such other factors as the court considers necessary in making its determination.

Additional provisions in section 1 of the bill include:

- Part II of ch. 61, the Uniform Child Custody Jurisdiction and Enforcement Act, applies to actions brought under s. 752.011, F.S., as created by the bill;
- The courts are encouraged to consolidate grandparent visitation matters with separate but concurrently pending matters relating to child support and parenting plans (s. 61.13, F.S.), in order to minimize the burden of litigation on the minor and the parties;

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

- An order for grandparent visitation may be modified if there has been a substantial change in circumstances and modification is found to be in the best interests of the child;
- A grandparent may only file a petition requesting visitation once during any two-year period, unless good cause is shown that the denial of visitation has or is likely to cause mental or emotional harm in a way that was not known to the grandparent at the time of a previous filing;
- Grandparent visitation cannot be granted subsequent to a final order of adoption, except as provided in s. 752.071, F.S., which is created by the bill; and
- Venue is in the county where the child primarily resides, unless venue is otherwise governed by chs. 39, 61, or 63, F.S.

Section 2. of the bill amends s. 752.015, F.S,. to make technical and conforming changes.

Section 3. of the bill creates s. 752.071, F.S., to provide that, following the adoption of a minor child by a stepparent or close relative, the stepparent or close relative may petition the court to terminate an order granting grandparent visitation and the court may terminate the order unless the grandparent demonstrates that visitation continues to be justified pursuant to s. 752.011, F.S.

Section 4. of the bill amends s. 39.01, F.S., to include "great-grandparents" in the definition of the term "next of kin."

Section 5. of the bill amends s. 39.509, F.S., relating to grandparents' rights when a grandchild has been adjudicated dependent to include great-grandparents.

Section 6. of the bill amends s. 39.801, F.S., relating to termination of parental rights, to add great-grandparent to the list of persons that must be served notice of the date, time, and place of the advisory hearing for the petition to terminate parental rights.

Section 7. of the bill amends s. 63.0425, F.S., relating to grandparents' right to notice, to add great-grandparents to the persons who must be provided notice of a hearing on a petition for adoption.

Section 8. of the bill amends s. 63.172, F.S., to add great-grandparents to the list of individuals considered to be "close relatives" and to add great-grandparents to rights delineated under chapter 752, F.S., when a child is adopted.

Section 9. of the bill repeals ss. 752.01 and 752.07, F.S., relating to action by grandparent for right of visitation and the effect of adoption of the child by a stepparent on the right of visitation.

Section 10. of the bill provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The fundamental right of parenting is a long-standing liberty interest recognized by both the United States and Florida constitutions. Because child-rearing – inherent in Florida's right to privacy – is considered a fundamental right, when determining whether something unconstitutionally infringes on that right, courts have used the highest standard of review available: the strict scrutiny standard. As explained in the Present Situation of this analysis, Florida courts have consistently held all statutes that compel visitation or custody with a grandparent based solely on the best interests of the child standard to be unconstitutional. However, this bill does not compel visitation based on the best interests of the child standard, but instead appears to codify certain aspects of Florida court opinions by:

- Allowing any grandparent to be able to petition for visitation, regardless of the parents' marital status;
- Creating a rebuttable presumption that a fit parent acts in the best interests of the child when denying visitation; and
- Requiring the grandparent to prove by clear and convincing evidence that the failure to allow visitation has caused or is likely to cause demonstrable significant mental or emotional harm to the child.

The United States Supreme Court has not held that all grandparent visitation statutes are unconstitutional, instead leaving such a determination to be made by the states on a case-by-case basis. Because Florida has a specific right to privacy, it has a higher hurdle to cross than many other states in enacting a valid grandparent visitation rights statute. Montana also has an explicit right to privacy in its state constitution. Specifically, the Montana Constitution provides:

> The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.[41]

Additionally, Montana is one of 35 states with a valid grandparent visitation statute.[42] It appears, based on Montana, that a state may be able to have a constitutional grandparent visitation statute, even if the state has an explicit right to privacy.

[41] MT. CONST. art II, s. 10.
[42] See MT. CODE ANN. s. 40-9-102.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

State Government

The bill authorizes the appointment of a guardian ad-litem under certain circumstances. The Guardian ad-Litem Program is funded by the state and currently only serves 70 percent of the eligible children. Increasing the workload of the program would create an indeterminate fiscal impact on the state. The State Courts System could see an increase in judicial hearings under the bill.

Local Government

Service of process is provided primarily by county sheriff's offices. The bill requires service of process to grandparents and great grandparents of children under certain proceedings. The bill is silent as to who would pay for this service. If it falls on the sheriff offices, the bill would create a fiscal impact on county governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Line 60 of the bill does not reference a "fit" parent.

Line 78 of the bill requires the court to order the family to mediation. It does not include an opt out for situations where there has been a history of domestic violence. The bill might be amended to add: However, upon motion or request of a party, the court shall not refer the case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process.

Lines 79-80 of the bill provide that if mediation between involving the parents and the grandparent fails to yield a resolution, the court is required to order a psychological evaluation of the child absent the availability of comparable evidence of the findings expected from an evaluation. There does not appear to be a nexus between a failure of parents and grandparents to reach agreement during mediation and requiring the child to be psychologically evaluated.

The bill is silent on the fact that if a court finds that there is prima facie evidence that the minor child is suffering or is threatened with suffering demonstrable significant mental or emotional harm a result of not being allowed to visit a grandparent, the judge will be required to call the child abuse hotline under the provisions of ch. 39, F.S. This may result in the Department of Children and Families commencing a child protective investigation pursuant to s. 39.301, F.S.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Children, Families, and Elder Affairs on April 1, 2013:
The CS makes a number of changes to the bill including:

- Narrowing the pool of grandparents who would be eligible to petition for visitation to those with a grandchild whose parent or parents are deceased, missing or in a permanent vegetative state;
- Removing the requirement that the child be psychologically evaluation if mediation fails,
- Removing the requirement that the court establish a rebuttable presumption that a parent's decision to deny visitation with a grandparent is in the child's best interest and that the court accord special weight to the parent's decision; and
- Renaming a list of factors in the bill to be considered by the court when determining harm to a child to a list of factors to be considered by the court when determining best interest of the child.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
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The Committee on Children, Families, and Elder Affairs (Clemens) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Section 752.011, Florida Statutes, is created to
6 read:
7 752.011 Petition for grandparent visitation of a minor
8 child.—A grandparent of a minor child whose parent or parents
9 are deceased, missing, or in a permanent vegetative state may
10 petition the court for court-ordered visitation with the
11 grandchild under this section.
12 (1) Upon the filing of a petition by a grandparent for

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13 visitation the court shall hold a preliminary hearing to
14 determine whether the petitioner has made a prima facie showing
15 of parental unfitness or significant harm to the child. Absent
16 such a showing, the court shall dismiss the petition and shall
17 award reasonable attorney fees and costs to be paid by the
18 petitioner to the respondent.
19 (2) If the court finds that there is prima facie evidence
20 that a parent is unfit or that there is a danger of significant
21 harm to the child, the court shall proceed toward a final
22 hearing, may appoint a guardian ad litem, and shall order the
23 matter to family mediation as provided in s. 752.015.
24 (3) After conducting a final hearing on the issue of
25 visitation, the court may award reasonable visitation to the
26 grandparent with respect to the minor child if the court finds
27 by clear and convincing evidence that a parent is unfit or that
28 there is a danger of significant harm to the child, that
29 visitation is in the best interest of the minor child, and that
30 the visitation will not materially harm the parent-child
31 relationship.
32 (4) In assessing the best interest of the child under
33 subsection (3), the court shall consider the totality of the
34 circumstances affecting the mental and emotional well-being of
35 the minor child, including:
36 (a) The love, affection, and other emotional ties existing
37 between the minor child and the grandparent, including those
38 resulting from the relationship that had been previously allowed
39 by the child’s parent.
40 (b) The length and quality of the previous relationship
41 between the minor child and the grandparent, including the

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42 extent to which the grandparent was involved in providing
43 regular care and support for the child.
44 (c) Whether the grandparent established ongoing personal
45 contact with the minor child before the death of the parent.
46 (d) The reasons that the surviving parent made the decision
47 to end contact or visitation between the minor child and the
48 grandparent.
49 (e) Whether there has been demonstrable significant mental
50 or emotional harm to the minor child as a result of disruption
51 in the family unit, for which the child derived support and
52 stability from the grandparental relationship, and whether the
53 continuation of that support and stability is likely to prevent
54 further harm.
55 (f) The existence or threat to the minor child of mental
56 injury as defined in s. 39.01.
57 (g) The present mental, physical, and emotional health of
58 the minor child.
59 (h) The present mental, physical, and emotional health of
60 the grandparent.
61 (i) The recommendations of the minor child's guardian ad
62 litem, if one is appointed.
63 (j) The results of any psychological evaluation of the
64 minor child.
65 (k) The preference of the minor child if the child is
66 determined to be of sufficient maturity to express a preference.
67 (l) A written testamentary statement by the deceased parent
68 regarding visitation with the grandparent. The absence of such a
69 testamentary statement does not provide evidence that the
70 deceased parent would have objected to the requested visitation.

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71 (m) Such other factors as the court considers necessary in
72 making its determination.
73 (5) In assessing material harm to the parent-child
74 relationship under subsection (3), the court shall consider the
75 totality of the circumstances affecting the parent-child
76 relationship, including:
77 (a) Whether there have been previous disputes between the
78 grandparent and the parent over childrearing or other matters
79 related to the care and upbringing of the minor child.
80 (b) Whether visitation would materially interfere with or
81 compromise parental authority.
82 (c) Whether visitation can be arranged in a manner that
83 does not materially detract from the parent-child relationship,
84 including the quantity of time available for enjoyment of the
85 parent-child relationship and any other consideration related to
86 disruption of the schedule and routines of the parent and the
87 minor child.
88 (d) Whether visitation is being sought for the primary
89 purpose of continuing or establishing a relationship with the
90 minor child with the intent that the child benefit from the
91 relationship.
92 (e) Whether the requested visitation would expose the minor
93 child to conduct, moral standards, experiences, or other factors
94 that are inconsistent with influences provided by the parent.
95 (f) The nature of the relationship between the parent and
96 the grandparent.
97 (g) The reasons that the parent made the decision to end
98 contact or visitation between the minor child and the
99 grandparent which was previously allowed by the parent.

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100 (h) The psychological toll of visitation disputes on the
101 minor child.
102 (i) Such other factors as the court considers necessary in
103 making its determination.
104 (6) Part II of chapter 61, the Uniform Child Custody
105 Jurisdiction and Enforcement Act, applies to actions brought
106 under this section.
107 (7) If separate actions under this section and s. 61.13 are
108 pending concurrently, the courts are strongly encouraged to
109 consolidate the actions in order to minimize the burden of
110 litigation of grandparent visitation on the minor child and the
111 other parties.
112 (8) An order for grandparent visitation may be modified
113 upon a showing by the person petitioning for modification that a
114 substantial change in circumstances has occurred and that
115 modification of visitation is in the best interest of the minor
116 child.
117 (9) An original action requesting visitation under this
118 section may be filed by a grandparent only once during any 2-
119 year period, except on good cause shown that the minor child is
120 suffering or threatened with suffering demonstrable significant
121 mental or emotional harm caused by a parental decision to deny
122 visitation between a minor child and the grandparent, which was
123 not known to the grandparent at the time of filing an earlier
124 action.
125 (10) This section does not provide for grandparent
126 visitation with a minor child placed for adoption under chapter
127 63, except as provided in s. 752.071 with respect to adoption by
128 a stepparent or close relative.

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129 (11) Venue shall be in the county where the minor child
130 primarily resides, unless venue is otherwise governed by chapter
131 39, chapter 61, or chapter 63.
132 Section 2. Section 752.015, Florida Statutes, is amended to
133 read:
134 752.015 Mediation of visitation disputes.—It shall be the
135 public policy of this state that families resolve differences
136 over grandparent visitation within the family. It shall be the
137 further public policy of this state that when families are
138 unable to resolve differences relating to grandparent visitation
139 that the family participate in any formal or informal mediation
140 services that may be available. If ~~When~~ families are unable to
141 resolve differences relating to grandparent visitation and a
142 petition is filed pursuant to s. 752.011 ~~s. 752.01~~, the court
143 shall, if such services are available in the circuit, refer the
144 case to family mediation in accordance with the Florida Family
145 Law Rules of Procedure ~~rules promulgated by the Supreme Court~~.
146 Section 3. Section 752.071, Florida Statutes, is created to
147 read:
148 752.071 Effect of adoption by stepparent or close
149 relative.—After the adoption of a minor child by a stepparent or
150 close relative, the stepparent or close relative may petition
151 the court to terminate an order granting grandparent visitation
152 under this chapter which was entered before the adoption. The
153 court may terminate the order unless the grandparent is able to
154 show that the criteria of s. 752.011 authorizing the visitation
155 continue to be satisfied.
156 Section 4. Subsection (45) of section 39.01, Florida
157 Statutes, is amended to read:

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158 39.01 Definitions.—When used in this chapter, unless the
159 context otherwise requires:
160 (45) "Next of kin" means an adult relative of a child who
161 is the child's brother, sister, grandparent, great-grandparent,
162 aunt, uncle, or first cousin.
163 Section 5. Section 39.509, Florida Statutes, is amended to
164 read:
165 39.509 Grandparents' and great-grandparents' ~~Grandparents~~
166 rights.—Notwithstanding any other provision of law, a maternal
167 or paternal grandparent or great-grandparent as well as a
168 stepgrandparent or step-great-grandparent is entitled to
169 reasonable visitation with his or her grandchild or great-
170 grandchild who has been adjudicated a dependent child and taken
171 from the physical custody of the parent unless the court finds
172 that such visitation is not in the best interest of the child or
173 that such visitation would interfere with the goals of the case
174 plan. Reasonable visitation may be unsupervised and, where
175 appropriate and feasible, may be frequent and continuing. Any
176 order for visitation or other contact must conform to the
177 provisions of s. 39.0139.
178 (1) Grandparent or great-grandparent visitation may take
179 place in the home of the grandparent or great-grandparent unless
180 there is a compelling reason for denying such a visitation. The
181 department's caseworker shall arrange the visitation to which a
182 grandparent or great-grandparent is entitled pursuant to this
183 section. The state shall not charge a fee for any costs
184 associated with arranging the visitation. However, the
185 grandparent or great-grandparent shall pay for the child's cost
186 of transportation when the visitation is to take place in the

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187 grandparent's or great-grandparent's home. The caseworker shall
188 document the reasons for any decision to restrict a
189 grandparent's or great-grandparent's visitation.
190 (2) A grandparent or great-grandparent entitled to
191 visitation pursuant to this section shall not be restricted from
192 appropriate displays of affection to the child, such as
193 appropriately hugging or kissing his or her grandchild or great-
194 grandchild. Gifts, cards, and letters from the grandparent or
195 great-grandparent and other family members shall not be denied
196 to a child who has been adjudicated a dependent child.
197 (3) Any attempt by a grandparent or great-grandparent to
198 facilitate a meeting between the child who has been adjudicated
199 a dependent child and the child's parent or legal custodian, or
200 any other person in violation of a court order shall
201 automatically terminate future visitation rights of the
202 grandparent or great-grandparent.
203 (4) When the child has been returned to the physical
204 custody of his or her parent, the visitation rights granted
205 pursuant to this section shall terminate.
206 (5) The termination of parental rights does not affect the
207 rights of grandparents or great-grandparents unless the court
208 finds that such visitation is not in the best interest of the
209 child or that such visitation would interfere with the goals of
210 permanency planning for the child.
211 (6) In determining whether grandparental or great-
212 grandparental visitation is not in the child's best interest,
213 consideration may be given to the following:
214 (a) The finding of guilt, regardless of adjudication, or
215 entry or plea of guilty or nolo contendere to charges under the

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216 following statutes, or similar statutes of other jurisdictions:
217 s. 787.04, relating to removing a minor child ~~minors~~ from the
218 state or concealing a minor child ~~minors~~ contrary to court
219 order; s. 794.011, relating to sexual battery; s. 798.02,
220 relating to lewd and lascivious behavior; chapter 800, relating
221 to lewdness and indecent exposure; s. 826.04, relating to
222 incest; or chapter 827, relating to the abuse of children.
223 (b) The designation by a court as a sexual predator as
224 defined in s. 775.21 or a substantially similar designation
225 under laws of another jurisdiction.
226 (c) A report of abuse, abandonment, or neglect under ss.
227 415.101-415.113 or this chapter and the outcome of the
228 investigation concerning such report.
229 Section 6. Paragraph (a) of subsection (3) of section
230 39.801, Florida Statutes, is amended to read:
231 39.801 Procedures and jurisdiction; notice; service of
232 process.—
233 (3) Before the court may terminate parental rights, in
234 addition to the other requirements set forth in this part, the
235 following requirements must be met:
236 (a) Notice of the date, time, and place of the advisory
237 hearing for the petition to terminate parental rights and a copy
238 of the petition must be personally served upon the following
239 persons, specifically notifying them that a petition has been
240 filed:
241 1. The parents of the child.
242 2. The legal custodians of the child.
243 3. If the parents who would be entitled to notice are dead
244 or unknown, a living relative of the child, unless upon diligent

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245 search and inquiry no such relative can be found.
246 4. Any person who has physical custody of the child.
247 5. Any grandparent or great-grandparent entitled to
248 priority for adoption under s. 63.0425.
249 6. Any prospective parent who has been identified under s.
250 39.503 or s. 39.803.
251 7. The guardian ad litem for the child or the
252 representative of the guardian ad litem program, if the program
253 has been appointed.
254
255 The document containing the notice to respond or appear must
256 contain, in type at least as large as the type in the balance of
257 the document, the following or substantially similar language:
258 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING
259 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
260 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
261 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
262 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
263 NOTICE."
264 Section 7. Subsection (1) of section 63.0425, Florida
265 Statutes, is amended to read:
266 63.0425 Grandparent's or great-grandparent's right to
267 notice.—
268 (1) If a child has lived with a grandparent or great-
269 grandparent for at least 6 months within the 24-month period
270 immediately preceding the filing of a petition for termination
271 of parental rights pending adoption, the adoption entity shall
272 provide notice to that grandparent or great-grandparent of the
273 hearing on the petition.

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274 Section 8. Subsection (2) of section 63.172, Florida
275 Statutes, is amended to read:
276 63.172 Effect of judgment of adoption.—
277 (2) If one or both parents of a child die without the
278 relationship of parent and child having been previously
279 terminated and a spouse of the living parent or a close relative
280 of the child thereafter adopts the child, the child's right of
281 inheritance from or through the deceased parent is unaffected by
282 the adoption and, unless the court orders otherwise, the
283 adoption does ~~will~~ not terminate any grandparental or great-
284 grandparental rights delineated under chapter 752. For purposes
285 of this subsection, a close relative of a child is the child's
286 brother, sister, grandparent, great-grandparent, aunt, or uncle.
287 Section 9. Sections 752.01 and 752.07, Florida Statutes,
288 are repealed.
289 Section 10. This act shall take effect July 1, 2013.
290
291 ========== T I T L E A M E N D M E N T ==========
292 And the title is amended as follows:
293 Delete everything before the enacting clause
294 and insert:
295 A bill to be entitled
296 An act relating to grandparent visitation rights;
297 creating s. 752.011, F.S.; authorizing the grandparent
298 of a minor child to petition a court for visitation
299 under certain circumstances; requiring a preliminary
300 hearing; providing for the payment of attorney fees
301 and costs by a petitioner who fails to make a prima
302 facie showing of harm; authorizing grandparent

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303 visitation if the court makes specified findings;
304 providing factors for court consideration; providing
305 for application of the Uniform Child Custody
306 Jurisdiction and Enforcement Act; encouraging the
307 consolidation of certain concurrent actions; providing
308 for modification of an order awarding grandparent
309 visitation; limiting the frequency of actions seeking
310 visitation; limiting application to a minor child
311 placed for adoption; providing for venue; amending s.
312 752.015, F.S.; conforming references; creating s.
313 752.071, F.S.; providing conditions under which a
314 court may terminate a grandparent visitation order
315 upon adoption of a minor child by a stepparent or
316 close relative; amending s. 39.01, F.S.; revising the
317 definition of "next of kin" to include great-
318 grandparents for purposes of various proceedings
319 relating to children; amending s. 39.509, F.S.;
320 providing for visitation rights of great-grandparents;
321 amending ss. 39.801 and 63.0425, F.S.; providing for a
322 great-grandparent's right to notice of adoption;
323 amending s. 63.172, F.S.; conforming provisions;
324 repealing s. 752.01, F.S., relating to actions by a
325 grandparent for visitation rights; repealing s.
326 752.07, F.S., relating to the effect of adoption of a
327 child by a stepparent on grandparent visitation
328 rights; providing an effective date.

By Senator Abruzzo

25-00290-13 2013384__

A bill to be entitled

An act relating to grandparent visitation rights; creating s. 752.011, F.S.; authorizing the grandparent of a minor child to petition a court for visitation under certain circumstances; providing a rebuttable presumption in favor of the minor child's parent; requiring a preliminary hearing on harm to the minor child resulting from denial of visitation; providing for the payment of attorney fees and costs by a petitioner who fails to make a prima facie showing of harm; authorizing appointment of a guardian ad litem and mediation after a prima facie showing of harm; providing for a psychological evaluation of the minor child if mediation fails; authorizing grandparent visitation if the court makes specified findings; requiring clear and convincing evidence of demonstrable significant mental or emotional harm to the minor child resulting from a denial of visitation; prohibiting grandparent visitation that materially harms the parent-child relationship; providing factors for court consideration in determining whether there is harm to the minor child or to the parent-child relationship; providing for application of the Uniform Child Custody Jurisdiction and Enforcement Act; encouraging the consolidation of certain concurrent actions; providing for modification of an order awarding grandparent visitation; limiting the frequency of actions seeking visitation; limiting application to a minor child placed for adoption;

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25-00290-13 2013384__

providing for application of sanctions for unsupported claims or defenses; providing for venue; amending s. 752.015, F.S.; conforming references; creating s. 752.071, F.S.; providing conditions under which a court may terminate a grandparent visitation order upon adoption of a minor child by a stepparent or close relative; amending s. 39.01, F.S.; revising the definition of "next of kin" to include great-grandparents for purposes of various proceedings relating to children; amending s. 39.509, F.S.; providing for visitation rights of great-grandparents; amending ss. 39.801 and 63.0425, F.S.; providing for a great-grandparent's right to notice of adoption; amending s. 63.172, F.S.; conforming provisions; repealing s. 752.01, F.S., relating to actions by a grandparent for visitation rights; repealing s. 752.07, F.S., relating to the effect of adoption of a child by a stepparent on grandparent visitation rights; providing an effective date.

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

Section 1. Section 752.011, Florida Statutes, is created to read:

752.011 Petition for grandparent visitation of a minor child.—

(1) A grandparent of a minor child may petition the court for visitation with the child if the parent of the child has denied such visitation with the grandparent.

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59 (2) In evaluating the petition for visitation, the court
60 shall establish a rebuttable presumption that a parent's
61 decision to deny a grandparent reasonable visitation with the
62 minor child is in the child's best interest and shall accord
63 special weight to the parent's decision.
64 (3) Upon the filing of a petition by a grandparent for
65 visitation, the court shall hold a preliminary hearing to
66 determine whether the petitioner has made a prima facie showing
67 that the minor child is suffering or is threatened with
68 suffering demonstrable significant mental or emotional harm due
69 to the parental decision not to allow visitation with the
70 grandparent. Absent such a showing, the court shall dismiss the
71 petition and shall award reasonable attorney fees and costs to
72 be paid by the petitioner to the respondent.
73 (4) If the court finds that there is prima facie evidence
74 that the minor child is suffering or is threatened with
75 suffering demonstrable significant mental or emotional harm due
76 to the parental decision not to allow visitation with the
77 grandparent, the court may appoint a guardian ad litem and shall
78 order the matter to family mediation as provided in s. 752.015.
79 (5) If mediation fails to yield a resolution, the court
80 shall order a psychological evaluation of the minor child
81 pursuant to the Florida Family Law Rules of Procedure, absent
82 the availability of comparable evidence of the findings expected
83 from such an evaluation.
84 (6) After conducting a hearing on the issue of visitation,
85 the court may award reasonable visitation to the grandparent
86 with respect to the minor child if the court finds that:
87 (a) There is clear and convincing evidence that the minor

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88 child is suffering or is threatened with suffering demonstrable
89 significant mental or emotional harm as a result of a parental
90 decision not to allow visitation with the grandparent and that
91 visitation with the grandparent will alleviate or mitigate the
92 harm.
93 (b) The visitation will not materially harm the parent-
94 child relationship.
95 (7) In assessing demonstrable significant mental or
96 emotional harm under paragraph (6)(a), the court shall consider
97 the totality of the circumstances affecting the mental and
98 emotional well-being of the minor child, including:
99 (a) The love, affection, and other emotional ties existing
100 between the minor child and the grandparent, including those
101 resulting from the relationship that had been previously allowed
102 by the child's parent.
103 (b) The length and quality of the previous relationship
104 between the minor child and the grandparent, including the
105 extent to which the grandparent was involved in providing
106 regular care and support for the child.
107 (c) Whether the grandparent established or attempted to
108 establish ongoing personal contact with the minor child.
109 (d) The reasons that the parent made the decision to end
110 contact or visitation between the minor child and the
111 grandparent which had been previously allowed by the parent.
112 (e) Whether there has been demonstrable significant mental
113 or emotional harm to the minor child as a result of disruption
114 in the family unit, for which the child derived support and
115 stability from the grandparental relationship, and whether the
116 continuation of that support and stability is likely to prevent

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117 further harm.
118 (f) The existence or threat to the minor child of mental
119 injury as defined in s. 39.01.
120 (g) The present mental, physical, and emotional health of
121 the minor child.
122 (h) The present mental, physical, and emotional health of
123 the grandparent.
124 (i) The recommendations of the minor child's guardian ad
125 litem, if one is appointed.
126 (j) The results of the psychological evaluation of the
127 minor child ordered pursuant to subsection (5).
128 (k) The preference of the minor child if the child is
129 determined to be of sufficient maturity to express a preference.
130 (l) If a parent is deceased, any written testamentary
131 statement by the deceased parent requesting that visitation with
132 the grandparent be granted or stating a belief that such
133 visitation would reduce or mitigate demonstrable significant
134 mental or emotional harm to the minor child resulting from the
135 parent's death. The absence of such a testamentary statement
136 does not provide evidence that the deceased parent would have
137 objected to the requested visitation.
138 (m) Whether the parents of the minor child disagree on
139 whether to allow or the extent of grandparent visitation.
140 (n) Such other factors as the court considers necessary in
141 making its determination.
142 (8) In assessing material harm to the parent-child
143 relationship under paragraph (6)(b), the court shall consider
144 the totality of the circumstances affecting the parent-child
145 relationship, including:

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146 (a) Whether there have been previous disputes between the
147 grandparent and the parent or parents over childrearing or other
148 matters related to the care and upbringing of the minor child.
149 (b) Whether visitation would materially interfere with or
150 compromise parental authority.
151 (c) Whether visitation can be arranged in a manner that
152 does not materially detract from the parent-child relationship,
153 including the quantity of time available for enjoyment of the
154 parent-child relationship, and any other consideration related
155 to disruption of the schedule and routines of the parent and the
156 minor child.
157 (d) Whether visitation is being sought for the primary
158 purpose of continuing or establishing a relationship with the
159 minor child with the intent that the child benefit from the
160 relationship.
161 (e) Whether the requested visitation would expose the minor
162 child to conduct, moral standards, experiences, or other factors
163 that are inconsistent with influences provided by the parent.
164 (f) The nature of the relationship between the parent and
165 the grandparent.
166 (g) The reasons that the parent made the decision to end
167 contact or visitation between the minor child and the
168 grandparent which was previously allowed by the parent.
169 (h) The psychological toll of visitation disputes on the
170 minor child.
171 (i) Such other factors as the court considers necessary in
172 making its determination.
173 (9) Part II of chapter 61, the Uniform Child Custody
174 Jurisdiction and Enforcement Act, applies to actions brought

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175 under this section.
176 (10) If separate actions under this section and s. 61.13
177 are pending concurrently, the courts are strongly encouraged to
178 consolidate the actions in order to minimize the burden of
179 litigation of grandparent visitation on the minor child and the
180 other parties.
181 (11) An order for grandparent visitation may be modified
182 upon a showing by the person petitioning for modification that a
183 substantial change in circumstances has occurred and that
184 modification of visitation is in the best interest of the minor
185 child.
186 (12) An original action requesting visitation under this
187 section may be filed by a grandparent only once during any 2-
188 year period, except on good cause shown that the minor child is
189 suffering or threatened with suffering demonstrable significant
190 mental or emotional harm caused by a parental decision to deny
191 visitation between a minor child and the grandparent, which was
192 not known to the grandparent at the time of filing an earlier
193 action.
194 (13) This section does not provide for grandparent
195 visitation with a minor child placed for adoption under chapter
196 63 except as provided in s. 752.071 with respect to adoption by
197 a stepparent or close relative.
198 (14) Section 57.105 applies to actions brought under this
199 chapter.
200 (15) Venue shall be in the county where the minor child
201 primarily resides, unless venue is otherwise governed by chapter
202 39, chapter 61, or chapter 63.
203 Section 2. Section 752.015, Florida Statutes, is amended to

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204 read:
205 752.015 Mediation of visitation disputes.—It shall be the
206 public policy of this state that families resolve differences
207 over grandparent visitation within the family. It shall be the
208 further public policy of this state that when families are
209 unable to resolve differences relating to grandparent visitation
210 that the family participate in any formal or informal mediation
211 services that may be available. If ~~When~~ families are unable to
212 resolve differences relating to grandparent visitation and a
213 petition is filed pursuant to s. 752.011 ~~s. 752.01~~, the court
214 shall, if such services are available in the circuit, refer the
215 case to family mediation in accordance with the Florida Family
216 Law Rules of Procedure ~~rules promulgated by the Supreme Court~~.
217 Section 3. Section 752.071, Florida Statutes, is created to
218 read:
219 752.071 Effect of adoption by stepparent or close
220 relative.—After the adoption of a minor child by a stepparent or
221 close relative, the stepparent or close relative may petition
222 the court to terminate an order granting grandparent visitation
223 under this chapter which was entered before the adoption. The
224 court may terminate the order unless the grandparent is able to
225 show that the criteria of s. 752.011 authorizing the visitation
226 continue to be satisfied.
227 Section 4. Subsection (45) of section 39.01, Florida
228 Statutes, is amended to read:
229 39.01 Definitions.—When used in this chapter, unless the
230 context otherwise requires:
231 (45) "Next of kin" means an adult relative of a child who
232 is the child's brother, sister, grandparent, great-grandparent,

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233 aunt, uncle, or first cousin.
234 Section 5. Section 39.509, Florida Statutes, is amended to
235 read:
236 39.509 Grandparents' and great-grandparents' ~~Grandparents~~
237 rights.—Notwithstanding any other provision of law, a maternal
238 or paternal grandparent or great-grandparent as well as a
239 stepgrandparent or step-great-grandparent is entitled to
240 reasonable visitation with his or her grandchild or great-
241 grandchild who has been adjudicated a dependent child and taken
242 from the physical custody of the parent unless the court finds
243 that such visitation is not in the best interest of the child or
244 that such visitation would interfere with the goals of the case
245 plan. Reasonable visitation may be unsupervised and, where
246 appropriate and feasible, may be frequent and continuing. Any
247 order for visitation or other contact must conform to the
248 provisions of s. 39.0139.
249 (1) Grandparent or great-grandparent visitation may take
250 place in the home of the grandparent or great-grandparent unless
251 there is a compelling reason for denying such a visitation. The
252 department's caseworker shall arrange the visitation to which a
253 grandparent or great-grandparent is entitled pursuant to this
254 section. The state shall not charge a fee for any costs
255 associated with arranging the visitation. However, the
256 grandparent or great-grandparent shall pay for the child's cost
257 of transportation when the visitation is to take place in the
258 grandparent's or great-grandparent's home. The caseworker shall
259 document the reasons for any decision to restrict a
260 grandparent's or great-grandparent's visitation.
261 (2) A grandparent or great-grandparent entitled to

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262 visitation pursuant to this section shall not be restricted from
263 appropriate displays of affection to the child, such as
264 appropriately hugging or kissing his or her grandchild or great-
265 grandchild. Gifts, cards, and letters from the grandparent or
266 great-grandparent and other family members shall not be denied
267 to a child who has been adjudicated a dependent child.
268 (3) Any attempt by a grandparent or great-grandparent to
269 facilitate a meeting between the child who has been adjudicated
270 a dependent child and the child's parent or legal custodian, or
271 any other person in violation of a court order shall
272 automatically terminate future visitation rights of the
273 grandparent or great-grandparent.
274 (4) When the child has been returned to the physical
275 custody of his or her parent, the visitation rights granted
276 pursuant to this section shall terminate.
277 (5) The termination of parental rights does not affect the
278 rights of grandparents or great-grandparents unless the court
279 finds that such visitation is not in the best interest of the
280 child or that such visitation would interfere with the goals of
281 permanency planning for the child.
282 (6) In determining whether grandparental or great-
283 grandparental visitation is not in the child's best interest,
284 consideration may be given to the following:
285 (a) The finding of guilt, regardless of adjudication, or
286 entry or plea of guilty or nolo contendere to charges under the
287 following statutes, or similar statutes of other jurisdictions:
288 s. 787.04, relating to removing a minor child ~~minors~~ from the
289 state or concealing a minor child ~~minors~~ contrary to court
290 order; s. 794.011, relating to sexual battery; s. 798.02,

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291 relating to lewd and lascivious behavior; chapter 800, relating
292 to lewdness and indecent exposure; s. 826.04, relating to
293 incest; or chapter 827, relating to the abuse of children.
294 (b) The designation by a court as a sexual predator as
295 defined in s. 775.21 or a substantially similar designation
296 under laws of another jurisdiction.
297 (c) A report of abuse, abandonment, or neglect under ss.
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300 Section 6. Paragraph (a) of subsection (3) of section
301 39.801, Florida Statutes, is amended to read:
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304 (3) Before the court may terminate parental rights, in
305 addition to the other requirements set forth in this part, the
306 following requirements must be met:
307 (a) Notice of the date, time, and place of the advisory
308 hearing for the petition to terminate parental rights and a copy
309 of the petition must be personally served upon the following
310 persons, specifically notifying them that a petition has been
311 filed:
312 1. The parents of the child.
313 2. The legal custodians of the child.
314 3. If the parents who would be entitled to notice are dead
315 or unknown, a living relative of the child, unless upon diligent
316 search and inquiry no such relative can be found.
317 4. Any person who has physical custody of the child.
318 5. Any grandparent <u>or great-grandparent</u> entitled to
319 priority for adoption under s. 63.0425.

320 6. Any prospective parent who has been identified under s.
321 39.503 or s. 39.803.
322 7. The guardian ad litem for the child or the
323 representative of the guardian ad litem program, if the program
324 has been appointed.
325
326 The document containing the notice to respond or appear must
327 contain, in type at least as large as the type in the balance of
328 the document, the following or substantially similar language:
329 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING
330 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
331 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
332 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
333 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
334 NOTICE."
335 Section 7. Subsection (1) of section 63.0425, Florida
336 Statutes, is amended to read:
337 63.0425 Grandparent's <u>or great-grandparent's</u> right to
338 notice.—
339 (1) If a child has lived with a grandparent <u>or great-</u>
340 <u>grandparent</u> for at least 6 months within the 24-month period
341 immediately preceding the filing of a petition for termination
342 of parental rights pending adoption, the adoption entity shall
343 provide notice to that grandparent <u>or great-grandparent</u> of the
344 hearing on the petition.
345 Section 8. Subsection (2) of section 63.172, Florida
346 Statutes, is amended to read:
347 63.172 Effect of judgment of adoption.—
348 (2) If one or both parents of a child die without the

349 relationship of parent and child having been previously
350 terminated and a spouse of the living parent or a close relative
351 of the child thereafter adopts the child, the child's right of
352 inheritance from or through the deceased parent is unaffected by
353 the adoption and, unless the court orders otherwise, the
354 adoption does ~~will~~ not terminate any grandparental or great-
355 grandparental rights delineated under chapter 752. For purposes
356 of this subsection, a close relative of a child is the child's
357 brother, sister, grandparent, great-grandparent, aunt, or uncle.
358 Section 9. Sections 752.01 and 752.07, Florida Statutes,
359 are repealed.
360 Section 10. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Chair*

SENATOR JOSEPH ABRUZZO
25th District

February 15th, 2013

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

Dear Chair Sobel:

I respectfully request that Senate Bill 384, relating to Grandparent Visitation Rights, be placed on the Children, Families, and Elder Affairs Committee agenda. This legislation will provide the opportunity for grandparents to petition for visitation rights of their grandchildren.

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

Sincerely,

Senator Joseph Abruzzo

cc: Claude Hendon, Staff Director

RECEIVED
FEB 20 2013
Senate Committee
Children and Families

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

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

#1

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-13
Meeting Date

Topic: Grandparents Rights

Bill Number: 384 *(if applicable)*

Name: Suzie Caffery

Amendment Barcode: _____ *(if applicable)*

Job Title: Teacher

Address: 330 Orchard St.
Street

Chuluota, FL 32766
City *State* *Zip*

Phone: 407-312-8072

E-mail: doziecaffery78@hotmail.com

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

Representing: Yvonne Stewart

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

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

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

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

S-001 (10/20/11)

2

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-13
Meeting Date

Topic: Grandparents Rights

Bill Number: 384 *(if applicable)*

Name: Yvonne Stewart

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 557 Guy Ct
Street

Geneva, FL 32732
City *State* *Zip*

Phone: _____

E-mail: _____

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

Representing: Myself

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-13
Meeting Date

Topic: Grandparent Visitation

Bill Number: SB 384 *(if applicable)*

Name: Barbara Devane

Amendment Barcode: *(if applicable)*

Job Title: Organizer / Lobbyist & Independent Contractor

Address: 625 E Brevard St
Street

Tallahassee FL 32308
City *State* *Zip*

Phone: 850-222-3969

E-mail: barbaradevane1@yahoo.com

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

Representing: FL Alliance for Retired Americans

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 (10/20/11)

3

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-13
Meeting Date

Topic: Grandparent Rights

Bill Number: 384 *(if applicable)*

Name: Austin Erickson

Amendment Barcode: *(if applicable)*

Job Title:

Address: 557 guy ct
Street

Geneva FL 32732
City *State* *Zip*

Phone: 4072211665

E-mail: derickson07@Gmail.com

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

Representing: Myself

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 552

INTRODUCER: Senator Braynon

SUBJECT: Human Trafficking

DATE: March 27, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	**Favorable**
2.			CJ	
3.			JU	
4.				
5.				
6.				

I. Summary:

SB 552 authorizes victims or witnesses younger than 18 years old to testify in court using closed circuit television or video. Current law limits the use of such technology to children under the age of 16 years. The bill will enhance the ability of the state to receive testimony in human trafficking cases by protecting the victims from harm that would result from testifying in court in the presence of the defendants.

The bill will not have a fiscal impact on the state and has an effective date of July 1, 2013.

This bill substantially amends ss. 39.01, 95.54, and 92.56, and reenacts s. 847.01357, of the Florida Statutes:

II. Present Situation:

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, men, and women. Victims are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.[1]

The International Labor Organization (ILO), the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that there are at least

[1] U.S. Department of Health and Human Services, Administration for Children and Families, *About Human Trafficking*, *available at* http://www.acf.hhs.gov/trafficking/about/index.html# (last visited on March 27, 2013).

12.3 million adults and children in forced labor, bonded labor, and commercial sexual servitude at any given time.[2] The federal government has estimated that the number of persons trafficked into the United States each year ranges from 14,500-17,500.[3] An estimated 200,000 American children are at risk for trafficking into the sex industry each year, according to the U.S. Department of Justice.[4]

After drug dealing, trafficking of humans is tied with arms dealing as the second largest criminal industry in the world and is also the fastest growing. Many victims of human trafficking are forced to work in prostitution or the sex entertainment industry. However, trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work.[5]

Federal Trafficking Law

In 2000, Congress enacted the Trafficking Victims Protection Act (TVPA) to "combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims."[6] The TVPA not only criminalizes human trafficking, but it also requires that victims, who might otherwise be treated as criminals (e.g. engagement in prostitution), be treated as victims of crime and be provided with health and human services if they cooperate with prosecutions.

The Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003), Pub. Law 108-193, reauthorized the TVPA and added responsibilities to the U.S. Government's anti-trafficking portfolio. In particular, the TVPRA 2003 mandated new information campaigns to combat sex tourism, added refinements to the federal criminal law provisions, and created a new civil action that allows victims to sue their traffickers in federal district court. In addition, the TVPRA 2003 required an annual report from the Attorney General to Congress.[7]

The Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005), Pub. Law 108-164, reauthorized the TVPA and authorized new anti-trafficking resources, including grant programs to assist state and local law enforcement efforts and expand victim assistance programs to U.S. citizens or resident aliens subjected to trafficking; authorized pilot programs to establish residential rehabilitative facilities for trafficking victims, including one program aimed at juveniles; and provided extraterritorial jurisdiction over trafficking offenses committed overseas by persons employed by or accompanying the federal government.[8]

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[2] *See* U.S. Department of State, *The 2009 Trafficking in Persons (TIP) Report*, June 2009, *available at* http://www.state.gov/g/tip/rls/tiprpt/2009/ (last visited on March 27, 2013).
[3] Sonide Simon, *Human Trafficking and Florida Law Enforcement*, Florida Criminal Justice Executive Institute, pg. 2, March 2008, *available at* http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx (last visited on March 27, 2013).
[4] *Id.* at 3.
[5] *Supra* fn. 1.
[6] Trafficking Victims Protection Act of 2000, Pub. Law No. 106-386, H.R. 3244, 106th Cong. (October 28, 2000).
[7] Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons, pg. 2 (July 2010), available at http://www.justice.gov/ag/annualreports/agreporthumantrafficking2011.pdf (last visited on March 27, 2013).
[8] *Id.* at 3

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. Law 110-457, reauthorized the TVPA for 4 years and authorized new measures to combat human trafficking. The TVPRA 2008:

- Created new crimes imposing severe penalties on those who obstruct or attempt to obstruct the investigations and prosecutions of trafficking crimes;
- Changed the standard of proof for the crime of sex trafficking by force, fraud, or coercion by requiring that the government merely prove that the defendant acted in reckless disregard of the fact that such means would be used;
- Broadened the reach of the crime of sex trafficking of minors by eliminating the requirement to show that the defendant knew that the person engaged in commercial sex was a minor in cases where the defendant had a reasonable opportunity to observe the minor;
- Expanded the crime of forced labor; imposed criminal liability on those who, knowingly and with intent to defraud, recruit workers from outside the U.S. for employment within the U.S. by making materially false or fraudulent representations;
- Enhanced the penalty for conspiring to commit trafficking-related crimes; and
- Penalized those who knowingly benefit financially from participating in a venture that engaged in trafficking crimes.[9]

Florida Statewide Task Force on Human Trafficking

The Florida Statewide Task Force on Human Trafficking was created in 2009[10] with the express purpose of examining the problem of human trafficking and recommending strategies and actions for reducing or eliminating the unlawful trafficking of men, women, and children into Florida. The Florida State University Center for the Advancement of Human Rights was directed to submit a statewide strategic plan to the task force by November 1, 2009.[11] The strategic plan addressed the following subjects:

- A description of available data on human trafficking in Florida;
- Identification of available victim programs and services;
- Evaluation of public awareness strategies;
- Assessment of current laws; and
- A list of recommendations produced in consultation with governmental and non-governmental organizations.[12]

2012 Legislation on Human Trafficking

The 2012 legislature passed HB 7049 (2012-97, L.O.F.) to make comprehensive changes to the criminal statutes regarding human trafficking. The new law, which took went into effect July 1, 2012:

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[9] *Id.*
[10] *See* ch. 2009-95, Laws of Florida.
[11] Florida State University, Center for the Advancement of Human Rights, *Florida Strategic Plan on Human Trafficking*, *available at* http://www.dcf.state.fl.us/initiatives/humantrafficking/docs/FSUStrategicPlan2010.pdf (last visited on March 27, 2013).
[12] *Id.*

- Combined Florida's three existing human trafficking statutes into one statute making it more user-friendly for law enforcement;
- Increased penalties for crime of human smuggling from a first-degree misdemeanor to a third degree felony;
- Provided that those convicted of human sex trafficking may be designated as sex offenders and sex predators;
- Provided that any property used for human trafficking is subject to forfeiture;
- Required massage establishments and employees to present valid photo identification upon request; and
- Gave jurisdiction for human trafficking to the Statewide Prosecutor and the Statewide Grand Jury.

Use of Closed Circuit Television in Court

Courts have allowed victims of child abuse to testify through closed circuit television (CCTV) to protect the child victim of abuse. There are 46 states that allow for the use of CCTV for a child to testify without appearing in court.[13] CCTV allows a child to testify in one room, with the child's image and statements electronically sent into another room to be heard and seen on a monitor. Closed circuit television can be either a one-way system or a two-way system. In a one-way system, the child's image and statements are seen and viewed in a room separate from the child. Currently, 11 states statutorily require the use of a two-way closed circuit television system that allow officers in the court to ask questions of the child: California, Georgia, Hawaii, Indiana, Montana, New York, Tennessee, Vermont, Virginia, and West Virginia.[14]

States vary on the age requirements for a child to testify by closed circuit television. Alaska, Florida, Michigan, New Hampshire, New Jersey, Mississippi, New Mexico allow the use of CCTV for a child who is 16 years of age or younger.[15] Alabama and Massachusetts allow for the use of CCTV for a child younger than 15. Arizona and Nevada provide for the use of CCTV for a child 14 years of age or younger. Kansas, California, Tennessee, Utah, and West Virginia allow the use of CCTV for a child 13 years of age and younger. Wisconsin allows CCTV for a child under 12 or in the "interest of justice" when a child under 16 years of age is testifying.

The United States Supreme Court affirmed in *Maryland v. Craig*[16] the state interest in protecting the well-being of child abuse victims and protecting child victims from further harm. In that case, the court set the standard for the use of CCTV in court by holding that CCTV may only be used when testifying in front of the defendant will cause the child emotional trauma that impairs the child's ability to communicate. This determination must be made on a case-by-case basis.[17] Testifying in front of the defendant can be harmful to child victims and can negatively impact their ability to testify in court. Closed circuit television can be used to protect children, facilitate their testimony, and hold accountable perpetrators of child abuse.

