

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Monday, April 8, 2013
TIME: 4:00 —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 | CS/CS/SB 58 Governmental Oversight and Accountability / Judiciary / Hays (Similar CS/H 351) | Application of Foreign Law in Certain Cases; Clarifying that the public policies expressed in the act apply to violations of a natural person's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution in certain proceedings or actions brought after the act becomes a law; providing that the act does not apply to a corporation, partnership, or other form of business association, except when necessary to provide effective relief in actions or proceedings under or relating to chapters 61 and 88, F.S., etc. JU 03/06/2013 Fav/CS GO 03/21/2013 Fav/CS CF 04/08/2013 Favorable RC | Favorable Yeas 5 Nays 4 |
| 2 | CS/SB 226 Education / Ring (Similar H 129) | Disability Awareness; Requiring that each district school board provide disability history and awareness instruction in all K-12 public schools; providing for individual presenters who have disabilities to augment the disability history and awareness instruction; requiring each public school to establish a disability history and awareness advisory council; providing responsibilities of the council at each school, etc. ED 03/18/2013 Temporarily Postponed ED 04/01/2013 Fav/CS CF 04/08/2013 Favorable AED AP | Favorable Yeas 8 Nays 1 |

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Monday, April 8, 2013, 4:00 —6:00 p.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|---|----------------------------|
| 3 | SB 440 Simpson (Compare CS/CS/H 125, H 779, CS/CS/S 748) | Program of All-inclusive Care for the Elderly; Authorizing the Agency for Health Care Administration to contract with certain organizations to provide services under the federal Program of All- inclusive Care for the Elderly in Citrus, Hernando, and Pasco Counties; providing an exemption from provisions relating to Health Care Service Programs for the organizations; authorizing, subject to appropriation, enrollment slots for the program in such counties, etc. CF 04/08/2013 Not Considered HP AHS AP | Not Considered |
| 4 | SB 616 Bean (Similar H 865, Compare H 187, H 1313) | Certification of Assisted Living Facility Administrators; Requiring assisted living facility administrators to meet the training and education requirements established by a third-party credentialing entity; requiring the Department of Elderly Affairs to approve third-party credentialing entities for the purpose of developing and administering a professional credentialing program for assisted living facility administrators; requiring an approved third-party credentialing entity to establish the core competencies for administrators according to the standards set forth by the National Commission for Certifying Agencies, etc. CF 04/08/2013 Not Considered HP RC | Not Considered |
| 5 | SB 736 Richter (Similar CS/H 995) | Limitations Relating to Deeds and Wills; Providing for limitations of actions when a deed or will is on record; providing that a person claiming an interest in real property affected by amendments made in the act has until a specified date to file a claim or defense in court to determine the validity of the instrument; providing that if a claim or defense is filed within the specified period, the validity of the instrument is determined without regard to these amendments, etc. JU 03/06/2013 Favorable CF 04/08/2013 Favorable RC | Favorable Yeas 9 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Monday, April 8, 2013, 4:00 —6:00 p.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|---|---|----------------------------|
| 6 | CS/SB 1048 Regulated Industries / Gardiner (Identical CS/CS/CS/H 701) | Electronic Benefits Transfer Cards; Providing that an electronic benefits transfer card may not be used or accepted at certain establishments licensed under the Beverage Law, an adult entertainment establishment, a pari-mutuel facility, a slot machine facility, an unauthorized commercial bingo facility, a casino, a gaming facility or gambling facility, or any gaming activities authorized under part II of ch. 285, etc. RI 04/02/2013 Fav/CS CF 04/08/2013 Favorable AP | Favorable Yeas 9 Nays 0 |
| 7 | CS/SB 1210 Judiciary / Soto (Identical CS/H 905, Compare CS/CS/S 718) | Family Law; Providing for consideration of time-sharing schedules as a factor in the adjustment of awards of child support; authorizing judges in family cases to take judicial notice of certain court records without prior notice to the parties when imminent danger to persons or property has been alleged and it is impractical to give prior notice; creating an exception to a prohibition against using evidence other than the verified pleading or affidavit in an ex parte hearing for a temporary injunction for protection against domestic violence, repeat violence, sexual violence, dating violence, or stalking, etc. JU 04/01/2013 Fav/CS CF 04/08/2013 Fav/CS RC | Fav/CS Yeas 9 Nays 0 |
| 8 | SB 1680 Altman (Identical H 725) | Public Records and Public Meetings/State Child Abuse Death Review Committee or Local Committee; Eliminating requirements that the closed portion of a meeting of the State Child Abuse Death Review Committee or a local committee at which specified identifying information is discussed be recorded, that no portion of such closed meeting be off the record, and that the recording be maintained by the state committee or a local committee, etc. CF 04/08/2013 Favorable GO RC | Favorable Yeas 9 Nays 0 |
| 9 | 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/CS/SB 58

INTRODUCER: Governmental Oversight and Accountability Committee; Judiciary Committee; and Senators Hays and Evers

SUBJECT: Application of Foreign Law in Certain Cases

DATE: April 5, 2013 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|------------------|
| 1. | <u>Brown</u> | <u>Cibula</u> | <u>JU</u> | <u>Fav/CS</u> |
| 2. | <u>McKay</u> | <u>McVaney</u> | <u>GO</u> | <u>Fav/CS</u> |
| 3. | <u>Peterson</u> | <u>Hendon</u> | <u>CF</u> | <u>Favorable</u> |
| 4. | _____ | _____ | <u>RC</u> | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 58 restricts courts from applying foreign law, legal codes, and systems to disputes brought under chapters 61 and 88, F.S., relating to divorce, alimony, division of marital assets, child support, and child custody.

The bill restricts courts from applying foreign laws that do not grant the parties to litigation the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

Specifically, under the bill, the courts of this state may not:

- Base a decision on a foreign law that does not grant the parties to litigation the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Enforce a choice of law clause in a contract which requires a dispute to be resolved under a foreign law that does not grant the parties the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

- Enforce a forum selection clause in a contract which requires a dispute to be resolved in a forum in which a party would be denied his or her fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Grant a motion to dismiss a lawsuit based on forum non conveniens if granting the motion would likely result in the denial of a party's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

The bill authorizes a party to a contract to waive his or her rights but requires the court to narrowly construe the scope of a waiver.

The bill does not apply to the following:

- Corporations, partnerships, and other types of business associations;
- Ecclesiastical matters; and
- Matters governed by federal treaty or international agreements to which the United States is a party and which preempt state law.

The bill will have an indeterminate fiscal impact on the state court system and takes effect upon becoming a law.

This bill creates section 45.022 of the Florida Statutes.

II. Present Situation:

Choice of Law and Choice of Forum

Questions of choice of law or forum generally arise when a case involves parties or situations with connections to multiple states or countries.

Domestic Law

The Full Faith and Credit Clause, found in section 1, Article IV of the U.S. Constitution, provides, in part: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." The question of full faith and credit may arise after a state refuses to enforce another state's judgment, considered to be a "sister state."¹ Full faith and credit may also arise when a party to a case involving contacts in one state seeks to have the law of another state apply.

In choice of law cases, a court typically requires proof of sufficient contacts to a state, such as through residency, home ownership, or place of work to apply the law of that state. This test remains the prevailing standard in choice of law cases.²

¹ William B. Sohn, *Supreme Court Review of Misconstructions of Sister State Law*, 98 VA. L. REV. 1861, 1864-65 (Dec. 2012).

² In the seminal case of *Allstate Insurance Co. v. Hague*, the Supreme Court considered whether Minnesota law could apply where the widow established the following state ties to Minnesota: the decedent's long-term workplace, a daily commute between states, the insurer's place of operation, and the wife's new place of residency. The Court required proof of a singular or aggregate significant contact to a state so that choice of its law is not arbitrary or fundamentally unfair. Here, the court determined that the aggregate of contacts justified application of Minnesota law. 449 U.S. 302, 313-319 (1981).

Choice of Law

Some contracts stipulate a choice of law, defined as “a contractual provision by which the parties designate the jurisdiction whose law will govern any disputes that may arise between the parties.”³

Foreign Law

Numerous policies exist that favor the application of foreign law to U.S. state and federal courts.⁴ These policies are based on principles of international comity, reciprocity, predictability, fairness, and disapproval of forum shopping.⁵ The term “comity” is defined as “a practice among political entities (as nations, states, or courts of different jurisdictions), involving esp[ecially] mutual recognition of legislative, executive, and judicial acts.”⁶ Principles of comity are the international equivalent of full faith and credit.⁷

A court does not take judicial notice of the law of another country.⁸ Instead, if relevant to a case, a court conducts a review of foreign statutes, case law, and secondary sources and heavily relies on expert testimony.⁹

Choice of Forum

The term “forum non conveniens” is defined as:

The doctrine that an appropriate forum – even though competent under the law – may divest itself of jurisdiction if, for the convenience of the litigants and the witnesses, it appears that the action should proceed in another forum in which the action might also have been properly brought in the first place.¹⁰

Courts apply a strong presumption in favor of a plaintiff’s choice of forum.¹¹ Still, the proponent must firmly establish bona fide connections to the forum choice to outweigh perceptions of forum shopping.¹² Courts typically allow a U.S. citizen to choose a U.S. forum, rather than have the case heard in a foreign jurisdiction. However, if a U.S.

³ BLACK’S LAW DICTIONARY (9th ed. 2009).

⁴ Nicholas M. McLean, *Intersystemic Statutory Interpretation in Transnational Litigation*, 122 YALE L.J. 303, 304 (Oct. 2012). “A court sitting in diversity might apply a state choice-of-law rule that requires the court to apply the tort law of a foreign nation. In a contract dispute, a federal court might apply foreign substantive law pursuant to an international agreement’s choice-of-law clause. In the realm of corporate law, a court might find, based on an application of the internal affairs doctrine, that a foreign nation’s procedural requirements govern a shareholder derivative suit (citation omitted).” *Id.*

⁵ *Id.* at 304.

⁶ BLACK’S LAW DICTIONARY (9th ed. 2009).

⁷ James Botsford and Paul Stenzel, *The Wisconsin Way Forward with Comity: A Legal Term for Respect*, 47 TULSA L. REV. 659 (Spring 2012). “Full faith and credit is a constitutional principle requiring states to enforce fully the judgments and orders of other states. Comity is the principle of international law by which a sovereign gives deference to the judgments of another due to mutual respect.” *Id.* at 660.

⁸ Determination of question relating to foreign law as one of law or fact, 34 A.L.R. 1447.5

⁹ McLean, *supra* note 4, at 306-307.

¹⁰ BLACK’S LAW DICTIONARY (9th ed. 2009).

¹¹ Plaintiff’s choice of forum, 32A AM. JUR. 2D FED. CTS. § 1364.

¹² Forum Non Conveniens – Deference to Plaintiff’s Forum Choice, 14D FED. PRAC. & PROC. JURIS. §3828.2 (3d ed.)

corporation operates in international commerce, not all litigation will be heard in the U.S.¹³

Courts place a high burden on a defendant who seeks dismissal of a case based on forum non conveniens. Although international treaty requirements promote the principle “equal access to courts,” in practice, courts do not accord foreign plaintiffs the same deference to move a case to another jurisdiction as U.S. citizens.¹⁴

Validity of Judgment

U.S. courts are generally not bound by foreign judgments. Still, principles of comity dictate strong consideration of another country’s judicial orders, based on deference and mutual respect.

Criteria that courts apply in accepting a foreign judgment include proof that:

- The parties had access to a full and fair trial.
- The proceeding took place after due notice and voluntary appearance.
- The jurisdiction operates under impartiality, rather than prejudice, between its own citizens and those of other countries.
- No evidence of fraud existed in securing the judgment.¹⁵

Chapter 61, F.S.

Chapter 61, F.S., addresses dissolution of marriage including the distribution of assets and liabilities, alimony, and child support and child custody arrangements. Regarding child support, the public policy of the state is that each parent has a fundamental obligation towards dependent children.¹⁶ Child support is based in part on a parent’s income and the child’s needs.¹⁷

Child custody arrangements, whether developed by the parents or by a court, must comply with state law and international treaties.¹⁸

Florida courts distribute assets and liabilities through equitable distribution, rather than, say, community property, as is done in California and a handful of other Western states. Under equitable distribution, a court considers various factors including contributions to the marriage, economic circumstances of the parties, and the length of marriage.¹⁹ The court also

¹³ American citizenship of party; suits by aliens, 32A AM. JUR. 2D FED. CTS. §1365.

¹⁴ 14D FED. PRAC. & PROC. JURIS. §3828.2 (3d ed.)

¹⁵ 9 AM. JUR. *Proof of Facts* 3D 687 §1.5. Comity (Dec. 2012).

¹⁶ Section 61.29, F.S.

¹⁷ Section 61.30, F.S.

¹⁸ These laws include the Uniform Child Custody Jurisdiction and Enforcement Act, the International Child Abduction Remedies Act, the Parental Kidnapping Prevention Act, and the Convention on the Civil Aspects of International Child Abduction.

¹⁹ Section 61.075(1), F.S.

considers various factors in awarding alimony and awards it on different bases, such as, monthly, lump sum, temporary, or permanent.²⁰

Florida recognizes written, signed premarital agreements as enforceable contracts.²¹ These agreements may include choice of law clauses.²² However, an agreement cannot negatively affect the rights of a child to support.²³ Grounds for unenforceability of a premarital agreement include coercion, fraud, duress, or overreaching or that the agreement is unconscionable.²⁴

To relocate with a child, absent an agreement between the parents, the relocating parent must petition the court or face contempt charges.²⁵

Chapter 88, F.S.

Federal law required each state to adopt the Uniform Interstate Family Support Act (UIFSA), codified in chapter 88, F.S.²⁶ The purpose of the UIFSA is to unify state law among the states regarding child support obligations, reconcile child support orders issued by more than one state, and streamline procedures for out-of-state petitioners.²⁷ Under the Act, only one court possesses jurisdiction and only one order is in effect at any given time.²⁸ This can change, however, to another court for modification, if that court has personal jurisdiction.²⁹

The UIFSA applies to support proceedings involving a foreign support order (meaning an order entered into out-of-state), a foreign tribunal, or a case in which an obligee, obligor, or child lives in a foreign country.³⁰

²⁰ The law recognizes bridge-the-gap, rehabilitative, durational, and permanent forms of alimony. Section 61.08(1) and (2), F.S.

²¹ Section 61.079, F.S.

²² Section 61.079(4)(a)7., F.S.

²³ Section 61.079(4) (b), F.S.

²⁴ Section 61.079(7), F.S.

²⁵ Section 61.13001(3), F.S.

²⁶ Building on earlier federal efforts to address the complications of enforcing child support across state lines, Congress passed the original UIFSA in 1992, and later amended it in 1996 and 2001. Kimball Denton, *A Brief History of Uniform Laws for Private Interstate Support Enforcement*, 20 J. CONTEMP. LEGAL ISSUES 323, 326 (2011-12). “[T]he Act innovatively created a one-order system by including a long-arm jurisdiction provision, which provided that a case should be kept in the obligee’s home state as often as possible. The long-arm provision called for ‘extended personal jurisdiction over nonresidents’” This was thought to remove the noncustodial parent’s advantage of having automatic case transfer to his or her home state. Nicole K. Bridges, *The “Strengthen and Vitalize Enforcement of Child Support (Save Child Support) Act: Can the Save Child Support Act Save Child Support from the Recent Economic Downturn?”*, 36 OKLA. CITY U.L. REV. 679, 692-93 (Fall 2011).

²⁷ 23 AM. JUR. 2D *Desertion and Nonsupport* § 73; 67A C.J.S. Parent and Child §247.

²⁸ Denton, *supra* note 26 at 327.

²⁹ *Id.* at 327. In Florida, a court may establish personal jurisdiction over an individual based on any of the following: The individual is served with citation, summons, or notice in-state; the individual consents to jurisdiction in the state; the individual lived with the child in-state and provided prenatal expenses or child support; the child lives in the state as a result of the acts or directives of the individual; the individual had sexual intercourse in this state which may have resulted in the conception of the child; the individual asserted parentage in a court or putative father registry in the state; or any other basis which is constitutional for the exercise of personal jurisdiction. Section 88.2011, F.S.

³⁰ Section 88.1041(1), F.S.