---

[13] Margaret Brancatelli, *Facilitating Children's Testimony: Closed Circuit Television*, National Center for Prosecution of Child Abuse Update. Volume 21, Number 11, 2009.
[14] *Id.*
[15] *Id.*
[16] *Maryland v. Craig*, 110 S. Ct. 3157, 3196 (1990).
[17] *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 39.01, F.S., to add cross references to the definition of sexual abuse of a child in s. 787.06, F.S. The new cross references are to conform the section to changes made by HB 7049 (2012-97, L.O.F.) in the 2012 Legislative Session.

Section 2 amends s. 92.54, F.S., to authorize victims or witnesses younger than 18 years old to testify in court using closed circuit television or video. Current law allows victims or witnesses younger than 16 to testify in this manner. This change will make such testimony easier on the victim and increase the chances that such testimony can be successfully offered in court.

Section 3 amends s. 92.56, F.S., to add cross references to s. 787.06, F.S., to conform the section to changes made by HB 7049 (2012-97, L.O.F.) in the 2012 Legislative Session.

Section 4 reenacts subsection (3) of s. 847.01357, F.S., to provide for a pseudonym for victims.

Section 5 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial 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 Braynon

36-00896-13 2013552__

A bill to be entitled

An act relating to human trafficking; amending s. 39.01, F.S.; revising the definition of the term "sexual abuse of a child"; amending s. 92.54, F.S.; authorizing the court to order that the testimony of a child younger than 18 years of age who is a victim or witness be taken outside the courtroom and shown by means of closed circuit television; amending s. 92.56, F.S.; authorizing the state to use a pseudonym instead of the victim's name to designate the victim of human trafficking; reenacting s. 847.01357(3), F.S., relating to exploited children's civil remedy, to incorporate the amendment made to s. 92.56, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (g) of subsection (67) of section 39.01, Florida Statutes, is amended to read:

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

(67) "Sexual abuse of a child" for purposes of finding a child to be dependent means one or more of the following acts:

(g) The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in chapter 796 based on such behavior; or allowing, encouraging, or forcing a child to:

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

36-00896-13 2013552__

1. Solicit for or engage in prostitution;

2. Engage in a sexual performance, as defined by chapter 827; or

3. Participate in the trade of sex trafficking as provided in s. 787.06(3)(g) or (h), and s. 796.035.

Section 2. Subsection (1) of section 92.54, Florida Statutes, is amended to read:

92.54 Use of closed circuit television in proceedings involving victims or witnesses younger than 18 years of age ~~under the age of 16~~ or persons with mental retardation.—

(1) Upon motion and hearing in camera and upon a finding that there is a substantial likelihood that the child or person with mental retardation will suffer at least moderate emotional or mental harm due to the presence of the defendant if the child or person with mental retardation is required to testify in open court, or that such victim or witness is unavailable as defined in s. 90.804(1), the trial court may order that the testimony of a child younger than 18 years of ~~under the~~ age ~~of 16~~ or person with mental retardation who is a victim or witness be taken outside ~~of~~ the courtroom and shown by means of closed circuit television.

Section 3. Subsection (3) of section 92.56, Florida Statutes, is amended to read:

92.56 Judicial proceedings and court records involving sexual offenses.—

(3) The state may use a pseudonym instead of the victim's name to designate the victim of a crime described in s. 787.06(3)(g) or (h), chapter 794, or chapter 800, ~~or~~ of child abuse, aggravated child abuse, or sexual performance by a child

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

59 as described in chapter 827, or any crime involving the
60 production, possession, or promotion of child pornography as
61 described in chapter 847, in all court records and records of
62 court proceedings, both civil and criminal.
63 Section 4. For the purpose of incorporating the amendment
64 made by this act to section 92.56, Florida Statutes, in a
65 reference thereto, subsection (3) of section 847.01357, Florida
66 Statutes, is reenacted to read:
67 847.01357 Exploited children's civil remedy.—
68 (3) Any victim who has a bona fide claim under this section
69 shall, upon request, be provided a pseudonym, pursuant to s.
70 92.56(3), which shall be issued and maintained by the Department
71 of Legal Affairs for use in all legal pleadings. This identifier
72 shall be fully recognized in all courts in this state as a valid
73 legal identity.
74 Section 5. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 1, 2013
Meeting Date

Topic _____ Bill Number 552 *(if applicable)*

Name Carlos Martinez Amendment Barcode _____ *(if applicable)*

Job Title Public Defender

Address 1320 NW 14th Street
Street

Miami FL 33125
City *State* *Zip*

Phone 305-545-1600

E-mail cmartinez@pdmiami.com

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida Public Defender Assoc.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-13
Meeting Date

Topic Human Trafficking Bill Number SB 552 *(if applicable)*

Name Barbara DeLane Amendment Barcode _____ *(if applicable)*

Job Title Independent Contractor

Address 625 E. Brevard
Street

Tallahassee FL 32303
City *State* *Zip*

Phone 850-222-3969

E-mail barbaradelane1@yahoo.com

Speaking: ☑ For ☐ Against ☐ Information

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 738

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

SUBJECT: Substance Abuse Services

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	**Fav/CS**
2.			CA	
3.			AHS	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 738 creates state regulation for the placement and operation of residential facilities, called sober houses, that provide housing to recovering addicts of substance abuse. The bill prohibits sober houses from being located within 1,000 feet of each other and requires sober houses to provide certain information to local governments to ensure compliance with local zoning and occupancy standards.

This bill would create a significant fiscal impact on the state and has an effective date of July 1, 2013.

This bill substantially amends sections 397.311 and 397.403 of the Florida Statutes.

II. Present Situation:

Historically, community housing options for persons with disabilities, frail elderly persons, dependent or delinquent children, and persons with mental illnesses have been limited. Although the transition from providing services in large institutions to community-based programs began in the 1970s, the availability of safe, appropriate, and affordable housing in Florida has been an

ongoing challenge. The "NIMBY" (Not In My Back Yard) syndrome is used to describe the opposition to placing affordable housing or housing for persons with disabilities or special needs in residential neighborhoods. This opposition began to be routinely challenged during the 1980s as policy and practice reform led to the development of more opportunities for persons with disabilities to live independently and participate fully in their communities.

Fair Housing Act

The Federal Fair Housing Act of 1988 (FHA)[1] prohibits discrimination on the basis of a handicap in all types of housing transactions. The FHA defines a "handicap" to mean those mental or physical impairments that substantially limit one or more major life activities. The term "mental or physical impairment" may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term "major life activity" may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The FHA also protects persons who have a record of such impairment, or are regarded as having such impairment. Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled by virtue of that status under the FHA.[2]

The Florida Fair Housing Act in s. 760.23(7)(b), F.S., provides that it is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available. The statute provides that "discrimination" is defined to include a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

Community Residential Homes

In 1989, the Florida Legislature enacted ch. 89-372, Laws of Florida, which was codified as ch. 419, F.S. The legislation was aimed at preventing or reducing inappropriate institutional care by encouraging the development of community-based residential environments for persons with special needs. A community residential home is a home consisting of "7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents."[3]

The following are included in the definition of a "resident:"

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[1] 42 U.S.C. 3601 *et seq.*
[2] See U.S. Department of Justice, *The Fair Housing Act, available at* http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited Mar. 23, 2011); *see also* M.M. Gorman *et al.*, *Fair Housing for Sober Living: How the Fair Housing Act Addresses Recovery Homes for Drug and Alcohol Addiction*, THE URBAN LAWYER v. 42, No. 3 (Summer 2010) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[3] Section 419.001(1)(a), F.S.

- "Frail elder" pursuant to s. 429.65, F.S., means a functionally impaired elderly person who is 60 years of age or older and who has physical or mental limitations that restrict the person's ability to perform the normal activities of daily living and that impede the person's capacity to live independently.
- Person with a "handicap" pursuant to s. 760.22(7)(a), F.S., means a person that has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment, or a person with a developmental disability as defined in s. 393.063, F.S.
- "Developmental disability" pursuant to s. 393.063, F.S., means a person with a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and which constitutes a substantial handicap that can reasonably be expected to continue indefinitely.
- "Nondangerous mentally ill person" means a person with a "mental illness" as defined in s. 394.455(18), F.S., which is an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with a person's ability to meet the ordinary demands of living, regardless of etiology.…the term does not include retardation or developmental disability as defined in ch. 393, F.S., intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.
- "Child who is found to be dependent" as defined in s. 39.01(12), F.S., and a "child in need of services" pursuant to ss. 984.03(9) and 985.03(8), F.S.[4]

Section 419.001(3), F.S., requires a sponsoring agency[5] to notify the chief executive officer of the local government in writing when a site for a community residential home has been selected in an area zoned for multifamily use. The notice must include the address of the site, the residential licensing category, the number of residents, and the community support requirements of the program. The notice must also contain a statement from the licensing entity[6] indicating the licensing status of the home and how the home meets applicable licensing criteria for the safe care and supervision of the residents. The sponsoring agency must provide the local government with the most recently published data compiled that identifies all community residential homes in the district in which the proposed site is to be located. The local government reviews the notification from the sponsoring agency in accordance with the zoning ordinance of the jurisdiction in which the community residential home is located.

The local government may only deny the siting of a community residential home if the site selected:

- Does not conform to existing zoning laws;
- Does not meet applicable licensing criteria;

[4] Section 419.001(1)(e), F.S.
[5] Section 419.001(1)(f), F.S., defines "sponsoring agency" as "an agency or unit of government, a profit or nonprofit agency, or any other person or organization which intends to establish or operate a community residential home."
[6] Section 419.001(1)(b), F.S., defines "licensing entity" as the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Children and Family Services, or the Agency for Health Care Administration, all of which are authorized to license a community residential home to serve residents, as defined in s. 419.001(1)(e), F.S.

- Would substantially alter the nature and character of the area.[7]

A home with six or fewer residents is deemed a single-family unit, and such a home is allowed in a single-or multi-family zoned area without approval by the local government, provided that the home does not exist within a 1,000 foot radius of another home with six or fewer residents and the sponsoring agency notifies the local government at the time of occupancy that the home is licensed.[8]

Americans with Disabilities Act

In July 1999, the U.S. Supreme Court held that the unnecessary institutionalization of people with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA).[9] In its opinion, the Court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective community-based services. This decision interpreted Title II of the ADA and its implementing regulation, requiring states to administer their services, programs, and activities "in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities. The ADA and the Olmstead decision apply to all qualified individuals with disabilities regardless of age. A former drug addict may be protected under the ADA because the addiction may be considered a substantially limiting impairment.[10] In addition, in the *United States of America vs. City of Boca Raton*, the court held that the city's ordinance excluding substance abuse treatment facilities from residential areas violates the FHA because it unjustifiably prohibits these individuals from enjoying the same rights and access to housing as anyone else.[11]

Sober Houses

Sober houses function under the belief that housing addicts in an environment that fosters recovery, such as low crime, drug free, single family neighborhoods, is essential to the success of any addict's treatment."[12] Proponents of sober houses believe that "such environments foster sobriety and encourage trust and camaraderie between home residents."[13] Living in a sober house allows a recovering addict the opportunity to develop practical life skills and build self confidence.[14]

The facilities, operators, and organizational design of sober houses vary greatly. It is argued that the location of the home is critical to recovery, and placing the home in a single-family neighborhood helps to avoid temptations that other environments can create.[15] Organizationally,

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[7] Section 419.001(3)(c), F.S.
[8] Section 419.001(2), F.S.
[9] *Olmstead v. L.C.*, 527 U.S. 581, (1999).
[10] U.S. Commission on Civil Rights, *Sharing the Dream: Is the ADA Accommodating All? available at* http://www.usccr.gov/pubs/ada/ch4.htm#_ftn12 (last visited March 26, 2013).
[11] *United States of America vs. City of Boca Raton* 2008 WL 686689 (S.D.Fla. 2008).
[12] M.M. Gorman *et al*., *supra* note 2.
[13] *Id*.
[14] 12 Step Treatment Centres, *Sober Living Home Transitional Housing, available at* http://www.12steptreatmentcentres.com/SOBER_LIVING_HOME_TRANSITIONAL_HOUSING_95.asp (last visited Mar. 23, 2011).
[15] M.M. Gorman *et al*., *supra* note 2.

these homes can range from a private landlord renting his or her home to recovering addicts to corporations that operate full-time treatment centers across the country and employ professional staff.[16]

Because of the wide range in variety, the sober house concept can easily be abused. For example, some homes under the guise of a "sober house" may have twenty to thirty individuals renting space from a landlord who is simply seeking to maximize rent and where no actual treatment is provided.[17] In addition, sober houses can attract criminal elements such as drug dealers who hope to sell to residents.

Local Zoning

Zoning may generally be defined as the division of a municipality or other local community into districts, the regulation of buildings and structures according to their construction and the nature and extent of their use, or the regulation of land according to its nature and uses. To be valid, zoning laws must balance individual property rights with the government's substantial interests in promoting the public welfare.

The power to zone at the county and municipal level may be granted by the state legislature to local authorities by local or special act. Zoning is an exercise of legislative power residing in the state and delegated to a municipal corporation. The enactment of a zoning ordinance constitutes the exercise of a legislative and governmental function. In Florida, the zoning power of municipalities is derived from article VIII, section 2(b) of the Florida Constitution through the Municipal Home Rule Powers Act. The Florida Legislature grants the governing body of a county the power to establish, coordinate, and enforce zoning and business regulations necessary for the protection of the public. However, the doctrine of separation of powers prohibits delegation of zoning powers to administrative bodies and limits judicial review. Since zoning is primarily legislative in nature, zoning decisions should be made by zoning authorities responsible to their constituents. [18]

III. Effect of Proposed Changes:

Section 1 amends s. 397.311, F.S., that contains definitions relating to the treatment of substance abuse. The bill adds a definition of "sober house transitional living home" as a residential dwelling that provides peer support in a substance abuse free living environment, but such homes are not defined as a component of clinical treatment.

Section 2 amends s. 397.403, F.S., relating to licensure of substance abuse providers by the Department of Children and Families (DCF). The bill creates new standards and regulations for sober houses. The bill specifies that applicants for licensure must comply with local zoning standards.

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[16] *Id*.
[17] *Id*.
[18] Dana M. Tucker, *Preventing the Secondary Effects of Adult Entertainment Establishments: Is Zoning the Solution?* Journal of Land Use and Environmental Law, Volume 12.2 (Spring 1997).

The applicant must first notify the city or county in writing that the sober house will not be located within 1,000 feet of another sober house. The applicant must also provide the maximum number of residents in the home. Sober houses operated by a licensed substance abuse provider are exempt from the requirement to notify local governments as long as the location of the sober house is provided in the department's licensure process for substance abuse providers.

The bill requires the local government to review the notice to determine if the sober house would comply with local zoning and occupancy standards as well as the minimum distance between sober houses provided in the bill. The local government must notify the applicant and DCF of its determination. Sober houses that were operating before the effective date of the bill have until September 1, 2013 to apply for a license and provide the required notice to local government. Sober homes in existence before July 1, 2013 are exempt from the minimum distance requirements between sober homes.

If the local government finds that the application for a sober house does not comply with the bill, the differences can be mediated if both parties agree to mediation under s. 186.509, F.S.

The bill does not require a local government to adopt new ordinances. The bill does authorize local governments to adopt more liberal ordinances to govern sober houses. It is not clear what "more liberal" means in this context. It could mean that local governments could adopt ordinances that are less stringent than the state law, for example, allowing sober houses to be closer than 1,000 feet from each other.

The department is authorized to adopt rules to establish penalties for failing to obtain a license from the department to operate a sober house.

Section 3 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The FHA prohibits a large range of practices that discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability or handicap. Discriminatory practices involving recovering addicts are forbidden because the term disability has been interpreted to include individuals recovering from drug or

alcohol addiction.[19] Restrictions placed on sober houses by the bill or by local ordinances may violate the FHA. An owner or operator of a home may bring suit to seek relief under the FHA.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill authorizes DCF to regulate sober houses under ch. 397, F.S. This chapter authorizes the department to assess fees by rule.

B. Private Sector Impact:

The bill could limit the operation of sober houses. The bill would also authorize the department to assess licensure fees. The fiscal impact of such fees is unknown as the amounts would need to be adopted by rule.

C. Government Sector Impact:

The bill would have a significant fiscal impact on DCF. The number of sober houses statewide that would apply for licensure is not known. Preliminary estimates from DCF are provided below and are based on approximately 6,000 sober houses.

Fiscal Impact	**Fiscal Year 2013-14**	
Department of Children and Families	**FTE**	**Total**
Staff for licensing sober houses	65	$6,836,895
Modify to information technology systems		$200,000
Total	65	$7,036,895

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Children, Families, and Elder Affairs on April 1, 2013:

- The definition of "sober house transitional living home" was moved within s. 397.311, F.S., to clarify that such homes are not a component of the definition of clinical treatment.

[19] M.M. Gorman *et al*., *supra* note 2.

- The requirement that local governments approve facilities that planned to offer day or night treatment or residential treatment was removed. These facilities are currently licensed by the department and the licensure process will notify local governments.
- The CS includes language in s. 367.403, F.S., to state that a sober house operated by a licensed substance abuse provider is exempt from the requirement to notify local governments as long as the location of the sober house is provided in the application to the department for licensure as a substance abuse provider.
- The CS removes language that required local governments to approve treatment programs and substance abuse providers that are currently subject to state regulation.
- Sober homes in existence before July 1, 2013 are exempt from the minimum distance requirements between sober homes established in the bill.
- The department is authorized to adopt rules to establish penalties for failing to obtain a license from the department to operate a sober house.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
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The Committee on Children, Families, and Elder Affairs (Clemens) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Paragraph (d) is added to subsection (18) of
6 section 397.311, Florida Statutes, to read:
7 397.311 Definitions.—As used in this chapter, except part
8 VIII, the term:
9 (18) Licensed service components include a comprehensive
10 continuum of accessible and quality substance abuse prevention,
11 intervention, and clinical treatment services, including the
12 following services:

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13 (d) "Sober house transitional living home" means a
14 residential dwelling unit that provides a peer-supported,
15 managed, alcohol-free and drug-free living environment.
16 Section 2. Subsections (4) through (10) are added to
17 section 397.403, Florida Statutes, to read:
18 397.403 License application.—
19 (4) An applicant for licensure under this section must
20 adhere to local, municipal, or county standards for zoning and
21 occupancy. After selection of a proposed site, but before
22 receiving a license under this section, the person or entity
23 that applies for licensure to operate a sober house transitional
24 living home as defined in s. 397.311 shall provide written
25 notice to the chief executive officer of the city or county that
26 governs the area in which the home will be located. The
27 applicant shall stipulate in the notice:
28 (a) That based upon the most recently published data
29 compiled by the department, the proposed sober house
30 transitional living home will not be located within 1,000 feet
31 of another sober house transitional living home or within 1,000
32 feet of a licensed service component as defined under s.
33 397.311. The distance between the proposed sober house
34 transitional living home and an existing sober house
35 transitional living home or licensed service component must be
36 measured from the nearest point of the existing sober house
37 transitional living home or licensed service component to the
38 nearest point of the proposed sober house transitional living
39 home; and
40 (b) The maximum number of residents who will reside at the
41 proposed home.

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42 (5) A proposed sober house transitional living home that is
43 managed by or operated by an owner or wholly-owned subsidiary of
44 a licensed service component as defined in s. 397.311 is exempt
45 from subsection (4) if the owner or wholly-owned subsidiary
46 provides to the department the location of the housing component
47 on the license application for the licensed service component in
48 order to avoid having to obtain an additional license for the
49 proposed sober house transitional living home. A sober house
50 transitional living home that is exempted by this subsection is
51 not exempt from local, municipal, and county standards for
52 zoning and occupancy.
53 (6) The city or county government may review the notice to
54 determine whether the proposed sober house transitional living
55 home complies with its zoning and occupancy standards and the
56 distance requirements specified in paragraph (4)(a). In making
57 its determination, the city or county government may also
58 consider whether the site of the proposed home would result in
59 an overconcentration of sober house transitional living homes in
60 the proximate area of the proposed home. After making its
61 determination, the city or county government shall notify the
62 applicant and the department of its determination.
63 (7) No later than September 1, 2013, a residential dwelling
64 unit that was operating as a sober house transitional living
65 home on or before July 1, 2013, shall apply for licensure under
66 this section and shall provide written notice to the city or
67 county government as provided in subsection (4). The city or
68 county government shall review the notice and notify the
69 applicant and the department of its determination pursuant to
70 subsection (6). A sober house transitional living home in

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71 existence before July 1, 2013, is exempt from complying with the
72 distance requirements of paragraph (4)(a) if the existing sober
73 house transitional living home continues to operate at the same
74 location and continues to be owned and operated by the same
75 person or entity that was the owner and operator on or before
76 June 30, 2013.
77 (8) If the city or county government determines that an
78 applicant's proposed sober house transitional living home or its
79 site does not comply with subsection (4), subsection (5), or
80 subsection (6), and if it is agreed to by both parties, a
81 conflict may be resolved through informal mediation. The city or
82 county government shall arrange for the services of an
83 independent mediator or may initiate dispute resolution
84 proceedings under s. 186.509. The mediation process must be
85 concluded within 45 days after a request for mediation. This
86 subsection may not be construed as altering the applicant's
87 statutory or common law rights.
88 (9) This section does not require a city or county
89 government to adopt a new ordinance if it has an existing
90 ordinance that meets the criteria specified in subsection (4).
91 State law that governs a sober house transitional living home as
92 defined in s. 397.311 prevails over a local ordinance; however,
93 a city or county government may adopt a more liberal ordinance
94 that governs sober house transitional living homes.
95 (10) The department may adopt rules to establish penalties
96 or fines for failure to obtain a license from the department to
97 operate a sober house transitional living home.
98 Section 3. This act shall take effect July 1, 2013.
99

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100 ========== T I T L E A M E N D M E N T ==========
101 And the title is amended as follows:
102 Delete everything before the enacting clause
103 and insert:
104 A bill to be entitled
105 An act relating to substance abuse services; amending
106 s. 397.311, F.S.; defining the term “sober house
107 transitional living home” as it relates to the Hal S.
108 Marchman Alcohol and Other Drug Services Act; amending
109 s. 397.403, F.S.; requiring that an applicant seeking
110 licensure for a proposed facility that would provide
111 specified substance abuse services adhere to local,
112 municipal, or county standards for zoning and
113 occupancy; requiring such applicant to provide written
114 notice to the chief executive officer of the
115 appropriate local government before receiving
116 licensure to operate a sober house transitional living
117 home; requiring the applicant to stipulate certain
118 criteria within the notice; exempting certain sober
119 house transitional living homes from additional
120 licensing as a service provider under ch. 397, F.S.,
121 under certain circumstances; requiring the local
122 government to review the notification and to determine
123 if the proposed home and its site comply with certain
124 requirements; requiring the local government to notify
125 the applicant and the Department of Children and
126 Families of its determination; requiring each sober
127 house transitional living home in existence on a
128 certain date to apply for licensure with the

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129 department and give notice to the local government by
130 a specified date; requiring the local government to
131 notify the existing sober house transitional living
132 home and the department of its determination;
133 exempting existing sober house transitional living
134 homes from complying with the distance requirement
135 under certain circumstances; providing conflict
136 resolution by informal mediation under certain
137 circumstances; requiring the local government to
138 arrange for services of an independent mediator or
139 initiate dispute resolution proceedings; providing
140 procedures for the mediation; providing construction;
141 providing that a local government is not required to
142 adopt a local ordinance under certain circumstances;
143 providing that state law prevails over a local
144 ordinance; providing that a local government is not
145 precluded from adopting ordinances that govern
146 facilities that offer certain substance abuse
147 services; providing that the department may adopt
148 rules to establish penalties or fines for failure to
149 obtain a license to operate a sober house transitional
150 living home; providing an effective date.

By Senator Clemens

27-00532C-13 2013738__

A bill to be entitled

An act relating to substance abuse services; amending s. 397.311, F.S.; defining the term "sober house transitional living home" as it relates to the Hal S. Marchman Alcohol and Other Drug Services Act; amending s. 397.403, F.S.; requiring that an applicant seeking licensure for a proposed facility that would provide specified substance abuse services adhere to local, municipal, or county standards for zoning and occupancy; requiring such applicants to provide written notice to the chief executive officer of the appropriate local government before receiving licensure as a substance abuse service provider; requiring the applicant to stipulate certain criteria within the notice; requiring the local government to review the notification and to determine if the proposed facility and its siting comply with certain requirements; requiring the local government to notify the applicant and the Department of Children and Families of its determination; requiring each sober house transitional living home in existence on a certain date to apply for licensure with the department and give notice to the local government by a specified date; requiring the local government to notify the existing sober house transitional living home and the department of its determination; providing that a dwelling unit that houses a facility that is a sober house transitional living home or that offers certain substance abuse services is subject to

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27-00532C-13 2013738__

local, municipal, or county zoning and occupancy standards; providing conflict resolution by informal mediation under certain circumstances; requiring the local government to arrange for services of an independent mediator or initiate dispute resolution proceedings; providing procedures for the mediation; providing construction; providing that a city or county government is not required to adopt a local ordinance under certain circumstances; providing that state law prevails over a local ordinance; providing that a local government is not precluded from adopting ordinances that govern facilities that offer certain substance abuse services; providing an effective date.

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

Section 1. Paragraph (a) of subsection (18) of section 397.311, Florida Statutes, is amended to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(18) Licensed service components include a comprehensive continuum of accessible and quality substance abuse prevention, intervention, and clinical treatment services, including the following services:

(a) "Clinical treatment" means a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle. As defined by rule, "clinical treatment services" include, but are not

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59 limited to, the following licensable service components:
60 1. “Addictions receiving facility” is a secure, acute care
61 facility that provides, at a minimum, detoxification and
62 stabilization services; is operated 24 hours per day, 7 days per
63 week; and is designated by the department to serve individuals
64 found to be substance use impaired as described in s. 397.675
65 who meet the placement criteria for this component.
66 2. “Day or night treatment” is a service provided in a
67 nonresidential environment, with a structured schedule of
68 treatment and rehabilitative services.
69 3. “Day or night treatment with community housing” means a
70 program intended for individuals who can benefit from living
71 independently in peer community housing while participating in
72 treatment services for a minimum of 5 hours a day for a minimum
73 of 25 hours per week.
74 4. “Detoxification” is a service involving subacute care
75 that is provided on an inpatient or an outpatient basis to
76 assist individuals to withdraw from the physiological and
77 psychological effects of substance abuse and who meet the
78 placement criteria for this component.
79 5. “Intensive inpatient treatment” includes a planned
80 regimen of evaluation, observation, medical monitoring, and
81 clinical protocols delivered through an interdisciplinary team
82 approach provided 24 hours per day, 7 days per week, in a highly
83 structured, live-in environment.
84 6. “Intensive outpatient treatment” is a service that
85 provides individual or group counseling in a more structured
86 environment, is of higher intensity and duration than outpatient
87 treatment, and is provided to individuals who meet the placement

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88 criteria for this component.
89 7. “Medication-assisted treatment for opiate addiction” is
90 a service that uses methadone or other medication as authorized
91 by state and federal law, in combination with medical,
92 rehabilitative, and counseling services in the treatment of
93 individuals who are dependent on opioid drugs.
94 8. “Outpatient treatment” is a service that provides
95 individual, group, or family counseling by appointment during
96 scheduled operating hours for individuals who meet the placement
97 criteria for this component.
98 9. “Residential treatment” is a service provided in a
99 structured live-in environment within a nonhospital setting on a
100 24-hours-per-day, 7-days-per-week basis, and is intended for
101 individuals who meet the placement criteria for this component.
102 10. “Sober house transitional living home” means a
103 residential dwelling unit that provides a peer-supported,
104 managed alcohol-free and drug-free living environment.
105 Section 2. Subsections (4) through (9) are added to section
106 397.403, Florida Statutes, to read:
107 397.403 License application.—
108 (4) An applicant for licensure under this section must
109 adhere to local, municipal, or county standards for zoning and
110 occupancy. After selection of a proposed site, but before
111 receiving a license under this section, the person or entity
112 that applies for licensure to operate a sober house transitional
113 living home as defined in s. 397.311 or to offer day or night
114 treatment, day or night treatment with community housing, or
115 residential treatment shall provide written notice to the chief
116 executive officer of the city or county that governs the area in

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117 which the facility will be located. The applicant shall
118 stipulate in the notice:
119 (a) That, based upon the most recently published data
120 compiled by the department, the proposed facility will not be
121 located within 1,000 feet of a sober house transitional living
122 home or a similar facility that offers day or night treatment,
123 day or night treatment with community housing, or residential
124 treatment. The distance between the proposed facility and an
125 existing facility shall be measured from the nearest point of
126 the existing facility to the nearest point of the proposed
127 facility;
128 (b) The maximum number of residents who will reside at the
129 proposed facility; and
130 (c) The licensed service components identified in s.
131 397.311(18) which will be provided at the proposed facility.
132 (5) The city or county government shall review the notice
133 to determine whether the proposed facility complies with its
134 zoning and occupancy standards and the distance requirements
135 specified in paragraph (4)(a). In making its determination, the
136 city or county government shall also consider whether the siting
137 of the proposed facility would result in an overconcentration of
138 facilities in the proximate area of the proposed facility site
139 which would substantially alter the nature and character of that
140 area. After making its determination, the city or county
141 government shall notify the applicant and the department of its
142 determination.
143 (6) No later than September 1, 2013, a residential dwelling
144 unit that was operating as a sober house transitional living
145 home on or before July 1, 2013, shall apply for licensure under

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146 this section and shall provide written notice to the city or
147 county government as provided in subsection (4). The city or
148 county government shall review the notice and notify the
149 applicant and the department of its determination pursuant to
150 subsection (5).
151 (7) A dwelling unit that is a sober house transitional
152 living home as defined in s. 397.311 or that houses an existing
153 facility that offers day or night treatment, day or night
154 treatment with community housing, or residential treatment is
155 subject to local, municipal, or county zoning and occupancy
156 standards.
157 (8) If the city or county government determines that an
158 applicant's proposed facility or its siting does not comply with
159 subsections (5), (6), or (7), and if it is agreed to by both
160 parties, a conflict may be resolved through informal mediation.
161 The city or county government shall arrange for the services of
162 an independent mediator or may initiate dispute resolution
163 proceedings under s. 186.509. The mediation process must be
164 concluded within 45 days after a request for mediation. This
165 subsection may not be construed as altering the applicant's
166 statutory or common law rights.
167 (9) This section does not require a city or county
168 government to adopt a new ordinance if it has a standing
169 ordinance that meets the criteria specified in subsection (4).
170 State law that governs a facility that is a sober house
171 transitional living home as defined in s. 397.311 or that offers
172 day or night treatment, day or night treatment with community
173 housing, or residential treatment prevails over a local
174 ordinance; however, a city or county government is not precluded

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175 from adopting a more liberal ordinance that governs such
176 facilities.
177 Section 3. This act shall take effect July 1, 2013.

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A Times Editorial

Halfway houses need better oversight

Saturday, November 24, 2012 3:30am

Halfway houses are supposed to be a way station for those in society who have stumbled but need help getting back on their feet. But a lack of regulation in Tampa Bay and beyond means that too often in Florida unscrupulous operators — many of them felons themselves — have turned them into cash businesses that exploit the ex-convicts and substance abusers who need them. Some local efforts are underway to address the problem, but true reform will require action by the Legislature.

An investigation into halfway houses in the region by *Tampa Bay Times* senior correspondent Susan Taylor Martin uncovered a morass of problems. Without a licensing requirement or state regulations setting minimum operating standards, halfway house operators make their own rules. In some homes, residents are housed two or three to a room. This is a lucrative business if each person pays $500 per month, meaning a three-bedroom house with two residents per bedroom can bring in $3,000 per month. But residents too often don't get what they pay for.

Martin found some homes don't provide the promised counseling or 12-step programs. Some were filthy, insect -infested and tolerated drug use and violence. Several homes were run by felons with serious criminal records. And in some of the worst homes, staff confiscated residents' paychecks and demanded drugs or sex. At least three people have died of drug overdoses at unregulated homes in the state.

People land in halfway houses after coming out of detox programs where they have tried to rid themselves of a drug or alcohol addiction, or they are offenders released from jail who are trying to keep from returning to an environment that got them into trouble. While many excellent transitional housing programs are there to help, including places like St. Vincent de Paul in St. Petersburg and New Beginnings of Tampa Inc., too many take advantage of a vulnerable population.

A new regime of licensing, reporting and oversight is needed to protect halfway house residents trying to make a break with their past. Florida's Department of Children and Families should be put in charge. The agency is already responsible for oversight of transitional housing programs that receive money from the federal Access to Recovery grants, and in general DCF is charged with overseeing social service providers. An oversight program of halfway houses that service veterans, run by the federal Veterans Administration, could serve as a model.

In the meantime, area detox facilities, courts and hospitals could weed out bad actors by not making referrals to them. Martin found these institutions will sometimes recommend a halfway house based on a slick yet dishonest brochure, website or sales pitch. A coalition of groups that assist substance abusers and the homeless in Pinellas County is trying to address this by creating a "preferred provider" list of halfway houses that permit inspections and meet certain standards. It's a start.

Regulation and oversight will cost the state money. But without it a housing option that is supposed to give ex-offenders and addicts a chance at a new life will breed social ills instead, costing taxpayers and society more in the long run. State lawmakers need to address this during the 2013 legislative session.

Halfway houses need better oversight 11/24/12

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Addicts say recovery program stole their money

Sunday, November 18, 2012 11:00pm

Second of two parts

"Come join us in recovery!" ¶ So urged the Web ads for Peachford House, a halfway house program in Clearwater that promised to help people addicted to drugs and alcohol. ¶ Peachford would put them up in nice apartments, find them work and support their recovery with 12-step meetings. ¶ It would turn around their lives. ¶ Instead, residents say, Peachford employees stole their money, had sex with clients and turned a blind eye to drugs and drinking as all semblance of "sober living" dissolved late last year. The only jobs most residents got were dead-end day labor. Two alcoholics say they were put to work selling beer at Raymond James Stadium.

Finally, a few days after Christmas, eviction notices went up. Peachford had been cramming six people to an apartment, charging each $135 a week for rent and "program fees," but hadn't paid the apartment complex in months.

"All Peachford did was provide an over-priced roof over my head," said Anthony DiGregorio, one of 40 people who found themselves on their own when the Clearwater program shut down in January. "It did absolutely nothing to make me a better life."

Peachford's parent organization — Sober Living America — continues to run halfway houses in Tampa and Jacksonville. As the *Tampa Bay Times* reported Sunday, hundreds of halfway houses have sprung up in Florida in the past 10 years but there is almost no regulation of a business that purports to help people but in many cases exploits them and leaves them worse off.

"In America, the choice shouldn't be living under a bridge or being a slave," said Christine Allamanno, a legal aid lawyer in Pinellas County.

Peachford was started by James deVarennes, a 55-year-old Georgia man who heads the nonprofit Peachford Ministries.

In 2005, deVarennes incorporated a for-profit company — Peachford House Clearwater — and started a recovery program in the MacArthur Park apartments, off U.S. 19. Among the first clients was DiGregorio.

At first the program seemed good, he said. Though most of the jobs were day labor, requiring clients to be up at 3 a.m., Peachford allowed them to keep their paychecks. It provided meals. It supported clients' recovery by requiring them to attend Alcoholics or Narcotics Anonymous meetings.

DiGregorio, addicted to painkillers, acknowledges he wasn't ready for recovery then. He left the program, spent eight months in state prison for grand theft, then returned to Peachford a year ago.

Things were far different. Clients had to get their own food. They had to sign power-of-attorney forms authorizing Peachford to take their paychecks.

"I thought that was crazy," DiGregorio said. " I never had to sign anything like that before."

He was surprised, too, that one of the male directors was having sex with female clients.

And unlike his first time at Peachford, DiGregorio found virtually no emphasis on recovery.

"The AA meetings were run by the senior (person) in the apartment, who could have been there two weeks," he said. "It was supposed to be in the AA format but mostly it was people complaining about Peachford and how they didn't have any money."

Clients were paying Peachford $172.50 a week — $135 for "program fees," which were supposed to cover rent and support group meetings, and $7.50 a day for van rides to the labor pool. But DiGregorio said he and others discovered that not all of their payments were being credited to their accounts.

Complaints that employees were stealing from clients brought deVarennes, Peachford's founder, down from Atlanta in October 2011.

DeVarennes blamed the clients.

"He said we should never have given (the program director) money, we trusted a drug addict with our money," DiGregorio said.

DeVarennes fired a director. He was replaced a few days later by the van driver, a man who watched gay pornography in the office and offered male residents "money to have sex," DiGregorio said.

Yet Peachford continued to draw clients.

A mental hospital in Pasco County referred 31-year-old Briana Newman to Peachford in November. Within two weeks, she was named "intake coordinator," charged with soliciting referrals from detox centers and hospitals that needed some place to send patients after they were discharged.

Once Newman got a discharge planner on the phone, she followed a script that started like this:

Ask this person, 'Have you heard of Peachford Communities?'

If the answer is NO, go into the pitch.

The pitch touted Peachford's "sober clean living, its employment assistance and the most attractive come-on: "Clients without funds are welcomed."

The pitch brought people from as far away as Maine.

"I took on a lot of guilt for sending people here who didn't know what they were getting into," Newman said.

Mass eviction

Three days after Christmas last year, clients were told they had to be out by New Year's Eve.

Peachford was supposed to pay MacArthur Park $1,000 a month per apartment. By putting six people in a unit and charging each $540 a month, Peachford was collecting as much as $3,240 per apartment yet hadn't made its own rent payments in months.

With no place to go, many clients relapsed.

"People were just getting loaded," said Jeffry Oliver, a recovering alcoholic who had been at Peachford less than three months. "There was a lot of prescription drug abuse, oxycodone, and people were just running around drunkenly."

DiGregorio, trying to stay clean, worked long hours at a St. Petersburg sludge incinerator.

"When I got back to Peachford, they wanted those checks," he said. In late December, he left the program and moved in with a friend.

Other clients landed in homeless shelters or shabby motels. Some went to other halfway house programs, including This House II in Clearwater. It was run by Mark Samson, a former Peachford manager accused of stealing from clients.

Samson denied wrongdoing. "The only thing I'm guilty of is trying to give people there a better life."

Allamanno, of the nonprofit Gulfcoast Legal Services, worked with Clearwater detectives to get prosecutors to take action against Peachford. Luring clients to Clearwater with false promises, requiring them to sign over their paychecks — it smacked to Allamanno of human trafficking, but no charges were brought.

DeVarennes, Peachford's founder, did not respond to requests for comment for this story. In a Sept. 5, 2012, letter to Allamanno, he blamed the collapse of Peachford Clearwater on the soured economy and a lender's decision to call in a $550,000 business loan.

"For over six years, we faithfully served almost 5,000 families in the Pinellas/Hillsborough area with no means to pay," deVarennes wrote. "Unfortunately, when the economy hit bottom, we were unable to afford to keep these self-supporting facilities in operation."

In his letter, deVarennes said he and his wife had recently lost their $450,000 suburban Atlanta home to foreclosure. They still have a $350,000 gulf-front condo in Panama City Beach, records show.

DeVarennes' nonprofit ministry, now called Sober Living America, is soliciting donations on its website for programs to help "homeless and destitute" men in Tampa, Jacksonville and Atlanta.

In Tampa, the program is called How House: Growth in Recovery, and operates out of several apartments in Ashford Place, a run-down complex near the University of South Florida. On a recent day, a man opened the office door, then quickly slammed it when a reporter asked to speak with him.

Outside a few clients milled around the parking lot. They described a familiar-sounding "program:" Seven men crowded into a three-bedroom apartment. Up at 3 a.m. to catch a ride to the labor pool. How House taking their paychecks, leaving them with little or no money to eventually move out on their own.

The only difference? The program fees. They're now up to $145 a week.

Times staff writer Lane DeGregory contributed to this story. Susan Taylor Martin can be contacted at susan@tampabay.com.

ABC news investigation

Tune in tonight to WFTS for ABC Action News at 11 p.m. to see more on this joint investigation into halfway houses.

Addicts say recovery program stole their money 11/18/12

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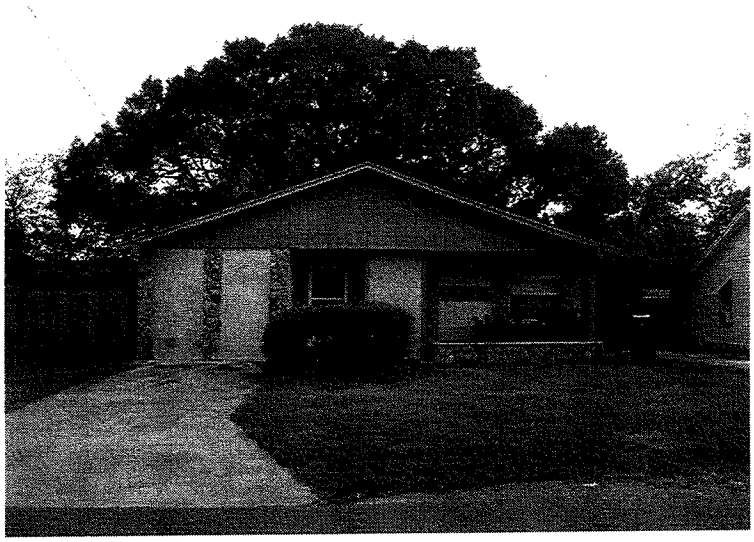
Felons, drug dealers run halfway houses for addicts

Sunday, November 18, 2012 6:00am

First of two parts



Troy Anthony Charles bounced in and out of jail for two decades before he rented a Spanish-style bungalow in St. Petersburg last year and went into the halfway house business.

He called it "Back to Life Outreach Recovery Services" and for $125 a week, he offered addicts and alcoholics a safe, sober place to stay while he helped them find jobs and get counseling. At least that's what he said.

Residents like John Lees quickly grew skeptical.

"Lees advised the program is a scam (and Charles) is using the money he gets from funding to purchase drugs," according to a St. Petersburg police report in February.

Not long after Lees complained to police, Charles confronted another resident, shot him in the head and landed back in jail charged with murder.

How did Troy Charles, a felon with a history of violence, theft and drug dealing, get into the business of housing recovering addicts?

Easy. Almost anyone can open a halfway house in Florida because there's almost no regulation or accountability.

Every day, hundreds of people emerge from jails, detox centers and mental hospitals desperate for a place to stay while they try to remake their lives. Most can't afford a square meal, let alone first and last month's rent and a damage deposit.

Many wind up in transitional houses — often called halfway houses or sober living houses — that give them a bed and promise to help them find jobs and get to 12-step meetings.

The *Tampa Bay Times* examined dozens of halfway house programs in the Tampa Bay area. Among them are large, professionally managed facilities that generally deliver what they promise. But many others are little more than flophouses that cram residents two or three to a room in dingy quarters with no job assistance, no trained staff and no support.

The *Times* found:

• Several houses are run by felons with serious criminal records, including robbery, sexual assault and drug trafficking. One operator was permanently barred from a federal housing program because of improper billing, yet started a new halfway house that is getting thousands of dollars from the same program.

• Residents of some halfway houses say drug abuse is rampant, and records show at least three people have overdosed and died at unregulated homes. Though such deaths are not unusual among recovering addicts, they underscore the need for oversight, experts say.

• One halfway house that touted "sober living" bused recovering alcoholics to sell beer at Raymond James Stadium. Another required residents to get their prescriptions filled at a pharmacy in a store plastered with neon beer signs.

• Residents have few protections under the law. Halfway houses can take their paychecks to cover rent and can kick them out at a moment's notice.

Donna Masucci said she and her two kids were thrown out of a Pinellas County halfway house in the middle of the night. The owner, a pastor, had demanded Masucci attend a church service in Tampa even though she was on probation and couldn't leave the county.

The family was left on the street with no money in an area notorious for drugs and prostitution.

"It was," Masucci said, "a horror show."

It is impossible to determine how many others have had similar experiences, or even how many people have died of overdoses at halfway houses. Because there is no licensing, no one even knows how many halfway houses exist in Florida.

State officials say the number may be huge.

"We've been told there are several thousands of those around the state at any one time," said Darran Duchene, who helped oversee federally funded halfway houses when he worked for the Florida Department of Children and Families. "They should be regulated from a business standpoint and then from a social service standpoint."

Troubled past? No problem

You can find halfway houses almost everywhere in Florida. Many are ordinary-looking homes on quiet suburban streets.

There are halfway house programs in apartment complexes, old motels and buildings once used as assisted living facilities for the elderly. Few have signs out front, making it even more difficult to tell how many there are.

But "they keep popping up," said Ramona Schaefer, a Pinellas County sheriff's supervisor who helps find housing for ex-inmates. "My concern is, what are their intentions? There are a lot of people who truly want to help. Then there are others whose intentions are not so pure."

A driving force behind Florida's explosion in halfway houses is the increase in addiction fueled by the prescription drug crisis.

The housing bust played a part, too. Some investors converted regular homes into halfway houses so they could maximize the rent.

On paper at least, transitional housing can be lucrative. With two people per room, each paying $500, a run-down three bedroom house can bring in $3,000 a month.

And in recent years, there has been another reason to convert houses and apartments — government support.

In 2003, at a time when 24 million Americans had a serious problem with drugs or alcohol, President George W. Bush announced a $150 million treatment initiative called Access to Recovery, or ATR.

Since then, $30 million in federal funds has gone to Hillsborough, Pinellas, Pasco and several other Florida counties, much of it for transitional housing. Almost 300 halfway houses initially qualified for the money. Some were run by felons who took advantage of the very people they were supposed to help.

William Garrison, a one-time crack user, opened New Birth Abundant Life Ministry in St. Petersburg and collected more than $300,000 in federal funds before being kicked out of the program.

Residents complained that Garrison made them pay $50 a week for food even though he was getting federal money for meals. Clients also said Garrison cursed profusely and touched them against their will with "strong sexual overtones," according to a state report.

Garrison, 56, told the *Times* he did nothing wrong. He said he still helps men find housing and other services but wouldn't say where.

Another halfway house that qualified for federal money was House of Hope in St. Petersburg. It was run by Patrick Jay Banks, who spent eight years in a Texas prison for robbery and forgery before moving to Pinellas and introducing himself as "Pastor" Banks.

In what investigators called the "most egregious case of fraud, waste and abuse" by any ATR provider in Florida, Banks submitted bills for residents long before they set foot inside the pair of tiny houses he ran down the street from a Catholic church.

He also billed for job coaching for up to 50 residents at a time even though the meeting room held less than 10.

Banks collected more than $110,000 before he was permanently barred from the federal program in 2007.

Yet in an interview with the *Times* last week, Banks acknowledged he started a new halfway house, Agape House in St. Petersburg, that has received $55,000 in federal funds in the past year. Banks' name did not appear on Agape's ATR application, but he told police he was the owner when they questioned him about an unrelated matter in October.

"I never kept it a secret I was starting it," said Banks, 48, who insisted he has done nothing wrong.

DCF, which oversees the federal program in Florida, said it was unaware of Banks' involvement and will investigate.

To qualify for the federal money, owners and employees of halfway houses must pass criminal background checks. The houses must meet health and safety codes, and are subject to periodic inspections.

But the vast majority of halfway houses in Florida get no government money and are subject to no regulation.

Residents are on their own.

Deadly homes

Emily Rifkin had been living in a Tampa halfway house for just three weeks when another resident found her blue in the face and foaming at the mouth.

By the time paramedics got there, Rifkin was cold to the touch, dead at 25 of an accidental overdose of oxycodone.

Rifkin is one of at least three people who have overdosed and died in Tampa Bay halfway houses owned by people who started them as a way to make money in a slow real estate market. They converted regular houses into halfway houses with no licensing and no oversight.

In November 2010, Rifkin, a former college student, was still struggling with the addiction that had sent her to prison for eight months on drug-related charges. Rifkin's family asked the courts for help, and a judge approved her going to a halfway house while she waited for a bed in a residential treatment program.

After Rifkin violated rules at the first house, she was moved to the three-bedroom, one bath house on Okaloosa Street where she was supposed to get more supervision. But the police report shows that obvious signs of trouble were ignored the day she died.

At 2 p.m., one roommate thought Rifkin seemed "kind out of it" but did nothing.

Six hours later, the house manager, herself an addict, saw Rifkin sitting listlessly on the bathroom floor and left her there.

It wasn't until 35 minutes later, after Rifkin had stopped breathing, that a roommate called 911.

The home's owner, Shelton Jones, said he converted the home into a halfway house with assistance from Linda Walker, who runs the nonprofit Hillsborough House of Hope transitional program for women.

Walker also has a for-profit business that helps people start halfway houses. She and Jones said they were not responsible for Rifkin's death.

"I feel bad she died," Walker said, "but a lot of people die in recovery. You have to want recovery."

As with most other halfway houses, there was no trained staff at Okaloosa Street and no routine testing for drug and alcohol use, Walker and Jones acknowledged. They said it was impossible to keep residents from sneaking in drugs.

A year before Rifkin's death, two men fatally overdosed on methadone in an unregulated house in Seminole. Like Jones, the owner had gone into the halfway house business to increase her rental property income.

Jones kept his place open almost a year after Rifkin died. Resident Collette Turner said the house was dirty and there were blue pills — "Oxies or something" — in a drawer.

"One girl in my room was selling drugs," said Turner, 26. "She told me how much weed and coke she could get."

Turner paid $500 a month to share the house with up to three other women at a time. But after paying utilities, cable, insurance and the mortgage, Jones decided "it just wasn't a good investment" and closed the doors late last year.

Risky referrals

Referrals are the lifeblood of halfway houses. Few could stay in business without courts, hospitals and detox centers steering people their way.

Yet the *Times* found that referrals often are made on the basis of glowing descriptions from the houses themselves.

After a suicide attempt in July and 11 days in Windmoor, a private Clearwater mental hospital, Leisha Simpson needed a place to go.

Simpson said Windmoor gave her the names of three halfway houses, and she chose Still Standing of St. Petersburg. Its website touted a "safe haven" with 24-hour staffing, counseling and on-site 12-step meetings.

There was none of that. For $500 a month, Simpson said, all she got was a bed in a roach-ridden house with as many as four other women, one of whom smoked crack and invited men into their shared bedroom for sex at all hours.

In the two months she was there, Simpson twice filed complaints with police. She said her TV, credit cards and safe with medications were stolen. Another resident threw her against a dresser and tried to drown her while she was in the bathtub.

"It was," Simpson recalled, "a horrible experience."

Still Standing's founder, the Rev. Edward Leftwich, 67, said he couldn't maintain a full sober living program as he got older and $240,000 in federal funding ran out. He acknowledged it was a mistake to leave up his website.

Police are investigating Simpson's theft complaint and have turned the assault case over to prosecutors. Simpson, 31, is now living with her mother and grandmother in North Carolina.

"At least I know they won't rob me in the middle of the night," she said.

Windmoor officials did not return several calls seeking comment on why they recommended a halfway house that no longer provided any services.

The demand for transitional housing is so great that even new programs easily get referrals.

Last spring, Pamela Dixon made the rounds of detox centers and public agencies in Pinellas promoting her 31-bed halfway house, A New Direction for Women and Men. Public Defender Bob Dillinger began sending chronic drunks there, unaware that A New Direction required residents to get prescriptions filled in a store that also sells beer and wine.

Both the pharmacy building and the converted ALF that houses A New Direction are owned by the same Tampa group. "I do find it questionable," Dillinger said when a reporter told him of the connection.

Dillinger checked out the halfway house and said Dixon agreed to stop dealing with the pharmacy. The public defender's office continues to send people to A New Direction.

'Preferred providers'

Is it possible to regulate the thousands of halfway houses now operating without oversight?

"We regulate thousands of child care facilities across the state with no problem," said Erin Gillespie, a DCF spokeswoman. "We are certainly up to the task if the law were changed."

So far there has been no legislative action to ensure that halfway houses deliver what they promise. But in Pinellas County, a coalition of groups that help substance abusers and the homeless is trying to come up with a list of "preferred providers." To get on it, halfway houses would have to permit inspections and meet certain standards, among them not exploiting residents.

In the meantime, it is easy for felons like 49-year-old Troy Charles to get into the business.

Charles, born in Phoenix, spent three years in an Arizona prison for aggravated assault before moving to St. Petersburg. He was arrested 16 times — charges ranged from auto theft to burglary to sale of cocaine — before he started his Back to Life ministry, rented a house, set up bunk beds in the living room and began charging clients $450 a month.

One was John Lees, who had done jail time for obtaining oxycodone by fraud.

"At first it was presented to me, like, if you need a place to stay and recover from addiction, you can stay there," Lees told the *Times*. "Then he tried to get me to sell drugs to him."

Lees, 32, said he saw Charles use cocaine and heard him discuss hooking girls on drugs so he could turn them into prostitutes.

Afraid of getting into trouble, Lees moved out in February. When he returned to get a book bag, he said, Charles accused him and a resident, Samuel Harper, of burglary. Prosecutors declined to charge the men, and Charles, upset by the decision, angrily confronted Harper and fatally shot him in the head, police say.

Charles pleaded not guilty and is awaiting trial. He landed back in the Pinellas County Jail about the same time as another halfway house operator, Matthew Hauschild.

Until a few years ago, Hauschild, 46, managed halfway houses for others. Then the real estate bust presented an opportunity to strike out on his own.

"I had a lot of owners and developers who had empty properties and I worked out contracts with them," Hauschild said earlier this year, boasting "I'm in multiple counties." He wouldn't say where.

At Hauschild's House of Hope, a two-story white frame house in Clearwater, clients paid $450 a month for a "recovery" program that included transportation to 12-step meetings. One problem: Hauschild, who has been convicted of forgery, theft and cocaine possession, had long ago lost his driving privileges.

Last spring, Hauschild was caught a fifth time driving without a license and is now serving a 13-month sentence in state prison. When he gets out, he told the *Times,* he plans to get back in the halfway house business.

Susan Taylor Martin can be contacted at susan@tampbay.com.

Coming Monday

A halfway house program that abruptly shut in Clearwater still operates in Tampa.

Felons, drug dealers run halfway houses for addicts 11/18/12

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Banking and Insurance, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Transportation

SENATOR JEFF CLEMENS
27th District

February 18, 2013

Chair Eleanor Sobel
520 Knott
404 S. Monroe St
Tallahassee, Fl 32399

Dear Chair Sobel:

I respectfully request that SB 738, An Act Relating to Substance Abuse Services, be placed on the agenda for the Children, Families and Elder Affairs Committee.

Please feel free to contact myself or my staff, should you have any questions.

Best Regards,

Jeff Clemens
Senate District 27

Cc: Claude Hendon

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Senate Committee
Children and Families

REPLY TO:
❒ 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
❒ 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-2013
Meeting Date

Topic: Sober Homes Leg. relief

Bill Number: SB 738 *(if applicable)*

Name: James DuBois

Amendment Barcode: *(if applicable)*

Job Title: Mayor, Town of Lake Park

Address: 535 Park Ave
Street

Lake Park, FL 33403
City *State* *Zip*

Phone: 561-718-8984

E-mail: jdubois@lakeparkflorida.gov

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

Representing:

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-13
Meeting Date

Topic: Sober Homes

Bill Number: SB 738 *(if applicable)*

Name: MARK FONTAINE

Amendment Barcode: *(if applicable)*

Job Title: Executive Director

Address: 2868 Mahan Drive
Street

Tallahassee, FL 32308
City *State* *Zip*

Phone: 878-2196

E-mail:

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

Representing: Florida Alcohol + Drug Abuse Association

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/13
Meeting Date

Topic: SB 738

Bill Number: 738 *(if applicable)*

Name: Casey Cook

Amendment Barcode: _____ *(if applicable)*

Job Title: Legislative Advocate

Address: PO Box 1757
Street

Tallahassee, Fl 32302
City, State, Zip

Phone: 850 701 3701

E-mail: ccook@flcities.com

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

Representing: Florida League of Cities

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 1, 2013
Meeting Date

Topic: Substance Abuse Services

Bill Number: SB 738 *(if applicable)*

Name: Candice Ericks

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: _____
Street

_____
City, State, Zip

Phone: 954-648-1204

E-mail: candice@ericksconsultants.com

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

Representing: Palm Beach County

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/13
Meeting Date

Topic: Sober Houses SB 738

Bill Number: SB 738 (if applicable)

Name: Terrill Pyburn

Amendment Barcode: (if applicable)

Job Title: Asst. City Attorney

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City State Zip

Phone: 561-243-7090

E-mail: pyburn@mydelraybeach.com

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

Representing: City of Delray Beach

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

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SM 912

INTRODUCER: Senator Abruzzo

SUBJECT: Supportive Housing for the Elderly

DATE: March 28, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	**Favorable**
2.			CA	
3.				
4.				
5.				
6.				

I. Summary:

SM 912 finds that the elderly population in Florida is in need of affordable housing. The memorial urges the United States Congress to provide adequate funding for the Supportive Housing for the Elderly Program.

II. Present Situation:

The Supportive Housing for the Elderly Program is a federal program that provides assistance to expand the supply of housing with supportive services for the elderly. The program provides capital advances to eligible private, nonprofit sponsors and, in cases of mixed-finance, for-profit limited partnerships where the sole general partner is (i) a nonprofit organization or (ii) a for-profit corporation wholly owned and controlled by one or more nonprofit organizations; or (iii) a limited liability company wholly owned and controlled by one or more nonprofit organizations to finance the development of rental housing with supportive services for the elderly. The advance is interest free and does not have to be repaid so long as the housing remains available for very low-income elderly persons for at least 40 years. Project rental assistance covers the difference between the HUD-approved operating cost of the project and the tenants' contributions toward rent.[1]

Private, nonprofit organizations and consumer cooperatives may qualify for assistance, and may partner with private, for-profit entities so long as the sole general partner is a nonprofit

[1] U.S. Department of Housing and Urban Development website, *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/progdesc/eld202 (last visited March 28, 2013).

organization that meets the statutory requirements. Occupancy is open to very low-income households which include at least one person 62 years of age or older.[2]

The legal authority for the program is contained in section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended by section 210 of the Housing and Community Development Act of 1974 (Public Law 86-372); section 801 of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625); the Housing and Community Development Act of 1992 (Public Law 102-550); the Rescissions Act (Public Law 104-19); the American Homeownership and Economic Opportunity Act of 2000 (Public Law 106-569); the Housing and Economic Recovery Act of 2008 (Public Law 110-289); and the Section 202 Supportive Housing for the Elderly Act of 2010 (Public Law 111-372). Regulations are at 24 CFR part 891.[3] The program is administered by the U.S. Department of Housing and Urban Development.

III. Effect of Proposed Changes:

The memorial expresses the Legislature's finding that the elderly population in Florida is in need of affordable housing. The memorial requests that the United States Congress provide adequate funding of the Supportive Housing for the Elderly Program.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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[2] *Id.*
[3] *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial 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 Abruzzo

25-01033-13 2013912__

Senate Memorial

A memorial to the Congress of the United States, urging Congress to adequately restore funding to the Supportive Housing for the Elderly Program.

WHEREAS, during the 20th Century, the senior population has increased from 3.1 million to 33.2 million, and by 2030, that number is expected to increase to 80 million, and

WHEREAS, half of people age 65 or older reside in nine states, led by Florida, California, and New York, and

WHEREAS, interest rates for personal savings accounts have dropped to less than one-half of one percent, pensions are rare, pension and health care payments for retirees are decreasing, and investments in 401(k) retirement savings accounts and stocks have dramatically decreased, and

WHEREAS, funding for low-cost housing has drastically decreased from the $650 million appropriated in 2005 to $78 million in 2011 and $0 in 2012, and

WHEREAS, with thousands of low-income seniors on waiting lists for as long as 2 or 3 years, there is a desperate need for low-cost housing, NOW, THEREFORE,

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

That the Congress of the United States is urged to assist our nation's low-income seniors by adequately funding the Supportive Housing for the Elderly Program.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the

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

25-01033-13 2013912__

President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1 Apr 13
Meeting Date

Topic: Supportive Housing for Elderly Program

Bill Number: 912 *(if applicable)*

Name: Charles Milsted

Amendment Barcode: _____ *(if applicable)*

Job Title: Associate State Director

Address: 200 West College Avenue
Street

Tallahassee, FL 32301
City, State, Zip

Phone: 850-577-5190

E-mail: cmilsted@aarp.org

Speaking: [✓] For [ ] Against [ ] Information

Representing: _____

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-13
Meeting Date

Topic: Low Cost Housing for Low Income Sr.

Bill Number: SM 912 *(if applicable)*

Name: Barbara DeVane

Amendment Barcode: _____ *(if applicable)*

Job Title: State Secretary FL Alliance for Retired Americans

Address: 625 E. Brevard St
Street

Tallahassee FL 32308
City, State, Zip

Phone: 850-222-3969

E-mail: barbaradevane1@yahoo.com

Speaking: [✓] For [ ] Against [ ] Information

Representing: FL Alliance for Retired Americans

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

Lobbyist registered with Legislature: [✓] Yes [ ] No
but not for FLARA

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1650

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

SUBJECT: Child Care Facilities

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Hendon	CF	**Fav/CS**
2.			AHS	
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	x	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1650 revises the minimum standards for nutritional practices in child care facilities to limit the type and quantity of drinks that can be served. Specifically, the bill requires facilities to serve only low fat or nonfat milk to children over 2; to serve not more than one serving of 100 percent fruit juice daily; and to make drinking water readily available. The bill also prohibits serving beverages with added sweeteners.

The bill does not have a fiscal impact on the state and has an effective date of July 1, 2013.

This bill substantially amends section 402.305 of the Florida Statutes.

II. Present Situation:

Child care facilities in the state must meet licensing standards that are established by the Department of Children and Family Services.[1] A child care facility generally includes any child care center or child care arrangement which provides child care for more than five children

[1] Section 402.305, F.S.

unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit.[2]

The statute directs DCF to adopt minimum licensing standards by rule which must be designed to address each of the following areas:

- The health, sanitation, safety, and adequate physical surroundings for all children in child care.
- The health and nutrition of all children in child care.
- The child development needs of all children in child care.[3]

In addition, the law establishes minimum requirements with respect to:

- Personnel
- Staff Credentials
- Staff-to-Children Ratios
- Physical Facilities
- Square Footage Per Child
- Sanitation and Safety
- Nutritional Practices
- Admissions and Recordkeeping
- Transportation Safety
- Access
- Child Discipline
- Plan of Activities
- Urban Child Care Facilities
- Transition Periods (periods of arrival and departure)
- Evening and Weekend Child Care
- Specialized Child Care Facilities for the Care of Mildly Ill Children
- Transfer of Ownership[4]

The specific licensing criteria applicable to child care facilities that have been adopted by DCF are set forth in Chapter 65C-22 of the Florida Administrative Code. The current nutrition standard generally requires that meals and snacks of a quality and quantity to meet the nutritional needs of children be served. Facilities must use the USDA MyPlate[5] to determine what food groups will be served at each meal. Special diets may be required by physician order. If a facility chooses not to provide meals and snacks, arrangements must be made with the parent or guardian to provide nutritious meals.[6]

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[2] Section 402.302(2), F.S.
[3] Section 402.305(1), F.S.
[4] Sections 402.305, 402.3055, 402.3057, F.S.
[5] The MyPlate replaced the MyPyramid, which is the guideline currently referenced in the DCF rule.
[6] Rule 65C-22.005, F.A.C.

Florida law permits a county that meets or exceeds the state's minimum licensing requirements to designate a local agency to license child care facilities or to contract with DCF to delegate administration of the standards to the department.[7] Currently, DCF is responsible for administering child care licensing in 62 of Florida's 67 counties. Five counties (Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota) administer their own inspections and licensure of child care facilities.[8] Currently, DCF and local licensing agencies regulate approximately 6,782 child care facilities.[9]

Florida Child Care Food Program

The Child Care Food Program (CCFP) provides reimbursement for nutritious meals and snacks served to children in child care settings. The program, which is authorized by the National School Lunch Act,[10] is funded by the U.S. Department of Agriculture (USDA) and is administered in Florida by the Department of Health, Bureau of Childcare Food Programs. To be eligible for reimbursement, a child care facility must be a public or private nonprofit organization, or a for-profit organization whose enrollment or licensed capacity consists of at least 25 percent low-income children meeting eligibility criteria.[11] Meals served to children are reimbursed at rates that are based upon a child's eligibility for free, reduced price, or paid meals. Meals and snacks served to children must meet USDA and Florida-specific meal pattern requirements. Currently, 43 percent of child care facilities participate in the program providing meals to an estimated 200,000 children daily.[12]

In 2010, Congress enacted the Healthy Hunger Free Kids Act (Act)[13] which reauthorized funding for the child nutrition programs for five years and included an additional $4.5 billion in new funding over the next 10 years. In addition, the Act promotes nutrition and wellness in child care settings. Among its many provisions, the Act requires facilities participating in the CCFP to provide children with potable water throughout the day, including at meal times,[14] and to serve children over the age of two only low fat or nonfat milk.[15] The American Academy of Pediatrics (AAP) also recommends serving low fat or nonfat milk.[16] Florida, through the meal pattern it has approved for facilities seeking reimbursement through the CCFP, requires that fruit juice be 100

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[7] Section 402.306(1), F.S.
[8] Fla. Dep't. of Children and Families, *Child Care Regulation Licensing Information, available at* http://www.dcf.state.fl.us/programs/childcare/licensing.shtml (last visited Mar. 27, 2013).
[9] Fla. Dep't of Children and Families, *Fiscal Note SB 1650* (Mar. 8, 2013) (on file with the Senate Committee on Children, Families and Elder Affairs).
[10] 42 U.S.C. 1766.
[11] Fla. Dep't. of Health, *FACT SHEET: Child Care Food Program/Child Care Centers* (July 2012), *available at* http://www.doh.state.fl.us/ccfp/Program/ccfpfactsheet.pdf (last visited Mar. 26, 2013).
[12] Conversation with Maria Williamson, Chief, Bureau of Childcare Food Programs, Fla. Dep't of Health (Mar. 26, 2013). Participating facilities are reimbursed the cost of meals for all children, not just those meeting eligibility requirements.
[13] Pub. Law No. 111-296, S. 3307, 111th Cong. (Dec. 13, 2010).
[14] *Id.* at s. 221.
[15] *Id.* The Act requires participating facilities to serve milk in accordance with the most recent version of the Dietary Guidelines for Americans. The Dietary Guidelines for Americans 2010, which contains nutrition standards for Americans 2 years and older, recommends low fat or nonfat milk. U.S. Dept. of Agriculture, *Dietary Guidelines for Americans 2010* (Dec. 2010), *available at http://www.health.gov/dietaryguidelines/2010.asp* (last visited Mar. 27, 2013).
[16] S.S. Gidding et al., American Academy of Pediatrics, *Dietary Recommendations for Children and Adolescents: A Guide for Practitioners* (2006), *available at* http://pediatrics.aappublications.org/content/117/2/544.full.pdf+html (last visited Mar. 27, 2013).

percent juice, but limits servings to not more than one per day,[17] consistent with recommendations of the AAP.[18] Florida does not currently prohibit serving drinks with added sweeteners, but those drinks would not be reimbursable through the CCFP.

Childhood Obesity

According to the Centers for Disease Control:

- Childhood obesity has more than doubled in children and tripled in adolescents in the past 30 years.
- The percentage of children aged 6–11 years in the United States who were obese increased from 7 percent in 1980 to nearly 18 percent in 2010. Similarly, the percentage of adolescents aged 12–19 years who were obese increased from 5 percent to 18 percent over the same period.
- In 2010, more than one third of children and adolescents were overweight or obese.[19]

Childhood obesity has both immediate and long-term effects on health and well-being.

- Obese youth are more likely to have risk factors for cardiovascular disease, such as high cholesterol or high blood pressure.
- Obese adolescents are more likely to have prediabetes, a condition in which blood glucose levels indicate a high risk for development of diabetes.
- Children and adolescents who are obese are at greater risk for bone and joint problems, sleep apnea, and social and psychological problems such as stigmatization and poor self-esteem.
- Children and adolescents who are obese are likely to be obese as adults and are therefore more at risk for adult health problems such as heart disease, type 2 diabetes, stroke, several types of cancer, and osteoarthritis.
- Overweight and obesity are associated with increased risk for many types of cancer, including cancer of the breast, colon, endometrium, esophagus, kidney, pancreas, gall bladder, thyroid, ovary, cervix, and prostate, as well as multiple myeloma and Hodgkin's lymphoma.[20]

III. Effect of Proposed Changes:

Section 1 amends s. 402.305, F.S., to require licensed child care facilities to serve only low fat or nonfat milk to children over 2; to serve not more than one serving of 100 percent fruit juice daily; and to make drinking water readily available. The bill also prohibits child care facilities from serving beverages with added sweeteners.

Section 2 provides an effective date of July 1, 2013.

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[17] Fla. Dep't. of Health, *Child Care Food Program Meal Pattern for Children*, (undated), *available at* http://www.doh.state.fl.us/ccfp/Nutrition/Children/mealpattern.pdf (last visited Mar. 27, 2013).
[18] American Academy of Pediatrics, *The Use and Misuse of Fruit Juice in Pediatrics*, (May 1, 2001), *available at* http://pediatrics.aappublications.org/content/107/5/1210.full (last visited Mar. 27, 2013).
[19] Centers for Disease Control and Prevention, *Adolescent and School Health*, *available at* http://www.cdc.gov/healthyyouth/obesity/facts.htm (last visited Mar. 26, 2013).
[20] *Id*.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Providers who are not currently participating in the CCFP or who do not voluntarily comply with the recommendations of the AAP or the Dietary Guidelines for Americans 2010 may have to alter their menus.

C. Government Sector Impact:

Public providers who are not currently participating in the CCFP or who do not voluntarily comply with the recommendations of the AAP or the Dietary Guidelines for Americans 2010 may have to alter their menus.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Children, Families, and Elder Affairs on April 1, 2013:

- CS/SB 1650 removed changes in the bill that may have had the unintended effect of removing DCF's general authority to require that meals and snacks meet the nutritional needs of children.

B. Amendments:

None.

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

347262

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment**
2
3 Delete lines 13 - 15
4 and insert:
5 requirements for the provision of meals or snacks of a quality
6 and quantity to assure that nutritional needs of the child are
7 met. <u>Such standards shall include at least the following</u>
8 <u>requirements:</u>

By Senator Gibson

9-01459A-13 20131650__

A bill to be entitled

An act relating to child care facilities; amending s. 402.305, F.S.; requiring licensed child care facilities to implement certain additional nutritional practices; providing an effective date.

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

Section 1. Subsection (8) of section 402.305, Florida Statutes, is amended to read:

402.305 Licensing standards; child care facilities.—

(8) NUTRITIONAL PRACTICES.—Minimum standards shall include the following requirements for the provision of nutritious meals or snacks to ensure ~~of a quality and quantity to assure~~ that the nutritional needs of the child are met.

(a) Only 1 percent milk or nonfat milk shall be served to children 2 years of age or older unless otherwise ordered by a physician or health practitioner.

(b) One hundred percent fruit juice shall be limited to no more than one serving per day.

(c) A beverage with added sweeteners, natural or artificial, may not be served.

(d) Clean and safe drinking water must be readily available and accessible throughout the day.

Section 2. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
9th District

COMMITTEES:
Military Affairs, Space, and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Communications, Energy, and Public Utilities
Criminal Justice
Regulated Industries

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act

March 7, 2013

Senator Eleanor Sobel, Chair
Committee on Children, Families, and Elder Affairs
520 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Sobel Eleanor,

I respectfully request that SB 1650, relating to child care facilities, be placed on the next committee agenda.

SB 1650, establishes minimum standards for licensed child care facilities to provide nutritional beverages for children.

Thank you for your time and consideration.

Sincerely,

Audrey

Audrey Gibson
State Senator
District 9

RECEIVED
MAR 07 2013
Senate Committee
Children and Families

REPLY TO:
☐ 101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553 FAX: (904) 359-2532
☐ 205 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SPB 7134

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

SUBJECT: Crossover Youth

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Submitted as Committee Bill**
2.				
3.				
4.				
5.				
6.				

I. Summary:

SPB 7134 authorizes the Department of Children and Families (DCF or the department) and the Department of Juvenile Justice (DJJ) and to collaborate on a pilot project to demonstrate a more effective service model for crossover youth, in one county, which is mutually agreed upon by DJJ and DCF. The term "crossover youth" is used to describe children, under the age of 18, who are under the care of both DCF and DJJ. The bill requires DCF to seek proposals from interested child welfare service providers to elicit innovative approaches for the pilot with preference being given to providers in counties with a unified family court system. The bill requires the pilot project to include the following elements:

- Training provided by the DJJ to pilot home staff.
- Intervention services by the DJJ to post commitment youth residing in pilot homes.
- Enhanced security measures at pilot homes.
- Unified treatment plans for cross over youth served by multiple state and local agencies.
- Interventions to ensure that youth at low risk to reoffend are not negatively affected by high risk cross over youth.

The bill requires an interim report and a final report due on findings, including specific performance measures identified in the bill and recommendations from the pilot project.

The bill has a fiscal impact on state government and has an effective date of upon becoming law.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Background

It has been recognized for some time that children involved in the child welfare system are at risk of "crossing over" to the juvenile justice system and, inversely, that many juvenile justice involved youth later become involved in the child welfare system.[1] Though not fully understood, the relationship between child maltreatment and delinquency is well established. Recognition of this relationship, however, has not always resulted in implementation of coordinated practice across the child welfare and juvenile justice systems, leaving many youth to fall into the crack that separates the two systems. At least one obstacle to improving the care of crossover youth is the absence of a clear definition of who these youth are and how they can be identified.[2]

A number of terms are currently used to refer to children who are involved in both the child welfare and juvenile justice systems and as we learn more about youth who experience maltreatment and delinquency, the need for standard definitions becomes clear. A number of practitioners have offered three terms and corresponding definitions to help categorize youth who experience different levels of system involvement:

- **Crossover youth** is the term used to define any youth who has experienced maltreatment and who has also engaged in delinquency regardless of system involvement. Crossover youth, in other words, experience maltreatment and delinquency, but they may or may not enter the child welfare and/or juvenile justice systems.
- **Dually-involved youth** represent a subgroup of crossover youth who are concurrently known to both the child welfare and juvenile justice systems at some level. Their contact may be preventative (i.e., having a voluntary case in child welfare and/or receiving informal diversion in juvenile justice), formal (i.e., having substantiated allegations for abuse and/or neglect or being adjudicated delinquent in the delinquency court), or a combination of both.
- **Dually-adjudicated youth**, a subgroup of dually involved youth, includes youth who entered both systems, were formally processed by both systems, and are under the formal care and control of them.[3]

This is a youth population with many complex needs that require systems to work together in a different way if improved outcomes are to be realized. Challenges to this working relationship include:

- There is often a lack of structural relationships and understanding among the agencies that are involved with dually-involved youth;
- In some states, there is no mechanism for interaction between staff of the child welfare and juvenile justice systems, and in others, there is simply no acknowledgment that joint cases even exist;

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[1] Denise Herz, et al. *Addressing the Needs of Multi-System Youth: Strengthening the Connection between Child Welfare and Juvenile Justice*. Center for Juvenile Justice Reform and Robert F. Kennedy Children's Action Corps (March 2012) a*vailable at* http://cjjr.georgetown.edu/pdfs/msy/AddressingtheNeedsofMultiSystemYouth.pdf (last visited March 20, 2013).
[2] *Id*.
[3] *Id*.

- There is commonly a lack of coordination among the various attorneys representing the youth and their parents and a lack of continuity among the judges who hear their cases;
- Outside of child welfare and juvenile justice, collaboration among the education, mental health, and substance abuse systems is also often quite tenuous for this population of youth;
- Information-sharing challenges are often encountered among these various agencies due to complex legal rules, different record-keeping procedures, the limits of current technology, and other factors that make it difficult for everyone involved in a particular child's case to be fully informed about the child's background and current situation;
- There are rarely any policy imperatives that require systems to work together, resulting in a lack of motivation to address the challenges faced; and
- There are often case management and fiscal inefficiencies that result in poor service delivery for the dually-involved youth population. Often, there is no coordinated response to the identification of these youth and to the assessment of their needs and risks.[4]

As a result, service delivery among systems can be duplicative or contradictory, and opportunities to prevent further involvement in the system can be lost. Moreover, when the systems fail to collaboratively engage families or to establish a joint permanency goal for a youth, the long-term outcomes for dually-involved youth suffer.[5]

Current Reform Initiatives

Understanding of the characteristics of crossover youth, the way in which they become known to systems, and common barriers to serving this population has led to the development of several multi-system reform efforts, particularly the Systems Integration Initiative[6] and the Crossover Youth Practice Model.[7]

Cross over Youth Practice Model

Casey Family Programs and the Center for Juvenile Justice Reform at the Georgetown University Public Policy Institute (CJJR) have partnered since 2007 to address the unique issues presented by children and youth who are known to both the child welfare and juvenile justice systems.[8]

Based on an increasing body of knowledge, CJJR has developed a practice model that describes the specific practices that need to be in place within a jurisdiction in order to reduce the number of youth who crossover between the child welfare and juvenile justice systems, the number of youth entering and reentering care, and the length of stay in out of home care. The Crossover Youth Practice Model (CYPM or Georgetown model) provides values and standards, evidence-

[4] *Id*.
[5] *Id*.
[6] The Systems Integration Initiative (SII) began at the Child Welfare League of America and is designed to help states improve the way dually-involved youth are served by focusing on the connections between the child welfare and juvenile justice systems and the development of a multisystem approach to policy and program development and service delivery. Central to the foundation of SII has been the presence of federal laws since 2002 and 2003 that specifically support—and in some instances require—collaboration between the child welfare and juvenile justice systems.
[7] Crossover Youth Practice Model. Center for Juvenile Justice Reform and Casey Family Program (2009) *available at* http://cjjr.georgetown.edu/pdfs/cypm/cypm.pdf (last visited March 20, 2013).
[8] *Id*.

based practices, policies and procedures, and quality assurance processes that will enable states to immediately impact how they serve crossover youth.[9]

In an effort to achieve the overall goals of the model, a set of interim outcome measures has been developed for use at each site where the model is currently being implemented:

- A reduction in the number of youth re-entering child welfare from juvenile justice placements;
- A reduction in the penetration of juvenile justice by foster youth;
- A reduction in the use of out-of-home placements;
- A reduction in the use of congregate care as a placement;
- A reduction in the use of pre-adjudication detention;
- A reduction in the rate of recidivism;
- An increase in the use of interagency information sharing;
- An increase in the inclusion of family voice in decision making;
- An increase in youth and parent satisfaction with the process; and
- An increase in the use of joint assessment.[10]

Implementation of the model would aim to ensure that practices are consistent for all youth within a system and resources are shared between the systems to maximize their impact. The model emphasizes the importance of developing cross systems data capacity and the need to use good data to make program and policy decisions. Within the model there is a specific focus on the reduction of youth placed in congregate care facilities, specifically group homes and shelter care, and the increased utilization of families and the community as partners in case planning, policy development, and the building of system capacity.[11]

Congregate Care

Group homes are utilized in a variety of social service settings including child welfare, mental health, and juvenile justice. Within child welfare, institutional care may be used as a large or small shelter care facility, as a place for children to go when family care is not immediately available, and as a place where children go who have not been able to be maintained in foster family care.[12] Group homes are smaller than other residential facilities, consisting of a medium size home capable of housing between six and nine adolescents in a community based setting. Within the social service continuum of care, group homes are less restrictive than in-patient psychiatric clinics and juvenile detention centers, but more restrictive than family foster care. Group homes are considered staff secured as opposed to a locked facility. In contrast with large residential care facilities, group homes generally do not provide academic instruction and the adolescents served within these programs largely attend local public schools.[13]

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[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] Barth, R.P. (2002). *Institutions vs. Foster Homes: The Empirical Base for the Second Century of Debate. Chapel Hill, NC*: UNC, School of Social Work, Jordan Institute for Families http://www.crin.org/docs/Barth.pdf. (last visited March 20, 2013).
[13] Ryan, J. P., et al., Juvenile delinquency in child welfare: Investigating group home effects, *Children and Youth Services Review* (2008) *available at* http://www.cwla.org/programs/juvenilejustice/grouphomeeffects.pdf (last visited March 20, 2013).

The relatively low number of youth served within each group home and the staff required to manage each facility are some of the reasons that group homes are one of the most expensive placement options for children in the child welfare system. The costs of group home care far exceed those for foster care or treatment foster care. The difference in monthly cost can be 6 to 10 times as high as foster care and 2 to 3 times as high as treatment foster care. Since there is virtually no evidence that these additional expenditures result in better outcomes for children, there is no cost benefit justification for group care, when other placements are available.[14] Nonetheless, some state legislatures have encouraged the expanded use of group home care because of a belief that it better provides for the needs of children.[15]

There is also considerable evidence that victims of physical abuse and neglect are at an increased risk of juvenile delinquency. Within the child welfare literature there is evidence that the risk of delinquency is further increased by placement in substitute care. The findings from at least one study indicate that group home placements are associated with a significantly higher risk of delinquency as compared with foster home placements.[16] Moreover, despite that only 26 percent of adolescents ever experienced a group home placement, 40 percent of all arrests in the child welfare system are associated with a group home placements as opposed to arrests that occur on home visits or subsequent to reunification.[17] The same study clearly identifies group homes as a target for delinquency prevention efforts in the child welfare system.[18]

According to national Adoption and Foster Care Analysis and Reporting System (AFCARS) data, in 2011, nearly half (47 percent) of all children in care lived in the foster family homes of non-relatives. Just over one-quarter (27 percent) lived in family foster homes with relatives, often referred to as "kinship care." Six percent of foster children lived in group homes, nine percent lived in institutions, four percent lived in pre-adoptive families, and the rest lived in other types of facilities.[19] These are not substantially different from the proportions at the beginning of the decade, though there has been a slight decrease in the number of foster children in group homes and institutions, and a corresponding increase of those in home care.[20]

Unified Family Court

In Florida, the Supreme Court has recognized that a family should be able to have all of their disputes resolved in the most effective and efficient way possible and that Unified Family Court (UFC) as the best way to handle cases that involve children and families.[21] Since 1991, a series

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[14] Barth, R.P. (2002) Institutions vs. Foster Homes: *The Empirical Base for the Second Century of Debate. Chapel Hill, NC*: UNC, School of Social Work, Jordan Institute for Families. *available at* http://www.crin.org/docs/Barth.pdf (last visited March 20, 2013).
[15] *See* s. 39.523, F.S.
[16] Ryan, J. P., et al., Juvenile delinquency in child welfare: *Investigating group home effects, Children and Youth Services Review* (2008) *available at* http://www.cwla.org/programs/juvenilejustice/grouphomeeffects.pdf (last visited March 20, 2013).
[17] *Id*.
[18] *Id*.
[19] U.S. Department of Health and Human Services *Administration for Children and Families, Children's Bureau. The AFCARS Report*. (2012) *available at* http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport19.pdf (last visited March 21, 2012).
[20] *Child Trends, Foster Care* (2012) *available at* www.childtrendsdatabank.org/?q=node/199 (last visited March 21, 2013).
[21] Office of Court Improvement, Florida State Courts, *available at*: http://www.flcourts.org/gen_public/family/familycourts.shtml (last visited March 21, 2013).

of Florida Supreme Court opinions have been instrumental in establishing UFC throughout the state. UFCs can cover a variety of legal issues which affect a given family under one judge and in one court. These issues may include domestic relations, domestic violence, dependency, and delinquency.[22] UFCs must have court case management, coordination of multiple cases involving one family, collaboration between the judiciary, stakeholders, and the community to provide service for families, and a less adversarial approach, focusing on minimal harm to the child.[23]

Florida

In January 2013, there were 360 children in DCF out-of-home care being jointly served on DJJ community supervision. Of those, 216 were residing in a DCF licensed residential program. Caring for this unique population often requires more extensive services than are currently being provided in the typical group home setting. This population has a high rate of running away, higher rate of behavioral problems, higher arrest rate, and this jeopardizes the behavior and stability of the other children in the homes.[24]

According to data provided by DCF, Florida currently has 26 percent of all children in care in the child welfare system are in group homes, compared to the national average of 6 percent. Of children in care between the ages of 13 and 17, 61 percent are in group homes.[25] The monthly room and board payment for a foster parent for a child 13 to 17 years of age is $515 ($6,180 annually). The department has reported that the average monthly group home care rate is $3,709 ($44,508),[26] with some community-based care lead agencies paying as high as $4,844 monthly ($58,126 annually), making the cost of group care in Florida 7-9.5 percent higher than a foster home.[27]

According to the Center for Juvenile Justice Reform at the Georgetown University Public Policy Institute, implementation of the Crossover Youth Practice Model is currently under way in the following jurisdictions:[28]

- Bartow (Highlands, Hardee, and Polk County)
- Broward County
- Duval County
- Miami-Dade County
- Volusia County

[22] *Id*.
[23] *Id*.
[24] Department of Children and Families, HB 7103 *Staff Analysis and Economic Impact* (March 12, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[25] Information provided by the Department of Children and Families (Dec. 21, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[26] *Id*.
[27] Information provided by ChildNet Broward (March 13, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[28] Center for Juvenile Justice Reform at the Georgetown University Public Policy Institute, *available at* http://cjjr.georgetown.edu/pm/cypmparticipants.html (last visited March 22, 2013).

According to the Office of the State Courts Administrator (OSCA) there is no one circuit/county that has implemented all of the UFC elements outlined in the model guidance,[29] but they have determined that the following circuits indicate that one judge handles dependency and delinquency crossover cases:[30]

- First Circuit
- Second Circuit: with the exception of Gadsden and Liberty Counties
- Third Circuit: with the exception of Columbia County
- Fourth Circuit: is working with Georgetown on implementing a crossover docket
- Fifth Circuit: with the exception of Hernando County
- Sixth Circuit: with the exception of East Pasco
- Seventh Circuit
- Eighth Circuit: with the exception of Gilchrist County
- Tenth Circuit: with the exception of Polk and Highlands Counties
- Eleventh Circuit: with some exceptions
- Twelfth Circuit
- Thirteenth Circuit
- Fourteenth Circuit
- Fifteenth Circuit
- Sixteenth Circuit: with the exception of Plantation
- Seventeenth Circuit
- Eighteenth Circuit
- Nineteenth Circuit: with the exception of St. Lucie and Okeechobee Counties

III. Effect of Proposed Changes:

Section 1 of the proposed committee bill authorizes DJJ and DCF to collaborate on a pilot project to demonstrate a more effective service model for cross over youth, efficient coordination of services between agencies and the evidence of improved outcomes for youth residing in the pilot project facility.

The pilot project shall be limited to one county mutually agreed upon by DJJ and DCF with a high rate of cross over youth. DCF is required to seek proposals from interested child welfare service providers to elicit innovative approaches for the pilot. Preference will be given to providers in counties who have a unified family court system.

The pilot project shall include but not be limited to the following elements:

- Training provided by the DJJ to pilot home staff.
- Intervention services by the DJJ to post commitment youth residing in pilot homes.
- Enhanced security measures at pilot homes.

[29] E-mail from Eric Maclure Director, Community and Intergovernmental Relations, Office of the State Courts Administrator (March 22, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[30] E-mail from Eric Maclure Director, Community and Intergovernmental Relations, Office of the State Courts Administrator (March 22, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

- Unified treatment plans for cross over youth served by multiple state and local agencies.
- Interventions to ensure that youth at low risk to reoffend are not negatively affected by high risk cross over youth.

The pilot project may begin upon the bill becoming law and must end no later than June 30, 2014. DCF and DJJ shall jointly prepare an interim report due December 31, 2013 and a final report due August 31, 2014, on findings including specific performance measures identified in the bill and recommendations from the pilot project.

Section 2 of the bill provides an effective date of upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Fiscal Impact	**Fiscal Year 2013-14**			
DCF	**FTE**	**GR**	**Trust**	**Total**
Contract review		$59,000	$0	$59,000
Consulting services		$126,000	$0	$126,000
Cost to participating CBC		$25,000	$0	$25,000
Operational efficiencies		$70,000	$0	$70,000
Total		$280,000	$0	$280,000

It is unknown if there will be a fiscal impact on the Department of Juvenile Justice to implement the provisions of the pilot.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Line s 30-31 of the bill states that the project will demonstrate a more effective service model for crossover youth and line 47 of the bill references "residential homes." Since evidence has shown that group homes are associated with a significantly higher risk of delinquency as compared with foster homes, a service model centered on increased interventions in group homes would not appear to be a preferred long-term method of enhancing outcomes for crossover youth.

Lines 40-41 of the bill provide a preference to counties having a unified family court when selecting a location for the pilot. Since there is no one circuit/county that has implemented all of the UFC elements outlined in the model guidance, a better choice might be to give preference to a circuit/county that currently has one judge that handles dependency and delinquency crossover cases.

Line 55 of the bill states that the pilot project must include enhanced security at the pilot homes which may negatively impact those children in the home who are not delinquent.

Since there are numerous counties in the state that have implemented the Crossover Youth Practice Model, the pilot should be designed to complement work that is already being done.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

586-02785-13 20137134__

A bill to be entitled

An act relating to crossover youth; creating a pilot project to serve youth in common to the Department of Children and Families and the Department of Juvenile Justice; providing for selection of a county for the project; requiring the Secretary of Children and Families to seek proposals from interested providers; specifying elements to be included in the project; requiring reports to the Governor and the Legislature; providing an effective date.

WHEREAS, hundreds of youth each month in this state are served in both the child welfare system and juvenile justice system, and

WHEREAS, a significant number of these children who reside in residential group homes have felony arrest records, and

WHEREAS, these youth tend to have a greater need for specialized services and can have a negative effect on other youth in the same group residential settings, and

WHEREAS, the state needs to assess the impact of these youth on the child welfare and juvenile justice systems and to develop better integrated systems of care and improved services to respond to the needs of these youth, NOW, THEREFORE,

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

Section 1. Crossover Youth pilot project.-The Crossover Youth pilot project is established as a collaborative initiative of the Department of Children and Families and the Department of

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

586-02785-13 20137134__

Juvenile Justice. The project will demonstrate a more effective service model for crossover youth, efficient coordination of services between agencies, and the evidence of improved outcomes for youth residing in the pilot project facility. The term "crossover youth" means youth younger than 18 years of age who receive services from the Department of Children and Families and the Department of Juvenile Justice.

(1) The pilot project shall be in one county with a high rate of crossover youth which is mutually agreed upon by the Secretary of Children and Families and the Secretary of Juvenile Justice. Counties that have a unified family court shall be given preference.

(2) The Secretary of Children and Families shall seek proposals from interested child welfare service providers to elicit innovative approaches for the pilot project. The Secretary of Children and Families, in consultation with the Secretary of Juvenile Justice, shall select one or more residential homes from the pilot county to participate in the project.

(3) The pilot project must include, but need not be limited to, the following:

(a) Training provided by the Department of Juvenile Justice to pilot home staff.

(b) Intervention services by the Department of Juvenile Justice to youth on probation who reside in pilot homes.

(c) Enhanced security measures at pilot homes.

(d) Unified treatment plans for crossover youth served by multiple state and local agencies.

(e) Interventions to ensure that youth at low risk of

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59 reoffending are not negatively affected by high-risk crossover
60 youth.
61 (4) The pilot project must begin no later than July 1,
62 2013, and must end June 30, 2014.
63 (5) The Department of Children and Families and the
64 Department of Juvenile Justice shall jointly prepare an interim
65 report and final report on findings and recommendations relating
66 to the pilot project. The reports must include performance
67 measure data, including, but not limited to:
68 (a) The number of youth served by the pilot project,
69 including demographic information, prior offense history, and
70 relative risk to reoffend at time of placement as determined by
71 the Department of Juvenile Justice.
72 (b) The number of youth who receive a charge for a new
73 violation of law while under supervision of the pilot project.
74 (c) The number of youth who receive a violation of
75 probation while under supervision of the pilot project.
76 (d) The reduction in risk factors.
77 (e) The increase in protective factors.
78 (f) The number of youth who transfer out of the pilot home
79 for behavioral reasons.
80 (g) The number of calls to law enforcement as a result of
81 incidents involving youth in the pilot home.
82 (h) The academic performance of youth in the pilot home.
83
84 The interim report is due December 31, 2013, and the final
85 report is due August 31, 2014. The Department of Children and
86 Families and the Department of Juvenile Justice shall submit the
87 reports to the Governor, the President of the Senate, and the

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88 Speaker of the House of Representatives.
89 Section 2. This act shall take effect upon becoming a law.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/13
Meeting Date

Topic: Crossover Youth

Bill Number: SPB 7134 *(if applicable)*

Name: Elisa Cramer

Amendment Barcode: *(if applicable)*

Job Title: Family and Community Services Director - DCF

Address: 1317 Winewood Blvd.
Street

Tallahassee, FL
City *State* *Zip*

Phone:

E-mail: elisa_cramer@dcf.state.fl.us

Speaking: ☐ For ☐ Against ☑ Information

Representing: Florida Dept. of Children and Families

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 1, 2013
Meeting Date

Topic:

Bill Number: 7134 *(if applicable)*

Name: BOB DILLINGER

Amendment Barcode: *(if applicable)*

Job Title: Public Defender

Address: 14250 49TH STREET
Street

CLEARWATER FL 33762
City *State* *Zip*

Phone: 727-464-6516

E-mail: bdilling@wearethehope.org

Speaking: ☐ For ☐ Against ☑ Information

Representing: Florida Public Defender Assoc.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 472

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

SUBJECT: Developmental Disabilities

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Hendon	CF	**Fav/CS**
2.			BI	
3.			AHS	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	x	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 472 creates the Developmental Disabilities Savings Program (savings program) which is intended to assist families in paying for services for children with developmental disabilities who will become ineligible for services, such as exceptional education services, due to age.