The UIFSA governs the:

- Establishment of a spousal or child support order.
- Enforcement of support orders and income-withholding orders without the registration of an order from out-of-state with a court in this state.
- Registration of a support order of another state for enforcement in this state.
- Modification of a child support order issued by a court of the state in which the support obligations originated.
- Registration of an order of another state for modification.
- Determination of parentage as it relates to child support.³¹

Jurisdiction

Section 88.2011, F.S., addresses a court's jurisdiction over parties to a support order or parentage determination. When a court exercises personal jurisdiction over a nonresident, in some circumstances, the state procedural and substantive laws apply, including choice of law rules, unless specified otherwise in the UIFSA:

Under ... choice of law ... the substantive law of an issuing state applies to petitions filed in a responding state to enforce the existing ... orders of the issuing state; ... the substantive law of the issuing state does not apply to petitions filed in a [subsequent] responding state to modify the existing child support orders of the issuing state.

A foreign country may be a "state" for purposes of application of the UIFSA, but the Act does not apply to obligations established under the law of a foreign country where there is no state law or contravening treaty or federal statute recognizing the enforcement of support orders from the foreign country ...³²

Enforcement of Income-Withholding Orders Without Registration

Part V of chapter 88, F.S., provides for income-withholding orders issued by another state to be self-executing and treated as if a Florida court issued them.³³ However, a Florida court can enforce out-of-state support and income-withholding orders once a party registers the order with the Florida court.³⁴

Choice of Law

Under the UIFSA, the law of the issuing or originating state applies regarding the nature, extent, amount and duration of payments and other support obligations, including arrearages. In proceedings to collect arrearages under support orders, the statute of limitation that applies is whichever is longer, this state's or the issuing state's.³⁵

³¹ 23 AM. JUR. 2D *Desertion and Nonsupport* § 73.

³² Section 88.2021, F.S.; 67A C.J.S. *Parent and Child* §247.

³³ Sections 88.5011 and 88.50211(2), F.S.

³⁴ Section 88.6011, F.S.

³⁵ Section 88.6041(1) and (2), F.S.

Enforcement and Modification of Support Order after Registration

Under the UIFSA, jurisdiction to enforce or modify another state’s child support order in a registration proceeding in this state is proper if all parties, including children, reside here.³⁶

To modify a support order from another state, an agency or party must register it in Florida.³⁷ Once the recipient meets personal jurisdiction and other factors, the court can enforce the order just as if it had been issued in-state.³⁸

To enforce orders involving a foreign country, the UIFSA authorizes:

- A tribunal of this state to assume jurisdiction to modify an order and make it the controlling order if a foreign country lacks or refuses jurisdiction to modify its own order.³⁹
- A party or support enforcement agency seeking to modify or enforce a foreign order which is not governed by an international convention to register the order in this state.⁴⁰

The UIFSA requires courts to recognize and enforce foreign support orders and agreements, unless:

- A court finds that a registered convention support order is manifestly incompatible with public policy. Incompatibility with public policy includes the failure of the issuing court to maintain minimum standards of due process such as notice and an opportunity to be heard.⁴¹
- A court finds that a registered foreign support agreement is manifestly incompatible with public policy.⁴²

Use and Acceptance of Religious Law by U.S. Courts

The U.S. Constitution does not permit official adoption of religious law by federal, state, or local governments.⁴³ Examples exist, however, of judicial deference to religious edicts.

In the seminal case of *Wisconsin v. Yoder*, the U.S. Supreme Court reviewed a challenge by Amish parents of a Wisconsin law requiring mandatory school attendance.⁴⁴ At the time, the law did not recognize home schooling as an alternative education. The parents asserted that high school would negatively impact their children through exposure to “worldly” views, self-distinction, and social life, all antithetical to Amish religion.⁴⁵ The Court noted the reputable work ethic, law-abiding nature, and potentially-compromised

³⁶ Section 88.6131(1), F.S.

³⁷ Section 88.6091, F.S.

³⁸ Section 88.6101, F.S.; Requirements for modification of child support orders issued out-of-state are provided in s. 88.6111, F.S.

³⁹ Section 88.6151(1) and (2), F.S.

⁴⁰ Section 88.6161, F.S.

⁴¹ Section 88.7081(1) and (2)(a), F.S.

⁴² Section 88.7101(3), F.S.

⁴³ Jaron Ballou, *Sooners vs. Shari’a: The Constitutional and Societal Problems Raised by the Oklahoma State Ban on Islamic Shari’a Law*, 30 LAW & INEQ. 309, 314 (Summer 2012).

⁴⁴ *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

⁴⁵ *Id.* at 210-11 (1972).

survival of the Amish.⁴⁶ The Court found the parents' violation of compulsory school attendance to be firmly rooted in Amish religion.⁴⁷ Requiring high school attendance would violate the defendants' rights to religious Free Exercise, under the First Amendment of the U.S. Constitution.⁴⁸

Scholars suggest that the Court is inclined to uphold a religious practice that violates a law if the statute unduly burdens religious First Amendment rights. This is particularly so where the practice cannot be said to harm others.⁴⁹ Still, "American laws impose behavioral mandates on all citizens, regardless of faith, and to the extent that religious regimes tolerate behaviors that fall outside those mandates, the secular court system will always come down on the side of secular laws."⁵⁰

Another group that the Court recognizes is the Beth Din of America (BDA), or a Jewish rabbinic court. The BDA established itself as a limited court alternative to civil disputes.⁵¹ Functioning primarily as a court of arbitration, the court has undergone significant changes since its inception 50 years ago.⁵² Present day proceedings before the BDA include:

- A detailed and standardized rules of procedure.
- An internal appellate process.
- Consideration of choice of law.
- Testimony from experts on secular law and commercial practice.
- Recognition of common commercial custom.
- Belief in communal governance, as reflected in multiple individual arbitration.⁵³

As noted, the BDA incorporated these features over time. "Recognizing this secular focus on procedure and procedural fairness, the BDA adopted detailed rules and procedures that contributed tremendously to the eventual secular acceptance of BDA decisions."⁵⁴ To date, no U.S. court has overturned a BDA case.⁵⁵

⁴⁶ *Id.* at 212-13.

⁴⁷ *Id.* at 213-16.

⁴⁸ *Id.* at 234.

⁴⁹ Omar T. Mohammedi, *Sharia-compliant Wills: Principles, Recognition, and Enforcement*, 57 N.Y.L. SCH. L. REV. 259, 280 (2012-13).

⁵⁰ Michael J. Broyde, *Jewish Law Courts in America: Lessons Offered to Sharia Courts by the Beth Din of American Precedent*, 57 N.Y.L. SCH. L. REV. 287, 303 (2012-13).

⁵¹ *Id.* at 288.

⁵² *Id.* at 288.

⁵³ Broyde, *supra* note 50, at 288-89. "Traditionally, Jewish law did not offer an appellate process like the American secular court system Over time, however, the BDA came to find that if it did not provide an internal mechanism by which parties could appeal perceived errors, secular judges would interject and substitute their own judgment. Because the ultimate goal for litigants submitting to a religious tribunals' jurisdiction (and for the tribunal itself) is to have matters resolved internally from start to finish, the BDA added an appellate process to its arbitration services." *Id.* at 293.

⁵⁴ *Id.* at 290.

⁵⁵ *Id.* at 288.

BDA cases apply to situations in which:

- A contract contains an arbitration provision that designates the BDA as the preferred forum for arbitration; or
- A party to a dispute invites an opposing party to bring the case to the BDA.⁵⁶

Anti-Foreign Law

In recent years, state legislatures have moved to limit Sharia law, or the applicability of foreign law through choice of law and choice of forum clauses in contracts. Starting with Louisiana and Tennessee, 21 states have considered some limits on the application of foreign law, either through legislation or ballot initiative.⁵⁷

Scholars generally classify initiatives or legislation in one of three ways:

- Bills that singularly restrict the use of Sharia law;⁵⁸
- Bills that include Sharia as one of several banned types of law or tradition;⁵⁹ or
- Prohibitions on foreign law generally, commonly known as a foreign or international law bill.⁶⁰

Proposals passed through initiative or legislation in Arizona,⁶¹ Kansas,⁶² Louisiana,⁶³ Oklahoma, and Tennessee.

⁵⁶ *Id.* at 291-92.

⁵⁷ Asma T. Uddin and Dave Pantzer, *A First Amendment Analysis of Anti-Sharia Initiatives*, 10 FIRST AMEND. L. REV. 363, 370 (Winter 2012).

⁵⁸ Alabama's proposed language read, in part: "The courts shall not look to the legal precepts of other nations or cultures. Specifically, the courts shall not consider international law or Sharia." H.R. 597 (Ala. 2011). Iowa, Missouri, and New Mexico proposed virtually the same language. Language before the Wyoming legislature would ban both direct use of Sharia law, and citing other states that use Sharia law. H.R. 8, (Wyo. 2011). Udder and Pantzer, *supra* note 57, at 371-73.

⁵⁹ An example of this was the language initially proposed in Arizona, which provided, in part: "... court shall not use, implement, refer to or incorporate [a] tenet of any body of religious sectarian law in to any decision, finding or opinion as controlling or influential authority." And further, the bill defines "religious sectarian law", as "a tenet or body of law evolving within and binding a specific religious sect or tribe. Religious sectarian law includes sharia law, canon law, halacha and karma" H.R. 2582 (Ariz. 2011). Udder and Pantzer, *supra* note 58, at 373-74.

⁶⁰ *Id.* at 373-74. An example of the more generalist approach was tried in Michigan. It defined foreign law as "any law, rule or legal code or system other than the constitution, laws and ratified treaties of the United States and the territories of the United States, or the constitution and laws of this state a court ... shall not enforce a foreign law if doing so would violate a right guaranteed by the constitution of this state or of the United States, or the constitution and laws of this state." *Id.* at 375.

⁶¹ Ariz.Rev.Stat. §12-3103, provides, in part: "A court, arbitrator, administrative agency or other adjudicative, mediation or enforcement authority shall not enforce a foreign law if doing so would violate a right guaranteed by the Constitution of this state or of the United States"

⁶² Kan. Stats. §§60-5103, 60-5104, and 60-5105 (a) and (b), provide, in part: "Any court, arbitration, tribunal or administrative agency ruling ... shall violate the public policy of this state and be void and unenforceable if the court ... bases its rulings ... on any foreign law, legal code or system that would not grant the parties affected ... the same fundamental liberties, rights and privileges granted under the ... constitutions, including ... equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage. A contract or ... provision ... which provides for the choice of a foreign law, legal code or system to govern ... shall violate the public policy of this state and be void and unenforceable if the foreign law, legal code or system chosen ... would not grant the parties the same fundamental liberties, rights and privileges granted under the ... constitutions, including ... equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage. A contract or ... provision ... which provides for a jurisdiction for ... in personam

Perhaps the most notable attempt to limit court use of foreign law was the constitutional amendment placed on the ballot in Oklahoma in 2010. The amendment restricted courts to the use of federal and state law, and expressly banned consideration of international and Sharia laws. The initiative defined Sharia law as Islamic law, based on the Koran and the teachings of Mohammed.⁶⁴ Fewer than 1 percent of Oklahoma’s population self-identifies as Muslim.⁶⁵ Known as the “Save our State” amendment, the measure passed handily both in the legislature and through adoption by voters.⁶⁶

A Muslim Oklahoma resident challenged the amendment on the basis that it violated his First Amendment rights under the Establishment Clause and the Free Exercise Clause of the U.S. Constitution. The U.S. District Court for the Western District of Oklahoma ruled in favor of the plaintiff. The plaintiff argued that the initiative unconstitutionally interfered with his ability to indicate his wishes as detailed in his will. Specifically, the will provided for:

charitable allotments to be made “in a manner that does not exceed the proscribed limitations found in Sahih Bukhari ... a highly respected collection of the “sayings and deeds of Prophet Muhammed,” and the cited provision appears to set a cap on the amount of property that a decedent may give to charity by will. It also provides for the preparation of Awad’s body in a manner that “comports precisely with ... Sahih Bukhari” ... and for “a burial

jurisdiction ... shall violate the public policy of this state and be void and unenforceable if the jurisdiction ... includes any foreign law, legal code or system ... that would not grant the parties the same fundamental liberties, rights and privileges granted under the ... constitutions, including ... equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage. ... If a resident ... subject to personal jurisdiction in this state, seeks to maintain litigation, ... in this state and if the courts ... find that granting ... forum non conveniens or a related claim violates ... the fundamental liberties, rights and privileges granted under the United States and Kansas constitutions of the nonclaimant in the foreign forum ... including ... equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage ... the claim shall be denied.

⁶³ La. Rev. Stat. §9:6001B, provides: “ ... it shall be the public policy of this state to protect its citizens from the application of foreign laws when the application ... will result in the violation of a right guaranteed by the constitution ... including ... due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the constitution of this state. ... A court, arbitrator, administrative agency, or other adjudicative, mediation, or enforcement authority shall not enforce a foreign law if doing so would violate a right guaranteed by the constitution. ... If any contractual provision or agreement provides for the choice of a foreign law ... would result in a violation of a right guaranteed by the constitution ..., the agreement or contractual provision shall be modified or amended ... to preserve the constitutional rights of the parties. ... If any contractual provision or agreement provides for the choice of venue or forum outside of the states or territories of the United States, and if the enforcement or interpretation ... would result in a violation of any right guaranteed by the constitution ... that contractual provision or agreement shall be interpreted ... to preserve the constitutional rights of the person against whom enforcement is sought. ... if a natural person subject to personal jurisdiction in this state seeks to maintain litigation ... in this state, and ... granting a claim of forum non conveniens or a related claim violates or would likely lead to the violation of the constitutional rights of the nonclaimant in the foreign forum with respect to the matter in dispute, the claim shall be denied.

⁶⁴*Id.* at 367-68.

⁶⁵ Ballou, *supra* note 43, at 310.

⁶⁶ Udder and Pantzer, *supra* note 57, at 377-78.

plot that allows my body to be interned [sic] with my head pointed in the direction of Mecca.”⁶⁷

His will, the plaintiff argued, would be rendered unenforceable under the amendment.⁶⁸

The court noted that the amendment language subjected the plaintiff and other Muslims in the state to disfavored treatment.⁶⁹ In determining the proper test to apply, the Court reviewed the principles of the tests established in *Lemon v. Kurtzman*⁷⁰ and *Larson v. Valente*.⁷¹ The Court cited *Larson* for the proposition that *Lemon* applies to laws providing a uniform benefit to all religions, while *Larson* applies in instances where a law discriminates among religions. Therefore, *Larson* provided the proper test in the Oklahoma challenge.⁷² The *Larson* test requires both strict scrutiny, and more narrowly, language “closely fitting” to a compelling interest.⁷³

This case presents even stronger ‘explicit and deliberate distinctions’ among religions than the provision that warranted strict scrutiny in *Larson* *Larson* involved a ... statute that imposed certain registration and reporting requirements upon only those religious organizations that solicited more than 50 percent of their funds from nonmembers Unlike the provision in *Larson*, the Oklahoma amendment specifically names the target of its discrimination.⁷⁴

The court selected the *Larson* test as the proper test. To satisfy strict scrutiny, the state must show that the interest addresses a real, identified problem, rather than a mere perception of harm.⁷⁵ As the state could not identify even a single time when an Oklahoma court applied Sharia law, the court found that the state failed to illustrate an actual problem, and therefore, failed to show a compelling state interest.⁷⁶ As the state failed the first prong, the court did not reach whether the state complied with the “close fit” required of the second prong.⁷⁷

Of the four states having laws in this area, Kansas and Louisiana are the most similar to SB 58.

Constitutional Impairment of Contracts

Article 1, Section 10, of the Florida Constitution provides, “No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.”

⁶⁷ *Id.* at 390.

⁶⁸ *Id.* at 390.

⁶⁹ *Awad v. Ziriax*, 670 F.3d 1111, 1123 (10th Cir. U.S.C.O.A. 2012).

⁷⁰ 403 U.S. 602 (1971). The *Lemon* test of constitutionality requires the language in question to have a secular legislative purpose, a primary effect that neither advances nor inhibits religion, and that does not foster an excessive government entanglement with religion. *Id.* at 612-13.

⁷¹ *Larson v. Valente*, 456 U.S. 228 (1982).

⁷² *Awad*, 670 F.3d at 1126-27, 1128.

⁷³ *Larson*, 456 U.S. at 246-47.

⁷⁴ *Awad*, 670 F.3d at 1128.

⁷⁵ *Awad*, 670 F.3d at 1129-30.

⁷⁶ *Awad*, 670 F.3d at 1111.

⁷⁷ *Awad*, 670 F.3d at 1130-31.

As a result of the constitutional limitation, the courts typically invalidate statutes that retroactively apply to existing contracts. In a 1940 Florida Supreme Court case, the Court ruled any statute enacted by the Legislature void which would impair the obligation of a contract.⁷⁸ Subsequent courts, however, carved out limited exceptions.

In *Pomponio v. Claridge of Pompano Condo, Inc.*, the Florida Supreme Court recognized that the state may have a legitimate interest in amending a law that has an impact on existing contracts based on its police power.⁷⁹ In determining legitimacy, the Court employed a balancing test to “weigh the degree to which a party’s contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy.”⁸⁰

The Court then applied the test established in the U.S. Supreme Court case of *Allied Structural Steel Co. v. Spannaus* to determine whether a law may apply to existing contracts.⁸¹ Under the test, a law is more likely to be upheld if it meets the following three prongs of the test, which are, cumulatively that:

- The law was enacted to deal with a broad, generalized economic or social problem.
- The law operates in an area already subject to state regulation at the time the parties’ contractual obligations were originally undertaken, rather than invading an area not previously subject to regulation by the state.
- The law effects a temporary alteration of the contractual relationships of those within its coverage, instead of working a severe, permanent, and immediate change in those relationships irrevocably and retroactively.⁸²

In an impairment of contracts challenge to a municipal ordinance, the Fifth District Court of Appeal reiterated the principle that laws that are reasonable and necessary to preserve public health, safety, and welfare are constitutional even if obligations of a private contract are impaired.⁸³ However, “the government’s authority in this regard is not unrestrained.”⁸⁴

In *Cohn v. Grand Condominium Association, Inc.*, the statute changed voting arrangements in condominium governance. In employing the *Pomponio* test, the court determined that the state failed to identify a current social problem, the law did not regulate the specific area at issue at the time that the condo organized, and the resulting change from the law would be severe, permanent, and immediate.⁸⁵

⁷⁸ *Bedell v. Lassiter*, 143 Fla. 43 (Fla. 1940).

⁷⁹ *Pomponio v. Claridge of Pompano Condo, Inc.*, 378 So. 2d 774 (Fla. 1979).

⁸⁰ *Id.* at 780.

⁸¹ *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-45 (1978). “Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.” *Id.* at 245.

⁸² *Pomponio*, 378 So. 2d at 779.

⁸³ *Brevard County v. Florida Power & Light Co.*, 693 So. 2d 77, 81 (Fla. 5th DCA 1997).

⁸⁴ *Id.* at 81.

⁸⁵ *Cohn v. Grand Condominium Assoc.*, 26 So. 3d 8, 11 (Fla. 3d DCA 2009).

Therefore, the state failed to meet its burden.⁸⁶ On appeal, the Florida Supreme Court affirmed but recognized that new laws apply to related contracts with provisions which incorporate future changes to the law.⁸⁷

III. Effect of Proposed Changes:

This bill restricts courts from applying foreign law to dissolution of marriage cases and issues involving multiple-state child support enforcement actions.

Specifically, under the bill, the courts of this state may not:

- Base a decision on a foreign law that does not grant the parties to litigation the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Enforce a choice of law clause in a contract which requires a dispute to be resolved under a foreign law that does not grant the parties the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Enforce a forum selection clause in a contract which requires a dispute to be resolved in a forum in which a party would be denied his or her fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Grant a motion to dismiss a lawsuit based on forum non conveniens if granting the motion would likely result in the denial of a party's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

This bill does not apply to:

- Corporations, partnerships, and other types of business associations (except as necessary to provide relief in proceedings brought under chapters 61 and 88, F.S.); and
- Ecclesiastical matters.

Although this bill recognizes that a party may waive his or her rights through a contract, the bill requires a court to narrowly construe the scope of the waiver.

The bill does not identify any laws or conduct authorized under foreign laws within the family law context which would deny a person's fundamental liberties, rights, and privileges. As such, courts will likely determine the impact of the bill on a case-by-case basis.

The bill requires a court to invalidate contractual provisions or judgments not based on laws that provide the parties with the "same" constitutional protections as the state and federal constitutions. As the "same" standard appears inflexible, the bill may result in the invalidation of contractual provisions or judgments based on foreign laws that grant the parties similar rights, privileges, and immunities as those granted by this country.

⁸⁶ *Id.* at 11.

⁸⁷ *Cohn v. Grand Condominium Assoc.*, 62 So. 3d 1120 (Fla. 2011).

The bill declares in s. 45.022(4), F.S., that court orders based on disfavored foreign laws are void and unenforceable. However, the bill does not specifically address a situation in which a person seeks to enforce in this state a court order from a sister state which is based on a disfavored foreign law. In those situations, a court may likely rule that the Full Faith and Credit Clause of the U.S. Constitution requires enforcement of the order.

Similarly, the bill does not specifically address how a court would reconcile the bill with chapter 88, F.S., the Uniform Interstate Family Support Act, which was mandated by Congress. Under the bill, a support order entered in a foreign nation whose laws are inconsistent with this nation's constitutional "fundamental liberties, rights, and privileges" is unenforceable. In contrast, chapter 88, F.S., renders foreign support orders and agreements unenforceable if they are "manifestly incompatible with public policy." Although the two provisions appear to overlap (for example, manifest incompatibility includes due process and opportunity to be heard), the scope of the bill is likely broader than the restrictions on foreign law under the UIFSA.

The bill requires the Division of Law Revision and Information to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Four constitutional issues may potentially be raised:

First Amendment

States that have proposed legislation to restrict courts from applying foreign law have banned the use of Sharia law, banned several types of law or tradition including Sharia law, or prohibited the use of foreign law generally. Of the three types of initiatives, this bill comes under the third category, as it contains no mention of Sharia or another specific type of banned law other than foreign law in general. In contrast to the law at issue in *Awad v. Ziriax*,⁸⁸ the bill appears to carry the greatest merit constitutionally, as it does not specifically single out a particular religion for disfavor or preference. If this bill

⁸⁸ 670 F.3d 1111, 1123 (10th Cir. U.S.C.O.A. 2012).

is challenged based on First Amendment grounds, a court following past precedents will initially review the language for facial discrimination. Again, as religion is not mentioned at all, the court will deem it facially neutral. A court will then apply the *Lemon* test, and likely find both a secular government purpose and that the law does not facilitate excessive governmental entanglement with religion. Because of this, a court will likely uphold the law.

Impairment of Contracts

The bill takes effect upon becoming a law and provides that it applies to actions filed after the effective date of the act. Still, if a party attempts to apply the law to invalidate provisions in existing contracts, he or she must demonstrate that the law is a legitimate use of the state's police power and that the change operates in less than a severe, permanent, and immediate fashion, as required under *Pomponio v. Claridge of Pompano Condo, Inc.*⁸⁹ This test places a very high burden on the state. Alternatively, this bill may reach back to existing contracts, if a contractual provision expressly incorporates future changes to the law.

Dormant Federal Foreign Affairs Powers

Although not explicitly provided for in the U.S. Constitution, the Supreme Court has interpreted the U.S. Constitution to mean that the national government has exclusive power over foreign affairs. In *Zschernig v. Miller*, the Supreme Court reviewed an Oregon statute that refused to let a resident alien inherit property because the alien's home country barred U.S. residents from inheriting property. The Court held that the Oregon law as applied exceeded the limits of state power because the law interfered with the national government's exclusive power over foreign affairs. The Court also held that, to be unconstitutional, the state action must have more than "some incidental or indirect effect on foreign countries,"⁹⁰ and the action must pose a "great potential for disruption or embarrassment"⁹¹ to the national unity of foreign policy. Such a determination would necessarily rely heavily on considerations of current political climates and foreign relations, as well as the United States' perception abroad. Due to the fact that these factors could only be evaluated if and when a challenge to this bill was brought, an assessment of the likelihood for success that such an action would have is not practical at this time.

Separation of Powers

The first three articles of the U.S. Constitution define the powers given to the three branches of government in the United States.⁹² Article I defines the legislative branch and vests with it all power to make law. Article II defines the executive branch and vest in it the power to enforce the law. Article III defines the judicial branch and vests in it all judicial power. For time immemorial, that power has been understood to mean the power to interpret and apply the law.⁹³

⁸⁹ 378 So. 2d 774 (Fla. 1979).

⁹⁰ *Zschernig v. Miller*, 389 U.S. 429, 433 (1968).

⁹¹ *Id.* at 435.

⁹² Articles I, II, III, U.S. Const.

⁹³ *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

As discussed above, to the extent that this bill directs Florida courts to consider and interpret foreign decisions and law in a certain manner, it may interfere with the federal government's ability to govern foreign policy with one voice. As such, this bill could be challenged as preempted by the federal government. Similarly, as previously stated, the judiciary's constitutional role is to act as the sole interpreter of laws; therefore, the bill could be challenged as an infringement on the essential role of the judicial branch in violation of the constitutional separation of powers. Similarly, the Florida Constitution explicitly mandates separation of powers between branches of the Florida government. Article II, section 3 of the Florida Constitution specifically states: "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

Because of this language, Florida's separation of powers doctrine is even stronger than the federal concept of separation of powers. Therefore, the bill may face an additional separation of powers inquiry.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Although private parties will be impacted by the bill, the extent of the impact is unknown at this time.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) anticipates that the bill will have a fiscal impact on judicial workloads resulting from the obligation imposed on judges to determine what liberties, rights, and privileges are provided under a foreign law, and how those compare with liberties, rights, and privileges under the Florida and U.S. Constitutions. OSCA anticipates these determinations may require expert testimony and will impose additional judicial workload; however, OSCA lacks adequate data presently to quantify the impact.⁹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁹⁴ Office of the State Courts Administrator, *2013 Judicial Impact Statement CS/CS/SB 58* (April 5, 2013).

VIII. Additional Information:

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

CS/CS by Governmental Oversight and Accountability on March 21, 2013:

The CS:

- Clarifies what constitutes a “foreign law, legal code, or system.”
- Specifies that the act applies to proceedings under Chapters 61 and 88, F.S., filed after the effective date of the bill.
- Requires the Division of Law Revision and Information to replace the phrase “the effective date of this act” with the date the act becomes law.

CS by Judiciary on March 6, 2013:

The CS:

- Adds liberties granted under the State and Federal Constitution to the list of the state’s interests to be upheld by the bill.
- Makes a choice of venue or choice of forum clause in a contract void and unenforceable if the clause would violate constitutional liberties, rights, or protections. This provision makes the remedy the same for choice of venue or choice of forum clause violations as that of choice of foreign law clauses.

- B. **Amendments:**

None.



494970

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: WD | . | |
| 04/09/2013 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Children, Families, and Elder Affairs (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Delete lines 73 - 76
and insert:
and filed after the effective date of this act.

(b) Except as necessary to provide effective relief in actions or proceedings brought under, pursuant to, or pertaining to the subject matter of chapter 61, this section

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

And the title is amended as follows:

Delete lines 14 - 22



494970

13 and insert:
14 proceedings under or relating to chapter 61, F.S.;
15 specifying the public policy of this state in applying
16 the choice of a foreign law, legal code, or system
17 under certain circumstances in proceedings brought
18 under or relating to chapter 61, F.S., which relates
19 to dissolution of marriage, support, time-sharing, and
20 the Uniform Child Custody Jurisdiction and Enforcement
21 Act; declaring that certain decisions rendered
22

By the Committees on Governmental Oversight and Accountability;
and Judiciary; and Senators Hays and Evers

585-02865-13

201358c2

A bill to be entitled

An act relating to application of foreign law in certain cases; creating s. 45.022, F.S.; providing intent; defining the term "foreign law, legal code, or system"; clarifying that the public policies expressed in the act apply to violations of a natural person's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution in certain proceedings or actions brought after the act becomes a law; providing that the act does not apply to a corporation, partnership, or other form of business association, except when necessary to provide effective relief in actions or proceedings under or relating to chapters 61 and 88, F.S.; specifying the public policy of this state in applying the choice of a foreign law, legal code, or system under certain circumstances in proceedings brought under or relating to chapters 61 and 88, F.S., which relate to dissolution of marriage, support, time-sharing, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Interstate Family Support Act; declaring that certain decisions rendered under such laws, codes, or systems are void; declaring that certain choice of venue or forum provisions in a contract are void; providing for the construction of a waiver by a natural person of the person's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution; declaring that claims of forum non conveniens or

Page 1 of 6

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585-02865-13

201358c2

related claims must be denied under certain circumstances; providing that the act may not be construed to require or authorize any court to adjudicate, or prohibit any religious organization from adjudicating, ecclesiastical matters in violation of specified constitutional provisions or to conflict with any federal treaty or other international agreement to which the United States is a party to a specified extent; providing for severability; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Section 45.022, Florida Statutes, is created to read:

45.022 Application of foreign law contrary to public policy in certain cases.-

(1) While the Legislature fully recognizes the right to contract freely under the laws of this state, it also recognizes that this right may be reasonably and rationally circumscribed pursuant to the state's interest to protect and promote liberties, rights, and privileges granted under the State Constitution or the United States Constitution.

(2) As used in this section, the term "foreign law, legal code, or system" means any law, legal code, or system of a foreign country, or a state, nation, or subdivision thereof, outside of the United States or its territories, including, but not limited to, a foreign or international organization claiming

Page 2 of 6

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585-02865-13 201358c2

59 the status of a country, state, or nation or asserting legal
 60 authority to act on behalf of one or more foreign countries,
 61 states, nations, or any other similar international organization
 62 or tribunal, which is applied by that jurisdiction's courts,
 63 administrative bodies, or other formal or informal tribunals.
 64 The term does not include the common law and statute laws of
 65 England as described in s. 2.01 or any laws of the Native
 66 American tribes in this state.

67 (3) (a) This section applies only to actual or foreseeable
 68 denials of a natural person's fundamental liberties, rights, and
 69 privileges guaranteed by the State Constitution or the United
 70 States Constitution from the application of a foreign law, legal
 71 code, or system in actions or proceedings brought under,
 72 pursuant to, or pertaining to the subject matter of chapter 61
 73 or chapter 88 and filed after the effective date of this act.

74 (b) Except as necessary to provide effective relief in
 75 actions or proceedings brought under, pursuant to, or pertaining
 76 to the subject matter of chapter 61 or chapter 88, this section
 77 does not apply to a corporation, partnership, or other form of
 78 business association.

79 (4) Any court, arbitration, tribunal, or administrative
 80 agency ruling or decision violates the public policy of this
 81 state and is void and unenforceable if the court, arbitration,
 82 tribunal, or administrative agency bases its ruling or decision
 83 in the matter at issue in whole or in part on any foreign law,
 84 legal code, or system that does not grant the parties affected
 85 by the ruling or decision the same fundamental liberties,
 86 rights, and privileges guaranteed by the State Constitution or
 87 the United States Constitution.

Page 3 of 6

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585-02865-13 201358c2

88 (5) (a) A contract or contractual provision, if severable,
 89 that provides for the choice of a foreign law, legal code, or
 90 system to govern some or all of the disputes between the parties
 91 to be adjudicated by a court of law or by an arbitration panel
 92 arising from the contract violates the public policy of this
 93 state and is void and unenforceable if the foreign law, legal
 94 code, or system chosen includes or incorporates any substantive
 95 or procedural law, as applied to the dispute at issue, which
 96 would not grant the parties the same fundamental liberties,
 97 rights, and privileges guaranteed by the State Constitution or
 98 the United States Constitution.

99 (b) This subsection does not limit the right of a natural
 100 person in this state to voluntarily restrict or limit his or her
 101 fundamental liberties, rights, and privileges guaranteed by the
 102 State Constitution or the United States Constitution by contract
 103 or specific waiver consistent with constitutional principles,
 104 but the language of any such contract or other waiver must be
 105 strictly construed in favor of preserving such liberties,
 106 rights, and privileges.

107 (6) (a) A contract or contractual provision, if severable,
 108 that provides for the choice of venue or choice of forum outside
 109 a state or territory of the United States violates the public
 110 policy of this state and is void and unenforceable if the
 111 enforcement of the choice of venue or forum provision would
 112 result in a violation of any fundamental liberties, rights, and
 113 privileges guaranteed by the State Constitution or the United
 114 States Constitution.

115 (b) If a natural person who is subject to personal
 116 jurisdiction in this state seeks to maintain litigation,

Page 4 of 6

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585-02865-13 201358c2

117 arbitration, agency, or similarly binding proceedings in this
118 state and the courts of this state find that granting a claim of
119 forum non conveniens or a related claim denies or would likely
120 lead to the denial of any fundamental liberties, rights, and
121 privileges guaranteed by the State Constitution or the United
122 States Constitution of the nonclaimant in the foreign forum with
123 respect to the matter in dispute, it is the public policy of
124 this state that the claim be denied.

125 (7) This section may not be construed to:

126 (a) Require or authorize any court to adjudicate, or
127 prohibit any religious organization from adjudicating,
128 ecclesiastical matters, including, but not limited to, the
129 election, appointment, calling, discipline, dismissal, removal,
130 or excommunication of a member, officer, official, priest, nun,
131 monk, pastor, rabbi, imam, or member of the clergy of the
132 religious organization, or determination or interpretation of
133 the doctrine of the religious organization, if such adjudication
134 or prohibition would violate s. 3, Art. I of the State
135 Constitution or the First Amendment to the United States
136 Constitution; or

137 (b) Conflict with any federal treaty or other international
138 agreement to which the United States is a party to the extent
139 that such federal treaty or international agreement preempts or
140 is superior to state law on the matter at issue.