The bill creates the Developmental Disabilities Savings Program Board (board) to administer the savings program. The board consists of seven members who are to serve on the board without compensation. The bill lists the powers and duties of the board and provides that the goals of the board are to provide all contributors and benefactors of the program with the most secure, well-diversified, and beneficially administered savings program possible, to allow all qualified firms interested in providing investment services equal consideration, and to provide such services to the state at no cost and to the contributors and benefactors at the lowest cost possible.

The bill has no immediate fiscal impact on the state, but will have an indeterminate cost to operate the board once it becomes operational, and has an effective date of July 1, 2013, or on the date the "Achieving a Better Life Experience Act," or similar legislation, becomes law, whichever occurs later.

This bill creates unnumbered sections of the Florida Statutes.

II. Present Situation:

Developmental Disabilities

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities.[1] A developmental disability is defined as "a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely."[2] Children who are at high risk of having a developmental disability and are between the ages of 3 and 5 are also eligible for services.[3] The primary purpose of APD is to develop and implement community-based services to ensure the safety, well-being, and self-sufficiency of people with developmental disabilities to help them live, learn, and work in their communities, and to provide assistance in identifying needs and funding to purchase supports and services.[4]

Currently, home and community-based services for Medicaid recipients with developmental disabilities are provided through a four-tier waiver system.[5] The tier system was created by the 2007 Legislature to establish a predictable spending model for the program and to help control over-utilization of services which has led to significant program deficits. The program offers home and community-based services, including therapies, adult day training, behavioral services, residential habilitation services, respite, nursing services, employment, and supported living services, among others.[6] Each of the tier waivers targets specific groups of people with certain service needs.

The 2010 Legislature directed APD, in consultation with AHCA, to develop and implement individual budgets ("ibudget") as the basis for allocating funds to people enrolled in the Medicaid waiver programs. The ibudget system uses an algorithm to allocate funds to individuals based on client characteristics and acuity, which are reliable predictors of need. The ibudget caps each client's funding for a 12-month period, subject to exceptions for extraordinary needs. AHCA received approval from the federal government to implement the ibudget system in March of 2011. The majority of individuals receiving waiver services have now been transited to the ibudget.[7]

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[1] Section 20.197(3), F.S.
[2] Section 393.063(9), F.S.
[3] "High-risk child" is defined in s. 393.063(20), F.S.
[4] Section 393.062, F.S.
[5] Section 393.0661, F.S.
[6] Agency for Health Care Administration, *Developmental Disabilities Waiver Services Coverages and Limitations Handbook*, (Nov. 2010), *available at* http://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/DD_Waiver_Handbook_Final_Rule_Nov_2010.pdf (last visited Mar. 22, 2012).
[7] Email from Jared Torres, Legislative Affairs Director, Agency for Persons with Disabilities (Mar. 25, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

Demand for services exceeds available funding, as a consequence APD maintains a waiting list. As of March 25, 2013, 28,979 individuals are receiving services through the waiver and 22,308 are on the waiting list.[8] APD annually serves more than 50,000 persons with disabilities.[9]

Education for Persons with Developmental Disabilities

Prior to 1975, children with developmental disabilities often did not receive appropriate educational services, in part, because they were being excluded from public schools or because there was a lack of adequate resources in public schools. However, that changed with the passage of the Education for All Handicapped Children Act of 1975 (Act), which has been successful in ensuring children with disabilities, and the families of such children, access to a free appropriate public education and in improving educational results for children with disabilities.[10] The Act defines "children with disabilities" as a child with:

- Intellectual disabilities, hearing impairments (including deafness) speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments; or specific learning disabilities
- and who, by reason, thereof, needs special education and related services.[11]

The federal government provides grants to states through the Act in order to assist them in providing special education and related services to children with disabilities.[12] In order to be eligible for these funds, federal law requires each state to make free appropriate public education available to all children with disabilities residing in the state between the ages of three and 21, including children who have been suspended or expelled from school.[13] The Act requires that schools develop an Individual Education Program for each child that details the specific special education and related services that will meet the child's unique needs and prepare him or her for further education, employment, and independent living.[14] The state educational agency must exercise general supervision over all educational programs for children with disabilities in the state, including all programs administered by other state or local agencies, and ensure that the programs meet the educational standards of the state educational agency.[15]

Exceptional Students in Florida

Florida law provides that special education services be available to persons with disabilities. The law defines "special education services" as specially designed instruction and related services that are necessary for an exceptional student to benefit from education. These services may include:

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[8] *Id.*
[9] The number reflects waiver and waitlist clients because individuals on the waitlist may receive some services or temporary supports that are not on the waiver. *Id*
[10] 20 U.S.C. s. 1400.
[11] 20 U.S.C.1401(3).
[12] 20 U.S.C. s. 1411.
[13] 20 U.S.C. s. 1412.
[14] 20 U.S.C. s. 1414(d).
[15] 34 C.F.R. s. 300.149.

- Transportation;
- Diagnostic and evaluation services;
- Social services;
- Physical and occupational therapy;
- Speech and language pathology services;
- Job placement;
- Orientation and mobility training;
- Braillists, typists, and readers for the blind;
- Interpreters and auditory amplification;
- Services provided by a certified listening and spoken language specialist;
- Rehabilitation counseling;
- Transition services;
- Mental health services;
- Guidance and career counseling;
- Specified materials, assistive technology devices, and other specialized equipment; and
- Other such services as approved by rules of the State Board of Education.[16]

An "exceptional student" is defined as:

> [A]ny student who has been determined eligible for a special program in accordance with rules of the State Board of Education. The term includes students who are gifted and students with disabilities who have an intellectual disability; autism spectrum disorder; a speech impairment; a language impairment; an orthopedic impairment; [any] other health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; or a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; students who are deaf or hard of hearing or dual sensory impaired; students who are hospitalized or homebound; children with developmental delays ages birth through 5 years, or children, ages birth through 2 years, with established conditions that are identified in State Board of Education rules pursuant to s. 1003.21(1)(e).[17]

Section 1003.57, F.S., ensures that all exceptional students are provided a public education with appropriate due process rights. Chapter 6A-6 of the Florida Administrative Code operationally defines the statute and establishes program eligibility and evaluation criteria for all exceptional students, including students identified as gifted.[18] In the fall of 2012, there were nearly 350,000 exceptional students in the state, not including those designated as gifted students.[19]

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[16] Section 1003.01(3)(b), F.S.
[17] Section 1003.01(3)(a), F.S.
[18] Florida Department of Education, *Memorandum: Revised Exceptional Student Education Rules*, 2 (Oct. 15, 2004), *available at* http://info.fldoe.org/docushare/dsweb/Get/Document-2533/ESE.pdf (last visited Mar. 25, 2013).
[19] Education Information and Accountability Services, Florida Department of Education, *Data Report: Membership in Programs for Exceptional Students, Fall 2010*, 2 (Feb. 2011), *available at* http://www.fldoe.org/eias/eiaspubs/pubstudent.asp (follow the "Membership in Programs for Exceptional Students" hyperlink) (last visited Mar. 25, 2013).

Prepaid Educational Plans

The Stanley G. Tate Florida Prepaid College Program allows purchasers to buy prepaid contracts to pay the registration fees, local fees, tuition differential fees, and dormitory expenses of beneficiaries at Florida community colleges and state universities, in advance of enrollment.[20] Beneficiaries of prepaid contracts are permitted to transfer the benefits of their contracts to any of the following institutions that qualify as an "eligible educational institution" under s. 529 of the Internal Revenue Code:

- An independent college or university located and chartered in Florida, that confers degrees and is accredited by the Southern Association of Colleges and Schools or the Accrediting Council for Independent Colleges and Schools and that confers degrees;
- Any out-of-state college or university that confers degrees, is not-for-profit, and is accredited by a regional accrediting association; and
- An applied technology diploma program or career certificate program operated by a Florida community college or a career center operated by a district school board.[21]

Prepaid Services for Parents of Children with Developmental Disabilities Study Group

Chapter 2009-56, Laws of Florida, created the Prepaid Services for Parents of Children with Developmental Disabilities Study Group (study group).[22] The study group was charged with evaluating the feasibility of establishing a prepaid service plan for children with disabilities modeled after the Florida prepaid college plan. According to the legislation, the purpose of the program would be to allow funds to be paid into a plan to provide a voucher for purchasing services from willing providers once a child exits the exceptional student program. These services would assist with the transition into the workforce, if possible. The Legislature directed the study group to evaluate and develop findings regarding:

- Services for which a voucher could be used;
- Financial requirements for such a system;
- Qualifications of service providers; and
- Steps necessary to qualify prepaid service plan funds for a federal waiver match program or other federal funding, and the likelihood of obtaining a waiver or other federal funding.[23]

The study group met six times in 2009, with the bill drafting subcommittee meeting three additional times. In its final report, the study group concluded that "the years after a student with a developmental disability ages out of the educational system are critical for learning and transition." To provide families with adequate resources to access services, the study group recommended pursuing legislation to establish the Florida Developmental Disabilities Prepaid Savings Account Trust fund consisting of a prepaid contract fund and an investment fund.[24]

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[20] Section 1009.98, F.S.
[21] *Id.*
[22] At s. 4.
[23] *Id.*
[24] *Prepaid Services Savings Program for Parents of Children with Developmental Disabilities Study Group Final Report 2010*, *available at* http://www.apd.myflorida.com/publications/reports/docs/dd-prepaid-2010-access-ver.pdf (last visited Mar. 25, 2013).

Achieving a Better Life Experience Act (ABLE Act)

The ABLE Act, which has been filed in Congress, proposes to amend Section 529 of the Internal Revenue Service Code to create tax-free savings accounts for individuals with disabilities. First introduced in 2006, the bill would authorize these accounts to cover qualified expenses, such as education, housing, and transportation services. The accounts would be a financial resource that augments, but does not supplant, benefits provided through private insurance, Medicaid, the supplemental security income (SSI) program, wages, or other sources.[25]

III. Effect of Proposed Changes:

Section 1 names the act the "C.V. Clay Ford/Gabriela Poole Developmental Disabilities Savings Plan.

Section 2

Developmental Disabilities Savings Program

This bill creates the Developmental Disabilities Savings Program which is intended to assist families in paying for services for children with developmental disabilities who will become ineligible for services due to age.

The bill defines the following terms:

- "Benefactor" means any person making a deposit, payment, contribution, gift, or other expenditure into the investment plan for a qualified beneficiary, and may include a noncustodial parent who is obligated to make payments into the plan for his or her child.
- "Contributor" means a Florida resident who is a parent or grandparent of a qualified beneficiary and who opens a savings account.
- "Developmental disability" means a disorder or syndrome attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome, that manifests before the age of 18, and that can reasonably be expected to continue indefinitely.[26]
- "Eligible services" include health-related, housing-related, education-related, employment-related, or other specific services.
- "Qualified beneficiary" means an individual with a developmental disability who is a resident of the state and who is under 22 years of age at the time a contributor opens a savings account on his or her behalf.
- "Savings program" means the Developmental Disabilities Savings Program.

The bill provides that the savings program must inform the purchaser of the potential impact of plan participation on eligibility for Medicaid or other state or federally-funded programs. Also, the bill requires that information and training concerning the program and its benefits for a qualified beneficiary to advance his or her goals and become a contributing member of society be provided.

[25] Press Release, Congress of the United States, *Achieving a Better Life Experience Act*, (Feb. 13, 2013) (on file with the Senate Children, Families and Elder Affairs Committee).
[26] This is the definition of "developmental disability" found in s. 393.063(9), F.S, which is cross-referenced in the bill.

Before the savings program may be implemented, the following must be obtained by the Developmental Disabilities Savings Program Board:

- A written opinion of a qualified attorney specializing in federal securities law that the savings program does not violate federal securities law; and
- A private letter ruling from the federal Internal Revenue Service (IRS) indicating that under the savings program taxes on any payments made, money deposited, investments made, and resulting earnings may be deferred under the Internal Revenue Code.

If the IRS declines to issue a private letter ruling, the bill provides that the program may rely on the legal opinion of a qualified attorney specializing in tax law.

The bill provides that the savings program is not a promise or guarantee that a qualified beneficiary will become eligible for Medicaid, receive permanent services, be enrolled in the Medicaid waiver program, or receive any other state or federal assistance. Likewise, the state does not make assurances regarding the performance of the program.

Developmental Disabilities Savings Program Board

The bill creates the Developmental Disabilities Savings Program Board (board), which has all of the powers of a body corporate, and is to administer the savings program.

The board consists of seven members:

- The Chief Financial Officer or the director of the Division of Treasury.
- The director of the Agency for Persons with Disabilities.
- The executive director of The Arc of Florida.
- The president of The Family Care Council of Florida, or designee.
- Three members, appointed by the Governor, who possess knowledge, skill, and experience in the areas of accounting, actuary, risk management, or investment management. These members are appointed for three-year terms.

A chair and vice chair shall be elected annually and the board shall designate a secretary-treasurer who does not need to be a member of the board. The board shall meet on a quarterly basis. Members of the board are to serve without compensation and must file a full and public disclosure of their financial interests.

The bill provides that the board shall have the following powers and duties:

- Appointing an executive director to serve as the chief administrative and operational officer of the program and to perform other duties assigned to him or her by the board.
- Delegating responsibility for administration of the savings program to persons the board determines are qualified.
- Adopting an official seal and rules.
- Making and executing contracts and other necessary instruments.
- Establishing agreements or other transactions with federal, state, and local agencies.

- Forming strategic alliances with public and private entities to provide benefits to the savings program.
- Appearing in its own behalf before boards, commissions, or other government agencies.
- Procuring and contracting for goods and services, employing personnel, and engaging the services of private consultants, actuaries, managers, legal counsel, and auditors in a manner determined to be necessary and appropriate by the board.
- Adopting procedures to govern contract dispute proceedings between the board and its vendors.
- Soliciting proposals and contracting for the marketing of the savings program.[27]
- Investing funds not required for immediate disbursement.
- Holding, buying, and selling any instruments, obligations, securities, and property determined appropriate by the board.
- Soliciting and accepting gifts, grants, loans, and other aids from any source or participating in any other way in any government program to carry out the purposes of the savings program.
- Requiring and collecting administrative fees and charges in connection with any transaction.
- Suing and being sued.
- Endorsing insurance coverage written exclusively for the purpose of protecting the investment plan, and the purchasers, benefactors, and beneficiaries thereof.
- Procuring insurance against any loss in connection with the property, assets, and activities of the savings program or the board.
- Providing for the receipt of contributions.
- Imposing reasonable time limits on use of the benefits provided by the savings program.
- Delineating the terms and conditions under which contributions may be withdrawn from the investment plan and imposing reasonable fees and charges for such withdrawal.
- Establishing other policies, procedures, and criteria to implement and administer the savings program.
- Additionally, the bill provides that the board shall solicit proposals and contract for investment managers, investment consultants, trustee services firms, and records administrators.

The board may adopt procedures necessary for the savings program to qualify for or retain its status as a qualified tax-deferred program or other similar status of the program, purchasers, and qualified beneficiaries under the Internal Revenue Code.

The act expires June 30, 2016.

Section 3 provides that the bill takes effect July 1, 2013, or on the date the "Achieving a Better Life Experience Act," or similar legislation, becomes law, whichever occurs later.

[27] The bill provides that all marketing materials must be approved by the board and that neither the state nor the board is liable for misrepresentation of the savings program by a marketing agent.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill provides that neither the state nor the Developmental Disabilities Savings Program Board (board) is liable for the misrepresentation of the savings program by a marketing agent. This bill possibly implicates the right of access to the courts under article I, section 21 of the Florida Constitution by eliminating or circumscribing an individual's right of action. Article I, section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." The Florida Constitution protects "only rights that existed at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution."[28] Constitutional limitations were placed on the Legislature's right to abolish a cause of action in the Florida Supreme Court case *Kluger v. White*, 281 So. 2d 1 (Fla. 1973). The Court held:

> [W]here a right of access … has been provided … the Legislature is without power to abolish such a right without providing a reasonable alternative … unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.[29]

To the extent that this bill is seen as depriving a person of the right to go to court to pursue a claim against the state or the board for a misrepresentation of the savings program, the bill may face constitutional scrutiny.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

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[28] 10A FLA. JUR 2D *Constitutional Law* s. 360. When analyzing an access to courts issue, the Florida Supreme Court clarified that 1968 is the relevant year in deciding whether a common law cause of action existed. *Eller v. Shova*, 630 So. 2d 537, 542 n. 4 (Fla. 1993).

[29] *Kluger*, 281 So. 2d at 4.

B. Private Sector Impact:

Parents or grandparents of children with developmental disabilities may be able to use the savings program to plan for their children or grandchildren's future educational and health related services.

C. Government Sector Impact:

According to the Agency for Persons with Disabilities, the bill should not have a direct financial impact on the agency.[30]

The bill authorizes a public board to run the program. The administrative costs of the board and the operational costs of the program are indeterminate. The bill authorizes the board to collect transaction fees, but does not provide detail regarding the amounts or authorized uses.

VI. Technical Deficiencies:

The bill prescribes the powers and duties of the board, such as procuring and contracting for goods and services, employing personnel, and engaging the services of private consultants, actuaries, managers, legal counsel, and auditors. However, the bill does not provide a funding source for the board to pay for these services or for the operations of the board.[31]

VII. Related Issues:

While the bill is modeled after the Florida Prepaid Program, it lacks the direction that law provides with respect to the structure and operation of the program.

The bill appears to create a public entity that would be subject to the open records and meetings laws of the state. The Legislature may wish to give consideration to any exemptions from ch. 119, F.S. and article 1, section 24 of the Florida Constitution as may be necessary or prudent to ensure the success of the savings program.[32]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Children, Families, and Elder Affairs on April 1, 2013:

- The CS removed provisions that described a program that would allow prepayment of eligible services at a fixed price.

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[30] Agency for Persons with Disabilities, *2013 Bill Analysis SB 472* (Feb. 14, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

[31] The bill authorizes the board to collect transaction fees, but does not provide detail regarding the amounts or authorized uses.

[32] *See e.g.* s. 1009.981(6), F.S., which creates a public records exemption for information that identifies the benefactors or beneficiaries of Florida College Savings Program accounts.

- The CS corrected technical deficiencies in the original bill related to the definition of "developmental disability," and inconsistent or undefined terminology.
- The CS changed the Board composition to remove the director of the Division of Vocational Rehabilitation and to substitute in his or her place the Chief Financial Officer of the director of the Division of Treasury.
- The CS names the act the "C.V. Clay Ford/Gabriela Poole Developmental Disabilities Savings Plan."

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
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	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. This act may be cited as the "C.V. Clay
6 Ford/Gabriela Poole Developmental Disabilities Savings Plan."
7 Section 2. Developmental Disabilities Savings Program.—
8 (1) The Legislature recognizes that there is a need to
9 provide families who have children that have developmental
10 disabilities who will become ineligible for services due to age
11 with sufficient access to services for those children. The
12 continued provision of educational, health, housing, employment,

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13 and other support services for children who have developmental
14 disabilities is critical. The Legislature finds that the
15 creation of a savings and investment program for families with
16 such children can offer continued accessibility to services,
17 regardless of income, insurance, or Medicaid eligibility. It is,
18 therefore, the intent of the Legislature that the Developmental
19 Disabilities Savings Program be established so that families may
20 begin saving in advance for the later costs associated with
21 providing services for these children. The savings and
22 investment program must be conducted in a manner that maximizes
23 program efficiency and effectiveness.
24 (2) As used in this section, the term:
25 (a) “Benefactor” means any person making a deposit,
26 payment, contribution, gift, or other expenditure into the
27 investment plan for a qualified beneficiary, and may include a
28 noncustodial parent who is obligated to make payments into the
29 plan for his or her child.
30 (b) “Contributor” means a resident of this state who is the
31 parent or grandparent of a qualified beneficiary and who opens a
32 savings account.
33 (c) “Developmental disability” has the same meaning as
34 provided in s. 393.063, Florida Statutes.
35 (d) “Eligible services” means:
36 1. Specific services that may include respite care,
37 provision of rehabilitation and habilitation services,
38 transportation, assistive technology, personal assistance
39 services, counseling, support for families headed by aging
40 caregivers, vehicular and home modifications, and assistance to
41 cover extraordinary expenses associated with the needs of

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42 individuals who have developmental disabilities.
43 2. Health-related services that may include medical,
44 dental, mental health, and other human and social services to
45 enhance the well-being of the individual, as well as durable and
46 consumable medical supplies.
47 3. Housing-related services that may result in individuals
48 who have developmental disabilities having access to and use of
49 housing and housing supports and services in their communities,
50 including assistance related to modifying an apartment or home.
51 4. Education-related services to facilitate attendance in a
52 training or educational setting, such as technology and
53 personnel-related services that assist in obtaining and
54 maximizing the educational experience.
55 5. Employment-related services that are necessary to assist
56 the individual in meeting essential job functions through
57 technology, personnel-related expenses, and transportation
58 expenses.
59 (e) "Qualified beneficiary" means an individual who has a
60 developmental disability, who is a resident of the state, and
61 who is younger than 22 years of age at the time a contributor
62 opens a savings account on his or her behalf.
63 (f) "Savings account contract" means the contract under the
64 savings program which allows a contributor or benefactor to make
65 payments into an investment plan that will provide funds that
66 may be used to pay for eligible services for a qualified
67 beneficiary.
68 (g) "Savings program" means the Developmental Disabilities
69 Savings Program.
70 (3) There is created the Developmental Disabilities Savings

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71 Program. The savings program shall:
72 (a) Offer an investment plan through which eligible
73 services for a qualified beneficiary may be saved for in
74 advance.
75 (b) Provide information and training concerning the program
76 and its benefits for a qualified beneficiary to advance his or
77 her goals and become a contributing member of society.
78 (c) Inform the contributor of the potential impact of plan
79 participation on eligibility for Medicaid or other state or
80 federally funded programs.
81 (4) The savings program may not be implemented until the
82 board created under subsection (6), which is administering the
83 savings program, has obtained the following:
84 (a) A written opinion of a qualified attorney specializing
85 in federal securities law stating that the savings program does
86 not violate federal securities law; and
87 (b) A private letter ruling from the Internal Revenue
88 Service indicating that under the savings program taxes on any
89 payments made, moneys deposited, or investments made, and
90 resulting earnings may be deferred under the Internal Revenue
91 Code. If the Internal Revenue Service declines to rule on the
92 request for a private letter ruling, the program may rely on a
93 legal opinion rendered by a qualified attorney specializing in
94 tax law.
95 (5) The savings program is not a promise or guarantee that
96 a qualified beneficiary will become eligible for Medicaid,
97 receive permanent services, be enrolled in the Medicaid waiver
98 program, or receive any other state or federal assistance. The
99 state is not responsible for and does not make assurances

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100 regarding the performance of the savings program or associated
101 investment plans.
102 (6) The savings program shall be administered by the
103 Developmental Disabilities Savings Program Board as a body
104 corporate with all the powers of a body corporate for the
105 purposes delineated in this section.
106 (a) The board shall consist of seven members, including:
107 1. The Chief Financial Officer or the Director of the
108 Division of Treasury.
109 2. The Director of the Agency for Persons with
110 Disabilities.
111 3. The President of The Arc of Florida.
112 4. The Chair of the Family Care Council Florida, or his or
113 her designee.
114 5. Three members, appointed by the Governor for 3-year
115 terms, who possess knowledge, skill, and experience in the areas
116 of accounting, actuarial disciplines, risk management, or
117 investment management. Any person appointed to fill a vacancy
118 for the balance of an unexpired term is eligible for appointment
119 for a full term.
120 (b) The board shall annually elect a chair and vice chair
121 from the board members, and shall designate a secretary-
122 treasurer who need not be a member of the board. The secretary-
123 treasurer shall keep a record of the board proceedings and shall
124 be the custodian of all printed material filed with or by the
125 board and its official seal.
126 1. The board shall, at a minimum, meet on a quarterly basis
127 at the call of the chair.
128 2. Notwithstanding any vacancies on the board, a majority

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129 of the members constitutes a quorum. The board may not take
130 official action in the absence of a quorum.
131 3. Members of the board shall serve without compensation,
132 and each member shall file a full and public disclosure of his
133 or her financial interests pursuant to s. 8, Art. II of the
134 State Constitution and corresponding statute.
135 (c) The board shall have the following powers and duties:
136 1. To appoint an executive director, whose compensation
137 shall be provided from revenue generated by the program, to
138 serve as the chief administrative and operational officer of the
139 program and to perform other duties assigned to him or her by
140 the board.
141 2. To delegate responsibility for administering the savings
142 program to persons who the board determines are qualified.
143 3. To adopt an official seal and procedures.
144 4. To make and execute contracts and other necessary
145 instruments.
146 5. To establish agreements or other transactions with
147 federal, state, and local agencies.
148 6. To form strategic alliances with public and private
149 entities in order to provide benefits to the savings program.
150 7. To appear on its own behalf before commissions or other
151 boards or governmental agencies.
152 8. To procure and contract for goods and services, employ
153 personnel, and engage the services of private consultants,
154 actuaries, managers, legal counsel, and auditors in a manner
155 determined to be necessary and appropriate by the board.
156 9. To adopt procedures for governing contract dispute
157 proceedings between the board and its vendors.

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158 10. To solicit proposals and contract for the marketing of
159 the savings program. Any materials produced for the purpose of
160 marketing must be submitted to the board for review. Materials
161 may not be made available to the public before being approved by
162 the board. The state and the board are not liable for
163 misrepresentation of the savings program by a marketing agent.
164 11. To invest funds not required for immediate
165 disbursement.
166 12. To hold, buy, and sell any instruments, obligations,
167 securities, and property determined appropriate by the board.
168 13. To solicit and accept gifts, grants, loans, and other
169 aids from any source or participate in any other way in any
170 government program in order to carry out the purposes of the
171 savings program.
172 14. To require and collect administrative fees and charges
173 in connection with any transaction.
174 15. To sue and be sued.
175 16. To endorse insurance coverage written exclusively for
176 the purpose of protecting the investment plan, and the
177 contributors, benefactors, and beneficiaries thereof.
178 17. To procure insurance against any loss in connection
179 with the property, assets, and activities of the savings program
180 or the board.
181 18. To provide for the receipt of contributions.
182 19. To impose reasonable time limits on the use of benefits
183 provided by the savings program. However, such limitations must
184 be specified in the savings account contract.
185 20. To delineate the terms and conditions under which
186 contributions may be withdrawn from the investment plan and

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187 impose reasonable fees and charges for such withdrawal. Such
188 terms and conditions must be specified in the savings account
189 contract.
190 21. To establish other policies, procedures, and criteria
191 to implement and administer the savings program.
192 (d) The board shall solicit proposals and contract for:
193 1. Investment managers to provide investment portfolios for
194 the savings program. The board and investment managers owe a
195 fiduciary duty to the savings program. Investment managers are
196 limited to authorized insurers as defined in s. 624.09, Florida
197 Statutes, banks as defined in s. 658.12, Florida Statutes,
198 associations as defined in s. 665.012, Florida Statutes,
199 registered United States Securities and Exchange Commission
200 investment advisers, and investment companies as defined in the
201 Investment Company Act of 1940. All investment managers must
202 have their principal place of business and corporate charter
203 located and registered in the United States. In addition, each
204 investment manager must agree to meet the obligations of the
205 board to qualified beneficiaries if moneys in the fund fail to
206 offset the obligations of the board as a result of imprudent
207 investing by such manager. Each registered insurer shall
208 evidence superior performance overall on an acceptable level of
209 surety in meeting its obligations to its policyholders and other
210 contractual obligations. Only custodians approved by the Chief
211 Financial Officer are eligible for board consideration. Each
212 investment company shall provide investment plans as specified
213 within the request for proposals.
214 2. Investment consultants to review the performance of the
215 board’s investment managers and advise the board on investment

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216 management and performance and investment policy, including the
217 contents of investment plans.
218 3. Trustee services firms to provide trustee and related
219 services to the board. The trustee services firm must agree to
220 meet the obligations of the board to qualified beneficiaries if
221 moneys in the plan fail to offset the obligations of the board
222 as a result of imprudent selection or supervision of investment
223 plans by such firm.
224 4. The services of records administrators.
225 (e) The goals of the board in procuring investment services
226 are to provide all contributors and benefactors with the most
227 well-diversified and beneficially administered savings program
228 possible in order to provide such services to the state at no
229 cost and to the contributors and benefactors at the lowest cost
230 possible. Procurement processes are subject to chapter 287,
231 Florida Statutes. Evaluations of proposals submitted pursuant to
232 paragraph (d) must consider, without limitation, fees and other
233 costs that are charged to contributors or benefactors which
234 affect account values, or which impact the operational costs of
235 the savings program; past experience and past performance in
236 providing the required services; financial history and current
237 financial strength and capital adequacy to provide the required
238 services; and the capabilities and experience of proposed
239 personnel who will provide the required services.
240 (f) The board may adopt procedures necessary for the
241 savings program in order to qualify for or retain its status as
242 a qualified tax-deferred program or other similar status of the
243 program, contributors, and qualified beneficiaries under the
244 Internal Revenue Code. The board shall inform participants in

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245 the savings program of changes to the tax or securities status
246 of the investment plan.
247 (7) This section expires on June 30, 2016.
248 Section 3. This act shall take effect July 1, 2013, or upon
249 the date that the federal "Achieving a Better Life Experience
250 Act of 2013" or "ABLE Act of 2013," S.313/H.R.647, or similar
251 legislation becomes law, whichever occurs later.
252
253 ========== T I T L E A M E N D M E N T ==========
254 And the title is amended as follows:
255 Delete everything before the enacting clause
256 and insert:
257 A bill to be entitled
258 An act relating to developmental disabilities;
259 providing a short title; establishing the
260 Developmental Disabilities Savings Program to allow
261 for advance saving for services for children who have
262 developmental disabilities and who will be ineligible
263 for certain services due to age; providing legislative
264 intent; defining terms; requiring the program to
265 provide certain information; providing that the
266 program may not be implemented until certain legal
267 opinions are obtained; establishing the Developmental
268 Disabilities Savings Program Board to administer the
269 savings program; providing for board membership;
270 specifying the powers, duties, and goals of the board;
271 providing a sunset clause; providing a contingent
272 effective date.

By Senator Bean

4-00518-13 2013472__

A bill to be entitled

An act relating to developmental disabilities; establishing the Developmental Disabilities Savings Program to allow for the advance payment of services for children who have developmental disabilities and who will be ineligible for certain services due to age; providing legislative intent; defining terms; requiring the program to provide certain information; providing that the program may not be implemented until certain legal opinions are obtained; establishing the Developmental Disabilities Savings Program Board to administer the savings program; providing for board membership; specifying the powers, duties, and goals of the board; authorizing the board to adopt rules; providing a contingent effective date.

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

Section 1. Developmental Disabilities Savings Program.—

(1) The Legislature recognizes that there is a need to provide families who have children with developmental disabilities who will become ineligible for services due to age with sufficient access to services for those children. The continued provision of educational, health, housing, employment, and other support services for children with developmental disabilities is critical. The Legislature finds that the creation of a savings and investment program for families with such children can offer continued accessibility to services, regardless of income, insurance, or Medicaid eligibility. It is,

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4-00518-13 2013472__

therefore, the intent of the Legislature that the Developmental Disabilities Savings Program be established through which many of the later costs associated with services for these children may be paid or saved for in advance. Such savings and investment program must be conducted in a manner that maximizes program efficiency and effectiveness.

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

(a) "Advance payment contract" means the contract under the savings program which allows a purchaser or benefactor to make payments into an investment plan that will provide funds that may be used to pay for eligible services for a qualified beneficiary.

(b) "Benefactor" means any person making a deposit, payment, contribution, gift, or other expenditure into the investment plan for a qualified beneficiary, and may include a noncustodial parent who is obligated to make payments into the plan for his or her child.

(c) "Developmental disability" has the same meaning as provided in s. 393.063, Florida Statutes, or means any severe, chronic disability that:

1. Is attributable to a mental or physical impairment or a combination of those impairments.

2. Occurs before the individual attains 18 years of age.

3. Is likely to continue indefinitely.

4. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency.

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59 5. Reflects the individual's need for a combination and
60 sequence of special, interdisciplinary, or generic services,
61 individualized supports, or other forms of assistance that are
62 of lifelong or extended duration and are individually planned
63 and coordinated.
64 6. For a child younger than 10 years of age, is likely to
65 meet the criteria in subparagraphs 1.-5. without intervention.
66 (d) "Eligible services" means:
67 1. Specific services that may include respite care,
68 provision of rehabilitation and habilitation services,
69 transportation, assistive technology, personal assistance
70 services, counseling, support for families headed by aging
71 caregivers, vehicular and home modifications, and assistance to
72 cover extraordinary expenses associated with the needs of
73 individuals with developmental disabilities.
74 2. Health-related services that may include medical,
75 dental, mental health, and other human and social services to
76 enhance the well-being of the individual, as well as durable and
77 consumable medical supplies.
78 3. Housing-related services that may result in individuals
79 with developmental disabilities having access to and use of
80 housing and housing supports and services in their communities,
81 including assistance related to modifying an apartment or home.
82 4. Education-related services to facilitate attendance in a
83 training or educational setting, such as technology and
84 personnel-related services that assist in obtaining and
85 maximizing the educational experience.
86 5. Employment-related services that are necessary to assist
87 the individual in meeting essential job functions through

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88 technology, personnel-related expenses, and transportation
89 expenses.
90 (e) "Purchaser" means a resident of this state who is the
91 parent or grandparent of a qualified beneficiary and who enters
92 into an advance payment contract.
93 (f) "Qualified beneficiary" means an individual with a
94 developmental disability who is a resident of the state and who
95 is younger than 22 years of age at the time a purchaser enters
96 into an advance payment contract on his or her behalf.
97 (g) "Savings program" means the Developmental Disabilities
98 Savings Program.
99 (3) There is created the Developmental Disabilities Savings
100 Program.
101 (a) The savings program shall offer an investment plan
102 through which eligible services for a qualified beneficiary may
103 be paid for in advance.
104 (b) The savings program shall provide information and
105 training concerning the program and its benefits for a qualified
106 beneficiary to advance his or her goals and become a
107 contributing member of society.
108 (c) The savings program must inform the purchaser of the
109 potential impact of plan participation on eligibility for
110 Medicaid or other state or federally funded programs.
111 (4) The savings program may not be implemented until the
112 board created under subsection (6) which is administering the
113 savings program has obtained the following:
114 (a) A written opinion of qualified counsel specializing in
115 federal securities law that the savings program and the offering
116 of participation in the investment plan does not violate federal

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117 securities law; and
118 (b) A private letter ruling from the federal Internal
119 Revenue Service indicating that under the savings program taxes
120 on any payments made, moneys deposited, investments made, and
121 resulting earnings may be deferred under the Internal Revenue
122 Code. If the Internal Revenue Service declines to rule on the
123 request for a private letter ruling, the program may rely on
124 legal opinion rendered by a qualified attorney specializing in
125 tax law.
126 (5) The savings program is not a promise or guarantee that
127 a qualified beneficiary or a designated beneficiary will become
128 eligible for Medicaid, receive permanent services, be enrolled
129 in the Medicaid waiver program, or receive any other state or
130 federal assistance.
131 (6) The savings program shall be administered by the
132 Developmental Disabilities Savings Program Board as a body
133 corporate with all the powers of a body corporate for the
134 purposes delineated in this section.
135 (a) The board shall consist of seven members, including:
136 1. The director of the Agency for Persons with
137 Disabilities.
138 2. The director of the Division of Vocational
139 Rehabilitation of the Department of Education.
140 3. The president of The Arc of Florida.
141 4. The chair of the Family Care Council of Florida, or his
142 or her designee.
143 5. Three members, appointed by the Governor for 3-year
144 terms, who possess knowledge, skill, and experience in the areas
145 of accounting, actuary, risk management, or investment

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146 management. Any person appointed to fill a vacancy for such
147 members shall serve only for the unexpired term and until a
148 successor qualifies, but is eligible for reappointment.
149 (b) The board shall annually elect a chair and vice chair
150 from the board members, and shall designate a secretary-
151 treasurer who need not be a member of the board. The secretary-
152 treasurer shall keep a record of the proceedings of the board
153 and shall be the custodian of all printed material filed with or
154 by the board and its official seal.
155 1. The board shall, at a minimum, meet on a quarterly basis
156 at the call of the chair.
157 2. Notwithstanding the existence of vacancies on the board,
158 a majority of the members constitutes a quorum. The board shall
159 take no official action in the absence of a quorum.
160 3. Members of the board shall serve without compensation,
161 and each member shall file a full and public disclosure of his
162 or her financial interests pursuant to s. 8, Art. II of the
163 State Constitution and corresponding statute.
164 (c) The board shall have the powers and duties necessary or
165 proper to carry out the following provisions, including, but not
166 limited to:
167 1. Appointing an executive director, whose compensation
168 shall be provided from revenue generated by the program, to
169 serve as the chief administrative and operational officer of the
170 program and to perform other duties assigned to him or her by
171 the board.
172 2. Delegating responsibility for administration of the
173 savings program to persons the board determines are qualified.
174 3. Adopting an official seal and rules.

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

175 4. Making and executing contracts and other necessary
176 instruments.
177 5. Establishing agreements or other transactions with
178 federal, state, and local agencies.
179 6. Forming strategic alliances with public and private
180 entities to provide benefits to the savings program.
181 7. Appearing on its own behalf before boards, commissions,
182 or other governmental agencies.
183 8. Procuring and contracting for goods and services,
184 employing personnel, and engaging the services of private
185 consultants, actuaries, managers, legal counsel, and auditors in
186 a manner determined to be necessary and appropriate by the
187 board.
188 9. Adopting procedures to govern contract dispute
189 proceedings between the board and its vendors.
190 10. Soliciting proposals and contracting for the marketing
191 of the savings program. Any materials produced for the purpose
192 of marketing must be submitted to the board for review.
193 Materials may not be made available to the public before the
194 materials are approved by the board. The state and the board are
195 not liable for misrepresentation of the savings program by a
196 marketing agent.
197 11. Investing funds not required for immediate
198 disbursement.
199 12. Holding, buying, and selling any instruments,
200 obligations, securities, and property determined appropriate by
201 the board.
202 13. Administering the savings program in a manner that is
203 sufficiently actuarially sound to defray the obligations of the

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

204 savings program. The board shall annually evaluate the actuarial
205 soundness of the investment plan.
206 14. Soliciting and accepting gifts, grants, loans, and
207 other aids from any source or participating in any other way in
208 any government program to carry out the purposes of the savings
209 program.
210 15. Requiring and collecting administrative fees and
211 charges in connection with any transaction and imposing
212 reasonable penalties, including default, for delinquent payments
213 or for entering into an advance payment contract on a fraudulent
214 basis.
215 16. Suing and being sued.
216 17. Endorsing insurance coverage written exclusively for
217 the purpose of protecting the investment plan, and the
218 purchasers, benefactors, and beneficiaries thereof.
219 18. Procuring insurance against any loss in connection with
220 the property, assets, and activities of the savings program or
221 the board.
222 19. Providing for the receipt of contributions in lump sums
223 or installment payments.
224 20. Imposing reasonable time limits on use of the benefits
225 provided by the savings program. However, such limitations must
226 be specified in the contract.
227 21. Delineating the terms and conditions under which
228 payments may be withdrawn from the investment plan and impose
229 reasonable fees and charges for such withdrawal. Such terms and
230 conditions must be specified within the advance payment
231 contract.
232 22. Establishing other policies, procedures, and criteria

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

233 to implement and administer the savings program.
234 (d) The board shall solicit proposals and contract for:
235 1. Investment managers to provide investment portfolios for
236 the savings program. Investment managers are limited to
237 authorized insurers as defined in s. 624.09, Florida Statutes,
238 banks as defined in s. 658.12, Florida Statutes, associations as
239 defined in s. 665.012, Florida Statutes, authorized Securities
240 and Exchange Commission investment advisers, and investment
241 companies as defined in the Investment Company Act of 1940. All
242 investment managers shall have their principal place of business
243 and corporate charter located and registered in the United
244 States. In addition, each investment manager must agree to meet
245 the obligations of the board to qualified beneficiaries if
246 moneys in the fund fail to offset the obligations of the board
247 as a result of imprudent investing by such manager. Each
248 authorized insurer shall evidence superior performance overall
249 on an acceptable level of surety in meeting its obligations to
250 its policyholders and other contractual obligations. Only
251 qualified public depositories approved by the Chief Financial
252 Officer are eligible for board consideration. Each investment
253 company shall provide investment plans as specified within the
254 request for proposals.
255 2. Investment consultants to review the performance of the
256 board's investment managers and advise the board on investment
257 management and performance and investment policy, including the
258 contents of investment plans.
259 3. Trustee services firms to provide trustee and related
260 services to the board. The trustee services firm must agree to
261 meet the obligations of the board to qualified beneficiaries if

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262 moneys in the plan fail to offset the obligations of the board
263 as a result of imprudent selection or supervision of investment
264 plans by such firm.
265 4. The services of records administrators.
266 (e) The goals of the board in procuring investment services
267 shall be to provide all purchasers and benefactors with the most
268 secure, well-diversified, and beneficially administered savings
269 program possible, to allow all qualified firms interested in
270 providing such services equal consideration, and to provide such
271 services to the state at no cost and to the purchasers and
272 benefactors at the lowest cost possible. Evaluations of
273 proposals submitted pursuant to paragraph (d) must consider,
274 without limitation, fees and other costs that are charged to
275 purchasers or benefactors that affect account values, or that
276 impact the operational costs of the savings program; past
277 experience and past performance in providing the required
278 services; financial history and current financial strength and
279 capital adequacy to provide the required services; and
280 capabilities and experience of proposed personnel who will
281 provide the required services.
282 (f) The board may adopt rules necessary for the savings
283 program to qualify for or retain its status as a qualified tax-
284 deferred program or other similar status of the program,
285 purchasers, and qualified beneficiaries under the Internal
286 Revenue Code. The board shall inform participants in the savings
287 program of changes to the tax or securities status of the
288 investment plan.
289 Section 2. This act shall take effect July 1, 2013, or upon
290 the date that the Governor, by executive order filed with the

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291 Secretary of State, certifies that the United States Congress
292 has passed the federal "Achieving a Better Life Experience Act
293 of 2011" or "ABLE Act of 2011," S.1872/H.R.3423, or similar
294 legislation, whichever occurs later, if such legislation becomes
295 law before October 5, 2015.

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The Florida Senate

Committee Agenda Request

RECEIVED

FEB 06 2013

Senate Committee
Children and Families

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

Subject: Committee Agenda Request

Date: February 6, 2013

I respectfully request that **Senate Bill #472**, relating to Developmental Disabilities, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-13
Meeting Date

Topic: Savings Plans
Bill Number: SB 472 *(if applicable)*

Name: Dixie Sansom
Amendment Barcode: *(if applicable)*

Job Title: Lobbyist

Address: P.O. Box 98
Street

Cocoa, FL
City, State, Zip

Phone: 321-543-2195

E-mail: dixiesansom@aol.com

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

Representing: The Arc of Florida

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/2013
Meeting Date

Topic: Developmental Disabilities Savings Plan
Bill Number: SB 472 *(if applicable)*

Name: Deborah Linton
Amendment Barcode: *(if applicable)*

Job Title: Executive Director

Address: 2898 Mahan Drive Suite 1
Street

Tallahassee FL 32308
City, State, Zip

Phone: 850-921-0466

E-mail: deborah@arcflorida.org

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

Representing: The Arc 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 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 548

INTRODUCER: Children, Families, and Elder Affairs Committee; Senators Detert and Ring

SUBJECT: Florida Kidcare Program

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Hendon	CF	**Fav/CS**
2.			AHS	
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	x	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 548 grants presumptive eligibility to any child under the age of 19 who applies for coverage under the Kidcare program through a federally qualified health center, subject to federal rules. A child is presumed eligible for coverage if, based on a preliminary comparison of the family's income to the eligibility criteria, it appears the child is meets the program's eligibility criteria. Presumptive eligibility provides up to 60 days of coverage until a completed application is submitted, income is verified, and a final eligibility determination is made.

This bill will have a significant fiscal impact on the state and has an effective date of January 1, 2014.

This bill substantially amends section 409.814 of the Florida Statutes.

II. Present Situation:

Florida Kidcare Program

Florida Kidcare is the state's children's health insurance program for uninsured children from birth to age 19 who meet income and eligibility requirements. The 1998 Florida Legislature created Florida Kidcare after Congress passed the State Children's Health Insurance Program (CHIP), as part of the Balanced Budget Act of 1997 (BBA). CHIP is a non-entitlement program located in Title XXI of the Social Security Act.[1] Initially authorized for 10 years and then recently re-authorized[2] through 2019 with federal funding through 2015, CHIP provides subsidized health insurance coverage to uninsured children who do not qualify for Medicaid but who meet other eligibility requirements. Because it is a non-entitlement program, the state is able to determine how many children to cover and may discontinue enrollment or modify benefits within federal requirements in order to ensure that program expenditures do not exceed available Title XXI funding. The state statutory authority for Kidcare is found in part II of ch. 409, F.S.

Kidcare encompasses four programs: Medicaid for children, the Medikids program, the Children's Medical Services Network, and the Florida Healthy Kids program. Kidcare coverage is funded by state and federal funds through Title XIX (Medicaid) and Title XXI (CHIP) of the federal Social Security Act. Families also contribute to the cost of the coverage under the Title XXI-funded components of Kidcare based on their household size, income, and other eligibility factors. For families with incomes above the income limits for premium assistance or who do not otherwise qualify for assistance, Kidcare also offers an option under the Healthy Kids component and the Medikids component for the family to obtain coverage for its children by paying the full premium.

Eligibility for the Kidcare components that are funded by Title XXI is determined in part by age and household income as follows:[3]

- Medicaid for Children: Title XXI funding is available from birth until age 1 for family incomes between 185 percent and 200 percent of the Federal Poverty Level (FPL).
- Medikids: Title XXI funding is available from age 1 until age 5 for family incomes between 133 percent and 200 percent of the FPL.
- Healthy Kids: Title XXI funding is available from age 5 until age 6 for family incomes between 133 percent and 200 percent of the FPL. For age 6 until age 19, Title XXI funding is available for family incomes between 100 percent and 200 percent of the FPL.
- Children's Medical Services Network: Title XXI and Title XIX funds are available from birth until age 19 for family incomes up to 200 percent of the FPL for children with special health care needs. The Department of Health assesses whether children meet the program's clinical requirements.

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[1] Pub. Law No. 105-33, H.R. 2015, 105th Cong. (Aug. 5, 1997).
[2] Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Pub. Law No. 111-3, H.R. 2, 111th Cong. (Feb. 4, 2009).
[3] Fla. Dep't of Health, *Florida Kidcare Eligibility*, *available at* www.doh.state.fl.us/alternatesites/kidcare/images/data/FKC-eligibilityflag-accessible.pdf (last visited on Mar. 5, 2013).

Kidcare is administered jointly by the Agency for Health Care Administration (AHCA), the Department of Children and Families (DCF), the Department of Health, and the Florida Healthy Kids Corporation. Each entity has specific duties and responsibilities under Kidcare as detailed in part II of ch. 409, F.S. DCF determines eligibility for Medicaid, and the Florida Healthy Kids Corporation processes all Kidcare applications and determines eligibility for CHIP, which includes a Medicaid screening and referral process to the Department of Children and Families, as appropriate.

To enroll in Kidcare, families utilize a form that is both a Medicaid and CHIP application. Families may apply using the paper application or an online application. Both formats are available in English, Spanish, and Creole. Income eligibility is determined through electronic data matches with available databases or, in cases where income cannot be verified electronically, through submission of current pay stubs, tax returns, or W-2 forms.

Medicaid applications must be approved or denied within 45 days from the date the application is received and all factors of eligibility are verified. Currently, eligibility determinations for the Title XXI-funded programs occur within 4 – 6 weeks.[4] Coverage for a child under a Title XXI-funded program begins the first day of the month following the date the child is determined eligible for services and the required premium is paid.

Once a child is determined eligible, Florida Kidcare has 12 months of continuous eligibility for all children, except children ages 5 – 19 who are enrolled in Medicaid who receive six months continuous eligibility, regardless of changes in circumstance (other than aging out of the program). Continuous eligibility allows a child to maintain coverage for a set period, which reduces breaks in coverage and ensures continuity of care.[5] Medicaid may also be authorized for up to three months prior to the date of application provided an applicant has an unpaid medical bill for one or more of the three months preceding the application.

As of December 2012, total enrollment in Kidcare was 2,069,470. Between December 2011 and December 2012:

- Total Florida Kidcare enrollment increased by 4.3 percent. Medicaid child enrollments increased by 4.5 percent, while Title XXI-funded Florida Kidcare enrollment decreased by 1.5 percent.
- Among the Title XXI-funded components, enrollment in MediKids increased by 0.4 percent and Healthy Kids by 3.2 percent, while CMS Network enrollment decreased by 5.8 percent.
- MediKids full pay enrollment increased by 3.1 percent, while Healthy Kids full pay enrollment increased 13.5 percent.[6]

The 2012 – 2013 General Appropriations Act appropriated $539,160,556 to operate the Florida Kidcare Program, including $59,122,591 in General Revenue and $480,037,965 from trust funds.[7] The Social Services Estimating Conference convened on November 16, 2012 to adopt a

[4] Conversation with Fred Knapp, Florida Healthy Kids Corporation (Mar. 25, 2013).
[5] Fla. KidCare Coordinating Council, *2013 Annual Report and Recommendations*, (Jan. 4, 2012), *available at* http://www.floridakidcare.org/council/reports/2013_KCC_Report.pdf (last visited Mar. 5, 2012).
[6] *Id.*
[7] Ch. 2012-118, L.O.F.

caseload and expenditure forecast for the Kidcare Program through June 2016. For fiscal year 2012-13, the program is projected to end the year with a General Revenue surplus of $9.8 million.[8]

The Georgetown University Center for Children and Families reports that in 2010 the overall number of uninsured nationwide increased 8.5 percent from 2008 to a total of 47.2 million people. The number of children in poverty also increased significantly from 13.2 million in 2008 to 15.7 million in 2010. Yet, during this same period, the number of uninsured children decreased from 6.9 million to 5.9 million – a decrease the report attributes to the success of CHIP and Medicaid. Florida saw the largest decrease in uninsured children nationwide. Florida's child uninsurance rate declined 4 percent from 667,758 uninsured children in 2008 to 506,934 in 2010. Despite this large decrease, Florida's overall rate still remained at 12.7 percent in 2010, which exceeds the national average of 8.0 percent.[9]

Presumptive Eligibility

At the same time it created CHIP, Congress also amended Title XIX of the Social Security Act, to give states the option to allow specified qualified entities to make presumptive eligibility determinations of all children who apply for benefits through Medicaid or CHIP.[10] Qualified entities identify children they are already serving who are uninsured and who are likely to be eligible for Medicaid or CHIP. The qualified entity compares the family income of those children to eligibility levels for children's health care coverage under Medicaid or CHIP. If it looks like a child is eligible, he or she is given immediate access to temporary care until an official determination is made. Reported income is then verified after the fact. If, on verification, the family is determined to have income that exceeds the limits for program eligibility, he or she is taken off the program. The presumptive eligibility period for a child found to be eligible, based upon preliminary information that the family meets the financial eligibility standards, begins on the date of the presumptive eligibility determination and ends at the end of the next month, which is when a complete application must be filed.[11]

During the presumptive eligibility period, states receive their regular federal medical assistance participation (FMAP) match for children determined presumptively eligible for Medicaid and the enhanced FMAP for children determined eligible for CHIP or CHIP-funded Medicaid expansion.

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[8] Social Services Estimating Conference, *Florida KidCare Program* (Nov. 16, 2012), *available at* http://www.floridakidcare.org/council/12-07-12/kidcareSSEC_Exec_Summary.pdf (last visited Mar. 5, 2013).

[9] Georgetown University Center for Children and Families, *Despite Economic Challenges, Progress Continues: Children's Health Insurance Coverage in the United States from 2008 – 2010* (Nov. 2011), *available at* http://ccf.georgetown.edu/wp-content/uploads/2012/03/uninsured_acs_brief.pdf (last visited Mar. 5, 2013).

[10] Pub. Law No. 105-33, s. 4912, H.R. 2015, 105th Cong. (Aug. 5, 1997). "When presumptive eligibility was first enacted through the Children's Health Insurance Program (CHIP), the law did not explicitly extend presumptive eligibility to children eligible for CHIP. However, in a State Medicaid Director letter dated October 10, 1997, CMS issued guidance indicating that a state could craft an equivalent procedure in CHIP as a health services initiative. However, by doing presumptive eligibility as a health services initiative, CHIP PE expenditures counted against the state's 10 percent cap on administrative and outreach costs. In the 2000 enactment of [Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000], presumptive eligibility was fully extended to CHIP. This ended the requirement that presumptive eligibility expenditures be counted toward the 10-percent cap." Georgetown University Center for Children and Families, *Presumptive Eligibility: Providing Access to Health Care Without Delay and Connecting Children to Coverage* (May 2011), *available at* http://ccf.georgetown.edu/wp-content/uploads/2012/03/Presumptive_eligibility_20111.pdf (last visited Mar. 5, 1013).

[11] 42 U.S.C. s.1396r-1a(b)(2); 42 U.S.C. s.1397gg(e)(1)(D).

The ultimate federal match – once the child is enrolled in services – is based on the child's final eligibility determination. States receive the federal match even if the child is later determined ineligible.[12]

The benefits of presumptive eligibility include:

- Providing immediate access to health care services. Without insurance to cover the cost, families might delay treatment for conditions which, because of the delay, result in costlier and more extensive services.
- Allowing established community-based organizations to enroll eligible children who have not been reached through other means.
- Encouraging families to follow through on completing an application.[13]

Concerns expressed by states about implementing presumptive eligibility include:

- The administrative cost (e.g. training qualified entities).
- The programmatic cost of providing care during the presumptive eligibility period.
- The risk of providing expensive services to a child who is later determined ineligible.
- Whether, with simplified application processes and retroactive Medicaid coverage, presumptive eligibility is necessary.[14]

Entities states may authorize to make presumptive eligibility determinations include: health care providers participating in Medicaid; primary or secondary schools; organizations that determine eligibility for Head Start, WIC, and the Child Care and Development Block Grant program; agencies administering Medicaid, CHIP, TANF, or housing assistance; child support enforcement agencies, certain homeless shelters; and any other entity a state chooses, if approved by the Secretary of Health and Human Services.[15] In addition and starting in 2014, the Patient Protection and Affordable Care Act gives hospitals that provide Medicaid services the option to make presumptive eligibility determinations for Medicaid beneficiaries whether or not the state has otherwise adopted the option.[16]

Currently, sixteen states have implemented some form of presumptively eligibility, whether for CHIP, Medicaid, or both.[17]

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[12] 42 CFR s. 457.355.

[13] Georgetown University Center for Children and Families, *Presumptive Eligibility: Providing Access to Health Care Without Delay and Connecting Children to Coverage* (May 2011), *available at* http://ccf.georgetown.edu/wp-content/uploads/2012/03/Presumptive_eligibility_20111.pdf (last visited Mar. 5, 2013).

[14] Rachel Klein, *Presumptive Eligibility*, THE FUTURE OF CHILDREN J., Vol. 13, No. 1 (Spring 2003), *available at* http://futureofchildren.org/publications/journals/article/index.xml?journalid=41&articleid=158&sectionid=1021 (last visited Mar. 18, 2013).

[15] 42 U.S.C. s. 1396r-1a et. seq.

[16] Pub. Law No. 111-148, S. 2202, H.R. 3590, 111th Cong. (Mar. 23, 2010).

[17] California, Colorado, Connecticut, Illinois, Iowa, Kansas, Massachusetts, Michigan, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, Ohio, and Wisconsin. MedicaidlGov, *Presumptive Eligibility for Medicaid and CHIP Coverage*, http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Outreach-and-Enrollment/Presumptive-Eligibility.html (last visited Mar. 6, 2013).

Presumptive Eligibility in Florida

Florida currently offers presumptive eligibility for Medicaid benefits to pregnant women and babies born to women who are Medicaid eligible. Presumptive eligibility for pregnant women begins with the date the preliminary determination of eligibility is completed and extends for an additional two months while DCF makes a final determination of eligibility for ongoing Medicaid coverage. Presumptive eligibility covers outpatient prenatal care, only. Presumptive eligibility for newborns extends for up to thirteen months from the baby's date of birth.[18] Currently, DCF approves county health departments, regional perinatal intensive care centers, and other qualified designated providers to conduct Medicaid presumptive eligibility determinations for pregnant women. Federally qualified health centers are among the designated providers DCF has approved.[19]

The Legislature authorized presumptive eligibility for children applying for Kidcare as part of a series of reforms implemented in 2000.[20] A study conducted by AHCA at the request of the 1998 Legislature found that the benefits associated with implementing presumptive eligibility outweigh the costs because:

- Health outcomes for children would improve.
- The enrollment process would be simplified and less confusing, particularly for those applying to Title XXI programs who meet referral criteria for Medicaid.
- Hospitals and other providers would benefit to the extent they are currently providing uncompensated care to children.
- The cost to the state is low due to the enhanced federal match rate.[21]

At the time, implementation was expected to alleviate delays resulting from the then-existing backlog of applications.[22]

Beginning in fiscal year 2002, annual expenditures on the program exceeded the state's federal allotment with the anticipated consequence of spending down and eventually exceeding reserves. The 2003 Legislature funded a "no growth" enrollment policy that resulted in a waiting list of 90,000 children as of January 1, 2004. As a result, the 2004 Legislature implemented a number of changes intended to address the waitlist while still ensuring that the program's size remained within anticipated federal revenues. Among the changes, presumptive eligibility was repealed.[23]

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[18] Fla. Dept. of Children & Families, *Family-related Medicaid Programs Fact Sheet, (*April 2012), *available at* http://www.dcf.state.fl.us/programs/access/docs/fammedfactsheet.pdf (last visited Mar. 18, 2013).
[19] Dept. of Children and Families, *Operating Procedure No. 165-9: Presumptive Eligibility for Pregnant Women* (April 6, 2012) , *available at* http://www.dcf.state.fl.us/admin/publications/cfops/165%20Economic%20Self-Sufficiency%20Services%20(CFOP%20165-XX)/CFOP%20165-09,%20Presumptive%20Medicaid%20Eligibility%20for%20Pregnant%20Women.pdf (last visited Mar. 19, 2013).
[20] Chapter 2000-253, s. 4, L.O.F.
[21] Senate Committee on Health, Aging and Long-Term Care , *Staff Analysis of CS/SB 212 – Health Care Assistance/Florida Kidcare Program*, (Jan. 20, 2000) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[22] Comm. on Health, Aging and Long-Term Care, The Florida Senate, *Review Implementation of the Florida KidCare Act*, 6, (Interim Report 2000-57) (Sept. 1999).
[23] Senate Committee on Appropriation, *Staff Analysis of CS/SB 2000 – Children's Health Care,* (Mar. 1, 2004) (on file with the Senate Committee on Children, Families, and Elder Affairs). Language relating to presumptive eligibility for Medicaid-

III. Effect of Proposed Changes:

Section 1 amends s. 409.814, F.S., to grant presumptive eligibility to any child under the age of 19 who applies for coverage under the Kidcare program through a federally qualified health center.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Health care providers who serve children enrolled in the Kidcare program would benefit from immediate access to payments while the full eligibility determination is pending. Families of children who are presumptively eligible would have a means to cover the cost of any services provided to their children during the presumptive eligibility period. Children who are presumptively eligible would benefit from immediate access to services.

C. Government Sector Impact:

Services provided during the presumptive eligibility period will result in a fiscal impact to the state[24] for both the Title XIX and Title XXI programs. The cost is indeterminate because one cannot predict the number of children who will apply for coverage through an FQHC; of those children, the number whose initially-reported family income will qualify them for presumptive eligibility coverage; and the period of time each child would remain presumptively eligible. The bill will result in an increased cost to the state

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eligible children remains in statute. However, it appears that presumptive eligibility was never implemented for any portion of the Kidcare program, including Medicaid.

[24] In fiscal year 2013-2014, the state share of Title XXI (CHIP) expenditures is 28.97% and the state share of Title XIX (Medicaid) expenditures is 41.33%. The federal government will pay the difference.

if the effect is to increase the number of children who apply for and ultimately receive coverage under the Kidcare program. It will also result in an increased cost to the state if it results in children who are ineligible for Kidcare receiving services during the presumptive eligibility period. This cost would be calculated by multiplying the number of children who apply for presumptive eligibility times the monthly cost of coverage times two months, which is the maximum period during which presumptive eligibility is available. The estimated average per member per month cost for Title XIX coverage is $229 and for Title XXI is $173.

Medicaid eligibility changes proposed in the bill would require programming to FLORIDA and other ACCESS eligibility system components, which is estimated as 5,420 hours of programming and testing at a cost of $100/hour for a total cost of $542,000.

VI. Technical Deficiencies:

AHCA has raised a concern regarding whether the state will receive federal approval since the bill provides presumptive eligibility for only a subset of Medicaid and CHIP applicants. The concern is based on a previously proposed bill that would have extended presumptive eligibility to children who have been denied Medicaid during the transition to CHIP. At the time, the federal government indicated that presumptive eligibility could not be given to a subset of a population. In addition, language in the Medicaid State Plan only allows a state to indicate whether or not presumptive eligibility is offered. AHCA interprets that as providing an all or nothing choice.[25] Federal law, however, allows states to determine which qualified entities may perform presumptive eligibility determinations, which AHCA interprets as a conflict in policy and, as a result, has requested clarification from the federal government. A response has not yet been received.

VII. Related Issues:

As a result of the Patient Protection and Affordable Care Act, the federal government is developing a new, centralized data services hub to assist in eligibility determinations. Access to the hub is intended to help defray states' ongoing costs and result in greater efficiency. For example, states will be able to electronically verify eligibility factors through the hub, where previously they had to verify through multiple federal and private venues. Access to the hub could further decrease eligibility determination waiting periods, thereby decreasing the value or impact of presumptive eligibility.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Children, Families, and Elder Affairs on April 1, 2013:

- The CS changed the effective date to January 1, 2014 to allow AHCA adequate time to process the required amendment to the State Plan.

[25] *Id.*

B. Amendments:

None.

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

541596

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment**
2
3 Delete line 40
4 and insert:
5 Section 2. This act shall take effect January 1, 2014.

By Senator Detert

28-00524B-13 2013548__

A bill to be entitled

An act relating to the Florida Kidcare program; amending s. 409.814, F.S.; requiring certain children applying for eligibility for a component of Kidcare to be offered the opportunity to be made presumptively eligible for the Kidcare program; providing an effective date.

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

Section 1. Subsection (8) of section 409.814, Florida Statutes, is amended to read:

409.814 Eligibility.—A child who has not reached 19 years of age whose family income is equal to or below 200 percent of the federal poverty level is eligible for the Florida Kidcare program as provided in this section. If an enrolled individual is determined to be ineligible for coverage, he or she must be immediately disenrolled from the respective Florida Kidcare program component.

(8) A child under 19 years of age who applies for eligibility for any component of the Kidcare program through a federally qualified health center must be offered the opportunity, subject to federal rules, to be made presumptively eligible for the program. When determining or reviewing a child's eligibility ~~under the Florida Kidcare program~~, the applicant shall be provided with reasonable notice of changes in eligibility which may affect enrollment in one or more of the program components. If a transition from one program component to another is authorized, there must ~~shall~~ be cooperation

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

28-00524B-13 2013548__

between the program components and the affected family which promotes continuity of health care coverage. Any authorized transfers must be managed within the program's overall appropriated or authorized levels of funding. Each component of the program must ~~shall~~ establish a reserve to ensure that transfers between components are ~~will be~~ accomplished within current year appropriations. These reserves shall be reviewed by each convening of the Social Services Estimating Conference to determine the adequacy of such reserves to meet actual experience.

Section 2. This act shall take effect July 1, 2013.

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

The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: February 19, 2013

I respectfully request that **Senate Bill #548**, relating to Florida Kidcare Program, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Nancy C. Detert
Florida Senate, District 28

RECEIVED
FEB 19 2013
Senate Committee
Children and Families

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/2013
Meeting Date

Topic: FL KidCare Program

Bill Number: SB 548 *(if applicable)*

Name: ellen anderson

Amendment Barcode: *(if applicable)*

Job Title: state advocacy director

Address: *Street*

City *State* *Zip*

Phone:

E-mail: ellena@fha.org

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

Representing: FL Hospital Association

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-13
Meeting Date

Topic: FL Kidcare Program

Bill Number: 548 *(if applicable)*

Name: Michelle Jacquis

Amendment Barcode: *(if applicable)*

Job Title: Dir. of Legislative Advocacy

Address: PO BOX 10269
Street

Tallahassee, FL 32302
City *State* *Zip*

Phone: 850-251-2288

E-mail: mjacquis@flmedical.o

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

Representing: FL Medical Association

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/13
Meeting Date

Topic: Kid Care

Bill Number: SB548 *(if applicable)*

Name: SAM BELL

Amendment Barcode: *(if applicable)*

Job Title:

Address: 1298 MILLS TREAT
Street

TALL 32312
City *State* *Zip*

Phone: 850-222-3533

E-mail:

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

Representing: CHILDREN'S SERVICES COUNCILS

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/13
Meeting Date

Topic:

Bill Number: SB 548 *(if applicable)*

Name: Lori Fahey

Amendment Barcode: *(if applicable)*

Job Title: President/CEO "The Family Cafe

Address: 519 North Gadsden Street
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 850/224-4670

E-mail: LfaheyC familycafe.net

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

Representing:

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/13
Meeting Date

Topic: Florida Kid care

Bill Number: SB 548 *(if applicable)*

Name: Alex Brown

Amendment Barcode: *(if applicable)*

Job Title: Youth Advisor, The Florida Youth Council

Address: 519 N. Gadsden Street
Street

Tallahassee, Fl 32301
City *State* *Zip*

Phone: 850-980-4450

E-mail: abrown@familycafe.no

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

Representing: The Florida Youth Council

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic:

Bill Number: ~~SB~~ 548 *(if applicable)*

Name: Samuel Jones Jr

Amendment Barcode: *(if applicable)*

Job Title: Pastor

Address: 915 S.E. 19th Street
Street

Gainesville Fl. 32641
City *State* *Zip*

Phone: 352-376-3415

E-mail: Smcc7924@cox.net

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

Representing:

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/13
Meeting Date

Topic: Presumptive Eligibility

Bill Number: 548 (if applicable)

Name: Karen Woodall

Amendment Barcode: _____ (if applicable)

Job Title: _____

Address: 579 E. Call St.
Street

Tallahassee FL 32301
City State Zip

Phone: 850-321-9386

E-mail: kwtally@aol.com

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

Representing: ~~Presumptive Eligibility~~ Florida Center for Fiscal & Economic Policy

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 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1322

INTRODUCER: Senator Gibson and others

SUBJECT: Children's Initiatives

DATE: March 27, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Favorable**
2.			CA	
3.			AP	
4.				
5.				
6.				

I. Summary:

SB 1322 codifies in two Florida children's initiatives that are currently in existence and that have been designated by the Ounce of Prevention Fund (Ounce) as a Florida children's initiative pursuant to s. 409.147, F.S.:

- The "New Town Success Zone" in Jacksonville; and
- The "Parramore Kidz Zone" in Orlando.

This bill provides that the initiatives are subject to Florida public records laws, public meeting laws, and procurement laws, and that the initiatives are designed to encompass an area large enough to include all necessary components of community life, but small enough to reach every member of each neighborhood who is willing to participate.

This bill also requires the Department of Children and Families (DCF or department) and the Miami Children's Initiative (MCI) to contract with a not-for-profit corporation to work in collaboration with the governing body to adopt the resolution, establish the planning team, and adopt the strategic community plan required by law to be designated as a children's initiative.

This bill is anticipated to have no fiscal impact on the state and has an effective date of July 1, 2013.

This bill substantially amends section 409.147 of the Florida Statutes.

II. Present Situation:

Harlem Children's Zone

The Harlem Children's Zone (HCZ) began in 1970 as an organization working with young children and their families as the city's first truancy-prevention program.[1] In the early 1990s, the HCZ ran a pilot project that brought a range of support services to a single block. The idea was to address all the problems that poor families were facing including crumbling apartments, failing schools, violent crime, and chronic health problems.[2]

Believing that for children to do well, their families have to do well, and for families to do well, their community must do well, the HCZ works to strengthen families as well as empowering them to have a positive impact on their children's development. The two fundamental principles of the HCZ are to help kids in a sustained way, starting as early in their lives as possible, and to create a critical mass of adults around them who understand what it takes to help children succeed.[3]

The HCZ Project began as a one-block pilot in the 1990s, then following a 10-year business plan to ensure its best-practice programs were operating as planned, it expanded to 24 blocks, then 60 blocks, then ultimately 97 blocks. The HCZ became a model among nonprofits that began carefully evaluating and tracking the results of their work. Those evaluation results enabled staff to see if programs were achieving their objectives and to take corrective actions if they were not.[4]

Children's Zones in Florida

Using the Harlem Children's Zone as a model, the Legislature created children's zones in Florida in 2008.[5] The stated policy and purpose for the zones was:

> It is the policy of this state to provide the necessary means to assist local communities, the children and families who live in those communities, and the private sector in creating a sound educational, social, and economic environment. To achieve this objective, the state intends to provide investments sufficient to encourage community partners to commit financial and other resources to severely disadvantaged areas. The purpose of this section is to establish a process that clearly identifies the severely disadvantaged areas and provides guidance for developing a new social service paradigm that systematically coordinates programs that address the critical needs of children and their families and for directing efforts to rebuild the basic infrastructure of the

---

[1] Harlem Children's Zone, *available at* http://www.hcz.org/index.php/about-us/history (last visited March 20, 2013). The organization was then known as Rheedlen.
[2] *Id*.
[3] Harlem Children's Zone, *available at* http://www.hcz.org/index.php/about-us/the-hcz-project (last visited March 20, 2013).
[4] *Id*.
[5] Chapter 2008-96, Laws of Fla. In 2009, the term "children's zone" was changed to "children's initiative." Shortly after the 2008 legislation was signed into law, the HCZ notified the Florida Legislature that they had trademarked the term "children's zone" and the state was no longer able to use the term. Chapter 2009-43, Laws of Fla.

> community. The Legislature, therefore, declares the creation of children's zones, through the collaborative efforts of government and the private sector, to be a public purpose.[6]

The 2008 legislation[7] and the amending 2009 legislation[8] relating to children's initiatives also contained the following provisions:

- Created a nominating process for areas within communities to be designated as children's zones,[9] provides for the creation of a planning team, a strategic community plan, and focus areas to be included in the plan;
- Required the creation of a not for profit corporation to implement and govern a designated children's zone;
- Created a ten-year project within the Liberty City neighborhood in Miami to be known as the Miami Children's Initiative (MCI); and
- Required the department to contract with an existing private nonprofit corporation, incorporated for certain specified purposes, to implement the newly created Miami Children's Initiative.[10]

Miami Children's Initiative

The idea for the Miami Children's Initiative dates back to 2006, when a group of Liberty City community leaders, local politicians and residents came together to try and determine possible solutions to perceived problems in the community. Liberty City was once a thriving neighborhood for many African Americans, but the high concentration of low-income housing projects, the exit of the area's businesses, increased joblessness, low performing schools, growing poverty, crime, juvenile delinquency, drugs and poor health had eroded the quality of life.[11]

Creation of the MCI in 2008 brought residents and local business people, as well as leaders in health care, education and human services, together to begin to formulate the foundation for this community-wide initiative. That extensive planning – professionally facilitated via 43 work groups and 18 focus groups – led to a plan and a strategy to achieve progress toward a "prosperous Liberty City."[12]

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[6] *Id*.
[7] *Id*.
[8] Chapter 2009-43, Laws of Fla.
[9] Section 409.147, F.S., provides that a county or municipality or other designated area may apply to the Ounce to designate an area as a children's initiative. The area must first adopt a resolution stating that the area has issues related to poverty, that changes are necessary for the area to improve, and that resources are necessary for revitalization of the area. The county or municipality must then establish a children's initiative planning team and develop and adapt a strategic community plan. Once a county or municipality has completed these steps, they must create a not-for-profit corporation to facilitate fundraising and secure broad community ownership of the children's initiative. The Ounce is a private, nonprofit corporation dedicated to shaping prevention policy and investing in innovative prevention programs that provide measurable benefits to Florida's children, families and communities.
[10] Chapter 2009-43, Laws of Fla.
[11] Miami Children's Initiative, *available at* http://www.miamichildrensinitiative.org/aboutus_whoweare.shtml (last visited March 21, 2013).
[12] *Id*.

New Town Success Zone

After review of a number of Jacksonville neighborhoods, the New Town community was selected by community leadership of Jacksonville in 2008 as the site for a Florida children's initiative.[13] In 2009, a strategic plan was developed and work began on the New Town Success Zone.[14] The initiative aims to assist parents and caregivers, business leaders, professionals, residents, teachers and other stakeholders create a safe environment and pipeline to success for children residing in the New Town area.[15] The New Town Success Zone has reported higher FCAT scores, an improvement in school promotion rates, and a reduction in violent crimes, theft and truancy since 2008.[16]

Parramore Kidz Zone

The Parramore Kidz Zone was launched by the City of Orlando on July 1, 2006 as part of a comprehensive effort to revitalize Orlando's highest crime, highest poverty neighborhood. The Parramore Kidz Zone replicates some aspects of the Harlem Children's Zone to create positive child-rearing conditions that will result in lower teen pregnancy rates, improved school performance, and decreased juvenile crime and child abuse rates. The Parramore Kidz Zone was implemented by a coalition of nonprofit organizations and neighborhood residents and was designated by the Ounce as a Florida children's initiative in June 2009.[17] The initiative was designed to invest in those things that make a difference in children's lives, such as quality early childhood education, after school programs, programs that build family economic success, youth development programs for teenagers, access to health care, and mentoring.[18] Since 2006, the Parramore neighborhood has seen increased test scores and decreased juvenile arrest rates.[19]

III. Effect of Proposed Changes:

Florida children's initiatives were created to assist disadvantaged areas within the state in creating a community-based service network that develops, coordinates, and provides quality education, accessible health care, youth development programs, opportunities for employment, and safe and affordable housing for children and families living within its boundaries. There are currently three Florida children's initiatives, the Miami Children's Initiative, Inc., the New Town Success Zone, and Parramore Kidz Zone. The Miami Children's Initiative, Inc. is the only initiative codified.[20]

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[13] The New Town Success Zone, *available at*: http://www.newtownsuccesszone.com/why.html (last visited March 21, 2013).
[14] *Id.*
[15] *Id.*
[16] New Town Success Zone Five Year Report to the Community, The New Town Success Zone, *available at* http://www.newtownsuccesszone.com/5year.html (last visited March 21, 2013).
[17] The Ounce of Prevention Fund of Florida, Parramore Kidz Zone, *available at* http://www.ounce.org/Orlando_CI.html (last visited March 22, 2013).
[18] City of Orlando, Parramore Kidz Zone, *available at* http://www.cityoforlando.net/fpr/Html/Children/pkz.htm (last visited March 22, 2013).
[19] *Id.*
[20] Section 409.147, F.S.

Section 1 of the bill codifies two existing children's initiatives:

- The New Town Success Zone in Council District 9 in Duval County – Jacksonville; and
- The Parramore Kidz Zone in Orange County – Orlando.

In addition, section 1 of the bill provides:

- Both initiatives must be managed by a not-for-profit corporation, in accordance with ch. 617, F.S.;
- The corporation is subject to ch. 119, F.S., relating to public records, ch. 286, F.S., relating to public meetings and records, and ch. 287, F.S., relating to procurement of commodities or contractual services. These requirements are consistent with existing law relating to the Miami Children's Initiative;
- Clarifies that the "New Town Success Zone" and the "Parramore Kidz Zone" are not subject to control, supervision, or direction by any department of the state in any manner;
- Both initiatives are designed to encompass an area that is large enough to include all of the necessary components of community life, including, but not limited to, schools, places of worship, recreational facilities, commercial areas, and common space, yet small enough to allow programs and services to reach every member of the neighborhood who is willing to participate in the project; and
- The department and the Miami Children's Initiative are required to contract with a not-for-profit corporation to work in collaboration with the governing body to adopt the resolution, establish the planning team, and adopt the strategic community plan required by law to be designated as a children's initiative.

Section 2 of the bill provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 409.147(9), F.S., was enacted in 2009 in order to provide for the implementation of the Miami Children's Initiative.[21] At that time an appropriation was provided and the Ounce provided direction and oversight for the project. Proviso language in the 2008-2009 General Appropriations Act (GAA) provided $3.6 million in non-recurring general revenue funds for the MCI. The Ounce was designated as the agent to develop a business plan and for the evaluation, fiscal management, and oversight of the pilot program. The funds were intended to be used as a grant over a three-year period to carry out activities in the zones.[22] The department developed a three-year non-renewable contract with the Ounce with the first monthly payment being made in August 2008.

Lines 80-82 of the bill amend s. 409.147(9), F.S., to require the department and the Miami Children's Initiative to contract with a not-for-profit corporation to work in collaboration with the governing body to adopt the resolution, establish the planning team, and adopt the strategic community plan required by law to be designated as a children's initiative. It is unclear why the MCI **and** the department would be required to contract with a not-for-profit corporation to implement the law.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial 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.

[21] Chapter 2009-43, Laws of Fla.
[22] S. 3, General Appropriations Act of 2008, 2008-152 Laws of Fla.

By Senator Gibson

A bill to be entitled

An act relating to children's initiatives; amending s. 409.147, F.S.; establishing the New Town Success Zone in Duval County and the Parramore Kidz Zone in Orange County; providing for the projects to be managed by corporations not for profit that are not subject to control, supervision, or direction by any department of the state; requiring the corporations to be subject to state public records and meeting requirements and procurement of commodities and contractual services requirements; requiring designated children's initiatives to assist in the creation of community-based service networks and programming that provides certain services for children and families residing in disadvantaged areas of the state; providing for evaluation, fiscal management, and oversight of the projects; providing an effective date.

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

Section 1. Present subsection (9) of section 409.147, Florida Statutes, is renumbered as subsection (11) and amended, and new subsections (9) and (10) are added to that section, to read:

409.147 Children's initiatives.—

(9) CREATION OF THE NEW TOWN SUCCESS ZONE.—

(a) There is created within the City of Jacksonville Council District 9 in Duval County a 10-year project that shall be managed by an entity organized as a corporation not for

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

profit that is registered, incorporated, organized, and operated in compliance with chapter 617. The New Town Success Zone is not subject to control, supervision, or direction by any department of the state in any manner. The Legislature determines, however, that public policy dictates that the corporation operate in the most open and accessible manner consistent with its public purpose. Therefore, the Legislature declares that the corporation is subject to chapter 119, relating to public records, chapter 286, relating to public meetings and records, and chapter 287, relating to procurement of commodities or contractual services.

(b) This initiative is designed to encompass an area that is large enough to include all of the necessary components of community life, including, but not limited to, schools, places of worship, recreational facilities, commercial areas, and common space, yet small enough to allow programs and services to reach every member of the neighborhood who is willing to participate in the project.

(10) CREATION OF THE PARRAMORE KIDZ ZONE.—

(a) There is created within the City of Orlando in Orange County a 10-year project managed by an entity organized as a corporation not for profit that is registered, incorporated, organized, and operated in compliance with chapter 617. The Parramore Kidz Zone program is not subject to the control, supervision, or direction of any department of the state. The Legislature determines, however, that public policy dictates that the corporation operate in the most open and accessible manner consistent with its public purpose. Therefore, the Legislature specifically declares that the corporation is

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

59 subject to chapter 119, relating to public records, chapter 286,
60 relating to public meetings and records, and chapter 287,
61 relating to procurement of commodities or contractual services.
62 (b) This initiative is designed to encompass an area that
63 is large enough to include all of the necessary components of
64 community life, including, but not limited to, schools, places
65 of worship, recreational facilities, commercial areas, and
66 common space, yet small enough to allow programs and services to
67 reach every member of the neighborhood who is willing to
68 participate in the project.
69 (11) ~~(9)~~ IMPLEMENTATION.—
70 (a) The Miami's Children's Initiative, Inc., the New Town
71 Success Zone, and the Parramore Kidz Zone have been designated
72 as Florida Children's Initiatives consistent with the
73 legislative intent and purpose of s. 16, chapter 2009-43, Laws
74 of Florida, and as such shall each assist the disadvantaged
75 areas of the state in creating a community-based service network
76 and programming that develops, coordinates, and provides quality
77 education, accessible health care, youth development programs,
78 opportunities for employment, and safe and affordable housing
79 for children and families living within their boundaries.
80 (b) In order to implement this section, the Miami
81 Children's Initiative, Inc., and the Department of Children and
82 Families ~~Family Services~~ shall contract with a not-for-profit
83 corporation, to work in collaboration with the governing body to
84 adopt the resolution described in subsection (4), to establish
85 the planning team as provided in subsection (5), and to develop
86 and adopt the strategic community plan as provided in subsection
87 (6). The not-for-profit corporation is also responsible for the

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

88 development of a business plan and for the evaluation, fiscal
89 management, and oversight of the Miami Children's Initiative,
90 Inc.
91 Section 2. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
9th District

COMMITTEES:
Military Affairs, Space, and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Communications, Energy, and Public Utilities
Criminal Justice
Regulated Industries

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act

March 5, 2013

Senator Eleanor Sobel, Chair
Committee on Children, Families, and Elder Affairs
520 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Sobel

I respectfully request that SB 1322, relating to children's initiatives, be placed on the next committee agenda.

SB 1322, establishes the New Town Success Zone in Duval County and the Parramore Kidz Zone in Orange County. The initiatives will create community based service networks and programming for children and families residing in disadvantaged areas of these communities. As well as implanting the Miami Children's Initiative , Inc. which is already established.

Thank you for your time and consideration.

Sincerely,

Audrey Gibson
State Senator
District 9

RECEIVED
MAR 05 2013
Senate Committee
Children and Families

REPLY TO:
☐ 101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553 FAX: (904) 359-2532
☐ 205 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-13
Meeting Date

Topic: Children's Initiatives

Bill Number: 1322 *(if applicable)*

Name: JACK LEVINE

Amendment Barcode: *(if applicable)*

Job Title: Founder 4 Generations Institute

Address: BOX 1227
Street

Tallah FL 32302
City *State* *Zip*

Phone: 850 567 5252

E-mail: Jack@4gen.org

Speaking: ☐ For ☐ Against ☑ Information

Representing:

Appearing at request of Chair: ☑ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1682

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

SUBJECT: Religious-exempt Child Care Programs

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Fav/CS**
2.			JU	
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1682 makes numerous changes to s. 409.175, F.S., related to boarding schools including the following:

- Clarifies that boarding schools must receive one accreditation for academic programs and one accreditation for residential programs;
- Requires boarding schools to register with Department of Education (DOE) as a school which provides residential service for students;
- Sets a timeframe for applying for accreditation and directs DOE to remove boarding schools who fail to comply with these requirements;
- Requires boarding schools to report to the Department of Children and Families (DCF or department) on accreditation progress; and
- Requires level 2 background screening of boarding school employees or contractors with direct student contact.

The bill also makes changes to s. 409.176, F.S., related to residential child-caring agencies and family foster homes, including the following:

- Adds a timeframe of 24 hours for the qualified association under s. 409.176, F.S., to notify DCF when a specified violation occurs which threatens harm to any child or constitutes an emergency requiring immediate action;
- Sets a timeframe of 3 days for the qualified association to notify DCF of facilities who are not licensed or properly registered for residential child care;
- Adds reporting requirements for the qualified association; and
- Grants DCF the authority to fine the qualified association for failure to comply with statutory requirements.

The bill is not expected to have a fiscal impact on the state and provides for an effective date of July 1, 2013.

This bill substantially amends sections 409.175 and 409.176 of the Florida Statutes.

II. Present Situation:

Residential Services for Children

Currently, residential facilities serving children are either licensed by DCF, registered with the Florida Association of Christian Child Caring Agencies (FACCCA), or registered with DOE as a boarding school.

Boarding Schools

Current law requires all boarding schools to register with DOE, and obtain accreditation within three years of registering. Approved accreditation consists of two parts:

- Academic accreditation by either the Florida Council of Independent Schools, or the Southern Association of Colleges and Schools; and
- Residential accreditation by the Council on Accreditation, the Commission on Accreditation of Rehabilitative Facilities, or the Coalition for Residential Education.[1,2]

To operate legally in the state of Florida as a boarding school, a school must take the following steps:

- Seek academic accreditation from one of the legislatively approved accrediting agencies;
- Seek residential accreditation from one of the legislatively approved accrediting agencies and;
- Register with the DOE as a school to receive a school number. Schools must indicate whether they provide residential care for their students when completing the annual online survey.[3]

[1] Section 409.175(2)(b), F.S.
[2] DCF General Counsel issued a memo in December, 2012, clarifying that the intent of the statute is for boarding schools to seek both academic and residential accreditation. Department of Children and Families, HB 7129 Staff Analysis and Economic Impact (March 18, 2013) (on file with the Senate Committee on Children, Families and Elder Affairs).
[3] The registration occurs online and does not require any facility inspections by the Department of Education. An annual online survey (which is the same as the initial registration form) is also required by DOE.

A boarding school has 3 years to complete the accreditation process.

A facility wishing to operate as a boarding school can seek exemption from licensure and accreditation by operating under s. 409.176, F.S., which requires registering with a qualified association to provide 24 hour residential care for children. The registration occurs online and does not require any facility inspections by DOE. An annual online survey (which is the same as the initial registration form) is also required by DOE.[4]

Boarding schools must provide proof of accreditation or documentation of the accreditation process upon request. A boarding school that cannot produce the required documentation or that has not registered with the DOE shall be considered to be providing residential group care without a license. DCF can impose administrative sanctions or seek civil remedies for noncompliance with statutory requirements for boarding schools.[5]

Registration of Residential Child Caring Agencies and Family Foster Homes

Section 409.176, F.S. requires registration of residential child-caring agencies and family foster homes. This requirement applies to a facility which is a religious organization that does not directly receive state or federal funds or is a family foster home that is associated with such an organization and does not directly receive state or federal funds. These are referred to in statute as Type II facilities.[6] These facilities are also exempted from licensure by DCF as long as they become registered under s. 409.176, F.S.

These facilities must be registered by a Florida Statewide Childcare Organization which was in existence on January 1, 1984. The only organization currently used is the Florida Association of Christian Child Caring Agencies (FACCCA).[7,8] The standards for registration used by FACCCA are required to be in substantial compliance to similar standards used to license similar child caring agencies. DCF is required to determine that the standards are in compliance and thereafter receives updates to the standards within 10 days of adoption.[9]

The registered facilities must enter into contracts with parents, guardians or others with legal custody prior to the child entering a facility. FACCCA is required to notify DCF when there is a violation of requirements in s. 409.176, F.S., which threatens harm to a child.[10] DCF is to notify the state attorney when there is a violation of law reported and shall file civil suit when needed to stop the facility from continuing care.[11] DCF also has authority to institute injunctive proceedings in court to enforce requirements of s. 409.176, F.S., or terminate facility operations.[12]

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[4] Section 1002.42(b), F.S.
[5] Section 409.175, F.S.
[6] Section 409.176,(4),F.S.
[7] Section 409.176(5)(b),F.S.
[8] Florida Association of Christian Child Caring Agencies, *available at* http://www.faccca.com/about_us (last visited March 22, 2013).
[9] Section 409.176(5)(b),F.S.
[10] Section 409.176(10), F.S.
[11] *Id*.
[12] Section 409.176(9), F.S.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 409.175, F. S., to make a number of changes related to boarding schools including:

- Clarifying that boarding schools must receive one accreditation for academic programs and one accreditation for residential programs and adds academic accrediting sources to the list of choices in statute;
- Clarifying that boarding schools must register with DOE as a school which provides residential service for students;
- Setting a timeframe for applying for accreditation and directing DOE to remove boarding schools who fail to comply with these requirements;
- Requiring boarding schools to report to the department on progress made towards accreditation; and
- Requiring level 2 background screening of boarding school employees or contractors with direct student contact.

Section 2 of the bill amends s. 409.176, F.S, related to residential child-caring agencies and family foster homes. Revisions include:

- Adding a timeframe of 24 hours for the "qualified association" to notify DCF when a specified violation occurs which threatens harm to any child or constitutes an emergency requiring immediate action. There is no current timeframe regarding when a qualified association must report this. The only "qualified association" currently used is the Florida Association of Christian Child Caring Agencies;
- Setting a timeframe of 3 days for the qualified association to notify DCF of facilities who are not licensed or properly registered for residential child care;
- Adding reporting requirements for the qualified association; and
- Granting DCF the authority to fine the qualified association for failure to comply with statutory requirements.

Section 3 of the bill provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Boarding schools or their employees will have to pay the cost for background screening.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Children, Families, and Elder Affairs on April 1, 2013:

- The CS removes provisions in the bill that created requirements related to boarding schools in ch. 402, F.S. and removes provisions in the bill related to religious exempt child care facilities.

- The CS adds requirements related to boarding schools in ch. 409, F.S., including clarifying that boarding schools must receive one accreditation for academic programs and one accreditation for residential programs and requiring boarding schools to register with DOE as a school which provides residential service for students. A timeframe is set for applying for accreditation and level 2 background screening is required for boarding school employees or contractors with direct student contact.

- The CS also amends s. 409.176, F.S, related to residential child-caring agencies and family foster homes, including adding a timeframe of 24 hours for the qualified association under s. 409.176, F.S., to notify DCF when a specified violation occurs which threatens harm to any child or constitutes an emergency requiring immediate action and setting a timeframe of 3 days for the qualified association to notify DCF of facilities who are not licensed or properly registered for residential child care. The CS adds reporting requirements for the qualified association and grants DCF the authority to fine the qualified association for failure to comply with statutory requirements.

B. Amendments:

None.