141 (8) If any provision of this section or its application to
142 any natural person or circumstance is held invalid, the
143 invalidity does not affect other provisions or applications of
144 this section which can be given effect, and to that end the
145 provisions of this section are severable.

Page 5 of 6

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585-02865-13 201358c2

146 Section 2. The Division of Law Revision and Information is
147 directed to replace the phrase "the effective date of this act"
148 wherever it occurs in this act with the date this act becomes a
149 law.

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

Page 6 of 6

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The Florida Senate
Committee Agenda Request

RECEIVED

MAR 19 2013

Senate Committee
Children and Families

To: Senator Eleanor Sobel, Chair
Committee on Children, Families, and Elder Affairs

CC: Claude Hendon, Staff Director
Lynn Wells, Administrative Assistant

Subject: Committee Agenda Request

Date: March 19, 2013

I respectfully request that **Senate Bill #58**, relating to Application of Foreign Law in Certain Cases, be placed on the:

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

A handwritten signature in black ink that reads "Alan Hays".

Senator Alan Hays
Florida Senate, District 11
320 Senate Office Building
(850) 487-5011



THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/13

Meeting Date

Topic Application of Foreign Law

Bill Number SB58 (if applicable)

Name Terry Kemple

Amendment Barcode (if applicable)

Job Title President

Address 2312 Cherry Ridge Ln.

Phone 813 653 4822

Street

Brandon, FL 33511

City

State

Zip

E-mail ckc@integrity.com

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)

8 APRIL 2013

Meeting Date

Topic SB58

Bill Number SB58 (if applicable)

Name JOHN McMAHON

Amendment Barcode (if applicable)

Job Title US ARMY OFFICER (RETIRED)

Address 2121 ROCKLEDGE DR

Phone

Street

ROCKLEDGE FL 32955

City

State

Zip

E-mail expatcat@hotmail.com

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

Representing

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD



8 April 2013
Meeting Date

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

Topic SB-58 Bill Number 58
Name Lee Boyland Amendment Barcode _____
Job Title Author (if applicable)
Address 704 Kenwood Cir Phone 321-255-3995
Street Melbourne E-mail leeboyland@att.net
City State Zip

Speaking: For Against Information
Representing VDAL
Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

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



APR 8, 2013
Meeting Date

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

Topic APPLICATION OF FOREIGN LAW IN CERTAIN CASES Bill Number SB 58
Name MAJOR JOE OBLACK Amendment Barcode _____
Job Title RETIRED USAF (if applicable)
Address 2631 HITLE BEND PL Phone 321 453 2947
Street MERRITT ISLAND E-mail OBLACK1032@201.com
City State Zip

Speaking: For Against Information
Representing VETERANS IN DEFENSE OF AMERICAN VALUES (VDAA)
Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

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

APPEARANCE RECORD

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



8 APRIL 2013
Meeting Date

Topic SB 58 LIMITED USE OF FOREIGN LAW IN
Florida Courts

Bill Number SB-58
(if applicable)

Name BENNETT LEWIS

Amendment Barcode
(if applicable)

Job Title LT GENERAL U.S. ARMY, RETIRED

Address 1540 TIPPICANCE COURT
Street

Phone 321-255-9348

MELBOURNE FL 32940
City State Zip

E-mail BenL50@aol.com

Speaking: For Against Information

Representing VETERANS IN DEFENSE OF AMERICAN LIBERTIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/8/13
Meeting Date

Topic APP OF FOREIGN LAW

Bill Number 58
(if applicable)

Name ROBERT WILDER

Amendment Barcode
(if applicable)

Job Title RETIRED POLICE OFFICER

Address 1007 MEADOW LN
Street

Phone 813-653-4130

BRANDON FL
City State Zip

E-mail Bobwilder2@aol.com

Speaking: For Against Information

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)



8 Apr 2013
Meeting Date

Topic Application of Foreign Law

Bill Number SB58
(if applicable)

Name Emma Jane Miller

Amendment Barcode _____
(if applicable)

Job Title retired middle school teacher

Address 1405 Dumont Dr.

Phone 813-684-4209

Valrico FL 33596
City State Zip

E-mail ejmiller20@gmail.com

Speaking: For Against Information

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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April 8, 2013
Meeting Date

Topic Application of Foreign Law

Bill Number SB 58
(if applicable)

Name Zoila T Walter

Amendment Barcode _____
(if applicable)

Job Title Part time bookkeeper

Address 4608 Clarksdale Lane

Phone 813-685-3123

Brandon FL 33511
City State Zip

E-mail zwalter3@hotmail.com

Speaking: For Against Information

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

8 Apr 2013

Meeting Date

Topic Application of Foreign Law

Bill Number SB 58
(if applicable)

Name DENNIS R MILLER

Amendment Barcode _____
(if applicable)

Job Title DoD CONTRACTOR

Address 1405 DUMONT DR

Phone 813 684 4209

Street
Valrico FL 33596
City State Zip

E-mail dmiller26@gmail.com

Speaking: For Against Information

Representing Myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD



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

04-08-13

Meeting Date

Topic SP 58

Bill Number SP 58
(if applicable)

Name TED RALSTON

Amendment Barcode _____
(if applicable)

Job Title RETIRED

Address 10601 CLYDESDALE DR. W

Phone 850 420 5955

Street
JAX FL 32257
City State Zip

E-mail RALSTON41@HOTMAIL.COM

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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4/8/13
Meeting Date

Topic CS-CS-SB 58
Name David Barkley
Job Title Religious Freedom Council
Address 621 NW 53rd St
Boca Raton FL 33487
City State Zip

Bill Number CS-CS-SB 58
(if applicable)
Amendment Barcode _____
(if applicable)
Phone 561-985-2912
E-mail dbarkley@aol.org

Speaking: For Against Information

Representing Anti-Defamation League

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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4/8/2013
Meeting Date

Topic SB 58
Name Laila Abdelaziz
Job Title Regional Director
Address 5031 Sunridge Palms Drive
Tampa FL 33617
City State Zip

Bill Number SB 58
(if applicable)
Amendment Barcode _____
(if applicable)
Phone 352-361-1808
E-mail labdelaziz@emerge-usa.org

Speaking: For Against Information

Representing Emerge USA

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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



4/8/13

Meeting Date

Topic Application Foreign Law Bill Number SB 58
Name CARLOS OSORIO Amendment Barcode _____
Job Title Chair, Legislative Committee
Address 1 SE 3rd Ave Ste 2250 Phone 305 373 6600
City _____ State _____ Zip _____ E-mail cosorio@aball.com

Speaking: For Against Information
Representing International Law Section of Florida Bar
Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
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4/8/13

Meeting Date

Topic SB 58 Bill Number 58
Name CHRISTOPHER W. RUMBOLD Amendment Barcode _____
Job Title ATTORNEY / FLA. FAM. LAW SECTION
Address 101 RENAISSANCE - 101 N. FEDERAL Phone 954. 761. 9994
Street HIGHWAY - 702
City BOLA LANE FL State _____ Zip 3342 E-mail CWR@GUPA.COM

Speaking: For Against Information
Representing FAMILY LAW SECTION
Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

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4/8/13

Meeting Date



Topic Foreign Law
Name Ron Bilbao
Job Title SR. Legislative Associate
Address 4500 Biscayne Blvd
Miami FL 33137

Bill Number SB 58
Amendment Barcode
Phone 919-923-7288
E-mail rbilbao@aclufl.org

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.

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S-001 (10/20/11)

THE FLORIDA SENATE

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4/8/13

Meeting Date



Topic OF LEGISLATION ON THE IMPACT OF JEWISH COMMUNITY
Name RON GEORGALIS
Job Title TUTOR
Address 2309 OLD BAINBRIDGE RD., APT. 901-B
Tallahassee FL 32303

Bill Number S.B. 58
Amendment Barcode
Phone 850-545-3026
E-mail RGEORGA@GMAIL.COM

Speaking: For Against Information

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting.

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S-001 (10/20/11)

THE FLORIDA SENATE
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4-8-13

Meeting Date

Topic Application of Foreign Laws

Bill Number SB 58
(if applicable)

Name EVA PELT

Amendment Barcode _____
(if applicable)

Job Title _____

Address 6451 Coastal HWY

Phone (850) 925-9992

Crawfordville FL 32307
Street City State Zip

E-mail evagpelt@gmail.com

Speaking: For Against Information

Representing ~~self~~ National Council of Jewish Women

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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APRIL 8 / 13

Meeting Date

Topic SB 58 - APPLICATION OF FOREIGN LAW

Bill Number SB 58
(if applicable)

Name LINDA GELLER-SCHWARTZ

Amendment Barcode _____
(if applicable)

Job Title VP Public Policy, NCJW (PALM BEACH)

Address 6861 CALLE DEL PAZ S

Phone 561 703-6718

BOCA RATON FL 33433
Street City State Zip

E-mail lndgellerschwartz@gmail.com

Speaking: For Against Information

Representing NCJW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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4-8-13

Meeting Date

Topic Internal Application of Foreign Laws

Bill Number SB58
(if applicable)

Name JOANNE SININSKY

Amendment Barcode _____
(if applicable)

Job Title RETIRED

Address 4510 CARLTON GOLF DR

Phone 561 491-8106

Street WELLINGTON State FL Zip 33449

E-mail jginsky@yehoo.com

Speaking: For Against Information

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

4-8-13

Meeting Date

Topic Application of Foreign Laws

Bill Number SB58
(if applicable)

Name Amy Datz

Amendment Barcode _____
(if applicable)

Job Title Self

Address 1130 Westview Ave.

Phone 850-322-7599

Street Tallahassee State _____ Zip _____

E-mail Amalie Datz

Speaking: For Against Information

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/18/13

Meeting Date

Topic Application of foreign laws

Bill Number SB 58 (if applicable)

Name Amanda Daulton

Amendment Barcode (if applicable)

Job Title

Address 7132 Francis Road Dr.

Phone 561-865-9628

Street Delray Beach, FL 33446

E-mail amdaul@smc1@gmail.com

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

Representing Self

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

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

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)

4/8/2013

Meeting Date

Topic

Bill Number CS for CS for SB 58 (if applicable)

Name MARK Schlakman

Amendment Barcode (if applicable)

Job Title senior program director, FSU Center for the Advancement of Human Rights

Address 426 W. Jefferson St.

Phone 644-4614

Street Tallahassee, FL 32308

E-mail mschlakman@admin.fsu.edu

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

Representing

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

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

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

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4/8/13
Meeting Date

Topic Foreign Law

Bill Number 58
(if applicable)

Name Sara Johnson

Amendment Barcode
(if applicable)

Job Title legislative Assistant to the President

Address 4853 S. Orange Ave.

Phone 850 567 8143

Street
Orlando FL 32806
City State Zip

E-mail saraj@flfamily.org

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.

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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 226

INTRODUCER: Education Committee and Senator Ring

SUBJECT: Disability Awareness

DATE: April 4, 2013 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Graf | Klebacha | ED | Fav/CS |
| 2. | Peterson | Hendon | CF | Favorable |
| 3. | _____ | _____ | AED | _____ |
| 4. | _____ | _____ | AP | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 226 changes current law to require, rather than authorize, district school boards to provide disability history and awareness instruction in all K-12 public schools beginning with the 2014-2015 school year. The instruction must be integrated into the existing school curriculum and be augmented by presentations from individuals who have a disability and are approved by the school or school district and meet existing background screening requirements.

The bill requires each public school in Florida to establish a disability history and awareness council and provides requirements for the council regarding membership, roles and responsibilities, and frequency of meetings each year.

The bill will not have a fiscal impact on the state and is effective upon becoming law.

This bill amends section 1003.4205 of the Florida Statutes.

II. Present Situation:

One in five (19 percent or approximately 54 million) people living in the United States have a disability. Five percent of children between the age of 5 and 17 have disabilities.¹

The 2008 Legislature authorized district school boards to designate the first two weeks in October as "Disability History and Awareness Weeks."² Each district school board may provide disability history and awareness instruction to students in kindergarten through grade 12. The instruction may be integrated into the existing school curriculum and the goals of the instruction must be to achieve better treatment for individuals with disabilities; encourage individuals with disabilities to develop increased self-esteem; and reaffirm the local, state, and federal commitment to the full inclusion in society of, and the equal opportunity for, all individuals with disabilities. Qualified school personnel or knowledgeable guest speakers may deliver disability history and awareness instruction.³

The Bureau of Exceptional Education and Student Services, within the Department of Education (DOE), has created a resource guide to help school districts promote Disability History and Awareness Weeks.⁴ The guide includes:⁵

- Promotional ideas to help schools promote disability history and awareness;
- Fliers recognizing the contributions of various individuals with disabilities;
- Disability etiquette documents;
- Documents concerning "people first" language;
- A guide to differentiated instruction;
- A copy of "A Legislative History of Florida's Exceptional Student Education Program"; and
- A list of websites that contain a variety of games, activities, and lesson plans that can be integrated into a curriculum for students.

Current law requires the Commissioner of Education to develop recommendations to incorporate instruction regarding autism spectrum disorder, Down syndrome, and other developmental disabilities into continuing education for instructional personnel.⁶ Continuing education must include:

¹ United States Census Bureau, *Profile America Facts for Features: 20th Anniversary of American with Disabilities Act: July 26* (May 26, 2010 based on 2005 report), available at http://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb10-ff13.html (last visited March 15, 2013).

² Section 1, ch. 2008-156, L.O.F.; s. 1003.4205, F.S.

³ Section 1003.4205, F.S. Nationally, disability advocates are mobilizing to create understanding and celebrate the history of individuals with disabilities. In 2006, West Virginia passed the first Disability History Week bill. Since 2006, twenty states, including Florida, have signed disability awareness-related laws. Additional states are considering similar legislation. Museum of disABILITY History, *Disability History Week: Legislation*, available at <http://www.disabilityhistoryweek.org/legislations/> (last visited March 14, 2013).

⁴ Bureau of Exceptional Education and Student Services, Department of Education, *Disability History and Awareness: A Resource Guide* (2010), available at <http://www.fldoe.org/ese/pdf/DHA-Resource2010.pdf>, at 1.

⁵ Bureau of Exceptional Education and Student Services, Department of Education, *Disability History and Awareness: A Resource Guide* (2010), available at <http://www.fldoe.org/ese/pdf/DHA-Resource2010.pdf>, at 1-2.

⁶ Section 1012.582 (1), F.S.

- Early identification of, and intervention for, students who have autism spectrum disorder, Down syndrome, or other developmental disabilities;
- Curriculum planning and curricular and instructional modifications, adaptations, and specialized strategies and techniques;
- The use of available state and local resources;
- The use of positive behavioral supports to deescalate problem behaviors; and
- Appropriate use of manual physical restraint and seclusion techniques.⁷

III. Effect of Proposed Changes:

CS/SB 226 changes current law to require, rather than authorize, district school boards to provide disability history and awareness instruction in all K-12 public schools beginning with the 2014-2015 school year. The bill is expected to raise greater awareness about individuals with disabilities and promote the full inclusion of such individuals in our society.

The disability history and awareness instruction must be provided during the first two weeks in October. Beginning in the 2014-2015 school year, such instruction must be integrated into the existing school curriculum. Additionally, the bill requires that the instruction be augmented by presentations from individuals who:

- Have disabilities;
- Are approved as presenters by the school or school district; and
- Meet the background screening requirements regarding entering schools and interacting with children under current law.⁸

The bill requires each public school in Florida to establish a disability history and awareness council and requires that the council:

- Be made up of seven members, including six teachers who are employed at each public school and one individual with a disability from the local community.
- Perform the following roles and responsibilities:
 - Providing input to the public school regarding curriculum for disability history and awareness;
 - Assisting with locating individuals with disabilities to make presentations at schools; and
 - Submitting, an annual report by August 1, 2014, and each year thereafter, to the superintendent of the school district in which the public school is located. The annual report must include recommendations and policy alternatives regarding the state of disability awareness at the public school.
 - Meet at least four times each year.

⁷ *Id.*

⁸ Section 1012.465, F.S., relates to background screening for noninstructional school district employees and contractors who are permitted access on school grounds when students are present, who have direct contact with students, or who have access to or control of school funds. Such individuals must meet level 2 screening requirements as described in s. 1012.32, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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.)**CS by Education on April 1, 2013:**

The committee substitute:

- Removes requirement regarding DOE assisting with creating curriculum for the disability history and awareness instruction for use in each school district.
- Requires each public school in Florida to establish a disability history and awareness council and provides requirements for the council regarding membership, roles and responsibilities, and frequency of meetings.