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

547916

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Paragraph (b) of subsection (2) of section
6 409.175, Florida Statutes, is amended, and subsection (17) is
7 added to that section, to read:
8 409.175 Licensure of family foster homes, residential
9 child-caring agencies, and child-placing agencies; public
10 records exemption.—
11 (2) As used in this section, the term:
12 (b) "Boarding school" means a school that ~~which~~ is

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13 registered with the Department of Education as a school that
14 provides a residential service for students and is:
15 1. Accredited for academic programs by the Florida Council
16 of Independent Schools or the Southern Association of Colleges
17 and Schools an accrediting association that is a member of the
18 National Council for Private School Accreditation, or the
19 Florida Association of Academic Nonpublic Schools, and~~; which is~~
20 ~~accredited~~ for residential programs by the Council on
21 Accreditation, the Commission on Accreditation of Rehabilitation
22 Facilities, or the Coalition for Residential Education; or
23 2. Accredited by one of the organizations in subparagraph
24 1. as a boarding school that includes both an academic and
25 residential component in the accreditation. ~~and which is~~
26 ~~registered with the Department of Education as a school. Its~~
27 ~~program must follow established school schedules, with holiday~~
28 ~~breaks and summer recesses in accordance with other public and~~
29 ~~private school programs. The children in residence must~~
30 ~~customarily return to their family homes or legal guardians~~
31 ~~during school breaks and must not be in residence year-round,~~
32 ~~except that this provision does not apply to foreign students.~~
33 ~~The parents of these children retain custody and planning and~~
34 ~~financial responsibility. A boarding school currently in~~
35 ~~existence and a boarding school opening and seeking~~
36 ~~accreditation have 3 years to comply with the requirements of~~
37 ~~this paragraph. A boarding school must provide proof of~~
38 ~~accreditation or documentation of the accreditation process upon~~
39 ~~request. A boarding school that cannot produce the required~~
40 ~~documentation or that has not registered with the Department of~~
41 ~~Education shall be considered to be providing residential group~~

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42 ~~care without a license. The department may impose administrative~~
43 ~~sanctions or seek civil remedies as provided under paragraph~~
44 ~~(11)(a).~~
45 (17) Boarding schools are subject to the following
46 requirements:
47 (a) A boarding school currently in existence, or a new
48 boarding school that is seeking accreditation, must complete the
49 accreditation requirements pursuant to paragraph (2)(b) within 3
50 years after the date it registers with the Department of
51 Education.
52 (b) A boarding school must provide to the Department of
53 Education and the department, letters that verify application
54 for accreditation no later than 270 days before registration.
55 The letters must be provided by an accrediting agency described
56 in subparagraph (2)(b)1. or subparagraph (2)(b)2. Effective July
57 1, 2013, the Department of Education shall remove from the
58 registry and the website any boarding school that has not
59 completed the accreditation requirements of paragraph (2)(b) or
60 has not provided the required verification letters.
61 (c) A boarding school must provide proof of accreditation
62 or documentation of the accreditation process upon request by
63 the department. The school must provide an annual report to the
64 department on the status of achieving the accreditation required
65 in paragraph (2)(b). The first report is due 12 months after the
66 date of registration with the Department of Education. Boarding
67 schools that have obtained the accreditations required under
68 paragraph (2)(b) are not subject to the reporting requirements
69 in this subsection.
70 (d) A boarding school that cannot produce the required

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71 documentation in accordance with this subsection or that has not
72 registered with the Department of Education or has not obtained
73 all required accreditation in accordance with paragraph (2)(b),
74 shall be considered to be providing residential group care
75 without a license. The department may impose administrative
76 sanctions or seek civil remedies as provided under paragraph
77 (11)(a).
78 (e) The boarding school must require employees and
79 contracted personnel with direct student contact to be
80 background screened upon employment. The term "direct student
81 contact" means unsupervised access to a student for whom the
82 boarding school is responsible. The screening shall be conducted
83 as provided in chapter 435, using the level 2 standards for
84 screening set forth in that chapter. The department may grant
85 exemptions from disqualification from working with children as
86 provided in s. 435.07.
87 (f) The boarding school shall follow established school
88 schedules and shall specify holiday breaks and summer recesses
89 in accordance with other public and private school programs. The
90 children in residence must customarily return to their family
91 homes or legal guardians during school breaks and, with the
92 exception of students who are citizens of foreign countries, may
93 not be in residence year-round. The parents of children
94 attending a boarding school retain custody of their children and
95 responsibility for planning and finances.
96 Section 2. Paragraphs (a) and (b) of subsection (10) and
97 subsection (15) of section 409.176, Florida Statutes, are
98 amended to read:
99 409.176 Registration of residential child-caring agencies

547916

100 and family foster homes.—
101 (10)(a) The qualified association shall notify the
102 department within 24 hours when the qualified association finds
103 there is a violation of any of the provisions of this section
104 which threatens harm to any child or which constitutes an
105 emergency requiring immediate action.
106 (b) The qualified association shall notify the department
107 within 3 calendar days when the qualified association finds~~,~~
108 ~~within 30 days after written notification by registered mail of~~
109 ~~the requirement for registration,~~ that a person or facility
110 continues to care for children without a certificate of
111 registration pursuant to this section, a license pursuant to s.
112 409.175, or registration as a boarding school pursuant to s
113 409.175. The department shall notify the appropriate state
114 attorney of the violation of law and, if necessary, shall
115 institute a civil suit to enjoin the person or facility from
116 continuing the care of children.
117 (15) The qualified association issuing certificates of
118 registration for Type II facilities under this section shall
119 annually report to the department the following:
120 (a) The number of Type II facilities registered during the
121 most recent calendar year, the names and addresses of the
122 facilities, and the name of each facility's administrator.~~, and~~
123 (b) The total number of children served by each facility
124 during the calendar year.
125 (c) The average length of stay for children at a Type II
126 facility.
127 (d) The number of violations pursuant to paragraph (10)(a)
128 by a Type II facility.

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129 (e) A list of persons or facilities, including their
130 addresses, which applied for registration pursuant to this
131 section and were denied or withdrew the request.
132
133 The department may impose an administrative fine against the
134 qualified association not to exceed $250 per violation for
135 failure to comply with the requirements of this subsection.
136 (f) The department may adopt rules necessary to implement
137 this subsection.
138 Section 3. This act shall take effect July 1, 2013.
139
140 ========== T I T L E A M E N D M E N T ==========
141 And the title is amended as follows:
142 Delete everything before the enacting clause
143 and insert:
144 A bill to be entitled
145 An act relating to residential services for children;
146 amending s. 409.175, F.S.; revising the definition of
147 the term “boarding school”; providing accreditation
148 requirements for boarding schools; establishing
149 reporting requirements for boarding schools during the
150 accreditation process; providing an exemption for the
151 reporting requirements; authorizing the Department of
152 Children and Families to impose administrative
153 sanctions or civil remedies when residential group
154 care is being provided without a license; requiring
155 background screening for certain boarding school
156 personnel; defining the term “direct student contact”;
157 requiring boarding schools to follow standard school

547916

158 schedules, holiday breaks, and summer recesses;
159 providing that children other than foreign citizens
160 may not be year-round residents; amending s. 409.176,
161 F.S.; providing notification requirements for
162 qualified associations for specified violations;
163 providing reporting requirements for the qualified
164 association regarding Type II facilities; authorizing
165 the Department of Children and Families to adopt
166 rules; providing an effective date.

179124

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
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	.	
	.	

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

1 **Senate Amendment to Amendment (547916)**
2
3 Delete line 54
4 and insert:
5 for accreditation no later than 270 days after registration.

By Senator Joyner

19-00570-13 20131682__

A bill to be entitled

An act relating to religious-exempt child care programs; amending s. 402.302, F.S.; defining the term "boarding school"; amending s. 402.316, F.S.; providing for a child care program affiliated with a religious congregation or religious boarding school to be exempt from regulation by the Department of Children and Families as a religious-exempt child care program; requiring religious-exempt child care programs to display a certificate of compliance issued by an accrediting agency recognized by the department; providing requirements for accrediting agencies recognized by the department; requiring a recognized accrediting agency to conduct an initial onsite review; providing timeframes within which child care programs must meet the requirements for training and credentials; requiring recognized accrediting agencies for religious-exempt child care programs to submit standards to the department; requiring the department to create and maintain a list of recognized accrediting agencies; providing that the act does not authorize the department to regulate specified elements of a religious-exempt child care program; requiring that the department notify recognized accrediting agencies of any revision in standards; requiring that a recognized accrediting agency submit an annual report; providing timeframes within which an exempt child care program must notify an accrediting agency of its transfer and termination of

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

19-00570-13 20131682__

accreditation; prohibiting a recognized accrediting agency for religious exemption from owning, operating, or administering certain programs; requiring the department to facilitate an annual meeting; providing an effective date.

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

Section 1. Present subsections (1) through (18) of section 402.302, Florida Statutes, are renumbered as subsections (2) through (19), respectively, and a new subsection (1) is added to that section, to read:

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

(1) "Boarding school" means a school that is accredited by the Florida Council of Independent Schools or the Southern Association of Colleges and Schools; which is accredited by the Council on Accreditation, the Commission on Accreditation of Rehabilitation Facilities, or the Coalition for Residential Education; and which is registered with the Department of Education as a school and that must meet all of the following criteria within 3 years of the effective date of this act:

(a) Its program must follow established school schedules, with holiday breaks and summer recesses in accordance with other public and private school programs.

(b) With the exception of foreign students, the children in residence must customarily return to their family homes or legal guardians during school breaks and must not be in residence year-round.

(c) Parents of the children in residence must retain

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59 planning and financial responsibility for and custody of their
60 children. A boarding school must provide proof of accreditation
61 or documentation of the accreditation process upon request. A
62 boarding school that cannot produce the required documentation
63 or that has not registered with the Department of Education
64 shall be considered to be providing residential group care
65 without a license. The Department of Children and Families may
66 impose administrative sanctions or seek civil remedies as
67 provided under s. 409.175(11)(a).
68 Section 2. Section 402.316, Florida Statutes, is amended to
69 read:
70 (Substantial rewording of section. See s. 402.316,
71 F.S., for present text.)
72 402.316 Exemption for child care program, weekday preschool
73 program, or boarding school accredited by a recognized
74 accrediting agency for religious exemption.—
75 (1) A child care program, weekday preschool program, or
76 boarding school qualifies for religious exemption if the program
77 or boarding school is an integral part of an established
78 religious congregation or religious school that conducts
79 regularly scheduled classes, courses of study, or educational
80 programs, and is a member or participant of, or accredited by a
81 state, regional, or national accrediting agency for religious
82 exemption which is recognized by the Department of Children and
83 Families. A child care program, weekday preschool program, or
84 boarding school that qualifies as a religious-exempt child care
85 program may choose to be exempt from or to be voluntarily
86 licensed under ss. 402.301-402.319. However, a religious-exempt
87 child care program that chooses to be exempt from these sections

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88 still must meet the screening requirements in ss. 402.305 and
89 402.3055 and must display in a conspicuous location in the
90 facility a certificate of compliance issued by a recognized
91 accrediting agency for religious exemption. Failure to post the
92 certificate of compliance in a conspicuous location will result
93 in an administrative action as determined by the standards of
94 the program's accrediting agency for religious exemption.
95 (2) In a county in which a local licensing agency is
96 approved by the department, the local licensing agency may
97 continue to recognize a county accrediting agency for religious
98 exemption.
99 (3) The department shall verify an accrediting agency as a
100 recognized accrediting agency for religious exemption if the
101 accrediting agency:
102 (a) Adopts minimum standards for operating a child care
103 program or weekday preschool program which meet or exceed the
104 department's minimum standards set forth in s. 402.305.
105 (b) Publishes its minimum standards and requires a child
106 care program, weekday preschool program, or boarding school that
107 is a member or participant of, or accredited by, the agency to
108 comply with the accrediting agency's minimum standards.
109 (c) Requires a program that is a member or participant of,
110 or accredited by, the agency to meet the minimum requirements of
111 the local governing body with respect to health, sanitation, and
112 safety, including minimum requirements for environmental health,
113 fire safety, zoning, and building codes, and provides that the
114 applicable local governing body has enforcement authority over
115 such members or participants with respect to their compliance
116 with all such minimum requirements.

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117 (d) Requires a program that is a member or participant of,
118 or accredited by, the agency to inform parents that the program
119 is exempt from state licensing requirements but meets the
120 standards of the program's accrediting agency, which meet or
121 exceed the department's minimum standards.
122 (e) Conducts an initial onsite review of each program that
123 is a member or participant of, or accredited by, the agency.
124 Each year thereafter, each program must submit to the
125 accrediting agency a notarized statement verifying compliance
126 with applicable state laws and the accrediting agency's
127 published minimum standards.
128 (f) Requires child care personnel employed by a program
129 that is a member or participant of, or accredited by, the agency
130 to comply with standards that meet or exceed the standards
131 established in s. 402.305.
132 (4) A recognized accrediting agency for religious exemption
133 shall require child care personnel to take a 40-clock-hour
134 introductory course in child care, approved by the department,
135 by October 1, 2013, or within 90 days after the date on which
136 the training begins. In addition, a recognized accrediting
137 agency shall require a program that is a member or participant
138 of, or accredited by, the agency to meet or exceed the
139 requirements for staff credentials established in s. 402.305 by
140 July 1, 2016. The department and accrediting agencies for
141 religious exemption shall work collaboratively to expedite the
142 approval of equivalency programs developed by the accrediting
143 agencies.
144 (5) Each accrediting agency for religious exemption that
145 seeks recognition by the department under this section shall

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146 submit a copy of its published standards to the department for
147 review. The department shall review these standards within 30
148 days after submission. The department shall recognize an
149 accrediting agency if the agency is in compliance with
150 subsection (3). The department shall create and maintain a
151 complete and accurate list of all recognized accrediting
152 agencies for religious exemption which includes their respective
153 standards.
154 (6) This section does not authorize the department to
155 regulate or control an accrediting agency for religious
156 exemption or to regulate or control the governance, religious
157 curriculum, academic curriculum, testing or assessments,
158 evaluation procedures, academic requirements of the staff,
159 discipline, or hiring practices of any religious-exempt child
160 care program.
161 (7) The department shall distribute to each recognized
162 accrediting agency for religious exemption any revision made to
163 the department's minimum standards within 30 days after the
164 revision is adopted. Within 30 days after the receipt of revised
165 minimum standards from the department, each recognized
166 accrediting agency for religious exemption shall notify the
167 department by written statement documenting that the agency has
168 notified each religious-exempt program of the revised standards.
169 The new standards must be incorporated during the next revision
170 of the accrediting agency's minimum standards. Each recognized
171 accrediting agency for religious exemption shall prepare and
172 submit to the department an annual report that includes an
173 updated listing of programs that are members or participants of,
174 or accredited by, that agency and must submit a written notice

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175 of a new program coming into affiliation thereafter, or
176 terminating affiliation, within 30 days after such action. A
177 religious-exempt child care program that transfers its
178 affiliation from one accrediting agency to another must notify
179 the accrediting agency from which it is transferring 30 days
180 before the transfer.
181 (8) A recognized accrediting agency for religious exemption
182 may not own, operate, or administer a child care program or
183 weekday preschool program under its certificate of approval. A
184 religious-exempt child care or weekday preschool program is
185 solely responsible for its day-to-day operations and compliance
186 with applicable state laws and shall meet the minimum standards
187 of its accrediting agency for religious exemption.
188 (9) The department shall facilitate an annual meeting with
189 the accrediting agencies for religious exemption, health and
190 safety of children in child care and preschool programs.
191 Section 3. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and Civil Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on General Government
Ethics and Elections
Health Policy
Judiciary
Transportation

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR ARTHENIA L. JOYNER
19th District

March 07, 2013

Senator Eleanor Sobel, Chair
Senate Committee on Children, Families, and Elder Affairs
520 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Madame Chair:

This is to request that Senate Bill 1682, Religious-Exempt Child Care Programs, be placed on the agenda for the Committee on Children, Families, and Elder Affairs. Your consideration of this request is greatly appreciated.

Sincerely,

Arthenia L. Joyner
State Senator, District 19

ALJ/rr

REPLY TO:
☐ 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
☐ 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic: Religious Exempt

Bill Number: 1682 (if applicable)

Name: JOEL LEVINE

Amendment Barcode: (if applicable)

Job Title: 4 Generations Institute

Address: BOX 903 (Street)

Tallahassee Fl. 32302 (City, State, Zip)

Phone: 850 567 5282

E-mail: joel@4gen.org

Speaking: ☐ For ☐ Against ☑ Information

Representing:

Appearing at request of Chair: ☑ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1724

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

SUBJECT: Transitional Living Facilities

DATE: April 1, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	**Fav/CS**
2.			HP	
3.			AHS	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1724 revises regulations for transitional living facilities. The purpose of these facilities is to provide rehabilitative care in a small residential setting. Such facilities primarily serve persons with brain of spinal injuries and who need significant care and services to regain their independence. There are currently thirteen such facilities in Florida. The bill provides admission criteria, client evaluations, treatment plans, and discharge plans. The bill establishes rights for clients in these facilities, screening requirements for facility employees, and penalties for violations.

This bill will have a minor fiscal impact on the state and has an effective date of July 1, 2013.

This bill substantially amends ss. 381.745, 381.75, and 381.78 of the Florida Statutes. This bill creates sections 400.9970, 400.9971, 400.9972, 400.9973, 400.9974, 400.9975, 400.9976, 400.9977, 400.9978, 400.9979, 400.998, 400.9981, 400.9982, 400.9983, and 400.9984 of the Florida Statutes. This bill repeals section 400.805 of the Florida Statutes.

II. Present Situation:

Brain and Spinal Cord Injuries

The human spinal cord operates much like a telephone line, relaying messages from the brain to the rest of the body. Spinal cord injuries are caused by bruising, crushing, or tearing of the delicate cord tissue.[1] Swelling of the spinal cord after the injury can cause even more damage. After an injury, the "messages" sent between the brain and the other parts of the body no longer flow through the damaged area. Many times the functions of the body which are located above the injury point will continue to work properly without impairment. However, the area below the injury point will be impaired to some degree, which will include any combination of the following: motor deficit, sensory deficit, initial breathing difficulty, and/or bowel and bladder dysfunction.

The Brain and Spinal Cord Injury Program (BSCIP) is administered by the Florida Department of Health (DOH).[2] The program is funded through a percentage of traffic related fines and surcharges for driving or boating under the influence, fees on temporary license tags, and a percentage of fees from the motorcycle specialty tag.

The BSCIP is operated through a statewide system of case managers and rehabilitation technicians. Children receive services from the Children's Medical Services nurse care coordinators and human services counselors. The program also employs regional managers who supervise staff in their region and who oversee locally the operation, development, and evaluation of the program's services and supports. Services include: case management, acute care, inpatient and outpatient rehabilitation, transitional living, assistive technology, home and vehicle modifications, nursing home transition facilitation; and long-term supports for survivors and families through contractual agreements with community-based agencies.

In addition to providing resource facilitation and funding for the services above, the program funds education, prevention, and research activities. It expands its services by funding a contract with the Brain Injury Association of Florida and the Florida Disabled Outdoors Association. Other services are provided through working relationships with the Florida Centers for Independent Living and the Florida Department of Education, Division of Vocational Rehabilitation.

Section 381.76, F.S., requires that an individual must be a legal Florida resident who has sustained a moderate-to-severe traumatic brain or spinal cord injury meeting the state's definition of such injuries; has been referred to the BSCIP Central Registry; and must be medically stable to be eligible for services. There must also be a reasonable expectation that with the provision of appropriate services and supports, the person can return to a community-based setting, rather than reside in a skilled nursing facility.

The state definition of a brain injury is an insult to the skull, brain or its covering, resulting from external trauma, which produces an altered state of consciousness or anatomic, motor, sensory,

[1]Florida Spinal Cord Injury Resource Center, *Family and Survivor's Guide*, *available at* http://fscirc.com/ (last visited March 25, 2013).
[2] Florida Department of Health website, *available at* http://www.doh.state.fl.us/ (last visited March 25, 2013).

cognitive or behavioral deficit. The state definition of a spinal cord injury is a lesion to the spinal cord or cauda equina resulting from external trauma with evidence of significant involvement of two of the following-motor deficit, sensory deficit, or bowel and bladder dysfunction.

Transitional Living Facilities

Transitional living facilities provide specialized health care services, including, but not limited to: rehabilitative services, community reentry training, aids for independent living, and counseling to spinal-cord-injured persons and head-injured persons. There are currently thirteen facilities located in the state.[3] Most of the facilities are small and have between 5 and 10 beds. One facility however is licensed for 127 beds (Florida Institute for Neurologic Rehabilitation in Wauchula). The facilities are located primarily in central Florida. The Agency for Health Care Administration (AHCA) is the licensing authority and one of the regulatory authorities which oversee transitional living facilities pursuant to chs. 408, Part II, and ch. 400, Part V, F. S., and ch. 59A-17 of the Florida Administrative Code. The current licensure fee is $4,588, and $90 per bed fee per biennium.

AHCA governs the physical plant and fiscal management of these facilities and adopts rules in conjunction with the DOH, which monitors services for persons with traumatic brain and spinal cord injuries. The Department of Children and Families investigates allegations of abuse and neglect of children and vulnerable adults.

Section 400.805, F.S., mandates requirements for transitional living facilities. Section 400.805(2), F.S., provides the licensure requirements and fees for operation of a transitional living facility as well as level 2 background screening requirements for all facility personnel. Section 400.805(3)(a), F.S., requires AHCA, in consultation with the DOH, to adopt rules governing the physical plan and the fiscal management of transitional living facilities.

The Brain and Spinal Cord Injury Advisory Council has the right to entry and inspection of transitional living facilities granted under s. 400.805(4), F.S. In addition, designated representatives of AHCA, the local fire marshal, and other agencies have access to the facilities and clients.

According to a news report from Bloomberg, dated January 24, 2012, clients at the Florida Institute for Neurologic Rehabilitation in Wauchula, Florida were abused, neglected and confined. The news report was based on information from 20 current and former clients and their family members, criminal charging documents, civil complaints and advocates for the disabled.[4] The report states that three former employees face criminal charges for abusing clients. News reports state the facility and three affiliated corporations filed Chapter 11 petitions in U.S. Bankruptcy Court in Tampa.[5] As of March 25, 2013, the facility is remains licensed.

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[3] Agency for Health Care Administration, *2013 Bill Analysis and Economic Impact Statement SB 1724*, (on file with the Senate Committee on Children, Families, and Elder Affairs).
[4] Bloomberg, *Abuse of Brain Injured Americans Scandalizes U.S.*, (Jan. 7, 2012) *available at* http://www.bloomberg.com/news/2012-07-24/brain-injured-abuse-at-for-profit-center-scandalizes-u-s-.html.
[5] Bloomberg, *Florida Brain-Injury Facility Files for Bankruptcy*, (Jan. 5, 2013) *available at* http://www.bloomberg.com/news/2013-01-05/florida-brain-injury-facility-files-for-bankruptcy.html.

III. Effect of Proposed Changes:

Section 1 designates ss. 400.997 through 400.9984, F.S., as "Transitional Living Facilities."

Section 2 creates s. 400.997, F.S., to state the intent behind the regulation of transitional living facilities. The bill specifies that such facilities shall be licensed by AHCA to ensure the quality of care for clients, provide the least restrictive placement, and assist clients to achieve a higher level of functioning. The intent is that these facilities enable the clients to return to the community.

Section 3 creates s. 400.9971. F.S., to define terms. Licensee is defined in this bill. The bill defines a chemical restraint which is used for the client protection or safety and is not required for the treatment of medical conditions or symptoms. The definition of physical restraint means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual's body so the client cannot easily remove the restraint and restricts freedom of movement or normal access to one's body. The definition of a transitional living facility is moved from s. 381.475, F.S. and the bill clarifies that a currently-licensed health care provider that treats brain and spinal cord injuries within the scope of its license need not be licensed as a transitional living facility as well.

Section 4 creates s. 400.9972, F.S., to provide the licensure requirements and application fee for transitional living facilities. The bill codifies the current license fee of $4,588 and the per bed fee of $90.[6] The bill requires certain information from the applicant, including the facility location, proof that local zoning requirements have been met, proof of liability insurance, documentation of a satisfactory fire safety inspection, and documentation of satisfactory sanitation inspection by the county health department. The bill also requires facilities to be accredited by an accrediting organization specializing in rehabilitation facilities. Such accreditation does not supplant the requirement for AHCA inspections.

Section 5 creates s. 400.9973, F.S., to set standards transitional living facilities must meet for client admission, transfer, and discharge from the facility. The facility is required to have admission, transfer, and discharge policies and procedures in writing.

Admission Criteria
Clients can only be admitted to the facility through a prescription by a licensed physician and must remain under the care of the physician for the duration of the client's stay in the facility. Clients admitted to the facility must have a brain and spinal cord injury, as defined in s. 381.745(2), F.S. Clients whose diagnosis does not positively identify a cause may be admitted for an evaluation period of up to 90 days.

A facility may not admit a client whose primary diagnosis is a mental illness or an intellectual or developmental disability. The facility may not admit clients who present significant risk of infection to other clients or personnel. Documentation indicating the person is free of apparent signs and symptoms of communicable disease is required. The facility may not admit clients who

[6] Section 400.805(2)(b), F.S., authorizes a license fee of $4,000 and a per bed fee of $75.50. Pursuant to s. 408.805(2), F.S., AHCA can increase the fees each year by up to the increase in the consumer price index for that year. The current fee is $4,588 and $90 per bed and bill uses these amounts.

are a danger to themselves or others as determined by a physician or mental health practitioner. The facility may not admit clients requiring mental health treatment or nursing supervision on a 24-hour basis or who are bedridden.

Client Plans and Evaluation
At or before admission, the facility must develop a "discharge plan" that states the intended placement after the client has received rehabilitative services. The goal of the placement is to return the client to independent living in the community. Discharge plans must be updated monthly.

The medical or nursing director must complete an initial evaluation of the client within 72 hours of admission.

The medical or nursing director must develop and implement an "initial" comprehensive treatment plan within 4 days of admission. The bill contains requirements for the treatment plans.

Facilities must provide at least 30 days notice to clients before involuntarily transferring or discharging them.

Section 6 creates s. 400.9974, F.S., to provide the requirements for clients' comprehensive treatment plans and services. The facility must develop a comprehensive treatment plan for each client within 30 days of admission. An interdisciplinary team, including the client, as appropriate, must develop the plan. Each plan must be updated at least monthly and include the following:

- Physician's orders, diagnosis, medical history, physical exams and rehab needs;
- A nursing evaluation with physician orders for immediate care completed at admission;
- A comprehensive assessment of the client's functional status and the services needed to become independent and return to the community.

The facility must have qualified staff to carry out and monitor rehabilitation services in accordance with the stated goals of the treatment plan.

Section 7 creates s. 400.9975, F.S., to provide for certain rights of each client. Specifically, the facility must ensure that each client:

- Lives in a safe environment;
- Is treated with respect, recognition of personal dignity, and privacy;
- Retains use of his or her own clothes and personal property;
- Has unrestricted private communications, which includes mail, telephone, and visitors;
- Participates in community services and activities;
- Manages his or her own financial affairs, unless the client or the client's representative authorizes the administrator of the facility to provide safekeeping for funds;
- Has reasonable opportunity for regular exercise and to be outdoors several times a week;
- May exercise civil and religious liberties;
- Has adequate access to appropriate health care services;
- Has the ability to present grievances and recommend changes in policies, procedures, and services;

- Promotes participation of client's representative in the process of treatment for the client;
- Answers communications from a client's family and friends promptly;
- Has visits by individuals with a relationship to the client at any reasonable hour;
- Is allowed leave from the facility to visit or to take trips or vacations; and
- That the client's representative is promptly notified of any significant incidents or changes in condition.

The bill requires the administrator to post a written notice of provider responsibilities in a prominent place in the facility that includes the statewide toll-free telephone number for reporting complaints to AHCA and the statewide toll-free number of Disability Rights of Florida. The facility must ensure the client has access to a telephone to call AHCA, the central abuse hotline, Disabilities Rights of Florida, or the local advocacy council. The facility cannot take retaliatory action against a client for filing a complaint or grievance. These are similar to protections provided to residents of nursing homes and assisted living facilities.

Section 8 creates s. 400.9976, F.S., to require the facility to record the client's medication administration, including self-administration, and each dose of medication. All drugs must be administered as ordered by the physician. The medication must be administered in compliance with the physician's orders. Drug administration errors and adverse drug reaction must be recorded and reported immediately to the physician. The interdisciplinary team that develops the client's treatment plan must determine whether a client is capable of self-administration of medications.

Section 9 creates s. 400.9977, F.S., to state that the facility is responsible for developing and implementing policies and procedures for screening and training employees, protection of clients, and for the prevention, identification, investigation, and reporting of abuse, neglect, mistreatment, and exploitation. This includes the facility identifying clients whose history renders the client a risk for abusing other clients. The facility must implement procedures to:

- Screen potential employees for a history of abuse, neglect, or mistreatment of clients;
- Train employees through orientation and on-going sessions on abuse prohibition practices;
- Implement procedures to provide clients, families, and staff information on how and to whom they may report concerns, incidents and grievances without fear of retribution;
- Implement procedures to identify events, such as suspicious bruising of clients, that may constitute abuse to determine the direction of the investigation;
- Investigate different types of incidents and identify staff members responsible for the initial reporting, and reporting of results to the proper authorities;
- Protect clients from harm during an investigation; and
- Report all alleged violations and all substantiated incidents as required under chs. 39 and 415, F.S., to the appropriate licensing authorities.

The facility must identify, correct, and intervene in situations where abuse, neglect, mistreatment, or exploitation is likely to occur, including conditions in the physical environment that make abuse and/or neglect more likely to occur, such as secluded areas. The facility must have sufficient numbers of staff to meet the needs of the clients; must assure staff has knowledge of each individual client's care needs; and provides adequate supervision to identify inappropriate behaviors, such as rough handling or ignoring clients while giving care. The

facility must analyze the occurrences of abuse, exploitation, mistreatment, or neglect and determine what changes are needed to policies and procedures to prevent further occurrences.

Section 10 creates s. 400.9978, F.S., to require that physical and chemical restraints be ordered for clients before they are used by the facility. The bill requires that the order must be documented by the client's physician and provided with the consent of the client or client's representative. Chemical restraint is limited to the dosage of medications prescribed by the client's physician. Clients receiving medications that can serve as a restraint must be evaluated by their physician at least monthly to assess:

- Continued use of medication;
- Level of the medication in client's blood; and
- Adjustments in the prescription.

The facility must ensure clients are free from unnecessary drugs and physical restraints. All interventions to manage inappropriate client behaviors must be administered with sufficient safeguards and supervision.

Section 11 creates s. 400.9979, F.S., to require all facility personnel to complete a level 2 background screening as required in s 408.809(1)(e), F.S. pursuant to ch. 435, F.S. The facility must maintain personnel records which contain the staff's background screening, job description, training requirements, compliance documentation, and a copy of all licenses or certification held by staff who perform services for which licensure or certification is required. The record must also include a copy of all job performance evaluations. In addition, the bill requires the facility to:

- Implement infection control policies and procedures.
- Maintain liability insurance, as defined by s. 624.605, F.S., at all times.
- Designate one person as administrator who is responsible for the overall management of the facility.
- Designate in writing a person responsible for the facility when the administrator is absent for 24 hours.
- Obtain approval of the comprehensive emergency management plan from the local emergency management agency.
- Maintain written records in a form and system in accordance with standard medical and business practices and be available for submission to AHCA upon request. The records must include:
    - A daily census record;
    - A report of all accident or unusual incidents involving clients or a staff member that caused or had the potential to cause injury or harm to any person or property within the facility;
    - Agreements with third party providers;
    - Agreements with consultants employed by the facility; and
    - Documentation of each consultant's visits and required written, dated reports.

Section 12 creates s. 400.998, F.S., to allow clients the option of using their own personal belongings, and choosing a roommate whenever possible. The admission of a client to a facility and his or her presence therein shall not confer on a licensee, administrator, employee, or

representative any authority to manage, use, or dispose of any property of the client. The licensee, administrator, employee, or representative may not act as the client's guardian, trustee, or payee for social security or other benefits. The licensee, administrator, employee, or representative may be granted power of attorney for a client if the licensee has filed a surety bond with AHCA in an amount equal to twice the average monthly income of the client. When the power of attorney is granted to the licensee, administrator, staff, or representative, he or she must notify the client on a monthly basis of any transactions made on their behalf and a copy of such statement given to the client and retained in the client's file and available for inspection by AHCA.

The bill states the facility, upon consent from the client, shall provide for the safekeeping in the facility of personal effects not in excess of $1,000 and funds of the client not in excess of $500 in cash, and shall keep complete and accurate records of all funds and personal effects received.

The bill provides for any funds or other property belonging to or due to a client, or expendable for his or her account, which is received by licensee, shall be trust funds which shall be kept separate from the funds and property of the licensee and other clients or shall be specifically credited to the client. At least once every month, unless upon order of a court of competent jurisdiction, the facility shall furnish the client and the client's representative a complete and verified statement of all funds and other property, detailing the amount and items received, together with their sources and disposition.

The bill mandates any licensee, administrator, or staff, or representative thereof, who is granted power of attorney for any client of the facility and who misuses or misappropriates funds obtained through this power commits a felony of the third degree.

In the event of the death of a client, the facility shall return all refunds, funds, and property held in trust to the client's personal representative. If the client has no spouse or adult next of kin or such person cannot be located, funds due the client shall be placed in an interest-bearing account, and all property held in trust by the licensee shall be safeguarded until such time as the funds and property are disbursed pursuant to the Florida Probate Code.

The bill allows AHCA, by rule, to clarify terms and specify procedures and documentation necessary to administer the provisions relating to the proper management of clients' funds and personal property and the execution of surety bonds.

Section 13 creates s. 400.9981, F.S., to authorize AHCA to publish and enforce rules to include criteria to ensure reasonable and consistent quality of care and client safety. AHCA, in consultation with the DOH, may adopt and enforce rules related to:

- Physical plant of transitional living facilities.
- Qualifications of all personnel having responsibility for any part of the client's care and services.
- Requirements for personnel procedures, insurance coverage, and reporting procedures.
- Services provided to clients.
- The preparation and annual update of a comprehensive emergency management plan.

Section 14 creates s. 400.9982, F.S., which establishes penalties for violations. Current law requires AHCA to determine if violations in health care related facilities are isolated, patterned or widespread by AHCA.[7] The penalties in the bill take into account the frequency of the problems within the facility. Violations are also separated into classes 1 through 4 based on severity in s. 408.813, F.S. Class 1 violations being the most serious and class 4 being the least serious. Class 1 violations put clients in imminent danger. Class 2 violations directly threaten the safety of clients. Class 3 violations indirectly threaten the safety of clients. Class 4 violations are primarily for paperwork violations that would not harm clients. The classifications must be included on the written notice of the violation provided to the facility.

The fines for violations are to be levied at the following amounts:

Class of Violation/Correction	Isolated	Patterned	Widespread
1 - regardless of correction	$5,000	$7,500	$10,000
2 - regardless of correction	$1,000	$2,500	$5,000
3 – if uncorrected	$500	$750	$1,000
	Range		
4 – regardless of correction	$100		$200

Section 15 creates s. 400.9983, F.S., to establish the right for AHCA to petition a court for the appointment of a receiver when the following conditions exist:

- The facility is closing or has informed AHCA that it intends to close.
- AHCA determines the conditions exist in the facility that presents danger to the health, safety, or welfare of the clients of the facility.
- The facility cannot meet its financial obligation for providing food, shelter, care, and utilities.

The bill states petitions for receivership shall take priority over other court business. A hearing shall be conducted within five days of the petition filing. AHCA notifies the facility administrator or owner of the petition and sets the date of the hearing. The court may grant the petition only upon finding that the health, safety, or welfare of the client is threatened if certain conditions exist. A receiver is appointed from a list of persons qualified to act as receiver developed by AHCA. The receiver must make provisions for the continued health, safety, and welfare of all clients for the facility and perform all duties set out by the court. The receiver must operate the facility to assure the safety and adequate health care for the clients. The receiver may use all resources and consumable goods in the provision of care services to the client and correct or eliminate any deficiency in the structure or furnishings of the facility which endangers the safety of clients and staff. The receiver may hire or contract staff to carry out the duties of the receiver. The receiver must also honor all leases and mortgages, and has the power to direct and manage and to discharge employees of the facility.

Section 16 creates s. 400.9984, F.S., to require AHCA, the DOH, the Agency for Persons with Disabilities, and the Department of Children and Families to develop an electronic database to ensure relevant data pertaining to the regulation of transitional living facilities and clients is communicated timely among all agencies for the protection of clients. This system must include the Brain and Spinal Cord Registry and the abuse registries. A database containing information

[7] s. 408.813(2), F.S.

on facilities will assist the various state agencies that are involved in regulating the facilities and the treatment of their clients.

Section 17 repeals s. 400.805, F.S. This section of law contains the current regulations for transitional living facilities. These provisions are replaced by ss. 400.997-9984, F.S. created in the bill.

Section 18 amends s. 381.745, F.S., to conform to changes in the definition of a transitional living facility.

Section 19 amends s. 381.75, F.S., to eliminate a reference to the responsibility of the Department of Health to develop rules with AHCA for the regulation of transitional living facilities. Provisions in this section are moved and revised in the newly-created sections 400.997-400.9984, F.S.

Section 20 amends s. 381.78, F.S., relating to the Brain and Spinal Cord Injury Advisory Council's appointment of a committee to regulate transitional living facilities. These duties are duplicative of the regulation by AHCA under the bill and, as a result, are removed.

Section 21 provides for an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Transitional living facilities may incur increased costs based on the increased requirements under the bill. The amount is indeterminate.

C. Government Sector Impact:

AHCA currently regulates the 13 transitional living facilities in the state and is not expected to incur increased costs of regulation. AHCA will see increased costs however to develop a database to hold information on facilities that would be shared with other state agencies as required under the bill. The costs are estimated below.

Fiscal Impact	**Fiscal Year 2013-14**
AHCA	
Develop database	$164,060
Total	$164,060

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Children, Families, and Elder Affairs on April 1, 2013:

- Provides that other health care providers serving brain and spinal cord-injured persons under their existing license, such as hospitals and skilled nursing rehabilitation programs, need not obtain a license as a transitional living facility.
- Requires client discharge plans that specify the rehabilitation goals must be developed before or at admission.
- Requires accreditation as a condition of licensure.
- Authorizes clients to stay beyond 2 years as long as they are making measurable progress to transition to the community.
- Allows a client whose diagnosis does not positively identify the cause of his or her condition to be admitted to the facility for up to 90 days for evaluation.
- Prohibits the admission of clients who have an intellectual or developmental disability as the primary diagnosis.
- Clarifies the requirements and timeframes for the client discharge plan (prior to or at admission), initial evaluation (within 72 hours of admission), initial comprehensive treatment plan (within 4 days of admission), and comprehensive treatment plan (within 30 days of admission).
- Provides that facilities must give the client 30 days notice prior to an involuntary discharge or transfer from the facility.
- Requires facilities to establish a system for investigating, tracking, and responding to complaints along with an appeals process.

- Amends s. 381.75, F.S., to delete current regulations that are replaced by newly-created sections 400.997-9984, F.S.
- Amends s. 381.78, F.S., to eliminate the authority of the Brain and Spinal Cord Injury Advisory Council to appointment a committee to regulate transitional living facilities.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Sections 400.9970 through 400.9984, Florida
6 Statutes, are designated as part XI of chapter 400, Florida
7 Statutes, entitled "Transitional Living Facilities."
8 Section 2. Section 400.9970, Florida Statutes, is created
9 to read:
10 400.9970 Legislative intent.—It is the intent of the
11 Legislature to provide for the licensure of transitional living
12 facilities and require the development, establishment, and

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13 enforcement of basic standards by the Agency for Health Care
14 Administration to ensure quality of care and services to clients
15 in transitional living facilities. It is the policy of the state
16 that the least restrictive appropriate available treatment be
17 used based on the individual needs and best interest of the
18 client and consistent with optimum improvement of the client's
19 condition. The goal of a transitional living program for
20 individuals who have brain or spinal cord injuries is to assist
21 each individual who has such an injury to achieve a higher level
22 of independent functioning and to enable that individual to
23 reenter the community.
24 Section 3. Section 400.9971, Florida Statutes, is created
25 to read:
26 400.9971 Definitions.—As used in this part, the term:
27 (1) "Agency" means the Agency for Health Care
28 Administration.
29 (2) "Chemical restraint" means a pharmacologic drug that
30 physically limits, restricts, or deprives an individual of
31 movement or mobility, is used for client protection or safety,
32 and is not required for the treatment of medical conditions or
33 symptoms.
34 (3) "Client's representative" means the parent of a child
35 client or the client's guardian, designated representative or
36 designee, surrogate, or attorney in fact.
37 (4) "Department" means the Department of Health.
38 (5) "Licensee" means an individual issued a license by the
39 agency.
40 (6) "Physical restraint" means any manual method to
41 restrict freedom of movement of or normal access to an

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42 individual's body or a physical or mechanical device, material,
43 or equipment attached or adjacent to the individual's body so
44 that he or she cannot easily remove the restraint and which
45 restricts freedom of movement of or normal access to one's body,
46 including, but not limited to, a half-bed rail, a full-bed rail,
47 a geriatric chair, and a posey restraint. The term includes any
48 device that was not specifically manufactured as a restraint but
49 which has been altered, arranged, or otherwise used for this
50 purpose. The term does not include bandage material used for the
51 purpose of binding a wound or injury.
52 (7) "Transitional living facility" means a site where
53 specialized health care services are provided, including, but
54 not limited to, rehabilitative services, behavior modification,
55 community reentry training, aids for independent living, and
56 counseling to individuals who have brain injuries or spinal cord
57 injuries. The term does not require a provider that is licensed
58 by the agency to obtain a separate transitional living facility
59 license to serve persons who have brain injuries or spinal cord
60 injuries as long as the services provided are within the scope
61 of the provider's license.
62 Section 4. Section 400.9972, Florida Statutes, is created
63 to read:
64 400.9972 License required; fee; application.—
65 (1) The requirements of part II of chapter 408 apply to the
66 provision of services that require licensure pursuant to this
67 part and part II of chapter 408 and to entities licensed by or
68 applying for such licensure from the agency pursuant to this
69 part. A license issued by the agency is required for the
70 operation of a transitional living facility in this state.