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 Education; and Senator Ring

581-03375-13

2013226c1

A bill to be entitled

An act relating to disability awareness; amending s. 1003.4205, F.S.; requiring that each district school board provide disability history and awareness instruction in all K-12 public schools; providing for individual presenters who have disabilities to augment the disability history and awareness instruction; requiring each public school to establish a disability history and awareness advisory council; providing membership on the council at each school; providing responsibilities of the council at each school; providing meeting times for the council at each school; providing an effective date.

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

Section 1. Section 1003.4205, Florida Statutes, is amended to read:

1003.4205 Disability history and awareness instruction.—

(1) Beginning with the 2014-2015 school year, each district school board shall ~~may~~ provide disability history and awareness instruction in all K-12 public schools in the district during the first 2 weeks in October each year. The district school board shall designate these 2 weeks as "Disability History and Awareness Weeks."

(2) (a) During this 2-week period, students shall ~~may~~ be provided intensive instruction to expand their knowledge, understanding, and awareness of individuals who have ~~with~~ disabilities, the history of disability, and the disability

Page 1 of 3

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

581-03375-13

2013226c1

rights movement. Disability history must ~~may~~ include the events and timelines of the development and evolution of services to, and the civil rights of, individuals who have ~~with~~ disabilities. Disability history must ~~may~~ also include the contributions of specific individuals who have ~~with~~ disabilities, including the contributions of acknowledged national leaders.

(b) Beginning with the 2014-2015 school year, the instruction shall ~~may~~ be integrated into the existing school curriculum in ways including, but not limited to, supplementing lesson plans, holding school assemblies, or providing other school-related activities. The instruction shall ~~may~~ be augmented by presentations from individuals who have disabilities, who have been approved by the school or school district as presenters, and who the school or school district has ensured meet appropriate background screening requirements of s. 1012.465 to enter schools and interact with children delivered by qualified school personnel or by knowledgeable guest speakers, with a particular focus on including individuals with disabilities.

(c)1. Each public school in the state shall establish a disability history and awareness advisory council. The council at each school shall consist of the following seven members:

a. Six teachers who are employed at the public school.

b. One individual from the local community who has a disability.

2. The responsibilities of the council at each school shall be, but are not limited to:

a. Providing to the public school input regarding the curriculum for disability history and awareness;

Page 2 of 3

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581-03375-13

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59 b. Assisting in locating individuals who have disabilities
60 to make presentations at schools; and

61 c. Submitting an annual report to the superintendent of the
62 school district in which the public school is located by August
63 1, 2014, and each year thereafter. The annual report must
64 include, but need not be limited to, recommendations and policy
65 alternatives regarding the state of disability awareness at the
66 public school.

67 3. The council at each school shall meet at least four
68 times a year and more often as needed.

69 (3) The goals of disability history and awareness
70 instruction include:

71 (a) Better treatment for individuals who have ~~with~~
72 disabilities, especially for youth in school, and increased
73 attention to preventing the bullying or harassment of students
74 who have ~~with~~ disabilities.

75 (b) Encouragement to individuals who have ~~with~~ disabilities
76 to develop increased self-esteem, resulting in more individuals
77 who have ~~with~~ disabilities gaining pride in being an individual
78 with a disability, obtaining postsecondary education, entering
79 the workforce, and contributing to their communities.

80 (c) Reaffirmation of the local, state, and federal
81 commitment to the full inclusion in society of, and the equal
82 opportunity for, all individuals who have ~~with~~ disabilities.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Finance and
Tax, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR JEREMY RING
29th District

April 2, 2013

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

RECEIVED

APR 02 2013

Senate Committee
Children and Families

Dear Chairwoman Sobel,

I am writing to respectfully request your cooperation in placing Senate Bill 226, relating to Disability Awareness on the Children, Families, and Elder Affairs agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 29

cc: Claude Hendon

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

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)

4-8-13

Meeting Date

Topic Disability Awareness Bill Number SB 226 (if applicable)

Name Margaret S. Hooper Amendment Barcode _____ (if applicable)

Job Title Public Policy Coordinator

Address 124 Merritt Orme #203 Phone (850) 921-7263

Tallahassee FL 32311 E-mail Hooper.Meg@gmail.com

Speaking: For Against Information

Representing Florida Developmental Disabilities Council

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.

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 440

INTRODUCER: Senator Simpson

SUBJECT: Program of All-inclusive Care for the Elderly

DATE: April 4, 2013

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------------------|
| 1. | Peterson | Hendon | CF | Pre-meeting |
| 2. | | | HP | |
| 3. | | | AHS | |
| 4. | | | AP | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

SB 440 authorizes two additional Program of All-inclusive Care for the Elderly (PACE) sites to serve Citrus, Hernando, and Pasco Counties with up to 150 slots for each site, subject to specific appropriation.

The bill will have a significant fiscal impact on the state and provides an effective date of July 1, 2013.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Program of All-Inclusive Care for the Elderly (PACE)

The PACE is a capitated benefit model authorized by the federal Balanced Budget Act of 1997 (BBA) that features a comprehensive service delivery system and integrated federal Medicare and state Medicaid financing. The model, which was tested through Centers for Medicaid and Medicare (CMS) demonstration projects beginning in the mid-1980s,¹ was developed to address the needs of long-term care clients, providers, and payers.

A PACE organization is a not-for-profit, private or public entity that is primarily engaged in providing PACE services and must:

¹CMS Manual available at <http://www.cms.gov/Medicare/Health-Plans/pace/downloads/r1so.pdf> (last visited Feb. 7, 2013)

- Have a governing board that includes community representation;
- Be able to provide the complete service package regardless of frequency or duration of services;
- Have a physical site to provide adult day services;
- Have a defined service area;
- Have safeguards against conflicts of interest;
- Have a demonstrated fiscal soundness; and
- Have a formal participant bill of rights.

The PACE participants must be at least 55 years of age, live in the PACE service area, and be certified eligible for nursing home care, but able to live safely in the community. The PACE program becomes the sole source of services for these Medicare and Medicaid eligible enrollees.

Under the PACE program, an interdisciplinary team consisting of professional and paraprofessional staff assesses participants' needs, develops care plans, and delivers all services, including acute care and nursing facility services when necessary, which are integrated to provide a seamless delivery model. A PACE program provides social and medical services primarily in an adult day health center, which are supplemented by in-home and referral services as necessary. The PACE service package must include all Medicare and Medicaid covered services, and other services determined necessary by the multidisciplinary team for the care of the PACE participant.

The BBA established the PACE model of care as a permanent entity within the Medicare program and enabled states to provide the PACE services to Medicaid beneficiaries as an optional state plan service without a Medicaid waiver. The state plan must include PACE as an optional Medicaid benefit before the state and the Secretary of the Department of Health and Human Services can enter into program agreements with PACE providers.

The PACE project is a unique federal/state partnership. The federal government establishes the PACE organization requirements and application process. The state Medicaid agency or other state agency is responsible for oversight of the entire application process, which includes reviewing the initial application and providing an on-site readiness review before a PACE organization can be authorized to serve patients. An approved PACE organization must sign a contract with CMS and the state Medicaid agency. Rates for PACE providers are developed based on a county level actuarial analysis of the costs associated with the service population.

Florida PACE Project

The Florida PACE project was initially authorized in ch. 98-327, Laws of Florida and is codified in s. 430.707(2), F.S., under the administration of the Department of Elder Affairs (DOEA), operating in consultation with the Agency for Health Care Administration (AHCA).² The initial program was located in Miami-Dade County and began serving enrollees in February 2003 with a total of 150 slots. Since then, the Legislature has approved additional slots either as part of the General Appropriations Act (GAA) or general law.

² Chapter 2011-135, s. 24, L.O.F, repeals s. 430.707, F.S., effective Oct 1, 2013, as part of the expansion of Medicaid managed care.

The 2006 GAA contained proviso language authorizing an additional 150 slots in the Miami-Dade County program and 200 slots each at new programs in Martin/St. Lucie Counties, and Lee County.³ In 2008, the Legislature reallocated equally 150 unused PACE slots to Miami-Dade, Lee, and Pinellas Counties.⁴ In 2009, the Legislature authorized 100 slots for a program in Hillsborough County.⁵ The 2010 GAA funded an additional 100 slots in Pinellas County and authorized and funded a new program with 100 slots in Hillsborough County.⁶ That same year, the Legislature, by general law, authorized an additional 50 slots in Miami-Dade and 150 slots for a program serving Polk, Hardee, Highlands, and Hillsborough Counties.⁷ In 2011, the Legislature authorized a program with 150 slots in Palm Beach County,⁸ and funded, through the GAA, 50 additional slots in Lee County and 150 slots for a program serving Polk, Hardee, and Highlands Counties.⁹ In 2012, the Legislature authorized two new programs of up to 150 slots each for a program in Broward County and a program serving Manatee, Sarasota, and DeSoto Counties.¹⁰ The 2012 – 2013 GAA funded 100 additional slots in Miami-Dade and 150 additional slots in Lee County.¹¹

Not all authorized PACE slots are currently in operation, and not all slots that have been authorized are currently funded. According to the DOEA, of the approximately 2,325 slots the Legislature has authorized since 2003, 1,075 are funded and operational; 250 are funded and will be operational in 2012, and 450 are not funded or operational.¹² The Legislature appropriated \$26,578,951 for PACE in the 2012 GAA.¹³

An entity that seeks to become a PACE provider must submit a comprehensive PACE application to the AHCA, which sets forth details about the adult day health care center, staffing, provider network, financial solvency and pro forma financial projections, and policies and procedures, among other elements. The application is similar in detail level to the provider applications submitted by managed care plans seeking to provide medical care to Medicaid recipients. Providers operating in the same geographic region must establish that there is adequate demand for services that each provider will be viable. The application requires that documentation be submitted demonstrating that neither provider is competing for the same potential enrollees.

The AHCA and the DOEA review the application and, when the entity has satisfied all requirements, conduct an on-site survey of the entity's readiness to serve PACE enrollees. Once all requirements are met, including full licensure of the center, staffing for key positions, and signed provider network contracts, the AHCA certifies to CMS that the PACE site is ready. At that time, CMS reviews the application and readiness certification and, if all requirements are

³Chapter 2006-25, L.O.F.

⁴ Chapter 2008-152, L.O.F.

⁵ Chapter 2009-55, s. 20, L.O.F.

⁶ Chapter 2010-152, L.O.F.

⁷ Chapter 2010-156, ss. 14, 15, L.O.F.

⁸ Chapter 2011-61, s. 17, L.O.F.

⁹ Chapter 2011-69, L.O.F.

¹⁰ Chapter 2012-33, ss.18, 19, L.O.F.

¹¹ Ch. 2012-118, L.O.F.

¹² E-mail from Marcy R. Hajdukiewicz, Division Director, Statewide Community Based Services, Florida Department of Elder Affairs, (Feb. 28,2013) (on file with the Senate Children, Families, and Elder Affairs Committee).

¹³ Chapter 2012-118, L.O.F.

satisfied, executes a three-way agreement with the PACE provider and the AHCA. The PACE provider may then begin enrolling members, subject to an appropriation to fund the slots. In total, the process to become a PACE provider and begin serving enrollees typically takes at least one year.¹⁴

In 2011, the Legislature moved administrative responsibility for the PACE program from DOEA to AHCA as part of the expansion of Medicaid managed care.¹⁵ Participation by PACE is not subject to the procurement requirements or regional plan number limits applicable to the statewide Medicaid Managed Care program. Instead, PACE plans may continue to provide services to individuals at such levels and enrollment caps as authorized by the GAA.¹⁶

Medicaid

Medicaid is the health care safety net for low-income Floridians. Medicaid serves approximately 3.3 million people in Florida, with over half of those being children and adolescents 20 years of age or younger. Medicaid is a partnership between the federal and state governments where the federal government establishes the structure for the program and pays a share of the cost. Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare and Medicaid Services or CMS. The plan outlines current Medicaid eligibility standards, policies and reimbursement methodologies.

In Florida, the program is administered by the AHCA. The AHCA delegates certain functions to other state agencies, including the Department of Children and Families (DCF), the Agency for Persons with Disabilities (APD), and the DOEA. The AHCA has overall responsibility for the program and qualifies providers, set payment levels, and pays for services. The DCF is responsible for determining financial eligibility for Medicaid recipients. The APD operates one of the larger waiver programs under Medicaid, the Home and Community Based Waiver program serving individuals with disabilities. The DOEA assesses Medicaid recipients to determine if they require nursing home care. Specifically, the DOEA determines whether an individual:

- Requires nursing home placement as evidenced by the need for medical observation throughout a 24-hour period and requires care to be performed on a daily basis under the direct supervision of a health professional of medically complex services because of mental or physical incapacitation; or
- Requires or is at imminent risk of nursing home placement as evidenced by the need for observation throughout a 24-hour period and requires care to be performed on a daily basis under the supervision of a health professional because of mental or physical incapacitation; or
- Requires or is at imminent risk of nursing home placement as evidenced by the need for observation throughout a 24-hour period and requires limited care to be performed on a daily

¹⁴ Agency for Health Care Administration, *Senate Bill 748 Bill Analysis & Economic Impact Statement* (Received Mar. 9, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁵ Chapter 2011-135, s. 24, Laws of Fla., repeals Section 430.707, F.S., effective Oct. 1, 2013.

¹⁶ Section 409.981(4), F.S.

basis under the supervision of a health professional because of mild mental or physical incapacitation.

The February 25, 2013 Social Services Estimating Conference estimated that expenditures for Medicaid for fiscal year 2012-2013 would be \$20.77 billion. One of the most important and expensive components of Medicaid is long-term care. The conference estimated that \$4.75 billion will be spent on long-term care under Medicaid in fiscal year 2012-2013.

Floridians who need nursing home care, but do not qualify for Medicaid, must pay from their own funds or through insurance. According to the 2011 MetLife Market Survey of Nursing Home, Assisted Living, Adult Day Services, and Home Care Costs, the national average cost of a nursing home was \$78,110 per year for a semi-private room in 2011. Persons needing nursing home care are determined to be eligible for Medicaid based on financial assets and monthly income.

Long-Term Managed Care

In 2011, the Legislature passed and the Governor signed into law HB 7107¹⁷ to increase the use of managed care in Medicaid. The law requires both long-term care services and Medicaid medical assistance to be provided through managed care plans. The Long-term Care Managed Care component of the law will be implemented first. Implementation of the program began July 1, 2012, with full implementation by October 1, 2013.

The AHCA has chosen the plans that may participate in the program through a competitive bid process. The AHCA considered many factors when choosing plans. The AHCA chose a certain number of long-term care managed care plans for each region to ensure that recipients have a choice between plans. After the AHCA has chosen the plans that may participate in the Florida Long-Term Care Managed Care Program, the AHCA will begin to notify and transition eligible Medicaid recipients into the program. It is anticipated that the Florida Long-Term Care Managed Program will be available in certain areas of the State beginning the first quarter of 2013 and will be in all areas by October 1, 2013.

Participating managed care plans are required to provide minimum benefits that include nursing home as well as home and community based services. Plans will be free to customize and offer additional serves. The minimum benefits include:

- Nursing home
- Services provided in assisted living facilities
- Hospice
- Adult day care
- Medical equipment and supplies, including incontinence supplies
- Personal care
- Home accessibility adaptation
- Behavior management
- Home delivered meals

¹⁷ Chapter 2011-134, L.O.F.

- Case management
- Therapies: physical, respiratory, speech, and occupational
- Intermittent and skilled nursing
- Medication administration
- Medication management
- Nutritional assessment and risk reduction
- Caregiver training
- Respite care
- Transportation
- Personal emergency response system

On February 1, 2013, the Federal Centers for Medicare and Medicaid Services, approved AHCA's request for a Home and Community Based Care Services waiver for individuals 65 and older and individuals with physical disabilities ages 18 through 64 years of age. This approval will allow Florida to implement managed care for long-term care services under Medicaid.

III. Effect of Proposed Changes:

Section 1 directs AHCA to contract with a not-for-profit organization that is licensed as a hospice and has been providing hospice services for more than 30 years to residents of Citrus, Hernando, and Pasco Counties to provide PACE services to frail elders in those counties. The bill exempts the organization from ch. 641, F.S., relating to health maintenance organizations. The bill authorizes 150 slots, subject to an appropriation.

Section 2 directs AHCA to contract with a not-for-profit organization, the sole member of which is a private, not-for-profit corporation that owns and manages health care organizations licensed in Citrus, Hernando, and Pasco Counties, which provide comprehensive services, including hospice and palliative care, to provide PACE services to frail elders in those counties. The bill exempts the organization from ch. 641, F.S., relating to health maintenance organizations. The bill authorizes 150 slots, subject to an appropriation.

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

Other Potential Implications:

The bill expands an existing carve out of long term care services from the Medicaid managed care program. Statewide long term managed care is estimated to serve 85,000 residents who are 18 years of age or older; whereas, the combined PACE enrollees is under 2,000 and limited to eligible residents who are 55 years of age and older. This bill would be inconsistent with one of the purposes of expanding Medicaid managed care – to standardize the delivery of Medicaid services by eliminating the waivers and carve outs.

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 bill may violate Art. III, s. 10, State Constitution, relating to special laws. The Constitution states: “No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law” Publication is not required if the law becomes effective only after referendum approval. s.11.02, F.S., requires that notice of the intent to pass special or local legislation be published in a newspaper as defined in ch 50 in each affected county: The bill was filed as a general bill without prior publication. It proposes to create an exception to general law authorizing two providers to operate PACE programs in specified counties.

In general, a special law relates to or operates on persons or things, or on classified persons or things when classification is not permissible or is illegal. A local law relates to or operates only on one part of the state when there is no valid basis to distinguish that location from others, or within classified territory when the classification is illegal. A general law operates universally throughout the state, or uniformly upon subjects as they may exist throughout the state, or uniformly within permissible classification by population of counties or otherwise. *State ex rel. Landis v. Harris*, 120 Fla. 555, 163 So. 237, 240 (Fla. 1934) (citations omitted). A statute may be a general law even if it was enacted for the benefit of a single business entity or a single geographic area, provided the classification regulated by the statute remains open. *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So. 2d 879, 882 (Fla 1983).

A Supreme Court decision is instructive in considering the potential constitutional violation of the bill. In *St. Vincent’s Medical Center, Inc. v. Memorial Healthcare Group, Inc.*,¹⁸ the Court was asked to review a statute creating a specific exemption from the requirement to obtain a Certificate of Need to establish an open heart surgery program in a new hospital. The exemption applied only if the new hospital was being established “in the location of an existing hospital with an adult open-heart surgery program, the existing hospital and the existing adult open-heart surgery program are being relocated to a replacement hospital, and the replacement hospital will utilize a closed-staff model.”¹⁹ The law was enacted during the 2003 Session and by its terms was repealed January 1, 2008. At the time of the law’s enactment, two hospitals met the criteria of having both an open-heart surgery program and closed medical staff, but only one hospital was actively seeking to establish a new hospital with an open-heart surgery program.

¹⁸ *St. Vincent’s Medical Center, Inc. v. Memorial Healthcare Group, Inc.*, 967 So.2d 794 (Fla. 2007)

¹⁹ *Id.*, at 796.

The statute was challenged on the grounds that it was a special law enacted in violation of the notice requirements of the Constitution.²⁰ The trial court heard testimony on whether the law could apply to another hospital, specifically, whether a hospital could convert to a closed medical staff in time to take advantage of the law. The trial court concluded that only the one already identified hospital could utilize the statute saying:

The Exemption Provision is nothing more than a description of the situation involving St. Vincent's and St. Luke's. The Court concludes that the constitutional requirements governing special laws cannot be avoided by merely utilizing generic language in a complicated classification scheme that is intended to address a special circumstance.²¹

On appeal, the First District Court held that the trial court correctly applied the law when it concluded there was no "reasonable possibility" that the exemption could apply to another party before the exemption expired.²² The Supreme Court affirmed, relying on the rule set forth in *Florida Department of Business Regulation v. Gulfstream Park Racing Ass'n*,²³ holding that "whether a law has general application turns on whether its application to others is reasonable or practical, not theoretical or speculative."²⁴

The bill creates exemptions from general law that apply to two providers in Citrus, Hernando, and Pasco Counties. In one case, the provider is a not-for-profit hospice provider with 30 years' experience and currently licensed to serve Citrus, Hernando, and Pasco Counties. In the second case, the provider is a private health care organization, the sole member of which is a private, not-for-profit corporations that owns other health care organizations licensed in Citrus, Hernando, and Pasco Counties that provide services, including hospice services, to residents of those counties. Currently, only one hospice is licensed to serve Citrus, Hernando, and Pasco Counties; and it has been licensed in those counties for 30 years. Thus, on its face, the bill authorizes a contract directed at the only provider in the state who currently meets its terms. Likewise, the bill authorizes programs that will operate in only specified counties. Thus, it appears the issue for a court would be whether or not it is "a reasonable possibility" that other hospice providers could eventually qualify under the terms of the bill.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁰ *Id.*, at 797.

²¹ *Id.*, at 798 (quoting the trial court order).

²² *Id.* (citing *St. Vincent's Medical Center, Inc. v. Memorial Healthcare Group, Inc.*, 928 So.2d 430, 435 (Fla. 1st DCA 2006)).

²³ *Florida Department of Business Regulation v. Gulfstream Park Racing Ass'n*, 967 So.2d 802 (Fla. 2007)

²⁴ *St. Vincent's* 967 So.2d at 801.

B. Private Sector Impact:

Frail elders in need of comprehensive home and community-based long-term care services in Alachua, Baker, Clay, Duval, Hernando, Nassau, Pasco, and St. Johns Counties will have additional choices of programs to serve their needs.

The new PACE providers would compete with other providers of long-term care services in those counties who have participated in the competitive procurement process required by statewide Medicaid managed care (SMMC). Because it takes up to two years for the typical PACE provider to be certified and begin operations, the AHCA will have fully implemented SMMC by that time and all individuals eligible for long term care will be enrolled in SMMC.

C. Government Sector Impact:

The AHCA reviews all new and expansion PACE applications, handles communication with CMS, and participates in all monitoring activities, including all federal and state on-site reviews. The AHCA is also responsible for providing technical assistance, as needed. In order to implement the bill, the AHCA would need one FTE for fiscal year 2013-2014.

The DOEA provides oversight of established PACE sites. The fiscal impact to DOEA would come in fiscal year 2014-2015 as it takes at least a year for the application approval and the readiness certification.

SB 440 conditions the new PACE sites contingent upon an appropriation by the Legislature. Typically, PACE slots cost approximately \$25,000 per member per year. Thus, the estimated cost of the 300 new PACE program slots authorized in the bill would be \$7.5 million, if an appropriation to cover those expenditures is provided. The PACE slots are intended as an alternative to nursing home care, however, which is separately funded in the budget. If the funding for nursing home services were to be reduced as a result of the addition of the new PACE slots, then the actual fiscal impact to the state could be less.

| Fiscal Impact | Fiscal Year 2013-14 | | Fiscal Year 2014-2015 |
|------------------------|----------------------------|-----------------|------------------------------|
| AHCA | FTE | Total | Total |
| Application process | 1 | \$71,128 | |
| Operation of 300 slots | | | \$7.5 million |
| Total | 1 | \$71,128 | \$7.5 million |

VI. Technical Deficiencies:

Section 2 of the bill appears to have inadvertently omitted language that expressly directs the organization to provide PACE services. In addition, the term “health care organization” is not defined in statute, although it has been used by the Legislature in previous bills authorizing PACE programs.

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 Simpson

18-00608-13

2013440__

A bill to be entitled

An act relating to the Program of All-inclusive Care for the Elderly; authorizing the Agency for Health Care Administration to contract with certain organizations to provide services under the federal Program of All-inclusive Care for the Elderly in Citrus, Hernando, and Pasco Counties; providing an exemption from ch. 641, F.S., for the organizations; authorizing, subject to appropriation, enrollment slots for the program in such counties; providing an effective date.

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

Section 1. Notwithstanding s. 430.707, Florida Statutes, and subject to federal approval of the application to be a site for the Program of All-inclusive Care for the Elderly (PACE), the Agency for Health Care Administration shall contract with one not-for-profit organization that has more than 30 years' experience as a licensed hospice and is currently a licensed hospice serving individuals and families in Citrus, Hernando, and Pasco Counties. This not-for-profit organization shall provide PACE services to frail elders who reside in Citrus, Hernando, and Pasco Counties. The organization shall be exempt from the requirements of chapter 641, Florida Statutes. The agency, in consultation with the Department of Elderly Affairs and subject to an appropriation, shall approve up to 150 initial enrollees in the Program of All-inclusive Care for the Elderly established by this organization to serve frail elders who

Page 1 of 2

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

18-00608-13

2013440__

reside in Citrus, Hernando, and Pasco Counties.

Section 2. Notwithstanding s. 430.707, Florida Statutes, and subject to federal approval of the application to be a site for the Program of All-inclusive Care for the Elderly (PACE), the Agency for Health Care Administration shall contract with one private health care organization, the sole member of which is a private, not-for-profit corporation that owns and manages health care organizations licensed in Citrus, Hernando, and Pasco Counties which provide comprehensive services, including hospice and palliative care, to frail elders who reside in those counties. The organization shall be exempt from the requirements of chapter 641, Florida Statutes. The agency, in consultation with the Department of Elderly Affairs and subject to an appropriation, shall approve up to 150 initial enrollees in the Program of All-inclusive Care for the Elderly established by this organization to serve frail elders who reside in Citrus, Hernando, and Pasco Counties.

Section 3. This act shall take effect July 1, 2013.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR WILTON SIMPSON
18th District

COMMITTEES:

Community Affairs, *Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Communications, Energy, and Public Utilities
Environmental Preservation and Conservation

JOINT COMMITTEE:

Joint Legislative Auditing Committee

January 29, 2013

Senator Eleanor Sobel, Chairwoman
Senate Children, Families & Elder Affairs Committee
520 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Senator Sobel,

Please place Senate Bill 440, relating to all inclusive care of the elderly, on the next Children, Families & Elder Affairs agenda.

Please contact my office with any questions.

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

Wilton Simpson,
Senator, 18th District

Cc: Claude Hendon, Staff Director

RECEIVED

JAN 29 2013

Senate Committee
Children and Families

REPLY TO:

- Post Office Box 787, New Port Richey, Florida 34656-0787
- 5612 Grand Boulevard, New Port Richey, Florida 34652 (727) 816-1120 FAX: (888) 263-4821
- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

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: SB 616

INTRODUCER: Senator Bean

SUBJECT: Certification of Assisted Living Facility Administrators

DATE: April 3, 2013

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Hendon | Hendon | CF | Pre-meeting |
| 2. | | | HP | |
| 3. | | | RC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

SB 616 requires all administrators of Assisted Living Facilities (ALFs) to be certified by July 1, 2014. The bill directs the Department of Elder Affairs (DOEA) to approve third-party credentialing entities to certify ALF administrators. The third-party credentialing entities must meet the standards of the National Commission for Certifying Agencies. The certification would take the place of existing training and testing requirements provided in law.

The bill would have an insignificant fiscal impact on the state and has an effective date of July 1, 2013.

This bill substantially amends ss. 429.178, and 429.52 of the Florida Statutes. The bill creates s. 429.55 of the Florida Statutes, and effective July 1, 2014, repeals subsections (2), (3), (4), (8), (9), and (10) of s. 429.52 of the Florida Statutes.

II. Present Situation:

An ALF is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.^{1,2} A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-

¹ Section 429.02(5), F.S.

² An ALF does not include an adult family-care home or a non-transient public lodging establishment.

administration of medication.³ Activities of daily living include: ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.⁴

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility.⁵ The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on a number of criteria.⁶ If a resident no longer meets the criteria for continued residency, or the facility is unable to meet the resident's needs, as determined by the facility administrator or health care provider, the resident must be discharged in accordance with the Resident Bill of Rights.⁷

There are currently 3,036 licensed ALFs in Florida with 85,413 beds.⁸ An ALF must have a standard license issued by the Agency for Health Care Administration (AHCA), pursuant to part I of ch. 429, F.S., and part II of ch. 408, F.S.

Department of Elder Affairs Rules

In addition to ch. 429, F.S., ALFs are subject to regulation under Chapter 58A-5, Florida Administrative Code. These rules are adopted by DOEA in consultation with AHCA, the Department of Children and Families, and the Department of Health.⁹ In June 2012, DOEA initiated a process of negotiated rulemaking to revise many of its rules regarding ALFs. After multiple meetings, a committee that consisted of agency staff, consumer advocates, and industry representatives voted on numerous changes to Rule 58A-5. On November 28, 2012 DOEA issued a proposed rule and held three public hearings on the proposed rule. The public comment period for the proposed rule ended on December 21, 2012 and DOEA has not yet issued a final rule.¹⁰

ALF Administrators and Managers

Administrators and other ALF staff must meet minimum training and education requirements established by the rule of the DOEA.^{11,12} The training and education are intended to assist facilities to respond appropriately to the needs of residents, maintain resident care and facility standards, and meet licensure requirements.¹³

³ Section 429.02(16), F.S.

⁴ Section 429.02(1), F.S.

⁵ For specific minimum standards see Rule 58A-5.0182, F.A.C.

⁶ Section 429.26, F.S., and Rule 58A-5.0181, F.A.C.

⁷ Section 429.28, F.S.

⁸ Agency for Health Care Administration, information provided to Senate Children, Families, and Elder Affairs Committee (Feb. 4, 2013).

⁹ Section 429.41(1), F.S.

¹⁰ The DOEA rule, documents, and dates for the negotiated rulemaking, *available at* http://elderaffairs.state.fl.us/doea/alf_rulemaking.php (last visited on Apr. 4, 2013).

¹¹ Rule 58A-5.0191, F.A.C.

¹² Many of the training requirements in rule may be subject to change due to the recent DOEA negotiated rulemaking process.

¹³ Section 429.52(1), F.S.

The current ALF core training requirements established by DOEA consist of a minimum of 26 hours of training and passing a competency test. Administrators and managers must successfully complete the core training requirements within 3 months from the date of becoming a facility administrator or manager. The minimum passing score for the competency test is 75 percent.¹⁴

Administrators and managers must participate in 12 hours of continuing education on topics related to assisted living every 2 years. A newly-hired administrator or manager who has successfully completed the ALF core training and continuing education requirements is not required to retake the core training. An administrator or manager, who has successfully completed the core training but has not maintained the continuing education requirements must retake the ALF core training and retake the competency test.¹⁵

National Commission for Certifying Agencies

The National Commission for Certifying Agencies (NCCA) was created in 1987 by the Institute for Credentialing Excellence to help ensure the health, welfare, and safety of the public through the accreditation of a variety of certification programs/organizations that assess professional competence. NCCA accredited programs certify individuals in a wide range of professions and occupations including nurses, automotive professionals, respiratory therapists, counselors, emergency technicians, crane operators, and more. To date, NCCA has accredited approximately 300 programs from more than 120 organizations. Certification organizations that submit their programs for accreditation are evaluated based on the process and not the content; therefore, the standards are applicable to all professions and industries. Program content validity is demonstrated by a comprehensive job analysis conducted and analyzed by experts, with data gathered from stakeholders in the occupation or industry.¹⁶

III. Effect of Proposed Changes:

Section 1 amends s. 429.178, F.S., relating to special care and training for ALFs that serve residents with dementia such as Alzheimer's Disease. This section of current law references the core training requirements that are repealed by section 3 of the bill.

Section 2 amends s. 429.52, F.S., to require AFL administrators to meet training and education requirements established by a third-party credentialing entity. This change is effective July 1, 2014. ALF administrators must earn and maintain certification from a third-party credentialing entity approved by the DOEA. The bill limits the additional training that the DOEA can require by rule to ALF staff other than the certified administrator.

Section 3 repeals subsections (2), (3), (4), (8), (9), and (10) of s. 429.52, F.S., effective July 1, 2014. These statutes require DOEA to develop a competency test covering a range of subjects (2); require that ALF administrators complete training and pass the competency test (3); require

¹⁴ Administrators who have attended core training prior to July 1, 1997, and managers who attended the core training program prior to April 20, 1998, are not required to take the competency test. Administrators licensed as nursing home administrators in accordance with Part II of Chapter 468, F.S., are exempt from this requirement.

¹⁵ Rule 58A-5.0191, F.A.C.

¹⁶ Institute for Credentialing Excellence, National Commission for Certifying Agencies website, *available at* <http://www.credentialingexcellence.org/ncca> (last visited April 4, 2013).

that ALF administrators complete 12 hours of continuing education every two years (4); require that DOEA adopt rules for training and the competency test (8); that trainers register with DOEA (9); and that trainers have certain qualifications such as a 4-year college degree and 3 years of experience managing an ALF (10). These provisions are no longer necessary under the bill due to the creation of s. 429.55, F.S. that assigns similar duties to a third-party credentialing entity.