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71 (2) In accordance with this part, an applicant or a
72 licensee shall pay a fee for each license application submitted
73 under this part. The license fee shall consist of a $4,588
74 license fee and a $90 per-bed fee per biennium and shall conform
75 to the annual adjustment authorized in s. 408.805.
76 (3) Each applicant for licensure must provide the
77 following:
78 (a) The location of the facility for which a license is
79 sought and documentation, signed by the appropriate local
80 government official, which states that the applicant has met
81 local zoning requirements.
82 (b) Proof of liability insurance as provided in s. 624.605.
83 (c) Proof of compliance with local zoning requirements,
84 including compliance with the requirements of chapter 419 if the
85 proposed facility is a community residential home.
86 (d) Proof that the facility has received a satisfactory
87 firesafety inspection.
88 (e) Documentation of a satisfactory sanitation inspection
89 of the facility by the county health department.
90
91 The applicant’s proposed facility must attain and continuously
92 maintain accreditation by an accrediting organization
93 specializing in evaluating rehabilitation facilities whose
94 standards incorporate comparable licensure regulations required
95 by the state. An applicant for licensure as a transitional
96 living facility must acquire accreditation within 12 months
97 after the issuance of an initial license. The agency shall
98 accept the accreditation survey report of the accrediting
99 organization in lieu of conducting a licensure inspection if the

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100 standards included in the survey report are determined by the
101 agency to document that the facility is in substantial
102 compliance with state licensure requirements. The applicant
103 shall submit to the agency within 10 days after receipt a copy
104 of any accreditation survey report and evidence of the
105 accreditation decision subsequent to a survey by the accrediting
106 organization on the facility. This part does not preclude the
107 agency from conducting periodic inspections of a transitional
108 living facility to ensure compliance with all licensure
109 requirements, and as it deems necessary to carry out the
110 functions of the agency. An inspection may be conducted to
111 ensure compliance with licensure requirements of this part, to
112 validate the inspection process of accrediting organizations, to
113 respond to licensure complaints, or to protect the public health
114 and safety.
115 Section 5. Section 400.9973, Florida Statutes, is created
116 to read:
117 400.9973 Client admission, transfer, and discharge.—
118 (1) Each transitional living facility must have written
119 policies and procedures governing the admission, transfer, and
120 discharge of clients.
121 (2) The admission of each client to a transitional living
122 facility must be in accordance with the licensee’s policies and
123 procedures.
124 (3) A client admitted to a transitional living facility
125 must have a brain or spinal cord injury, such as a lesion to the
126 spinal cord or cauda equina syndrome, with evidence of
127 significant involvement of two of the following deficits or
128 dysfunctions:

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129 (a) A motor deficit.
130 (b) A sensory deficit.
131 (c) Bowel and bladder dysfunction.
132 (d) An acquired internal or external injury to the skull,
133 the brain, or the brain's covering, whether caused by a
134 traumatic or nontraumatic event, which produces an altered state
135 of consciousness or an anatomic motor, sensory, cognitive, or
136 behavioral deficit.
137 (4) A client whose medical diagnosis does not positively
138 identify a cause of the client's condition, whose symptoms are
139 inconsistent with the known cause of injury, or whose recovery
140 is inconsistent with the known medical condition may be admitted
141 to a transitional living facility for evaluation for a period
142 not to exceed 90 days.
143 (5) A client admitted to a transitional living facility
144 must be admitted upon prescription by a licensed physician and
145 must remain under the care of a licensed physician for the
146 duration of the client's stay in the facility.
147 (6) A transitional living facility may not admit a client
148 whose primary admitting diagnosis is mental illness or an
149 intellectual or a developmental disability.
150 (7) An individual may not be admitted to a transitional
151 living facility if the individual:
152 (a) Presents significant risk of infection to other clients
153 or personnel. A health care practitioner must provide
154 documentation that the individual is free of apparent signs and
155 symptoms of communicable disease;
156 (b) Is a danger to self or others as determined by a
157 physician or mental health practitioner licensed under chapter

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158 490 or chapter 491, unless the facility provides adequate
159 staffing and support to ensure patient safety;
160 (c) Is bedridden; or
161 (d) Requires 24-hour nursing supervision.
162 (8) If the client meets the admission criteria, the medical
163 or nursing director of the facility must complete an initial
164 evaluation of the client's functional skills, behavioral status,
165 cognitive status, educational or vocational potential, medical
166 status, psychosocial status, sensorimotor capacity, and other
167 related skills and abilities within the first 72 hours after the
168 client's admission to the facility. An initial comprehensive
169 treatment plan that delineates services to be provided and
170 appropriate sources for such services must be implemented within
171 the first 4 days after admission.
172 (9) Each transitional living facility shall develop a
173 discharge plan for each client before or upon admission to the
174 facility. The discharge plan must identify the intended
175 discharge site and possible alternative discharge sites. For
176 each discharge site identified, the discharge plan must identify
177 the skills, behaviors, and other conditions that the client must
178 achieve to be appropriate for discharge. Discharge plans must be
179 reviewed and updated as necessary, but no less often than once
180 monthly.
181 (10) As soon as practicable, a transitional living facility
182 shall discharge a client when he or she no longer requires any
183 of the specialized services described in s. 400.9971(7) or is
184 not making measurable progress in accordance with his or her
185 comprehensive treatment plan, or if the transitional living
186 facility is no longer the most appropriate, least restrictive

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187 treatment option.
188 (11) Each transitional living facility shall provide at
189 least 30 days' notice to clients of transfer or discharge plans,
190 including the location of an acceptable transfer location if the
191 client is unable to live independently. This requirement does
192 not apply if a client voluntarily terminates residency.
193 Section 6. Section 400.9974, Florida Statutes, is created
194 to read:
195 400.9974 Client comprehensive treatment plans; client
196 services.—
197 (1) Each transitional living facility shall develop a
198 comprehensive treatment plan for each client as soon as
199 possible, but no later than 30 days following development of the
200 initial comprehensive treatment plan. Comprehensive treatment
201 plans must be reviewed and updated if the client fails to meet
202 projected improvements in the plan or if a significant change in
203 the client's condition occurs. Comprehensive treatment plans
204 must be reviewed and updated at least once monthly.
205 Comprehensive treatment plans must be developed by an
206 interdisciplinary team consisting of the case manager, the
207 program director, the nurse, and appropriate therapists. The
208 client or, if appropriate, the client's representative must be
209 included in developing the comprehensive treatment plan.
210 (2) The comprehensive treatment plan must include the
211 following:
212 (a) The physician's orders and the client's diagnosis,
213 medical history, physical examination, and rehabilitative or
214 restorative needs.
215 (b) A preliminary nursing evaluation with physician's

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216 orders for immediate care, completed on admission.
217 (c) A comprehensive, accurate, reproducible, and
218 standardized assessment of the client's functional capability;
219 the treatments designed to achieve skills, behaviors, and other
220 conditions necessary to return to the community; and specific
221 measurable goals.
222 (d) Steps necessary for the client to achieve transition to
223 the community and estimated length of time to achieve the goals.
224 (3) The client or, if appropriate, the client's
225 representative shall consent to the continued treatment at the
226 transitional living facility. If such consent is not given, the
227 transitional living facility shall discharge the client as soon
228 as practicable.
229 (4) Each client must receive the professional program
230 services needed to implement the client's comprehensive
231 treatment plan.
232 (5) The licensee must employ qualified professional staff
233 to carry out and monitor the various professional interventions
234 in accordance with the stated goals and objectives of every
235 client's comprehensive treatment plan.
236 (6) Each client must receive a continuous treatment program
237 that includes appropriate, consistent implementation of a
238 program of specialized and general training, treatment, health
239 services, and related services which is directed toward:
240 (a) The acquisition of the behaviors and skills necessary
241 for the client to function with as much self-determination and
242 independence as possible;
243 (b) The prevention or deceleration of regression or loss of
244 current optimal functional status; and

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245 (c) The management of behavioral issues that preclude
246 independent functioning in the community.
247 Section 7. Section 400.9975, Florida Statutes, is created
248 to read:
249 400.9975 Licensee responsibilities.—
250 (1) The licensee shall ensure that each client:
251 (a) Lives in a safe environment free from abuse, neglect,
252 and exploitation.
253 (b) Is treated with consideration and respect and with due
254 recognition of personal dignity, individuality, and the need for
255 privacy.
256 (c) Retains and uses his or her own clothes and other
257 personal property in his or her immediate living quarters, so as
258 to maintain individuality and personal dignity, except when the
259 licensee can demonstrate that such retention and use would be
260 unsafe, impractical, or an infringement upon the rights of other
261 clients.
262 (d) Has unrestricted private communication, including
263 receiving and sending unopened correspondence, access to a
264 telephone, and visiting with any person of his or her choice.
265 Upon request, the licensee shall make provisions to modify
266 visiting hours for caregivers and guests. The facility shall
267 restrict communication in accordance with any court order or
268 written instruction of a client’s representative. Any
269 restriction on a client’s communication for therapeutic reasons
270 shall be documented and reviewed at least weekly and shall be
271 removed as soon as it is no longer clinically indicated. The
272 basis for the restriction shall be explained to the client and,
273 if applicable, the client’s representative. The client shall

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274 nonetheless retain the right to call the abuse hotline, the
275 agency, and Disability Rights Florida at any and all times.
276 (e) Participates in and benefits from community services
277 and activities to achieve the highest possible level of
278 independence, autonomy, and interaction within the community.
279 (f) Manages his or her financial affairs unless the client
280 or, if applicable, the client's representative authorizes the
281 administrator of the facility to provide safekeeping for funds
282 as provided in this part.
283 (g) Has reasonable opportunity for regular exercise several
284 times a week and to be outdoors at regular and frequent
285 intervals except when prevented by inclement weather.
286 (h) Exercises civil and religious liberties, including the
287 right to independent personal decisions. No religious belief or
288 practice, including attendance at religious services, shall be
289 imposed upon any client.
290 (i) Has access to adequate and appropriate health care
291 consistent with established and recognized standards within the
292 community.
293 (j) Has the ability to present grievances and recommend
294 changes in policies, procedures, and services to the staff of
295 the licensee, governing officials, or any other person without
296 restraint, interference, coercion, discrimination, or reprisal.
297 Each licensee shall establish a grievance procedure to
298 facilitate a client's ability to present grievances, including a
299 system for investigating, tracking, managing, and responding to
300 complaints by persons receiving services or individuals acting
301 on their behalf, and an appeals process. This process must
302 include access to Disability Rights Florida and other advocates

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303 and the right to be a member of, be active in, and associate
304 with advocacy or special interest groups.
305 (2) The licensee shall:
306 (a) Promote participation of each client's representative
307 in the process of providing treatment to the client unless the
308 representative's participation is unobtainable or inappropriate.
309 (b) Answer communications from each client's family,
310 guardians, and friends promptly and appropriately.
311 (c) Promote visits by individuals with a relationship to
312 the client at any reasonable hour, without requiring prior
313 notice, or in any area of the facility which provides direct
314 client care services to the client, consistent with the client's
315 and other clients' privacy, unless the interdisciplinary team
316 determines that such a visit would not be appropriate.
317 (d) Promote leave from the facility for visits, trips, or
318 vacations.
319 (e) Promptly notify the client's representative of any
320 significant incidents or changes in the client's condition,
321 including, but not limited to, serious illness, accident, abuse,
322 unauthorized absence, or death.
323 (3) The administrator of a facility shall ensure that a
324 written notice of licensee responsibilities is posted in a
325 prominent place in each building where clients reside and read
326 or explained to clients who cannot read. This notice shall
327 include the statewide toll-free telephone number for reporting
328 complaints to the agency, must be provided to clients in a
329 manner that is clearly legible, and must include the words: "To
330 report a complaint regarding the services you receive, please
331 call toll-free ...[telephone number]... or Disability Rights

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332 Florida ...[telephone number]...”; and the statewide toll-free
333 telephone number for the central abuse hotline must be provided
334 to clients in a manner that is clearly legible and must include
335 the words: “To report abuse, neglect or exploitation, please
336 call toll-free ...[telephone number where complaints may be
337 lodged]....” The licensee must ensure a client’s access to a
338 telephone, where telephone numbers required in this subsection
339 are readily available, to call the agency, central abuse
340 hotline, or Disability Rights Florida.
341 (4) A licensee or employee of a facility may not serve
342 notice upon a client to leave the premises or take any other
343 retaliatory action against any person solely due to the
344 following:
345 (a) The client or other person files an internal or
346 external complaint or grievance regarding the facility.
347 (b) The client or other person appears as a witness in any
348 hearing inside or outside the facility.
349 (5) Before or at the time of admission, the client and the
350 client’s representative shall be provided with a copy of the
351 licensee’s responsibilities as provided in this section,
352 including grievance procedures and the telephone numbers
353 provided in this section.
354 (6) The licensee must develop and implement policies and
355 procedures governing the release of any client information,
356 including consent necessary from the client or the client’s
357 representative.
358 Section 8. Section 400.9976, Florida Statutes, is created
359 to read:
360 400.9976 Medication practices.—

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361 (1) An individual medication administration record must be
362 maintained for each client. Each dose of medication, including a
363 self-administered dose, shall be properly recorded in the
364 client's record. Each client who self-administers medication
365 shall be given a pill organizer. Medication must be placed in
366 the pill organizer by a nurse. A nurse shall document the date
367 and time medication is placed into each client's pill organizer.
368 All medications must be administered in compliance with the
369 physician's orders.
370 (2) If the interdisciplinary team determines that self-
371 administration of medications is an appropriate objective, and
372 if the physician does not specify otherwise, a client must be
373 taught to self-administer his or her medication without a staff
374 person. This includes all forms of administration, including
375 orally, via injection, and via suppository. The client's
376 physician must be informed of the interdisciplinary team's
377 decision that self-administration of medications is an objective
378 for the client. A client may not self-administer medication
379 until he or she demonstrates the competency to take the correct
380 medication in the correct dosage at the correct time, to respond
381 to missed doses, and to contact an appropriate person with
382 questions.
383 (3) Medication administration discrepancies and adverse
384 drug reactions must be recorded and reported immediately to a
385 physician.
386 Section 9. Section 400.9977, Florida Statutes, is created
387 to read:
388 400.9977 Protection from abuse, neglect, mistreatment, and
389 exploitation.—The licensee must develop and implement policies

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390 and procedures for the screening and training of employees, the
391 protection of clients, and the prevention, identification,
392 investigation, and reporting of abuse, neglect, and
393 exploitation. This includes the licensee's identification of
394 clients whose personal histories render them at risk for abusing
395 other clients, development of intervention strategies to prevent
396 occurrences, monitoring for changes that would trigger abusive
397 behavior, and reassessment of the interventions on a regular
398 basis. A licensee shall implement procedures to:
399 (1) Screen potential employees for a history of abuse,
400 neglect, or mistreatment of clients. The screening shall include
401 an attempt to obtain information from previous employers and
402 current employers and verification with the appropriate
403 licensing boards and registries.
404 (2) Train employees, through orientation and ongoing
405 sessions, on issues related to abuse prohibition practices,
406 including identification of abuse, neglect, mistreatment, and
407 exploitation, appropriate interventions to deal with aggressive
408 or catastrophic reactions of clients, the process to report
409 allegations without fear of reprisal, and recognition of signs
410 of frustration and stress that may lead to abuse.
411 (3) Provide clients, families, and staff with information
412 on how and to whom they may report concerns, incidents, and
413 grievances without the fear of retribution and provide feedback
414 regarding the concerns that have been expressed. A licensee must
415 identify, correct, and intervene in situations in which abuse,
416 neglect, mistreatment, or exploitation is likely to occur,
417 including:
418 (a) Evaluating the physical environment of the facility to

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419 identify characteristics that may make abuse or neglect more
420 likely to occur, such as secluded areas.
421 (b) Providing sufficient staff on each shift to meet the
422 needs of the clients, and ensuring that the staff assigned have
423 knowledge of the individual clients' care needs. The licensee
424 shall identify inappropriate behaviors of its staff, such as
425 using derogatory language, rough handling, ignoring clients
426 while giving care, and directing clients who need toileting
427 assistance to urinate or defecate in their beds.
428 (c) Assessing, planning care for, and monitoring clients
429 with needs and behaviors that might lead to conflict or neglect,
430 such as clients with a history of aggressive behaviors, clients
431 who have behaviors such as entering other clients' rooms,
432 clients with self-injurious behaviors, clients with
433 communication disorders, and clients who require heavy nursing
434 care or are totally dependent on staff.
435 (4) Identify events, such as suspicious bruising of
436 clients, occurrences, patterns, and trends that may constitute
437 abuse and determine the direction of the investigation.
438 (5) Investigate different types of incidents, identify the
439 staff member responsible for the initial reporting, investigate
440 alleged violations, and report results to the proper
441 authorities. The licensee must analyze the occurrences to
442 determine what changes are needed, if any, to policies and
443 procedures to prevent further occurrences and to take all
444 necessary corrective action depending on the results of the
445 investigation.
446 (6) Protect clients from harm during an investigation.
447 (7) Report all alleged violations and all substantiated

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448 incidents, as required under chapters 39 and 415, to the
449 licensing authorities and all other agencies as required and to
450 report any knowledge it has of any actions by a court of law
451 that would indicate an employee is unfit for service.
452 Section 10. Section 400.9978, Florida Statutes, is created
453 to read:
454 400.9978 Restraints and seclusion; client safety.—
455 (1) The use of physical restraints must be ordered and
456 documented by a physician and must be consistent with policies
457 and procedures adopted by the facility. The client or, if
458 applicable, the client's representative must be informed of the
459 facility's physical restraint policies and procedures at the
460 time of the client's admission.
461 (2) The use of chemical restraints is limited to prescribed
462 dosages of medications as ordered by a physician and must be
463 consistent with the client's diagnosis and the policies and
464 procedures adopted by the facility. The client or, if
465 applicable, the client's representative must be informed of the
466 facility's chemical restraint policies and procedures at the
467 time of the client's admission.
468 (3) Based on a physician's assessment, if a client exhibits
469 symptoms that present an immediate risk of injury or death to
470 self or others, a physician may issue an emergency treatment
471 order to immediately administer rapid response psychotropic
472 medications or other chemical restraints. Each emergency
473 treatment order must be documented and maintained in the
474 client's record.
475 (a) An emergency treatment order is effective for no more
476 than 24 hours.

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477 (b) Whenever a client is medicated in accordance with this
478 subsection, the client's representative or responsible party and
479 the client's physician must be notified as soon as practicable.
480 (4) A client who is prescribed and receiving a medication
481 that can serve as a chemical restraint for a purpose other than
482 an emergency treatment order must be evaluated by his or her
483 physician at least monthly to assess the following:
484 (a) The continued need for the medication.
485 (b) The level of the medication in the client's blood, as
486 appropriate.
487 (c) The need for adjustments in the prescription.
488 (5) The licensee shall ensure that clients are free from
489 unnecessary drugs and physical restraints and are provided
490 treatment to reduce dependency on drugs and physical restraints.
491 (6) The licensee may use physical restraints only as an
492 integral part of a client's comprehensive treatment plan which
493 is intended to lead to less restrictive means of managing and
494 eliminating the behavior for which the restraint is applied.
495 (7) Interventions to manage inappropriate client behavior
496 must be employed with sufficient safeguards and supervision to
497 ensure that the safety, welfare, and civil and human rights of
498 each client are adequately protected.
499 Section 11. Section 400.9979, Florida Statutes, is created
500 to read:
501 400.9979 Background screening; administration and
502 management.—
503 (1) The agency shall require level 2 background screening
504 for personnel as required in s. 408.809(1)(e) pursuant to
505 chapter 435 and s. 408.809.

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506 (2) The licensee shall maintain personnel records for each
507 staff member which contain, at a minimum, documentation of
508 background screening, if applicable, a job description,
509 documentation of compliance with all training requirements of
510 this part or applicable rule, the employment application,
511 references, a copy of all job performance evaluations, and, for
512 each staff member who performs services for which licensure or
513 certification is required, a copy of all licenses or
514 certification held by the staff member.
515 (3) The licensee must:
516 (a) Develop and implement infection control policies and
517 procedures and include such policies and procedures in the
518 licensee's policy manual.
519 (b) Maintain liability insurance as defined in s. 624.605.
520 (c) Designate one person as an administrator who is
521 responsible and accountable for the overall management of the
522 facility.
523 (d) Designate a person in writing to be responsible for the
524 facility when the administrator is absent from the facility for
525 more than 24 hours.
526 (e) Designate in writing a program director who is
527 responsible for supervising the therapeutic and behavioral
528 staff, determining the levels of supervision, and determining
529 room placement for each client.
530 (f) Designate in writing a person to be responsible when
531 the program director is absent from the facility for more than
532 24 hours.
533 (g) Obtain approval of the comprehensive emergency
534 management plan, pursuant to s. 400.9981(2)(e), from the local

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535 emergency management agency. Pending the approval of the plan,
536 the local emergency management agency shall ensure that the
537 following agencies, at a minimum, are given the opportunity to
538 review the plan: the Department of Health, the Agency for Health
539 Care Administration, and the Division of Emergency Management.
540 Appropriate volunteer organizations must also be given the
541 opportunity to review the plan. The local emergency management
542 agency shall complete its review within 60 days and either
543 approve the plan or advise the licensee of necessary revisions.
544 (h) Maintain written records in a form and system that
545 comply with medical and business practices and make such records
546 available in the facility for review or submission to the agency
547 upon request. The records shall include:
548 1. A daily census record that indicates the number of
549 clients currently receiving services in the facility, including
550 information regarding any public funding of such clients.
551 2. A record of all accidents or unusual incidents involving
552 any client or staff member that caused, or had the potential to
553 cause, injury or harm to any person or property within the
554 facility. Such records must contain a clear description of each
555 accident or incident, the names of the persons involved, a
556 description of all medical or other services provided to these
557 persons specifying who provided such services, and the steps
558 taken to prevent recurrence of such accidents or incidents.
559 3. A copy of current agreements with third-party providers.
560 4. A copy of current agreements with each consultant
561 employed by the licensee and documentation of each consultant's
562 visits and required written, dated reports.
563 Section 12. Section 400.9980, Florida Statutes, is created

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564 to read:
565 400.9980 Property and personal affairs of clients.—
566 (1) A client shall be given the option of using his or her
567 own belongings, as space permits; choosing his or her roommate
568 if practical and not clinically contraindicated; and, whenever
569 possible, unless the client is adjudicated incompetent or
570 incapacitated under state law, managing his or her own affairs.
571 (2) The admission of a client to a facility and his or her
572 presence therein shall not confer on a licensee, administrator,
573 employee, or representative thereof any authority to manage,
574 use, or dispose of any property of the client, nor shall such
575 admission or presence confer on any of such persons any
576 authority or responsibility for the personal affairs of the
577 client except that which may be necessary for the safe
578 management of the facility or for the safety of the client.
579 (3) A licensee, administrator, employee, or representative
580 thereof may:
581 (a) Not act as the guardian, trustee, or conservator for
582 any client or any of such client’s property.
583 (b) Act as a competent client’s payee for social security,
584 veteran’s, or railroad benefits if the client provides consent
585 and the licensee files a surety bond with the agency in an
586 amount equal to twice the average monthly aggregate income or
587 personal funds due to the client, or expendable for the client’s
588 account, that are received by a licensee.
589 (c) Act as the power of attorney for a client if the
590 licensee has filed a surety bond with the agency in an amount
591 equal to twice the average monthly income of the client, plus
592 the value of any client’s property under the control of the

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593 attorney in fact.
594
595 The bond under paragraph (b) or paragraph (c) shall be executed
596 by the licensee as principal and a licensed surety company. The
597 bond shall be conditioned upon the faithful compliance of the
598 licensee with the requirements of licensure and shall be payable
599 to the agency for the benefit of any client who suffers a
600 financial loss as a result of the misuse or misappropriation of
601 funds held pursuant to this subsection. Any surety company that
602 cancels or does not renew the bond of any licensee shall notify
603 the agency in writing not less than 30 days in advance of such
604 action, giving the reason for the cancellation or nonrenewal.
605 Any licensee, administrator, employee, or representative thereof
606 who is granted power of attorney for any client of the facility
607 shall, on a monthly basis, notify the client in writing of any
608 transaction made on behalf of the client pursuant to this
609 subsection, and a copy of such notification given to the client
610 shall be retained in each client's file and available for agency
611 inspection.
612 (4) A licensee, upon mutual consent with the client, shall
613 provide for the safekeeping in the facility of the client's
614 personal effects of a value not in excess of $1,000 and the
615 client's funds not in excess of $500 cash and shall keep
616 complete and accurate records of all such funds and personal
617 effects received. If a client is absent from a facility for 24
618 hours or more, the licensee may provide for the safekeeping of
619 the client's personal effects of a value in excess of $1,000.
620 (5) Any funds or other property belonging to or due to a
621 client or expendable for his or her account that is received by

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622 licensee shall be trust funds and shall be kept separate from
623 the funds and property of the licensee and other clients or
624 shall be specifically credited to such client. Such trust funds
625 shall be used or otherwise expended only for the account of the
626 client. At least once every month, unless upon order of a court
627 of competent jurisdiction, the licensee shall furnish the client
628 and the client's representative a complete and verified
629 statement of all funds and other property to which this
630 subsection applies, detailing the amount and items received,
631 together with their sources and disposition. In any event, the
632 licensee shall furnish such statement annually and upon the
633 discharge or transfer of a client. Any governmental agency or
634 private charitable agency contributing funds or other property
635 to the account of a client shall also be entitled to receive
636 such statement monthly and upon the discharge or transfer of the
637 client.
638 (6)(a) In addition to any damages or civil penalties to
639 which a person is subject, any person who:
640 1. Intentionally withholds a client's personal funds,
641 personal property, or personal needs allowance, or who demands,
642 beneficially receives, or contracts for payment of all or any
643 part of a client's personal property or personal needs allowance
644 in satisfaction of the facility rate for supplies and services;
645 or
646 2. Borrows from or pledges any personal funds of a client,
647 other than the amount agreed to by written contract under s.
648 429.24,
649
650 commits a misdemeanor of the first degree, punishable as

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651 provided in s. 775.082 or s. 775.083.
652 (b) Any licensee, administrator, employee, or
653 representative thereof who is granted power of attorney for any
654 client of the facility and who misuses or misappropriates funds
655 obtained through this power commits a felony of the third
656 degree, punishable as provided in s. 775.082, s. 775.083, or s.
657 775.084.
658 (7) In the event of the death of a client, a licensee shall
659 return all refunds, funds, and property held in trust to the
660 client's personal representative, if one has been appointed at
661 the time the licensee disburses such funds, or, if not, to the
662 client's spouse or adult next of kin named in a beneficiary
663 designation form provided by the licensee to the client. If the
664 client has no spouse or adult next of kin or such person cannot
665 be located, funds due the client shall be placed in an interest-
666 bearing account and all property held in trust by the licensee
667 shall be safeguarded until such time as the funds and property
668 are disbursed pursuant to the Florida Probate Code. Such funds
669 shall be kept separate from the funds and property of the
670 licensee and other clients of the facility. If the funds of the
671 deceased client are not disbursed pursuant to the Florida
672 Probate Code within 2 years after the client's death, the funds
673 shall be deposited in the Health Care Trust Fund administered by
674 the agency.
675 (8) The agency, by rule, may clarify terms and specify
676 procedures and documentation necessary to administer the
677 provisions of this section relating to the proper management of
678 clients' funds and personal property and the execution of surety
679 bonds.

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680 Section 13. Section 400.9981, Florida Statutes, is created
681 to read:
682 400.9981 Rules establishing standards.—
683 (1) It is the intent of the Legislature that rules
684 published and enforced pursuant to this part and part II of
685 chapter 408 include criteria to ensure reasonable and consistent
686 quality of care and client safety. Rules should make reasonable
687 efforts to accommodate the needs and preferences of clients to
688 enhance the quality of life in transitional living facilities.
689 (2) The agency may adopt and enforce rules to implement
690 this part and part II of chapter 408, which shall include
691 reasonable and fair criteria in relation to the following:
692 (a) The location of transitional living facilities.
693 (b) The number of qualifications of all personnel,
694 including management, medical, nursing, and other professional
695 personnel and nursing assistants and support personnel having
696 responsibility for any part of the care given to clients. The
697 licensee must have enough qualified professional staff available
698 to carry out and monitor the various professional interventions
699 in accordance with the stated goals and objectives of each
700 comprehensive treatment plan.
701 (c) Requirements for personnel procedures, insurance
702 coverage, reporting procedures, and documentation necessary to
703 implement this part.
704 (d) Services provided to clients of transitional living
705 facilities.
706 (e) The preparation and annual update of a comprehensive
707 emergency management plan in consultation with the Division of
708 Emergency Management. At a minimum, the rules must provide for

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709 plan components that address emergency evacuation
710 transportation; adequate sheltering arrangements; postdisaster
711 activities, including provision of emergency power, food, and
712 water; postdisaster transportation; supplies; staffing;
713 emergency equipment; individual identification of clients and
714 transfer of records; communication with families; and responses
715 to family inquiries.
716 Section 14. Section 400.9982, Florida Statutes, is created
717 to read:
718 400.9982 Violations; penalties.—
719 (1) Each violation of this part and rules adopted pursuant
720 thereto shall be classified according to the nature of the
721 violation and the gravity of its probable effect on facility
722 clients. The agency shall indicate the classification on the
723 written notice of the violation as follows:
724 (a) Class "I" violations are defined in s. 408.813. The
725 agency shall issue a citation regardless of correction and
726 impose an administrative fine of $5,000 for an isolated
727 violation, $7,500 for a patterned violation, and $10,000 for a
728 widespread violation. Violations may be identified and a fine
729 must be levied notwithstanding the correction of the deficiency
730 giving rise to the violation.
731 (b) Class "II" violations are defined in s. 408.813. The
732 agency shall impose an administrative fine of $1,000 for an
733 isolated violation, $2,500 for a patterned violation, and $5,000
734 for a widespread violation. A fine must be levied
735 notwithstanding the correction of the deficiency giving rise to
736 the violation.
737 (c) Class "III" violations are defined in s. 408.813. The

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738 agency shall impose an administrative fine of $500 for an
739 isolated violation, $750 for a patterned violation, and $1,000
740 for a widespread violation. If a deficiency giving rise to a
741 class "III" violation is corrected within the time specified by
742 the agency, a fine may not be imposed.
743 (d) Class "IV" violations are defined in s. 408.813. The
744 agency shall impose an administrative fine for a cited class IV
745 violation in an amount not less than $100 and not exceeding $200
746 for each violation.
747 Section 15. Section 400.9983, Florida Statutes, is created
748 to read:
749 400.9983 Receivership proceedings.—The agency may apply s.
750 429.22 with regard to receivership proceedings for transitional
751 living facilities.
752 Section 16. Section 400.9984, Florida Statutes, is created
753 to read:
754 400.9984 Interagency communication.—The agency, the
755 department, the Agency for Persons with Disabilities, and the
756 Department of Children and Families shall develop electronic
757 systems to ensure that relevant information pertaining to the
758 regulation of transitional living facilities and clients is
759 timely and effectively communicated among agencies in order to
760 facilitate the protection of clients. Electronic sharing of
761 information shall include, at a minimum, a brain and spinal cord
762 injury registry and a client abuse registry.
763 Section 17. Section 400.805, Florida Statutes, is repealed.
764 Every transitional living facility licensed under s. 400.805 on
765 or before July 1, 2013, shall be licensed under the provisions
766 of this act.

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767 Section 18. Subsection (9) of section 381.745, Florida
768 Statutes, is amended to read:
769 381.745 Definitions; ss. 381.739-381.79.—As used in ss.
770 381.739-381.79, the term:
771 (9) "Transitional living facility" means a state-approved
772 facility, as defined and licensed under chapter 400 ~~or chapter~~
773 ~~429, or a facility approved by the brain and spinal cord injury~~
774 ~~program in accordance with this chapter~~.
775 Section 19. Section 381.75, Florida Statutes, is amended to
776 read:
777 381.75 Duties and responsibilities of the department~~, of~~
778 ~~transitional living facilities, and of residents~~.—Consistent
779 with the mandate of s. 381.7395, the department shall develop
780 and administer a multilevel treatment program for individuals
781 who sustain brain or spinal cord injuries and who are referred
782 to the brain and spinal cord injury program.
783 (1) Within 15 days after any report of an individual who
784 has sustained a brain or spinal cord injury, the department
785 shall notify the individual or the most immediate available
786 family members of their right to assistance from the state, the
787 services available, and the eligibility requirements.
788 (2) The department shall refer individuals who have brain
789 or spinal cord injuries to other state agencies to assure that
790 rehabilitative services, if desired, are obtained by that
791 individual.
792 (3) The department, in consultation with emergency medical
793 service, shall develop standards for an emergency medical
794 evacuation system that will ensure that all individuals who
795 sustain traumatic brain or spinal cord injuries are transported

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796 to a department-approved trauma center that meets the standards
797 and criteria established by the emergency medical service and
798 the acute-care standards of the brain and spinal cord injury
799 program.
800 (4) The department shall develop standards for designation
801 of rehabilitation centers to provide rehabilitation services for
802 individuals who have brain or spinal cord injuries.
803 (5) The department shall determine the appropriate number
804 of designated acute-care facilities, inpatient rehabilitation
805 centers, and outpatient rehabilitation centers, needed based on
806 incidence, volume of admissions, and other appropriate criteria.
807 (6) The department shall develop standards for designation
808 of transitional living facilities to provide transitional living
809 services for individuals who participate in the brain and spinal
810 cord injury program ~~the opportunity to adjust to their~~
811 ~~disabilities and to develop physical and functional skills in a~~
812 ~~supported living environment~~.
813 ~~(a) The Agency for Health Care Administration, in~~
814 ~~consultation with the department, shall develop rules for the~~
815 ~~licensure of transitional living facilities for individuals who~~
816 ~~have brain or spinal cord injuries.~~
817 ~~(b) The goal of a transitional living program for~~
818 ~~individuals who have brain or spinal cord injuries is to assist~~
819 ~~each individual who has such a disability to achieve a higher~~
820 ~~level of independent functioning and to enable that person to~~
821 ~~reenter the community. The program shall be focused on preparing~~
822 ~~participants to return to community living.~~
823 ~~(c) A transitional living facility for an individual who~~
824 ~~has a brain or spinal cord injury shall provide to such~~

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825 ~~individual, in a residential setting, a goal-oriented treatment~~
826 ~~program designed to improve the individual's physical,~~
827 ~~cognitive, communicative, behavioral, psychological, and social~~
828 ~~functioning, as well as to provide necessary support and~~
829 ~~supervision. A transitional living facility shall offer at least~~
830 ~~the following therapies: physical, occupational, speech,~~
831 ~~neuropsychology, independent living skills training, behavior~~
832 ~~analysis for programs serving brain-injured individuals, health~~
833 ~~education, and recreation.~~
834 ~~(d) All residents shall use the transitional living~~
835 ~~facility as a temporary measure and not as a permanent home or~~
836 ~~domicile. The transitional living facility shall develop an~~
837 ~~initial treatment plan for each resident within 3 days after the~~
838 ~~resident's admission. The transitional living facility shall~~
839 ~~develop a comprehensive plan of treatment and a discharge plan~~
840 ~~for each resident as soon as practical, but no later than 30~~
841 ~~days after the resident's admission. Each comprehensive~~
842 ~~treatment plan and discharge plan must be reviewed and updated~~
843 ~~as necessary, but no less often than quarterly. This subsection~~
844 ~~does not require the discharge of an individual who continues to~~
845 ~~require any of the specialized services described in paragraph~~
846 ~~(c) or who is making measurable progress in accordance with that~~
847 ~~individual's comprehensive treatment plan. The transitional~~
848 ~~living facility shall discharge any individual who has an~~
849 ~~appropriate discharge site and who has achieved the goals of his~~
850 ~~or her discharge plan or who is no longer making progress toward~~
851 ~~the goals established in the comprehensive treatment plan and~~
852 ~~the discharge plan. The discharge location must be the least~~
853 ~~restrictive environment in which an individual's health, well-~~

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854 ~~being, and safety is preserved.~~
855 ~~(7) Recipients of services, under this section, from any of~~
856 ~~the facilities referred to in this section shall pay a fee based~~
857 ~~on ability to pay.~~
858 Section 20. Subsection (4) of section 381.78, Florida
859 Statutes, is amended to read:
860 381.78 Advisory council on brain and spinal cord injuries.—
861 (4) The council shall~~:~~
862 ~~(a)~~ provide advice and expertise to the department in the
863 preparation, implementation, and periodic review of the brain
864 and spinal cord injury program.
865 ~~(b) Annually appoint a five-member committee composed of~~
866 ~~one individual who has a brain injury or has a family member~~
867 ~~with a brain injury, one individual who has a spinal cord injury~~
868 ~~or has a family member with a spinal cord injury, and three~~
869 ~~members who shall be chosen from among these representative~~
870 ~~groups: physicians, other allied health professionals,~~
871 ~~administrators of brain and spinal cord injury programs, and~~
872 ~~representatives from support groups with expertise in areas~~
873 ~~related to the rehabilitation of individuals who have brain or~~
874 ~~spinal cord injuries, except that one and only one member of the~~
875 ~~committee shall be an administrator of a transitional living~~
876 ~~facility. Membership on the council is not a prerequisite for~~
877 ~~membership on this committee.~~
878 ~~1. The committee shall perform onsite visits to those~~
879 ~~transitional living facilities identified by the Agency for~~
880 ~~Health Care Administration as being in possible violation of the~~
881 ~~statutes and rules regulating such facilities. The committee~~
882 ~~members have the same rights of entry and inspection granted~~

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883 ~~under s. 400.805(4) to designated representatives of the agency.~~
884 ~~2. Factual findings of the committee resulting from an~~
885 ~~onsite investigation of a facility pursuant to subparagraph 1.~~
886 ~~shall be adopted by the agency in developing its administrative~~
887 ~~response regarding enforcement of statutes and rules regulating~~
888 ~~the operation of the facility.~~
889 ~~3. Onsite investigations by the committee shall be funded~~
890 ~~by the Health Care Trust Fund.~~
891 ~~4. Travel expenses for committee members shall be~~
892 ~~reimbursed in accordance with s. 112.061.~~
893 ~~5. Members of the committee shall recuse themselves from~~
894 ~~participating in any investigation that would create a conflict~~
895 ~~of interest under state law, and the council shall replace the~~
896 ~~member, either temporarily or permanently.~~
897 Section 21. This act shall take effect July 1, 2013.
898
899 ========== T I T L E A M E N D M E N T ==========
900 And the title is amended as follows:
901 Delete everything before the enacting clause
902 and insert:
903 A bill to be entitled
904 An act relating to transitional living facilities;
905 creating part XI of ch. 400, F.S., entitled
906 “Transitional Living Facilities”; creating s.
907 400.9970, F.S.; providing legislative intent; creating
908 s. 400.9971, F.S.; providing definitions; creating s.
909 400.9972, F.S.; requiring the licensure of
910 transitional living facilities; providing fees;
911 providing license application requirements; creating

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912 s. 400.9973, F.S.; providing requirements for
913 transitional living facilities relating to client
914 admission, transfer, and discharge; creating s.
915 400.9974, F.S.; requiring a comprehensive treatment
916 plan to be developed for each client; providing plan
917 requirements; creating s. 400.9975, F.S.; providing
918 licensee responsibilities; providing notice
919 requirements; prohibiting a licensee or employee of a
920 facility from serving notice upon a client to leave
921 the premises or take other retaliatory action;
922 requiring the client and client's representative to be
923 provided with certain information; requiring the
924 licensee to develop and implement certain policies and
925 procedures; creating s. 400.9976, F.S.; providing
926 licensee requirements relating to medication
927 practices; creating s. 400.9977, F.S.; providing
928 requirements for the screening of potential employees
929 and monitoring of employees for the protection of
930 clients; requiring licensees to implement certain
931 procedures; creating s. 400.9978, F.S.; providing
932 requirements for the use of physical restraints and
933 chemical restraint medication on clients; creating s.
934 400.9979, F.S.; providing background screening
935 requirements; requiring the licensee to maintain
936 certain personnel records; providing administrative
937 responsibilities for licensees; providing
938 recordkeeping requirements; creating s. 400.9980,
939 F.S.; providing requirements relating to property and
940 personal affairs of clients; providing requirements

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941 for a licensee with respect to obtaining surety bonds;
942 providing recordkeeping requirements relating to the
943 safekeeping of personal effects; providing
944 requirements for trust funds received by licensee and
945 credited to the client; providing a penalty for
946 certain misuse of a resident's personal needs
947 allowance; providing criminal penalties for
948 violations; providing for the disposition of property
949 in the event of the death of a client; authorizing the
950 Agency for Health Care Administration to adopt rules;
951 creating s. 400.9981, F.S.; authorizing the agency to
952 adopt and enforce certain rules; creating s. 400.9982,
953 F.S.; providing procedures relating to violations and
954 penalties; providing administrative fines for
955 specified classes of violations; creating s. 400.9983,
956 F.S.; authorizing the agency to apply certain
957 provisions with regard to receivership proceedings;
958 creating s. 400.9984, F.S.; requiring the Agency for
959 Health Care Administration, the Department of Health,
960 the Agency for Persons with Disabilities, and the
961 Department of Children and Families to develop
962 electronic systems for certain purposes; repealing s.
963 400.805, F.S., relating to transitional living
964 facilities; providing that every transitional living
965 facilities licensed under s. 400.805, F.S., on or
966 before a specified date is licensed under the
967 provisions of the act; amending s. 381.745, F.S.;
968 revising a definition; amending s. 381.75, F.S.;
969 revising the duties of the Department of Health as

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970 they relate to transitional living facilities;
971 amending s. 381.78, F.S.; conforming provisions to
972 changes made by the act; providing an effective date.

By Senator Garcia

38-00939A-13 20131724__

A bill to be entitled

An act relating to transitional living facilities; creating part XI of ch. 400, F.S., entitled "Transitional Living Facilities"; creating s. 400.9970, F.S.; providing legislative intent; creating s. 400.9971, F.S.; providing definitions; creating s. 400.9972, F.S.; requiring the licensure of transitional living facilities; providing fees; providing license application requirements; creating s. 400.9973, F.S.; providing requirements for transitional living facilities relating to client admission, transfer, and discharge; creating s. 400.9974, F.S.; requiring an individual treatment plan to be developed for each client; providing plan requirements; creating s. 400.9975, F.S.; providing licensee responsibilities; providing notice requirements; prohibiting a licensee or employee of a facility from serving notice upon a client to leave the premises or take other retaliatory action; requiring the client and client's representative to be provided with certain information; requiring the licensee to develop and implement certain policies and procedures; creating s. 400.9976, F.S.; providing licensee requirements relating to medication practices; creating s. 400.9977, F.S.; providing requirements for the screening of potential employees and monitoring of employees for the protection of clients; requiring licensees to implement certain procedures; creating s. 400.9978, F.S.; providing

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requirements for the use of physical restraints and chemical restraint medication on clients; creating s. 400.9979, F.S.; providing background screening requirements; requiring the licensee to maintain certain personnel records; providing administrative responsibilities for licensees; providing recordkeeping requirements; creating s. 400.9980, F.S.; providing requirements relating to property and personal affairs of clients; providing requirements for a licensee with respect to obtaining surety bonds; providing recordkeeping requirements relating to the safekeeping of personal effects; providing requirements for trust funds received by a licensee and credited to the client; providing a penalty for certain misuse of a resident's personal needs allowance; providing criminal penalties for violations; providing for the disposition of property in the event of the death of a client; authorizing the Agency for Health Care Administration to adopt rules; creating s. 400.9981, F.S.; requiring the agency, in consultation with the Department of Health, to adopt and enforce certain rules; creating s. 400.9982, F.S.; providing procedures relating to violations and penalties; providing administrative fines for specified classes of violations; creating s. 400.9983, F.S.; authorizing the agency to access the provisions of s. 429.22, F.S., regarding receivership proceedings; creating s. 400.9984, F.S.; requiring the Agency for Health Care Administration, the Department

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59 of Health, the Agency for Persons with Disabilities,
60 and the Department of Children and Families to develop
61 an electronic database for certain purposes; repealing
62 s. 400.805, F.S., relating to transitional living
63 facilities; amending s. 381.78, F.S.; conforming
64 provisions to changes made by the act; providing an
65 effective date.
66
67 Be It Enacted by the Legislature of the State of Florida:
68
69 Section 1. Sections 400.9970 through 400.9984, Florida
70 Statutes, are designated as part XI of chapter 400, Florida
71 Statutes, entitled "Transitional Living Facilities."
72 Section 2. Section 400.9970, Florida Statutes, is created
73 to read:
74 400.9970 Legislative intent.—It is the intent of the
75 Legislature to provide for the licensure of transitional living
76 facilities and require the development, establishment, and
77 enforcement of basic standards by the department to ensure
78 quality of care and services to clients in transitional living
79 facilities. It is the policy of the state that the least
80 restrictive appropriate available treatment be used based on the
81 individual needs and best interests of the client and consistent
82 with optimum improvement of the client's condition. The goal of
83 a transitional living program for individuals who have brain or
84 spinal cord injuries is to assist each individual who has such a
85 disability to achieve a higher level of independent functioning
86 and to enable that person to reenter the community.
87 Section 3. Section 400.9971, Florida Statutes, is created

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88 to read:
89 400.9971 Definitions.—As used in this part, the term:
90 (1) "Agency" means the Agency for Health Care
91 Administration.
92 (2) "Chemical restraint" means a pharmacologic drug that
93 physically limits, restricts, or deprives an individual of
94 movement or mobility and is used for client protection or safety
95 and is not required for the treatment of medical conditions or
96 symptoms.
97 (3) "Client's representative" means the parent of a child
98 client, or the client's guardian, designated representative or
99 designee, surrogate, or attorney in fact.
100 (4) "Department" means the Department of Health.
101 (5) "Licensee" means an individual issued a license by the
102 agency.
103 (6) "Physical restraint" means any manual method or
104 physical or mechanical device, material, or equipment attached
105 or adjacent to the individual's body so that he or she cannot
106 easily remove the restraint and which restricts freedom of
107 movement or normal access to one's body, including, but not
108 limited to, a half-bed rail, a full-bed rail, a geriatric chair,
109 and a posey restraint. The term includes any device that was not
110 specifically manufactured as a restraint but that has been
111 altered, arranged, or otherwise used for this purpose. The term
112 does not include bandage material used for the purpose of
113 binding a wound or injury.
114 (7) "Transitional living facility" means a site where
115 specialized health care services are provided, including, but
116 not limited to, rehabilitative services, community reentry

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117 training, aids for independent living, and counseling to brain-
118 injured persons and spinal-cord-injured persons. The term does
119 not include a hospital licensed under chapter 395 or any
120 federally operated hospital or facility.
121 Section 4. Section 400.9972, Florida Statutes, is created
122 to read:
123 400.9972 License required; fee; application.—
124 (1) The requirements of part II of chapter 408 apply to the
125 provision of services that require licensure pursuant to this
126 part and part II of chapter 408 and to entities licensed by or
127 applying for such licensure from the agency pursuant to this
128 part. A license issued by the agency is required for the
129 operation of a transitional living facility in this state.
130 (2) In accordance with this part, an applicant or a
131 licensee shall pay a fee for each license application submitted
132 under this part. The license fee shall consist of a $4,000
133 license fee and a $90 per-bed fee per biennium and shall conform
134 to the annual adjustment authorized in s. 408.805.
135 (3) Each applicant for licensure must provide:
136 (a) The location of the facility for which a license is
137 sought and documentation, signed by the appropriate local
138 government official, that states that the applicant has met
139 local zoning requirements.
140 (b) Proof of liability insurance as defined in s. 624.605.
141 (c) Proof of compliance with local zoning requirements,
142 including compliance with the requirements of chapter 419 if the
143 proposed facility is a community residential home.
144 (d) Proof that the facility has received a satisfactory
145 firesafety inspection.

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146 (e) Documentation of a satisfactory sanitation inspection
147 of the facility by the county health department.
148 Section 5. Section 400.9973, Florida Statutes, is created
149 to read:
150 400.9973 Client admission, transfer, and discharge.—
151 (1) Each transitional living facility must have written
152 policies and procedures governing the admission, transfer, and
153 discharge of clients.
154 (2) The admission of each client to a transitional living
155 facility must be in accordance with the licensee's policies and
156 procedures.
157 (3) A client admitted to a transitional living facility
158 must have a brain or spinal cord injury, such as a lesion to the
159 spinal cord or cauda equina syndrome, with evidence of
160 significant involvement of two of the following deficits or
161 dysfunctions:
162 (a) Motor deficit.
163 (b) Sensory deficit.
164 (c) Bowel and bladder dysfunction.
165 (d) An injury to the skull, brain, or its covering that
166 produces an altered state of consciousness or anatomic motor,
167 sensory, cognitive, or behavioral deficits.
168 (4) A client admitted to a transitional living facility
169 must be admitted upon prescription by a licensed physician and
170 must remain under the care of a licensed physician for the
171 duration of the client's stay in the facility.
172 (5) A transitional living facility may not admit a client
173 whose primary admitting diagnosis is mental illness.
174 (6) A person may not be admitted to a transitional living

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175 facility if the person:
176 (a) Presents significant risk of infection to other client
177 or personnel. A health care practitioner must provide
178 documentation that the person is free of apparent signs and
179 symptoms of communicable disease;
180 (b) Is a danger to self or others as determined by a
181 physician, or mental health practitioner licensed under chapter
182 490 or chapter 491, unless the facility provides adequate
183 staffing and support to ensure patient safety;
184 (c) Is bedridden; or
185 (d) Requires 24-hour nursing supervision.
186 (7) If the client meets the admission criteria, the medical
187 or nursing director of the facility must implement a
188 preadmission treatment plan that delineates services to be
189 provided and appropriate sources for such services.
190 (8) Each comprehensive treatment plan and discharge plan
191 must be reviewed and updated as necessary, but at least monthly.
192 A transitional living facility shall discharge as quickly as
193 possible a resident who no longer requires any of the
194 specialized services described in s. 400.9971(6) or is not
195 making measurable progress in accordance with that individual's
196 comprehensive treatment plan.
197 (9) Each transitional living facility shall provide at
198 least 30 days' notice to clients of transfer or discharge plans,
199 including the location of an acceptable transfer location if the
200 client is unable to live independently. This requirement does
201 not apply if a client voluntarily terminates residency.
202 (10) Each transitional living facility shall create a
203 discharge plan for each client within 15 days after admission.

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204 The discharge plan must identify the intended discharge site and
205 possible alternative discharge sites. For each discharge site,
206 the discharge plan must identify the skills, behaviors, and
207 other conditions that the client must achieve to be appropriate
208 for discharge. A transitional living facility shall discharge a
209 client as soon as practicable if the transitional living
210 facility is no longer the most appropriate, least restrictive
211 treatment option.
212 (11) A client may not reside in a transitional living
213 facility for a period of more than 2 years. An exception may be
214 made if a referral is made to Disability Rights Florida at least
215 21 months after admission and the client or, if appropriate, the
216 client's guardian requests that the client continue to receive
217 treatment at the transitional living facility. However, the
218 extension may not exceed a 1 year.
219 Section 6. Section 400.9974, Florida Statutes, is created
220 to read:
221 400.9974 Individual treatment plans; client services.—
222 (1) An interdisciplinary team, consisting of the case
223 manager, program director, nurse, behavior specialist, and
224 appropriate therapists, must develop an individual treatment
225 plan for each client. The client and his or her representative
226 must also be included in developing the treatment plan.
227 (2) The individual treatment plan must include:
228 (a) The physician's orders and the client's diagnosis,
229 medical history, physical examination, and rehabilitative or
230 restorative needs.
231 (b) A preliminary nursing evaluation with physician's
232 orders for immediate care, completed on admission.