Section 4 creates s. 429.55, F.S., which establishes an ALF administrator certification program. The intent is that ALF administrators earn professional certification from a third-party credentialing entity approved by DOEA. The bill states that certification by a nationally-recognized credentialing entity is equal to a state run licensure program. New terms are defined, such as “third-party credentialing entity” to mean a nonprofit organization that administers certification programs using standards established by the National Commission for Certifying Agencies.

DOEA must approve one or more third-party credentialing entities that have:

- Core competencies, certification standards, and tests for ALF administrators that meet the standards established by the National Commission for Certifying Agencies,
- A process to administer ALF certification using standards established by the National Commission for Certifying Agencies,
- A demonstrated ability to administer a code of ethics and a disciplinary process,
- An ability to maintain publicly available website with information on certified ALF administrators,
- The ability to administer continuing education requirements, and
- The ability to administer a program to approve training entities to provide training to ALF administrators.

The bill requires all ALF administrators to be certified by July 1, 2014. Administrators who are not certified after that time are subject to administrative fine pursuant to s. s. 429.19, F.S.

The bill allows for current ALF administrators to be granted certification until October 1, 2014 as long as they have met the current education and training requirements.

The bill requires the third-party credentialing entity to establish “core competencies” that would capture the skills and knowledge needed to operate an ALF. The bill describes the requirements for the certification program. Certification programs must meet the standards of the National Commission for Certifying Agencies and establish minimum requirements for such things as education, supervision, testing, and continuing education. Certification programs must also include a code of ethics and a disciplinary process. The certification programs must also provide a website listing the certified administrators. Lastly, the certification programs must approve training entities that would provide initial and ongoing training to ALF administrators.

Section 5 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:

The bill requires ALF administrators to be certified. The costs of this certification is not specified in the bill, but would be borne by the administrators or the ALF owners. The third-party credentialing entity would presumably set these fees. The administrators will however, no longer be charged the current fees by DOEA for training and testing. If the certification fees are different from the current DOEA fees, the ALF administrators may be required to pay more or less.

C. Government Sector Impact:

The bill would have an impact on DOEA whereby some department functions would no longer be required, while new functions would be added. The impact to the state would be insignificant.

VI. Technical Deficiencies:

The bill creates s. 429.55(3)(5), F.S., to require continuing education for ALF administrators on a “biannual” basis. This term means twice a year.¹⁷ Current law requires ALF administrators to have 12 hours of continuing education every two years.¹⁸ The bill should read “biennial” or “every two years” if the intent is to continue the frequency of continuing education requirements for ALF administrators.

The bill states that ALF administrators who are not certified after July 1, 2014 are subject to an administrative fine pursuant to s. 429.19, F.S. Fines in this section are separated into four classes based on the severity of the violation. The newly-created violation of an uncertified ALF

¹⁷ American Heritage College Dictionary (3rd ed. 1993).

¹⁸ s. 429.52(4), F.S.

administrator does not specify what class of violation so AHCA would not have direction on what penalty to assess.

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 Bean

4-00247B-13

2013616__

1 A bill to be entitled
 2 An act relating to certification of assisted living
 3 facility administrators; amending s. 429.178, F.S.;
 4 conforming provisions to changes made by the act;
 5 amending s. 429.52, F.S.; requiring assisted living
 6 facility administrators to meet the training and
 7 education requirements established by a third-party
 8 credentialing entity; revising requirements for new
 9 administrators; authorizing the Department of Elderly
 10 Affairs to require additional training or education of
 11 any personal care staff in the facility except an
 12 administrator; authorizing the department to adopt
 13 rules to establish staff training requirements;
 14 providing for the future repeal of s. 429.52(2), (3),
 15 (4), (8), (9), and (10), F.S., relating to training
 16 and educational requirements for administrators and
 17 assisted living facility staff, continuing education,
 18 adoption of rules, trainers, and requirements for
 19 trainers; creating s. 429.55, F.S.; providing
 20 legislative intent; providing definitions; requiring
 21 the department to approve third-party credentialing
 22 entities for the purpose of developing and
 23 administering a professional credentialing program for
 24 assisted living facility administrators; requiring the
 25 department to approve a third-party credentialing
 26 entity that documents compliance with certain minimum
 27 standards; requiring a third-party credentialing
 28 entity that applies for department approval before a
 29 specified date to have its assisted living facility

Page 1 of 11

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

4-00247B-13

2013616__

30 administrator certification program accredited with
 31 the National Commission for Certifying Agencies;
 32 requiring an administrator to be certified by a third-
 33 party credentialing entity; providing that an
 34 administrator who fails to be certified is subject to
 35 an administrative fine; providing an exemption for an
 36 administrator licensed under part II of ch. 468, F.S.;
 37 requiring an approved third-party credentialing entity
 38 to establish a process for certifying persons who meet
 39 certain qualifications; requiring an approved third-
 40 party credentialing entity to establish the core
 41 competencies for administrators according to the
 42 standards set forth by the National Commission for
 43 Certifying Agencies; requiring a third-party
 44 credentialing entity to meet certain certification
 45 requirements; providing an effective date.
 46

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

48
 49 Section 1. Effective July 1, 2014, paragraphs (a) and (b)
 50 of subsection (2) of section 429.178, Florida Statutes, are
 51 amended to read:

52 429.178 Special care for persons with Alzheimer's disease
 53 or other related disorders.—

54 (2) (a) An individual who is employed by a facility that
 55 provides special care for residents with Alzheimer's disease or
 56 other related disorders, and who has regular contact with such
 57 residents, must complete up to 4 hours of initial dementia-
 58 specific training developed or approved by the department. The

Page 2 of 11

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

4-00247B-13 2013616
 59 training shall be completed within 3 months after beginning
 60 employment ~~and shall satisfy the core training requirements of~~
 61 ~~s. 429.52(2)(g).~~

62 (b) A direct caregiver who is employed by a facility that
 63 provides special care for residents with Alzheimer's disease or
 64 other related disorders, and who provides direct care to such
 65 residents, must complete the required initial training and 4
 66 additional hours of training developed or approved by the
 67 department. The training shall be completed within 9 months
 68 after beginning employment ~~and shall satisfy the core training~~
 69 ~~requirements of s. 429.52(2)(g).~~

70 Section 2. Section 429.52, Florida Statutes, is amended to
 71 read:

72 429.52 Staff training and educational programs; core
 73 educational requirement.—

74 (1) Effective July 1, 2014, administrators shall meet the
 75 training and education requirements established by a third-party
 76 credentialing entity pursuant to s. 429.55, and other assisted
 77 living facility staff shall ~~must~~ meet minimum training and
 78 education requirements established by the Department of Elderly
 79 Affairs by rule. This training and education is intended to
 80 assist facilities to appropriately respond to the needs of
 81 residents, to maintain resident care and facility standards, and
 82 to meet licensure requirements.

83 (2) The department shall establish a competency test and a
 84 minimum required score to indicate successful completion of the
 85 training and educational requirements. The department, in
 86 conjunction with the agency and providers, shall develop the
 87 competency test ~~must be developed by the department in~~

4-00247B-13 2013616
 88 ~~conjunction with the agency and providers.~~ The required training
 89 and education must cover at least the following topics:

90 (a) State law and rules relating to assisted living
 91 facilities.

92 (b) Resident rights and identifying and reporting abuse,
 93 neglect, and exploitation.

94 (c) Special needs of elderly persons, persons with mental
 95 illness, and persons with developmental disabilities and how to
 96 meet those needs.

97 (d) Nutrition and food service, including acceptable
 98 sanitation practices for preparing, storing, and serving food.

99 (e) Medication management, recordkeeping, and proper
 100 techniques for assisting residents with self-administered
 101 medication.

102 (f) Firesafety requirements, including fire evacuation
 103 drill procedures and other emergency procedures.

104 (g) Care of persons with Alzheimer's disease and related
 105 disorders.

106 (3) ~~Before July 1, 2014~~ Effective January 1, 2004, a new
 107 facility administrator ~~shall: must~~

108 (a) Complete the required training and education, including
 109 the competency test, within a reasonable time after being
 110 employed as an administrator, as determined by the department;
 111 or

112 (b) Earn and maintain certification as an assisted living
 113 facility administrator from a third-party credentialing entity
 114 that is approved by the department as provided in s. 429.55.

115
 116 Failure to do so is a violation of this part and subjects the

4-00247B-13 2013616

117 violator to an administrative fine as prescribed in s. 429.19.
 118 Administrators licensed in accordance with part II of chapter
 119 468 are exempt from this requirement. ~~Other licensed~~
 120 ~~professionals may be exempted, as determined by the department~~
 121 ~~by rule.~~

122 (4) Administrators are required to participate in
 123 continuing education for a minimum of 12 contact hours every 2
 124 years.

125 (5) Staff involved with the management of medications and
 126 assisting with the self-administration of medications under s.
 127 429.256 must complete a minimum of 4 additional hours of
 128 training provided by a registered nurse, licensed pharmacist, or
 129 department staff. The department shall establish by rule the
 130 minimum requirements of this additional training.

131 (6) Other facility staff shall participate in training
 132 relevant to their job duties as specified by rule of the
 133 department.

134 (7) If the department ~~or the agency~~ determines that there
 135 is a need for ~~are problems in a facility that could be reduced~~
 136 ~~through~~ specific staff training or education beyond that already
 137 required under this section, the department ~~or the agency~~ may
 138 require, and provide, or cause to be provided, the training or
 139 education of ~~any~~ personal care staff in the facility. However,
 140 this subsection does not apply to an assisted living facility
 141 administrator certified under s. 429.55.

142 (8) The department shall adopt rules related to these
 143 training requirements, the competency test, necessary
 144 procedures, and competency test fees and shall adopt or contract
 145 with another entity to develop a curriculum, which shall be used

4-00247B-13 2013616

146 as the minimum core training requirements. The department shall
 147 consult with representatives of stakeholder associations and
 148 agencies in the development of the curriculum.

149 (9) The training required by this section ~~must shall~~ be
 150 conducted by a person ~~persons~~ registered with the department as
 151 having the requisite experience and credentials to conduct the
 152 training. A person seeking to register as a trainer must provide
 153 the department with proof of completion of the minimum core
 154 training education requirements, successful passage of the
 155 competency test established under this section, and proof of
 156 compliance with the continuing education requirement in
 157 subsection (4).

158 (10) A person seeking to register as a trainer must also:

159 (a) Provide proof of completion of a 4-year degree from an
 160 accredited college or university and must have worked in a
 161 management position in an assisted living facility for 3 years
 162 after being core certified;

163 (b) Have worked in a management position in an assisted
 164 living facility for 5 years after being core certified and have
 165 1 year of teaching experience as an educator or staff trainer
 166 for persons who work in assisted living facilities or other
 167 long-term care settings;

168 (c) Have been previously employed as a core trainer for the
 169 department; or

170 (d) Meet other qualification criteria as defined in rule,
 171 which the department is authorized to adopt.

172 (11) The department may ~~shall~~ adopt rules to establish
 173 staff training ~~trainer registration~~ requirements.

174 Section 3. Effective July 1, 2014, subsections (2), (3),

4-00247B-13 2013616__

175 (4), (8), (9), and (10) of section 429.52, Florida Statutes, are
 176 repealed.

177 Section 4. Section 429.55, Florida Statutes, is created to
 178 read:

179 429.55 Assisted living facility administrator;
 180 certification.-

181 (1) LEGISLATIVE INTENT.-It is the intent of the Legislature
 182 that each assisted living facility administrator earn and
 183 maintain professional certification from a third-party
 184 credentialing entity that is approved by the Department of
 185 Elderly Affairs. The Legislature further intends that
 186 certification will ensure that an administrator has the
 187 competencies necessary to appropriately respond to the needs of
 188 residents, to maintain resident care and facility standards, and
 189 to meet licensure requirements for a facility. The Legislature
 190 recognizes professional certification by a nationally recognized
 191 professional credentialing organization as an equivalent
 192 alternative to a state-run licensure program and, therefore,
 193 intends that certification pursuant to this section is
 194 sufficient as an acceptable alternative to licensure.

195 (2) DEFINITIONS.-As used in this section, the term:

196 (a) "Assisted living facility administrator certification"
 197 means a professional credential awarded by a third-party
 198 credentialing entity that is approved by the department to a
 199 person who meets core competency requirements in assisted living
 200 facility practice areas.

201 (b) "Core competency" means the minimum knowledge and
 202 skills necessary to carry out work responsibilities.

203 (c) "Department" means the Department of Elderly Affairs.

4-00247B-13 2013616__

204 (d) "Nonprofit organization" means an organization that is
 205 exempt from federal income tax under s. 501(c) of the United
 206 States Internal Revenue Code.

207 (e) "Third-party credentialing entity" means a nonprofit
 208 organization that develops and administers certification
 209 programs according to the standards established by the National
 210 Commission for Certifying Agencies.

211 (3) THIRD-PARTY CREDENTIALING ENTITIES.-

212 (a) The department shall approve one or more third-party
 213 credentialing entities for the purpose of developing and
 214 administering a professional credentialing program for
 215 administrators. Within 90 days after receiving documentation
 216 from a third-party credentialing entity, the department shall
 217 approve a third-party credentialing entity that demonstrates
 218 compliance with the following minimum standards:

219 1. Establishment of assisted living facility administrator
 220 core competencies, certification standards, testing instruments,
 221 and recertification standards according to the standards
 222 established by the National Commission for Certifying Agencies.

223 2. Establishment of a process to administer the
 224 certification application, award, and maintenance processes
 225 according to the standards established by the National
 226 Commission for Certifying Agencies.

227 3. Demonstrated ability to administer a professional code
 228 of ethics and disciplinary process that applies to all certified
 229 persons.

230 4. Establishment of, and ability to maintain a publicly
 231 accessible Internet-based database that contains information on
 232 each person who applies for and holds certification, such as the

4-00247B-13 2013616__

233 person's first and last name, certification status, and ethical
234 or disciplinary history.

235 5. Demonstrated ability to administer biannual continuing
236 education and certification renewal requirements.

237 6. Demonstrated ability to administer an education provider
238 program to approve qualified training entities and to provide
239 precertification training to applicants and continuing education
240 opportunities to certified professionals.

241 (b) A credentialing entity that applies for department
242 approval before December 31, 2013, must have its program for
243 assisted living facility administrator certification accredited
244 with the National Commission for Certifying Agencies by July 1,
245 2014, and must continuously maintain such accreditation. A
246 credentialing entity that applies for department approval after
247 December 31, 2013, must hold accreditation from the National
248 Commission for Certifying Agencies at the time the entity
249 applies for department approval.

250 (4) ASSISTED LIVING FACILITY ADMINISTRATOR CERTIFICATION
251 REQUIRED.—Effective July 1, 2014, an assisted living facility
252 administrator must be certified by a third-party credentialing
253 entity that is approved by the department under this section. An
254 assisted living facility administrator who fails to be certified
255 violates this section and is subject to an administrative fine
256 as provided in s. 429.19. This subsection does not apply to an
257 administrator licensed under part II of chapter 468.

258 (5) GRANDFATHER CLAUSE.—For a period ending on October 1,
259 2014, a third-party credentialing entity that is approved by the
260 department shall establish a process, at no cost to the
261 department or the person, to certify a person who:

4-00247B-13 2013616__

262 (a) Is employed as an assisted living facility
263 administrator, and is in compliance with the requirements in s.
264 429.52, including continuing education requirements in place
265 before July 1, 2014; or

266 (b) Has completed before July 1, 2014, the required
267 training as an administrator, including the competency test and
268 continuing education requirements established in s. 429.52.

269 (6) CORE COMPETENCIES.—The third-party credentialing entity
270 that is approved by the department shall establish the core
271 competencies for assisted living facility administrators
272 according to the standards established by the National
273 Commission for Certifying Agencies.

274 (7) CERTIFICATION PROGRAM REQUIREMENTS.—A certification
275 program of a third-party credentialing entity that is approved
276 by the department must:

277 (a) Be established according to the standards set forth by
278 the National Commission for Certifying Agencies.

279 (b) Be directly related to the core competencies.

280 (c) Establish minimum requirements in each of the following
281 categories:

282 1. Formal education.

283 2. Training.

284 3. On-the-job work experience.

285 4. Supervision.

286 5. Testing.

287 6. Biannual continuing education.

288 (d) Administer a professional code of ethics and
289 disciplinary process that applies to all certified persons.

290 (e) Administer and maintain a publicly accessible Internet-

4-00247B-13

2013616__

291 based database that contains information on each person who
292 applies for or who holds certification.

293 (f) Approve qualified training entities that provide
294 precertification training to applicants and continuing education
295 to certified assisted living facility administrators.