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233 (c) A comprehensive, accurate, reproducible, and
234 standardized assessment of the client's functional capability
235 and the treatments designed to achieve skills, behaviors, and
236 other conditions to return to the community, and shall specify
237 measurable goals.
238 (d) Steps necessary for the client to achieve transition to
239 the community and estimated length of time to achieve the goals.
240 (3) The individual treatment plan must be completed before
241 admission to the facility and be reevaluated and updated at
242 least every 90 days thereafter. A reevaluation of the plan must
243 also occur if the client fails to meet projected improvements in
244 the plan or a significant change in the client's condition
245 occurs. The client, the client's guardian or responsible party,
246 and any other person approved by the client, and members of the
247 comprehensive treatment team are allowed to attend and
248 participate in formulating updates to the discharge and
249 treatment plans. At each quarterly meeting, the client or, if
250 appropriate, the client's guardian, shall consent to the
251 continued treatment at the transitional living facility. If such
252 consent is not given, the transitional living facility shall
253 discharge the client as soon as practicable.
254 (4) Each client must receive the professional program
255 services needed to implement the client's individual program
256 plan.
257 (5) The licensee must employ available qualified
258 professional staff to carry out and monitor the various
259 professional interventions in accordance with the stated goals
260 and objectives of every individual program plan.
261 (6) Each client must receive a continuous treatment program

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262 that includes appropriate, consistent implementation of a
263 program of specialized and general training, treatment, health
264 services, and related services that is directed toward:
265 (a) The acquisition of the behaviors necessary for the
266 client to function with as much self-determination and
267 independence as possible;
268 (b) The prevention or deceleration of regression or loss of
269 current optimal functional status; and
270 (c) An appropriate plan to address behavioral issues that
271 preclude independent functioning in the community.
272 Section 7. Section 400.9975, Florida Statutes, is created
273 to read:
274 400.9975 Licensee responsibilities.—
275 (1) The licensee shall ensure that each client:
276 (a) Lives in a safe environment free from abuse, neglect,
277 and exploitation.
278 (b) Is treated with consideration and respect and with due
279 recognition of personal dignity, individuality, and the need for
280 privacy.
281 (c) Retains and uses his or her own clothes and other
282 personal property in his or her immediate living quarters, so as
283 to maintain individuality and personal dignity, except when the
284 licensee can demonstrate that such retention and use would be
285 unsafe, impractical, or an infringement upon the rights of other
286 clients.
287 (d) Has unrestricted private communication, including
288 receiving and sending unopened correspondence, access to a
289 telephone, and visiting with any person of his or her choice.
290 Upon request, the licensee shall make provisions to modify

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291 visiting hours for caregivers and guests. The facility shall
292 restrict communication in accordance with any court order or
293 written instruction of a guardian. Any restriction on a client's
294 communication for therapeutic reasons shall be reviewed no less
295 often than weekly and the restrictions shall be removed as soon
296 as it is no longer clinically indicated. The basis for the
297 restrictions shall be explained to the client and, if
298 applicable, the client's representative. The client shall
299 nonetheless retain the right to call the abuse hotline, the
300 agency, and Disability Rights Florida at any and all times.
301 (e) Participates in and benefits from community services
302 and activities to achieve the highest possible level of
303 independence, autonomy, and interaction within the community.
304 (f) Manages his or her financial affairs unless the client
305 or, if applicable, the client's representative authorizes the
306 administrator of the facility to provide safekeeping for funds
307 as provided in this part.
308 (g) Has reasonable opportunity for regular exercise several
309 times a week and to be outdoors at regular and frequent
310 intervals except when prevented by inclement weather.
311 (h) Exercises civil and religious liberties, including the
312 right to independent personal decisions. No religious belief or
313 practice, including attendance at religious services, shall be
314 imposed upon any client.
315 (i) Has access to adequate and appropriate health care as
316 appropriate for the client and consistent with established and
317 recognized standards within the community.
318 (j) Has the ability to present grievances and recommend
319 changes in policies, procedures, and services to the staff of

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320 the licensee, governing officials, or any other person without
321 restraint, interference, coercion, discrimination, or reprisal.
322 Each licensee shall establish a grievance procedure to
323 facilitate a client's exercise of this right. This right
324 includes access to Disability Rights Florida and other advocates
325 and the right to be a member of, be active in, and associate
326 with advocacy or special interest groups.
327 (2) The licensee shall:
328 (a) Promote participation of each client's representative
329 in the process of providing treatment to the client unless the
330 representative's participation is unobtainable or inappropriate.
331 (b) Answer communications from each client's family and
332 friends promptly and appropriately.
333 (c) Promote visits by individuals with a relationship to
334 the client at any reasonable hour, without requiring prior
335 notice, or in any area of the facility that provides direct
336 client care services to the client, consistent with the client's
337 and other clients' privacy, unless the interdisciplinary team
338 determines that such a visit would not be appropriate.
339 (d) Promote leave from the facility for visits, trips, or
340 vacations.
341 (e) Promptly notify the client's representative of any
342 significant incidents or changes in the client's condition,
343 including, but not limited to, serious illness, accident, abuse,
344 unauthorized absence, or death.
345 (3) The administrator of a facility shall ensure that a
346 written notice of licensee responsibilities is posted in a
347 prominent place in each building where clients reside and read
348 or explained to clients who cannot read. This notice shall

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349 include the statewide toll-free telephone number for reporting
350 complaints to the agency, must be provided to clients in a
351 manner that is clearly legible, and must include the words: "To
352 report a complaint regarding the services you receive, please
353 call toll-free ...[telephone number]...; the Disability Rights
354 Florida (telephone number); and the statewide toll-free
355 telephone number for the central abuse hotline must be provided
356 to clients in a manner that is clearly legible and must include
357 the words: "To report abuse, neglect or exploitation, please
358 call toll-free ...[telephone number]..." where complaints may be
359 lodged. The licensee must ensure a client's access to a
360 telephone to call the agency, central abuse hotline, Disability
361 Rights Florida.
362 (4) No licensee or employee of a facility may serve notice
363 upon a client to leave the premises or take any other
364 retaliatory action against any person who:
365 (a) Files an internal or external complaint or grievance
366 regarding the facility.
367 (b) Appears as a witness in any hearing inside or outside
368 the facility.
369 (5) Before or at the time of admission, the client and the
370 client's representative shall be provided with a copy of the
371 client's contract and a copy of the licensee's responsibilities
372 as provided in subsection (1).
373 (6) The licensee must develop and implement policies and
374 procedures governing the release of any client information,
375 including consent necessary from the client or the client's
376 representative.
377 Section 8. Section 400.9976, Florida Statutes, is created

378 to read:
379 400.9976 Medication practices.—
380 (1) An individual medication administration record must be
381 maintained for each client. Each dose of medication, including a
382 self administered dose, shall be properly recorded in the
383 client's record. Each patient who is self administering
384 medication shall be given a pill organizer. Medication must be
385 placed in the pill organizer by a nurse. A nurse shall document
386 the date and time medication is placed into each patient's pill
387 organizer. All medications must be administered in compliance
388 with the physician's orders.
389 (2) If the interdisciplinary team determines that self
390 administration of medications is an appropriate objective, and
391 if the physician does not specify otherwise, a client must be
392 taught to self administer his or her medication without a staff
393 person. This includes all forms of administration, including
394 orally, via injection, and via suppository. The client's
395 physician must be informed of the interdisciplinary team's
396 decision that self administration of medications is an objective
397 for the client. A client may not self administer medication
398 until he or she demonstrates the competency to take the correct
399 medication in the correct dosage at the correct time, knows how
400 to respond to missed doses, and knows who to contact with
401 questions.
402 (3) Medication administration discrepancies and adverse
403 drug reactions must be recorded and reported immediately to a
404 physician.
405 Section 9. Section 400.9977, Florida Statutes, is created
406 to read:

407 400.9977 Protection from abuse, neglect, mistreatment, and
408 exploitation.—The licensee must develop and implement policies
409 and procedures for the screening and training of employees, the
410 protection of clients, and the prevention, identification,
411 investigation, and reporting of abuse, neglect, and
412 exploitation. This includes the licensee's identification of
413 clients whose personal histories render them at risk for abusing
414 other clients, development of intervention strategies to prevent
415 occurrences, monitoring for changes that would trigger abusive
416 behavior, and reassessment of the interventions on a regular
417 basis. A licensee shall implement procedures to:
418 (1) Screen potential employees for a history of abuse,
419 neglect, or mistreatment of clients. The screening shall include
420 an attempt to obtain information from previous employers and
421 current employers and verification with the appropriate
422 licensing boards and registries.
423 (2) Train employees, through orientation and ongoing
424 sessions, on issues related to abuse prohibition practices,
425 including identification of abuse, neglect, mistreatment, and
426 exploitation, appropriate interventions to deal with aggressive
427 or catastrophic reactions of clients, the process to report
428 allegations without fear of reprisal, and recognition of signs
429 of frustration and stress that may lead to abuse.
430 (3) Provide clients, families, and staff with information
431 on how and to whom they may report concerns, incidents, and
432 grievances without the fear of retribution and provide feedback
433 regarding the concerns that have been expressed. A licensee must
434 identify, correct, and intervene in situations in which abuse,
435 neglect, mistreatment, or exploitation is likely to occur,

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436 including:
437 (a) Evaluating the physical environment of the facility to
438 identify characteristics that may make abuse or neglect more
439 likely to occur, such as secluded areas.
440 (b) Providing sufficient staff on each shift to meet the
441 needs of the clients, and ensuring that the staff assigned have
442 knowledge of the individual clients' care needs. The licensee
443 shall identify inappropriate behaviors of its staff, such as
444 using derogatory language, rough handling, ignoring clients
445 while giving care, and directing clients who need toileting
446 assistance to urinate or defecate in their beds.
447 (c) Assessing, planning care for, and monitoring clients
448 with needs and behaviors that might lead to conflict or neglect,
449 such as clients with a history of aggressive behaviors, clients
450 who have behaviors such as entering other clients' rooms,
451 clients with self-injurious behaviors, clients with
452 communication disorders, and clients who require heavy nursing
453 care or are totally dependent on staff.
454 (4) Identify events, such as suspicious bruising of
455 clients, occurrences, patterns, and trends that may constitute
456 abuse and determine the direction of the investigation.
457 (5) Investigate different types of incidents, identify the
458 staff member responsible for the initial reporting, investigate
459 alleged violations, and report results to the proper
460 authorities. The licensee must analyze the occurrences to
461 determine what changes are needed, if any, to policies and
462 procedures to prevent further occurrences and to take all
463 necessary corrective actions depending on the results of the
464 investigation.

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465 (6) Protect clients from harm during an investigation.
466 (7) Report all alleged violations and all substantiated
467 incidents, as required under chapters 39 and 415, to the
468 licensing authorities and to all other agencies as required, and
469 to report any knowledge it has of any actions by a court of law
470 that would indicate an employee is unfit for service.
471 Section 10. Section 400.9978, Florida Statutes, is created
472 to read:
473 400.9978 Restraints and seclusion; client safety.—
474 (1) The use of physical restraints must be ordered and
475 documented by the a physician and must be consistent with
476 policies and procedures adopted by the facility. The client or,
477 if applicable, the client's representative must be informed of
478 the facility's physical restraint policies and procedures at the
479 time of admission.
480 (2) The use of chemical restraints is limited to prescribed
481 dosages of medications as ordered by a physician, must be
482 consistent with the client's diagnosis and the policies and
483 procedures adopted by the facility. The client or, if
484 applicable, the client's representative, must be informed of the
485 facility's chemical restraint policies and procedures at the
486 time of admission.
487 (3) Based on a physician's assessment, when a patient
488 exhibits symptoms that present an immediate risk of injury or
489 death to self or others, a physician may issue an emergency
490 treatment order to immediately administer rapid response
491 psychotropic medications or other chemical restraints. Each
492 emergency treatment order must be documented and maintained in
493 the patient's record.

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494 (a) An emergency treatment order is effective for no more
495 than 24 hours.
496 (b) Whenever a client is medicated in accordance with this
497 section, the client's representative or responsible party and
498 the client's physician must be notified as soon as practicable.
499 (4) A client who is prescribed and receiving a medication
500 that can serve as a chemical restraint, but not on an emergency
501 basis, must be evaluated by his or her physician at least
502 monthly to assess:
503 (a) The continued need for the medication.
504 (b) The level of the medication in the client's blood as
505 appropriate.
506 (c) The need for adjustments in the prescription.
507 (5) The licensee shall ensure that clients are free from
508 unnecessary drugs and physical restraints and are provided
509 treatment to reduce dependency on drugs and physical restraints.
510 (6) The licensee may use physical restraints only as an
511 integral part of an individual program plan that is intended to
512 lead to less restrictive means of managing and eliminating the
513 behavior for which the restraint is applied.
514 (7) Interventions to manage inappropriate client behavior
515 must be employed with sufficient safeguards and supervision to
516 ensure that the safety, welfare, and civil and human rights of
517 each client are adequately protected.
518 Section 11. Section 400.9979, Florida Statutes, is created
519 to read:
520 400.9979 Background screening; administration and
521 management.—
522 (1) The agency shall require level 2 background screening

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523 for personnel as required in s. 408.809(1)(e) pursuant to
524 chapter 435 and s. 408.809.
525 (2) The licensee shall maintain personnel records for each
526 staff member that contain, at a minimum, documentation of
527 background screening, if applicable, a job description,
528 documentation of compliance with all training requirements of
529 this part or applicable rule, the employment application,
530 references, a copy of all job performance evaluations, and, for
531 each staff member who performs services for which licensure or
532 certification is required, a copy of all licenses or
533 certification held by the staff member.
534 (3) The licensee must:
535 (a) Develop and implement infection control policies and
536 procedures and include such policies and procedures in the
537 licensee's policy manual.
538 (b) Maintain liability insurance as defined in s. 624.605.
539 (c) Designate one person as an administrator who is
540 responsible and accountable for the overall management of the
541 facility.
542 (d) Designate a person in writing to be responsible for the
543 facility when the administrator is absent from the facility for
544 more than 24 hours.
545 (e) Designate in writing a program director who is
546 responsible for supervising the therapeutic and behavioral
547 staff, determining the levels of supervision, and room placement
548 for each client.
549 (f) Designate in writing a person to be responsible when
550 the program director is absent from the facility for more than
551 24 hours.

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552 (g) Obtain approval of the comprehensive emergency
553 management plan, pursuant to s. 400.9981(2)(e), from the local
554 emergency management agency. Pending the approval of the plan,
555 the local emergency management agency shall ensure that the
556 following agencies, at a minimum, are given the opportunity to
557 review the plan: the Department of Health, the Agency for Health
558 Care Administration, and the Division of Emergency Management.
559 Appropriate volunteer organizations must also be given the
560 opportunity to review the plan. The local emergency management
561 agency shall complete its review within 60 days and either
562 approve the plan or advise the licensee of necessary revisions.
563 (h) Maintain written records in a form and system that
564 comply with medical and business practices and make such records
565 available in the facility for review or submission to the agency
566 upon request. The records shall include:
567 1. A daily census record that indicates the number of
568 clients currently receiving services in the facility, including
569 information regarding any public funding of such clients.
570 2. A record of all accidents or unusual incidents involving
571 any client or staff member that caused, or had the potential to
572 cause, injury or harm to any person or property within the
573 facility. Such records must contain a clear description of each
574 accident or incident, the names of the persons involved, a
575 description of all medical or other services provided to these
576 persons specifying who provided such services, and the steps
577 taken to prevent recurrence of such accidents or incidents.
578 3. A copy of current agreements with third-party providers.
579 4. A copy of current agreements with each consultant
580 employed by the licensee and documentation of each consultant's

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581 visits and required written, dated reports.
582 Section 12. Section 400.9980, Florida Statutes, is created
583 to read:
584 400.9980 Property and personal affairs of clients.—
585 (1) A client shall be given the option of using his or her
586 own belongings, as space permits; choosing his or her roommate
587 if practical and not clinically contraindicated; and, whenever
588 possible, unless the client is adjudicated incompetent or
589 incapacitated under state law, managing his or her own affairs.
590 (2) The admission of a client to a facility and his or her
591 presence therein shall not confer on a licensee, administrator,
592 employee, or representative thereof any authority to manage,
593 use, or dispose of any property of the client, nor shall such
594 admission or presence confer on any of such persons any
595 authority or responsibility for the personal affairs of the
596 client except that which may be necessary for the safe
597 management of the facility or for the safety of the client.
598 (3) A licensee, administrator, employee, or representative
599 thereof may:
600 (a) Not act as the guardian, trustee, or conservator for
601 any client or any of such client's property.
602 (b) Act as a competent client's payee for social security,
603 veteran's, or railroad benefits if the client provides consent
604 and the licensee files a surety bond with the agency in an
605 amount equal to twice the average monthly aggregate income or
606 personal funds due to the client, or expendable for the client's
607 account, that are received by a licensee.
608 (c) Act as the power of attorney for a client if the
609 licensee has filed a surety bond with the agency in an amount

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610 equal to twice the average monthly income of the client, plus
611 the value of any client's property under the control of the
612 attorney in fact.
613
614 The bond under paragraph (b) or paragraph (c) shall be executed
615 by the licensee as principal and a licensed surety company. The
616 bond shall be conditioned upon the faithful compliance of the
617 licensee with the requirements of licensure and shall be payable
618 to the agency for the benefit of any client who suffers a
619 financial loss as a result of the misuse or misappropriation of
620 funds held pursuant to this subsection. Any surety company that
621 cancels or does not renew the bond of any licensee shall notify
622 the agency in writing not less than 30 days in advance of such
623 action, giving the reason for the cancellation or nonrenewal.
624 Any licensee, administrator, employee, or representative thereof
625 who is granted power of attorney for any client of the facility
626 shall, on a monthly basis, notify the client in writing of any
627 transaction made on behalf of the client pursuant to this
628 subsection, and a copy of such notification given to the client
629 shall be retained in each client's file and available for agency
630 inspection.
631 (4) A licensee, upon mutual consent with the client, shall
632 provide for the safekeeping in the facility of the client's
633 personal effects of a value not in excess of $1,000 and the
634 client's funds not in excess of $500 cash and shall keep
635 complete and accurate records of all such funds and personal
636 effects received. If a client is absent from a facility for 24
637 hours or more, the licensee may provide for the safekeeping of
638 the client's personal effects of a value in excess of $1,000.

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639 (5) Any funds or other property belonging to or due to a
640 client or expendable for his or her account that is received by
641 licensee shall be trust funds and shall be kept separate from
642 the funds and property of the licensee and other clients or
643 shall be specifically credited to such client. Such trust funds
644 shall be used or otherwise expended only for the account of the
645 client. At least once every month, unless upon order of a court
646 of competent jurisdiction, the licensee shall furnish the client
647 and the client's representative a complete and verified
648 statement of all funds and other property to which this
649 subsection applies, detailing the amount and items received,
650 together with their sources and disposition. In any event, the
651 licensee shall furnish such statement annually and upon the
652 discharge or transfer of a client. Any governmental agency or
653 private charitable agency contributing funds or other property
654 to the account of a client shall also be entitled to receive
655 such statement monthly and upon the discharge or transfer of the
656 client.
657 (6)(a) In addition to any damages or civil penalties to
658 which a person is subject, any person who:
659 1. Intentionally withholds a client's personal funds,
660 personal property, or personal needs allowance, or who demands,
661 beneficially receives, or contracts for payment of all or any
662 part of a client's personal property or personal needs allowance
663 in satisfaction of the facility rate for supplies and services;
664 or
665 2. Borrows from or pledges any personal funds of a client,
666 other than the amount agreed to by written contract under s.
667 429.24,

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668
669 commits a misdemeanor of the first degree, punishable as
670 provided in s. 775.082 or s. 775.083.
671 (b) Any licensee, administrator, employee, or
672 representative thereof who is granted power of attorney for any
673 client of the facility and who misuses or misappropriates funds
674 obtained through this power commits a felony of the third
675 degree, punishable as provided in s. 775.082, s. 775.083, or s.
676 775.084.
677 (7) In the event of the death of a client, a licensee shall
678 return all refunds, funds, and property held in trust to the
679 client's personal representative, if one has been appointed at
680 the time the licensee disburses such funds, or, if not, to the
681 client's spouse or adult next of kin named in a beneficiary
682 designation form provided by the licensee to the client. If the
683 client has no spouse or adult next of kin or such person cannot
684 be located, funds due the client shall be placed in an interest-
685 bearing account and all property held in trust by the licensee
686 shall be safeguarded until such time as the funds and property
687 are disbursed pursuant to the Florida Probate Code. Such funds
688 shall be kept separate from the funds and property of the
689 licensee and other clients of the facility. If the funds of the
690 deceased client are not disbursed pursuant to the Florida
691 Probate Code within 2 years after the client's death, the funds
692 shall be deposited in the Health Care Trust Fund administered by
693 the agency.
694 (8) The agency may by rule clarify terms and specify
695 procedures and documentation necessary to administer the
696 provisions of this section relating to the proper management of

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697 clients' funds and personal property and the execution of surety
698 bonds.
699 Section 13. Section 400.9981, Florida Statutes, is created
700 to read:
701 400.9981 Rules establishing standards.—
702 (1) It is the intent of the Legislature that rules
703 published and enforced pursuant to this part and part II of
704 chapter 408 include criteria to ensure reasonable and consistent
705 quality of care and client safety. Rules should make reasonable
706 efforts to accommodate the needs and preferences of clients to
707 enhance the quality of life in transitional living facilities.
708 (2) The agency, in consultation with the Department of
709 Health, may adopt and enforce rules to implement this part and
710 part II of chapter 408, which shall include reasonable and fair
711 criteria in relation to:
712 (a) The location of transitional living facilities.
713 (b) The number of qualifications of all personnel,
714 including management, medical, nursing, and other professional
715 personnel and nursing assistants and support personnel having
716 responsibility for any part of the care given to clients. The
717 licensee must have enough qualified professional staff available
718 to carry out and monitor the various professional interventions
719 in accordance with the stated goals and objectives of each
720 individual program plan.
721 (c) Requirements for personnel procedures, insurance
722 coverage, reporting procedures, and documentation necessary to
723 implement this part.
724 (d) Services provided to clients of transitional living
725 facilities.

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726 (e) The preparation and annual update of a comprehensive
727 emergency management plan in consultation with the Division of
728 Emergency Management. At a minimum, the rules must provide for
729 plan components that address emergency evacuation
730 transportation; adequate sheltering arrangements; postdisaster
731 activities, including provision of emergency power, food, and
732 water; postdisaster transportation; supplies; staffing;
733 emergency equipment; individual identification of clients and
734 transfer of records; communication with families; and responses
735 to family inquiries.
736 Section 14. Section 400.9982, Florida Statutes, is created
737 to read:
738 400.9982 Violations; penalties.—
739 (1) Each violation of this part and rules adopted pursuant
740 thereto shall be classified according to the nature of the
741 violation and the gravity of its probable effect on facility
742 clients. The agency shall indicate the classification on the
743 written notice of the violation as follows:
744 (a) Class "I" violations are defined in s. 408.813. The
745 agency shall issue a citation regardless of correction and
746 impose an administrative fine of $5,000 for an isolated
747 violation, $7,500 for a patterned violation, and $10,000 for a
748 widespread violation. Violations may be identified and a fine
749 must be levied notwithstanding the correction of the deficiency
750 giving rise to the violation.
751 (b) Class "II" violations are defined in s. 408.813. The
752 agency shall impose an administrative fine of $1,000 for an
753 isolated violation, $2,500 for a patterned violation, and $5,000
754 for a widespread violation. A fine must be levied

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755 notwithstanding the correction of the deficiency giving rise to
756 the violation.
757 (c) Class "III" violations are defined in s. 408.813. The
758 agency shall impose an administrative fine of $500 for an
759 isolated violation, $750 for a patterned violation, and $1,000
760 for a widespread violation. If a deficiency giving rise to a
761 class "III" violation is corrected within the time specified by
762 the agency, a fine may not be imposed.
763 (d) Class "IV" violations are defined in s. 408.813. The
764 agency shall impose an administrative fine for a cited class IV
765 violation in an amount not less than $100 and not exceeding $200
766 for each violation.
767 Section 15. Section 400.9983, Florida Statutes, is created
768 to read:
769 400.9983 Receivership proceedings.—The agency may access
770 the provisions of s. 429.22 regarding receivership proceedings
771 for transitional living facilities.
772 Section 16. Section 400.9984, Florida Statutes, is created
773 to read:
774 400.9984 Interagency communication.—The agency, the
775 department, the Agency for Persons with Disabilities, and the
776 Department of Children and Families shall develop an electronic
777 database to ensure that relevant information pertaining to the
778 regulation of transitional living facilities and clients is
779 timely and effectively communicated among agencies in order to
780 facilitate the protection of clients. Electronic sharing of
781 information shall include, at a minimum, a brain and spinal cord
782 injury registry and a client abuse registry.
783 Section 17. Section 400.805, Florida Statutes, is repealed.

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784 Section 18. Paragraph (b) of subsection (4) of section
785 381.78, Florida Statutes, is amended to read:
786 381.78 Advisory council on brain and spinal cord injuries.—
787 (4) The council shall:
788 (b) Annually appoint a five-member committee composed of
789 one individual who has a brain injury or has a family member
790 with a brain injury, one individual who has a spinal cord injury
791 or has a family member with a spinal cord injury, and three
792 members who shall be chosen from among these representative
793 groups: physicians, other allied health professionals,
794 administrators of brain and spinal cord injury programs, and
795 representatives from support groups with expertise in areas
796 related to the rehabilitation of individuals who have brain or
797 spinal cord injuries, except that one and only one member of the
798 committee shall be an administrator of a transitional living
799 facility. Membership on the council is not a prerequisite for
800 membership on this committee.
801 1. The committee shall perform onsite visits to those
802 transitional living facilities identified by the Agency for
803 Health Care Administration as being in possible violation of the
804 statutes and rules regulating such facilities. ~~The committee~~
805 ~~members have the same rights of entry and inspection granted~~
806 ~~under s. 400.805(4) to designated representatives of the agency.~~
807 2. Factual findings of the committee resulting from an
808 onsite investigation of a facility pursuant to subparagraph 1.
809 shall be adopted by the agency in developing its administrative
810 response regarding enforcement of statutes and rules regulating
811 the operation of the facility.
812 3. Onsite investigations by the committee shall be funded

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813 by the Health Care Trust Fund.
814 4. Travel expenses for committee members shall be
815 reimbursed in accordance with s. 112.061.
816 5. Members of the committee shall recuse themselves from
817 participating in any investigation that would create a conflict
818 of interest under state law, and the council shall replace the
819 member, either temporarily or permanently.
820 Section 19. This act shall take effect July 1, 2013.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Communications, Energy, and Public Utilities, Vice Chair
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Health and Human Services
Transportation
Health Policy
Agriculture
Transportation

JOINT COMMITTEE:
Joint Committee on Administrative Procedures

SENATOR RENE GARCIA
40th District

March 8, 2013

The Honorable Eleanor Sobel
Chair Children, Families, and Elder Affairs Committee
520 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairwoman Sobel:

This letter should serve as a request to have my bill *SB 1724 Transitional Living Facilities* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

State Senator René García
District 38

RG:dm

RECEIVED
MAR 03 2013
Senate Committee
Children and Families

CC: Claude Hendon, Staff Director

REPLY TO:
☐ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
☐ 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/13
Meeting Date

Topic: Transitional Living Facilities

Bill Number: 1724 (if applicable)

Name: Sylvia W. Smith

Amendment Barcode: (if applicable)

Job Title: Director of Legislative & Public Affairs

Address: 2728 Centrview Dr.
Street

Tallahassee FL 32301
City State Zip

Phone: 850 322 2258

E-mail: sylvias@disabilityrightsflorida.org

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

Representing: Disability Rights Florida

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 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1468

INTRODUCER: Judiciary Committee and Senator Lee

SUBJECT: Appointment of an Attorney for a Dependent Child with Disabilities

DATE: March 27, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	**Fav/CS**
2.	Preston	Hendon	CF	**Favorable**
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1468 creates s. 39.01305, F.S., to require a court to appoint attorneys to represent dependent children having disabilities who either reside in a skilled nursing facility or are under consideration for placement in a skilled nursing facility.

The bill will have a fiscal impact on the state and has an effective date of July 1, 2013.

This bill creates section 39.01305, Florida Statutes.

II. Present Situation:

In December 2011, the U.S. Department of Justice (DOJ) opened an investigation of the state of Florida regarding the services the state provides to children having disabilities.[1] The DOJ visited a number of nursing homes that served severely disabled children throughout Florida. The DOJ found that the children housed at these facilities had little social activity, received little

[1] Letter to Attorney General Pam Bondi from Thomas E. Perez, Assistant Attorney General, Department of Justice (September 4, 2012), *available at* http://www.ada.gov/olmstead/documents/florida_findings_letter.pdf.

stimulation, and were often confined to their rooms or housed among the elderly.[2] The DOJ found that the state failed to provide for these children as required by the Americans with Disabilities Act by violating the requirement that persons with a disability be placed in the least restrictive environment.[3] In a letter from the DOJ, which was received by Attorney General Pam Bondi on September 1, 2012, the DOJ warned, "In the event we determine that we cannot secure compliance voluntarily to correct the deficiencies described in this letter, the [U.S.] Attorney General may initiate a lawsuit pursuant to the ADA."[4]

An attorney representing a dependent child having a disability could provide the necessary legal services to protect a child from a harmful environment and also insure that he or she receives all the necessary medical needs and other services needed to live full lives. This could include advocacy for benefits from the Agency for Persons with Disabilities, Agency for Health Care Administration, or the Social Security Administration.[5]

The purpose of ch. 39, F.S., is to provide for the care, safety, and protection of dependent children and to prevent child abuse, neglect, and abandonment.[6] Chapter 39, F.S., provides for the appointment of a Guardian Ad Litem (GAL) to represent the interest of the child in dependency cases.[7] However, there is no provision in ch. 39, F.S., which specifically provides an attorney for a dependent child having a disability and who resides in a skilled nursing home. Additionally, while the Guardian Ad Litem program is required to represent all children in dependency hearings, according to the Statewide Guardian Ad Litem Office, due to cost constraints, the program represents only 69 percent of the children in the system.[8] A court can however, order the appointment of an attorney for a dependent child. Such appointments are rare and are paid for by the Guardian Ad Litem program.

III. Effect of Proposed Changes:

The bill creates s. 39.01305, F.S., to require the court to appoint an attorney to represent a dependent child with a disability who either resides in a skilled nursing home facility or is being considered for placement in a skilled nursing facility.

The bill requires that the attorney be appointed in writing. The appointed attorney must provide the child with all necessary legal services, including all available appellate proceedings so that the attorney can address the medical and other services that the disabled child needs. The attorney must be adequately compensated and provided funding for costs of litigation. The appointment stays in effect until the attorney is discharged by the court, permitted to withdraw, or the case terminates.

The bill does not negate the authority of the court to appoint an attorney for a dependent child under other sections of ch. 39, F.S.

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[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] Statewide Guardian Ad Litem Office, *White paper: Bill Analysis* (2013) (on file with the Senate Committee on Judiciary).
[6] Section 39.001(1)(a), F.S.
[7] Section 39.822(1), F.S.
[8] Statewide Guardian Ad Litem Office, *supra* note 5.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates a requirement for the appointment of an attorney to represent a dependent child having a disability who resides in a skilled nursing home facility or is being considered for placement in a skilled nursing facility. Though this is a small group of individuals, attorneys representing these children must be compensated, including costs of litigation, until the termination of the case or the attorney is permitted to withdraw or is released. The bill provides that the implementation of the bill is subject to the appropriation of funds by the Legislature. The cost to implement the bill is not known.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 39.01305(2)(c), F.S., appears to be the main substantive portion of the bill. However, the provision appears to be structured as intent. "It is the intent of the Legislature that an attorney be appointed by the court . . . ." To avoid ambiguity, the Legislature may wish to restructure the provision as a command, such that: "A court must appoint an attorney to represent each dependent child . . . ."

VIII. 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 March 18, 2013
The CS makes technical changes to the underlying bill.

B. Amendments:

None.

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

By the Committee on Judiciary; and Senator Lee

590-02605-13 20131468c1

A bill to be entitled

An act relating to the appointment of an attorney for a dependent child with disabilities; creating s. 39.01305, F.S.; defining terms; providing legislative findings and intent; requiring an attorney to be appointed in writing; requiring that the appointment continues in effect until the attorney is permitted to withdraw or is discharged by the court or until the case is terminated; requiring that the attorney be adequately compensated for his or her service; providing a limitation; providing for a conditional implementation; providing an effective date.

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

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

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

(1) As used in this section, the term "dependent child with a disability" means a medically dependent or technologically dependent child who because of a medical condition requires continuous therapeutic interventions or skilled nursing supervision and resides in a skilled nursing facility or is being considered for placement in a skilled nursing facility.

(2)(a) The Legislature finds that all children in chapter 39 proceedings have important interests at stake, such as health, safety, and well-being and the need to obtain permanency.

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

590-02605-13 20131468c1

(b) The Legislature also finds that dependent children with disabilities as defined in this section have a particular need for an attorney to represent them in such proceedings, as well as in fair hearings and appellate proceedings, so that the attorney can address the medical and related needs and the services and supports necessary for these children to live successfully in the community.

(c) It is the intent of the Legislature that an attorney be appointed by the court to represent each dependent child who has a disability and who has been placed in a skilled nursing facility, or is being considered for placement in a skilled nursing facility, solely because that facility can provide medical care as determined by a Children's Multi-Disciplinary Assessment Team staffing.

(3) An order appointing an attorney for a dependent child who has a disability must be in writing.

(4) The appointment of an attorney for the dependent child continues in effect until the attorney is permitted to withdraw or is discharged by the court or until the case is dismissed. An attorney who is appointed to represent the child shall provide the complete range of legal services from removal from the home or initial appointment through all available appellate proceedings. With the permission of the court, the attorney for the dependent child may arrange for supplemental or separate counsel to handle proceedings at an appellate hearing.

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

(6) This section does not negate the authority of the court

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

59 to appoint an attorney for a dependent child in a proceeding
60 under this chapter.
61 (7) Implementation of this section is subject to
62 appropriations expressly provided for this purpose.
63 Section 2. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance
Ethics and Elections
Gaming
Rules
Transportation

SENATOR TOM LEE
Deputy Majority Leader
24th District

March 19, 2013

The Honorable Eleanor Sobel
Senate Committee on Children, Families and Elder Affairs, Chair
410 Senate Office Building
404 South Monroe St.
Tallahassee, Fl 32399

Dear Chair Sobel,

I respectfully request that SB 1468, related to the *Appointment of an Attorney for a Dependent Child with Disabilities*, be placed on the Senate Committee on Children, Families and Elder Affairs agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Tom Lee
Senator, District 24

Cc: Claude Hendon, Staff Director

RECEIVED
MAR 20 2013
Senate Committee
Children and Families

REPLY TO:
☐ 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
☐ 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance
Ethics and Elections
Gaming
Rules
Transportation

SENATOR TOM LEE
Deputy Majority Leader
24th District

March 29, 2013

The Honorable Eleanor Sobel
Senate Committee on Children, Families and Elder Affairs, Chair
410 Senate Office Building
404 South Monroe St.
Tallahassee, Fl 32399

Dear Chair Sobel,

I respectfully request that my Legislative Aide, Cori Cuttler, present SB 1468, related to the *Appointment of an Attorney for a Dependent Child with Disabilities*, at the Committee on Children, Families and Elder Affairs meeting on April 2nd, 2013.

Thank you for your consideration.

Sincerely,

Tom Lee
Senator, District 24

Cc: Claude Hendon, Staff Director

REPLY TO:
❒ 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
❒ 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/1/13
Meeting Date

Topic: Children with Disabilities
Bill Number: 1468 *(if applicable)*

Name: Sylvia Smith
Amendment Barcode: *(if applicable)*

Job Title: Director of Legislative & Public Affairs

Address: 2728 Centerview Dr.
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 322-2258 (850)

E-mail: Sylvias@disabilityrightsflorida.org

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

Representing: Disability Rights Florida

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic: Appointment of Atty for child in nursing home
Bill Number: 1468 *(if applicable)*

Name: ALAN ABRAMOWITZ
Amendment Barcode: *(if applicable)*

Job Title: Executive Director, GAL

Address: 600 South Calhoun
Street

Tallahassee FL 32399
City *State* *Zip*

Phone: 850-241-3232

E-mail: Alan.Abramowitz@gal.fl.gov

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

Representing:

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-1-13
Meeting Date

waive in support

Topic: Appointment of Attorney for a Dependent Child with Disabilities

Bill Number: 1468 *(if applicable)*

Name: Christina Spudeas

Amendment Barcode: *(if applicable)*

Job Title: Executive Director

Address: 1801 N. University Drive, Suite 3B
Street

Coral Springs, FL 33071
City, State, Zip

Phone: 954-796-0860

E-mail: christina.spudeas@floridaschildrenfir

Speaking: [✓] For [ ] Against [ ] Information

Representing: Florida's Children First

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Finance and Tax
Banking and Insurance
Children, Families, and Elder Affairs
Ethics and Elections
Rules
Transportation

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR MIGUEL DIAZ de la PORTILLA
40th District

April 1, 2013

RECEIVED
APR 01 2013
Senate Committee
Children and Families

The Honorable Eleanor Sobel
Chair
Senate Committee on Children, Families and Elder Affairs

Dear Chair Sobel:

Due to a problem relating to flight schedules, I will not arrive in Tallahassee in time for today's meeting. I respectfully request that I be excused.

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
State Senator, District 40

Cc: Ms. Lynn Wells, Committee Administrative Assistant

x Eleanor Sobel

REPLY TO:
☐ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
☐ 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: LL 37 **Case:** **Type:**
Caption: Senate Children, Families, and Elder Affairs Committee **Judge:**

Started: 4/1/2013 3:15:57 PM
Ends: 4/1/2013 5:23:32 PM Length: 02:07:36

3:16:02 PM	Meeting called to order
3:16:13 PM	Roll call
3:16:56 PM	Chair Sobel turns the chair to Sen. Hays
3:17:10 PM	SB 196 by Sen. Sobel
3:17:21 PM	Sen. Sobel presents her bill
3:18:03 PM	AM 180026
3:18:26 PM	Chair Hays
3:18:30 PM	Public Testimony
3:18:33 PM	Mallory Wells waves in support
3:19:00 PM	Pamela Burch Fort waves in support
3:19:12 PM	Mary Meeks waves in support
3:19:15 PM	Joan Hendrix waves in support
3:21:26 PM	John Stemberger speaks in opposition
3:21:52 PM	Pam Olsen speaks in opposition
3:23:12 PM	Michael Sheedy waves in opposition
3:23:55 PM	Roll call on SB 196
3:24:34 PM	Chair Sobel
3:25:48 PM	SB 548 by Sen. Detert
3:25:56 PM	Sen. Detert presents her bill
3:26:37 PM	AM 541596
3:27:06 PM	Chair Sobel
3:27:11 PM	Public Testimony
3:27:39 PM	Ellen Anderson waves in support
3:27:50 PM	Sam Bell waves in support
3:28:02 PM	Lori Fahey waves in support
3:28:23 PM	Roll call on SB 548
3:28:37 PM	Chair Sobel
3:29:25 PM	SB 1682 by Sen. Joyner
3:29:31 PM	Sen. Joyner presents her bill
3:31:48 PM	AM 179124
3:32:47 PM	Chair Sobel
3:33:18 PM	Sen. Detert
3:34:30 PM	Sen. Joyner
3:34:41 PM	Chair Sobel
3:34:56 PM	Public Testimony
3:35:10 PM	Jack Levine waves in support
3:35:21 PM	Chair Sobel
3:35:36 PM	Roll call on SB 1682
3:36:46 PM	Chair Sobel
3:36:51 PM	SB 384 by Sen. Abruzzo
3:36:59 PM	Sen. Abruzzo presents his amendment 791974
3:37:56 PM	Sen. Hays
3:38:47 PM	Chair Sobel
3:39:09 PM	Publice Testimony
3:39:13 PM	Suzie Caffery speaks in support
3:41:49 PM	Chair Sobel
3:41:55 PM	Yvonne Stewart speaks in support
3:45:07 PM	Chair Sobel
3:45:38 PM	Sen. Thompson
3:46:07 PM	Sen. Abruzzo
3:46:30 PM	Sen. Hays
3:47:33 PM	Sen. Abruzzo

3:48:18 PM	Sen. Hays
3:48:34 PM	Sen. Abruzzo
3:49:13 PM	Chair Sobel
3:49:20 PM	Sen. Dean
3:50:12 PM	Jessica Neer - Sen. Abruzzo's legislative aide
3:51:15 PM	Sen. Dean
3:51:20 PM	Jessica Neer
3:51:38 PM	Chair Sobel
3:51:41 PM	Yvonne Stewart
3:53:13 PM	Sen. Altman
3:55:06 PM	Chair Sobel
3:55:17 PM	Sen. Hays
3:55:51 PM	Dustin Erickson
3:59:53 PM	Chair Sobel
4:00:15 PM	Sen. Clemens
4:00:40 PM	Sen. Hays
4:01:47 PM	Sen. Thompson
4:02:28 PM	Sen. Grimsley
4:03:21 PM	Chair Sobel
4:03:38 PM	Sen. Dean
4:06:21 PM	Chair Sobel
4:06:31 PM	Sen. Abruzzo closes on his bill
4:07:54 PM	Carol Preston's remarks
4:08:04 PM	Roll call on SB 384
4:08:51 PM	SM 912 by Sen. Abruzzo
4:09:40 PM	Sen. Abruzzo presents his bill
4:09:55 PM	Roll call on SM 912
4:10:22 PM	Chair Sobel turns the chair to Sen. Hays
4:10:34 PM	Chair Hays
4:10:51 PM	SB 472 by Sen. Bean
4:10:58 PM	AM 761528
4:11:32 PM	Sen. Bean presents the amendment
4:12:04 PM	Public Testimony
4:12:32 PM	Roll call on SB 472
4:13:15 PM	Chair Hays
4:13:36 PM	SB 1322 by Sen. Gibson
4:13:43 PM	Sen. Gibson presents her bill
4:14:54 PM	Chair Hays
4:15:34 PM	Sen. Gibson
4:15:47 PM	Chair Hays
4:15:52 PM	Public Testimony
4:15:56 PM	Jack Levine waves in support
4:16:03 PM	Sen. Thompson
4:17:40 PM	Chair Hays
4:17:44 PM	Sen. Thompson
4:18:00 PM	Chair Hays
4:19:02 PM	Sen. Gibson
4:20:02 PM	Sen. Dean
4:20:25 PM	Sen. Gibson
4:20:50 PM	Sen. Dean
4:22:24 PM	Sen. Gibson
4:23:06 PM	Sen. Dean
4:23:15 PM	Carol Preston describes the history of the issue
4:25:19 PM	Chair Hays
4:25:22 PM	Carol Preston
4:25:51 PM	Chair Hays
4:27:22 PM	Sen. Braynon
4:29:25 PM	Sen. Hays turns the chair back to Sen. Sobel
4:29:37 PM	Sen. Gibson
4:29:53 PM	Sen. Detert
4:30:55 PM	Sen. Gibson
4:32:24 PM	Sen. Detert

4:32:40 PM	Sen. Gibson
4:32:47 PM	Sen. Detert
4:32:54 PM	Sen. Gibson
4:33:49 PM	Sen. Thompson
4:34:44 PM	Chair Sobel
4:34:53 PM	Sen. Dean
4:35:28 PM	Chair Sobel
4:35:37 PM	Sen. Gibson closes on her bill
4:37:39 PM	Roll call on SB 1322
4:38:18 PM	Chair Sobel
4:38:56 PM	SB 1650 by Sen. Gibson
4:39:18 PM	Sen. Gibson presents her bill
4:39:33 PM	AM 347262
4:39:54 PM	Sen. Gibson explains the amendment
4:40:17 PM	Sen. Detert
4:40:31 PM	Sen. Gibson
4:41:07 PM	Chair Sobel
4:41:33 PM	Roll call on SB 1650
4:42:06 PM	SB 1724 by Sen. Garcia
4:42:14 PM	Sen. Garcia presents his bill
4:43:04 PM	AM 791768
4:43:18 PM	Sen. Garcia explains the amendment
4:43:44 PM	Chair Sobel
4:44:40 PM	Public Testimony
4:44:43 PM	Syliva Smith waives in support
4:46:11 PM	Roll call on SB 1724
4:46:22 PM	Chair Sobel
4:46:49 PM	SB 1468 by Sen. Lee
4:47:01 PM	Cori Cutler - Sen. Lee's legislative aide
4:47:41 PM	Public Testimony
4:48:08 PM	Sen. Detert
4:48:26 PM	Roll call on SB 1468
4:48:55 PM	Chair Sobel
4:48:57 PM	SB 552 by Sen. Braynon
4:49:05 PM	Sen. Braynon presents his bill
4:49:48 PM	Chair Sobel
4:49:52 PM	Sen. Hays
4:50:36 PM	Sen. Braynon
4:51:12 PM	Chair Sobel
4:51:16 PM	Public Testimony
4:51:42 PM	Roll call on SB 552
4:52:04 PM	Chair Sobel
4:52:16 PM	SB 738 by Sen. Clemens
4:52:48 PM	AM 486162
4:52:56 PM	Sen. Clemens explains the amendment
4:54:14 PM	Public Testimony
4:54:27 PM	Terrill Pyburn - Asst City Attorney, Delray Beach
4:56:27 PM	Chair Sobel
4:56:35 PM	Candace Ericks
4:56:55 PM	Mark Fontaine - FL Alcohol and Drug Use Assoc.
4:57:49 PM	James Dubois - Mayor, Town of Lake Park
5:01:43 PM	Chair Sobel
5:01:58 PM	Sen. Clemens closes on his bill
5:02:41 PM	Chair Sobel
5:02:43 PM	Roll call on SB 738
5:02:58 PM	Chair Sobel
5:03:03 PM	SPB 7134
5:03:30 PM	Carol Preston presents the committee bill
5:04:41 PM	Chair Sobel
5:04:52 PM	Carol Preston remarks
5:06:20 PM	Chair Sobel
5:06:22 PM	Sen. Braynon

5:06:48 PM	Carol Preston
5:07:23 PM	Chair Sobel
5:07:28 PM	Sen. Clemens
5:07:52 PM	Carol Preston remarks
5:08:08 PM	Sen. Clemens
5:08:51 PM	Public Testimony
5:09:27 PM	Elisa Cramer - Director, Family and Community Services, Department of Children and Families
5:12:02 PM	Sen. Clemens
5:12:25 PM	Elisa Cramer
5:14:00 PM	Chair Sobel
5:14:06 PM	Elisa Cramer
5:15:26 PM	Chair Sobel
5:16:08 PM	Elisa Cramer
5:16:47 PM	Bob Dillinger - Florida Public Defender Assoc
5:21:18 PM	Sen. Clemens
5:21:30 PM	Chair Sobel
5:21:56 PM	Sen. Clemens in debate
5:22:16 PM	Roll call on SPB 7134
5:23:26 PM	Meeting Adjourned