296 Section 5. Except as otherwise expressly provided in this
297 act, this act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR AARON BEAN

4th District

March 4, 2013

Honorable Eleanor Sobel
Chair, Children Families & Elder Affairs
410 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairwoman Sobel:

I am writing to respectfully request you consider placing Senate Bill 616, relating to Certification of Assisted Living Facility Administrators on the Children Families & Elder Affairs agenda at your earliest convenience.

Thank you in advance for your consideration. As always, please do not hesitate to contact me with any question or comments you, or your staff may have.

Respectfully,

A handwritten signature in cursive script that reads "Aaron Bean".

Aaron Bean
Senator District 4

Cc: Claude Hendon, Staff Director
520 Knott

RECEIVED

MAR 04 2013

Senate Committee
Children and Families

REPLY TO:

□ 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004

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: SB 736

INTRODUCER: Senator Richter

SUBJECT: Limitations Relating to Deeds and Wills

DATE: April 4, 2013

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Munroe | Cibula | JU | Favorable |
| 2. | Preston | Hendon | CF | Favorable |
| 3. | | | RC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

SB 736 expands the scope of s. 95.231(1), F.S., to cure defective documents purporting to transfer title to real property. Under existing law, a 5-year limitation period acts to cure defective deeds or wills that are missing required seals or signatures of witnesses. Under the bill, the 5-year limitation period will cure such defects in any instrument, including a power of attorney,¹ used in connection with the transfer of title to real property. Additionally, the bill provides a savings clause to allow any person who is adversely affected by the bill’s changes to bring a claim within the specified period of time to protect his or her interest.

The bill is not anticipated to have a fiscal impact on state government and provides for an effective date of October 1, 2013.

This bill substantially amends section 95.231, Florida Statutes.

II. Present Situation:

In general, s. 689.01, F.S., provides the statutory requirements for the conveyance of real estate in Florida. In some instances, if an instrument such as a deed or will is not acknowledged or defectively acknowledged or is missing a required witness, the defective instrument may be cured over time.²

¹ “Power of attorney” means a writing that grants authority to an agent to act in the place of the principal, whether or not the term is used in that writing. Section 709.2102(7), F.S.

² See 1 FLA. JUR. 2D *Acknowledgments* s. 23 (2013).

The Legislature may cure defective deeds or wills that have technical deficiencies by enacting curative statutes. The Florida Legislature has enacted a number of these.³ Curative statutes make the process of owning and conveying real property easier.⁴ “By a curative statute the Legislature has the power to ratify, validate and confirm any act or proceeding which it could have authorized in the first place.”⁵

Section 95.231, F.S., cures the defects of missing witnesses and defective acknowledgements in deeds or wills conveying a fee simple interest⁶ in real estate.

The purpose of such statute is to ‘cure’ or clear an existing title to real estate or an interest in it, of formal irregularities, that is, of clouds, doubts and suspicions against the title resulting from technical defects in the form or execution of deeds and wills executed by ‘the person owning the property’ by limiting the time within which such defects can be asserted to a stated time as measured from some event, such as their recording.⁷

A person claiming an interest in the affected property has 20 years from the recording of the deed or the probate of the will to assert any claim to the property against the claimants under the deed or will.⁸ Easements, powers of attorney, restrictions, and declarations which are very common instruments do not have the benefit of s. 95.231, F.S.⁹

III. Effect of Proposed Changes:

In addition to deeds and wills, the bill expands the scope of s. 95.231(1), F.S., to include any instrument required in the conveyance of real estate in Florida (by example an easement¹⁰ or park dedication¹¹) and a power of attorney accompanying and used for such instrument. A power of attorney validated by the bill is valid only for the purpose of effectuating the instrument with which it is recorded.

³ See 19 FLA. JUR. 2D *Deeds* s. 21 (2013). See also ss. 694.01, F.S., et seq. and 1 FLA. JUR. 2D *Acknowledgments* s. 23 (2013).

⁴ See 19 FLA. PRAC. *Florida Real Estate* s. 5:14 (2012 ed.).

⁵ *Coon v. Board of Public Instruction of Okaloosa County*, 203 So. 2d 497, 498 (1967).

⁶ An absolute or fee simple estate is one in which the owner is entitled to the entire property with the unconditional power of disposition during his life.” Henry P. Trawick Jr., *Trawick’s Florida Practice and Procedure*, s. 9:2 (2009 ed.).

⁷ *Holland v. Hattaway*, 438 So. 2d 456, 462 (5th DCA 1983). The stated time in the statute is 5 years. Section 95.231(2), F.S.

⁸ Section 95.231(2), F.S.

⁹ Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper: In Support of Amending Section 95.231, F.S.* (2013) (on file with the Senate Committee on Judiciary).

¹⁰ Easement means “An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road). • The land benefiting from an easement is called the dominant estate; the land burdened by an easement is called the servient estate. Unlike a lease or license, an easement may last forever, but it does not give the holder the right to possess, take from, improve, or sell the land. The primary recognized easements are (1) a right-of-way, (2) a right of entry for any purpose relating to the dominant estate, (3) a right to the support of land and buildings, (4) a right of light and air, (5) a right to water, (6) a right to do some act that would otherwise amount to a nuisance, and (7) a right to place or keep something on the servient estate.” BLACK’S LAW DICTIONARY (9th ed. 2009).

¹¹ “A frequent method of ensuring that land is used for the purpose of a park is through a dedication of the land for that purpose, with a dedication being defined as the act of appropriating land to the public or any general or public use and specifically for that as a park.” 59 AM. JUR. 2D *Parks, Squares, and Playgrounds* s. 14 (internal citations omitted).

A person claiming an interest in property other than a fee simple interest which was defectively conveyed before October 1, 2013, must file a claim or defense of that interest in court before October 1, 2014, to have the validity of the instrument determined under existing law. Otherwise, the 5-year limitations period governing such claims and defenses will apply.

The bill takes effect October 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:

Because the bill cures defects in the execution of instruments other than deeds or wills, individuals engaged in commercial real estate transactions may save legal fees and other associated costs to cure technical defects of missing witnesses and defective acknowledgements in instruments conveying real property.¹²

C. Government Sector Impact:

The Office of the State Courts Administrator completed a judicial impact statement for the bill and found that the bill may result in a possible, though likely insubstantial, near-term increase in court workload based on civil filings before the October 1, 2014, deadline for matters to be determined under current law. The fiscal impact of the bill cannot be accurately determined due to the unavailability of data needed to quantify the near-term impact on judicial workload.¹³

¹² Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 9.

¹³ Office of the State Courts Administrator, *2013 Judicial Impact Statement*, SB 736 (Feb. 28, 2013) (on file with the Senate Committee on Judiciary).

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 Richter

23-00649-13

2013736__

1 A bill to be entitled
 2 An act relating to limitations relating to deeds and
 3 wills; amending s. 95.231, F.S.; providing for
 4 limitations of actions when a deed or will is on
 5 record; providing that a person claiming an interest
 6 in real property affected by amendments made in the
 7 act has until a specified date to file a claim or
 8 defense in court to determine the validity of the
 9 instrument; providing that if a claim or defense is
 10 filed within the specified period, the validity of the
 11 instrument is determined without regard to these
 12 amendments; providing an effective date.

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

15
 16 Section 1. Section 95.231, Florida Statutes, is amended to
 17 read:

18 95.231 Limitations where deed or will on record.—
 19 (1) Five years after the recording of an instrument
 20 required to be executed in accordance with s. 689.01; 5 years
 21 after the recording of a power of attorney accompanying and used
 22 for an instrument required to be executed in accordance with s.
 23 689.01; or 5 years after a deed or the probate of a will
 24 purporting to convey real property, from which it appears that
 25 the person owning the property attempted to convey, affect, or
 26 devise it, the instrument, power of attorney, deed or will shall
 27 be held to have its purported effect ~~authorize the conveyance or~~
 28 ~~devise of, or~~ to convey, affect, or devise, the ~~fee simple~~ title
 29 to the real property, ~~or any interest in it,~~ of the person

Page 1 of 2

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

23-00649-13

2013736__

30 signing the instrument, as if there had been no lack of seal or
 31 seals, witness or witnesses, defect in acknowledgment or
 32 relinquishment of dower, in the absence of fraud, adverse
 33 possession, or pending litigation. The instrument ~~is shall be~~
 34 admissible in evidence. A power of attorney validated under this
 35 subsection shall be valid only for the purpose of effectuating
 36 the instrument with which it was recorded.

37 (2) After 20 years from the recording of a deed or the
 38 probate of a will purporting to convey real property, no person
 39 shall assert any claim to the property against the claimants
 40 under the deed or will or their successors in title.

41 (3) This law is cumulative to all laws on the subject
 42 matter.

43 Section 2. A person claiming an interest in real property
 44 affected by the amendments to s. 95.231, Florida Statutes, in
 45 this act has until October 1, 2014, to file a claim or defense
 46 in court to determine the validity of an instrument that may be
 47 affected by the amendments. If a claim or defense is filed
 48 before October 1, 2014, the validity of the instrument shall be
 49 determined without regard to these amendments.

50 Section 3. This act shall take effect October 1, 2013.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

March 7, 2013

The Honorable Eleanor Sobel, Chair
Committee on Children, Families, & Elder Affairs
520 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RECEIVED

MAR 07 2013

Senate Committee
Children and Families

Dear Chair Sobel:

Senate Bill 736 relating to limitations in deeds and wills passed unanimously out of the Committee on Judiciary. The next committee of reference is Children, Families, & Elder Affairs. I would appreciate the placing of this bill on the committee's next available agenda.

Thank you for your consideration.

Sincerely,

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

Garrett Richter

cc: Claude Hendon, Staff Director

REPLY TO:

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

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

April 4, 2013

The Honorable Eleanor Sobel, Chair
Committee on Children, Families, and Elder Affairs
520 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Sobel:

Senate Bill 736, Limitations Relating to Deeds and Wills is scheduled to be heard in the Committee on Children, Families, and Elder Affairs this upcoming Monday, April 8th at 4:00 PM. Due to conflicts in my committee schedule, I will be sending my Legislative Assistant Michael Nachev as a representative to present the bill for your committee's consideration.

Sincerely,

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

Garrett Richter

cc: Claude Hendon, Staff Director

RECEIVED

APR 04 2013

**Senate Committee
Children and Families**

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road N. Unit 42 B, Lehigh Acres, FL 33916 (239) 338-2777

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)

4/8/13
Meeting Date

Topic SB 736 - cure statute § 95.231

Bill Number 736 (if applicable)

Name Josh Aubuchon

Amendment Barcode (if applicable)

Job Title Attorney

Address 215 S. Monroe St.
Street

Phone 222-3533

Tallahassee FL 32301
City State Zip

E-mail

Speaking: For Against Information

Representing "Reptiles" - Real Property, Probate, & Trust Law Section of the Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 1048

INTRODUCER: Regulated Industries Committee and Senator Gardiner

SUBJECT: Electronic Benefits Transfer Cards

DATE: April 4, 2013

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|------------------|
| 1. | <u>Kraemer</u> | <u>Imhof</u> | <u>RI</u> | <u>Fav/CS</u> |
| 2. | <u>Peterson</u> | <u>Hendon</u> | <u>CF</u> | <u>Favorable</u> |
| 3. | _____ | _____ | <u>AP</u> | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1048 amends s. 402.82, F.S., relating to electronic benefits transfer (EBT) cards. The bill prohibits the use or acceptance of EBT cards for the following activities or at the following locations: establishments licensed to sell distilled spirits, at adult entertainment establishments, pari-mutuel facilities, slot machine facilities, commercial bingo facilities, casinos, gaming facilities, gaming , and gaming establishments, or any gaming activities authorized under part II of ch. 285, F.S., (the Gaming Compact between the Seminole Tribe of Florida and the State of Florida, executed on April 7, 2010).

The bill does not have a fiscal impact on the state and provides an October 1, 2013 effective date.

This bill substantially amends section 402.82 of the Florida Statutes.

II. Present Situation:

Temporary Assistance for Needy Families

The Temporary Assistance for Needy Families (TANF) block grant provides federal funding to states for a wide range of benefits and activities, but is primarily known as the major source of funding for cash welfare for needy families with children.¹ According to a Congressional Research Service Report, in federal fiscal year 2011, Florida received a total of \$1.012 billion in TANF grant funds. Of that Florida spent 17 percent or \$171,700,000 on its cash assistance program. Through this program Florida served 76,785 children and 16,194 adults.²

In 2012, Congress enacted the Welfare Integrity and Data Improvement Act (the Act) as part of the larger Middle Class Tax Relief and Job Creation Act.³ The Act requires states to maintain policies and procedures that will prevent electronic benefit transfer (EBT) transactions relating to TANF benefits in the following locations:

- Liquor stores, defined as a retail establishment selling intoxicating liquor;
- Casino, gambling casino, or gaming establishments;
- Retail establishments which provide adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

In order to avoid a 5 percent reduction in the state's TANF grant money, the state must report to the Secretary of the Department of Health and Human Services (HHS) by February 2014 regarding implementation of the required spending policies and practices.

Regulated Industries

In Florida, "adult entertainment establishment" means the following terms as defined:⁴

- An "adult bookstore" means any corporation, partnership, or business of any kind which restricts or purports to restrict admission only to adults, which has as part of its stock books, magazines, other periodicals, videos, discs, or other graphic media and which offers, sells, provides, or rents for a fee any sexually oriented material;
- An "adult theater" means an enclosed building or an enclosed space within a building used for presenting either films, live plays, dances, or other performances that are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults;
- A "special cabaret" means any business that features persons who engage in specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults; or

¹ 42 U.S.C. ss 601 - 619.

² Congressional Research Service, *The Temporary Assistance for Needy Families (TANF) Block Grant: Responses to Frequently Asked Questions*, (Jan. 22, 2013), available at <https://www.fas.org/sgp/crs/misc/RL32760.pdf> (last visited April 4, 2013).

³ Pub. Law. No. 112-96, H.R. 3630, (112th Cong.) (Feb. 22, 2012).

⁴ Section 847.001(2), F.S.

- An “unlicensed massage establishment” means any business or enterprise that offers, sells, or provides, or that holds itself out as offering, selling, or providing, massages that include bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating, or other tactile stimulation of the human body by either male or female employees or attendants, by hand or by any electrical or mechanical device, on or off the premises. The term “unlicensed massage establishment” does not include an establishment licensed under s. 480.043, F.S., which routinely provides medical services by state-licensed health care practitioners and massage therapists licensed under s. 480.041, F.S.

Pari-mutuel gambling is authorized at pari-mutuel facilities under ch. 550, F.S. Pari-mutuel facilities are defined as a “racetrack, fronton, or other facility used by a permit holder for the conduct of pari-mutuel wagering.”⁵

Slot machines are currently authorized at pari-mutuel facilities in Miami-Dade and Broward counties pursuant to ch. 551, F.S. Slot machines and banked table games are authorized at the Seminole Tribe of Florida’s facilities through the Gaming Compact between the Tribe and the State of Florida that is ratified by s. 285.710, F.S.

Slot machine facility is defined in s. 551.102(9), F.S., as a facility at which slot machines are lawfully offered for play. In turn, “slot machine” means any mechanical or electrical contrivance, terminal (whether or not able of downloading games from a central server system), machine, or other device that, upon insertion of a coin, bill, ticket, token, or similar object or upon payment of any consideration, including the use of any electronic payment system except a credit card or debit card, is available to play or operate, whether skill or chance or both, may deliver or entitle the player to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value, whether the payoff is made automatically or manually. A slot machine may use spinning reels, video displays, or both, but is not a “coin-operated amusement machine” as defined in s. 212.02(24), F.S., or an amusement game or machine as described in s. 849.161, F.S.⁶

Pursuant to s. 849.0931, F.S., the only entities or groups authorized to conduct bingo are charitable, nonprofit, or veterans’ organizations directly involved in the conduct of a bingo game, or condominium associations, cooperative associations, homeowners’ associations as defined in s. 720.301, F.S., mobile home owners’ associations, groups of residents of mobile home parks as defined in ch. 723, F.S., or groups of residents of a mobile home park or recreational vehicle park as defined in ch. 513, F.S., where the net proceeds from such games are returned to players in the form of prizes after deduction of the actual business expenses for such games for articles designed for and essential to the operation, conduct, and playing of bingo.

The sale of liquor is regulated under the Beverage Law.⁷ The number of liquor licenses granted under s. 565.02, F.S., is limited by population under s. 561.20, F.S. These licenses are referred to as “quota” licenses. Retailers (vendors) who receive a license under s. 565.02, F.S., may sell any

⁵ Section 550.002(23), F.S. A person must be issued a permit to conduct pari-mutuel wagering in Florida. An initial permit must be approved or rejected by the electors in the county in a special election conducted pursuant to s. 550.0651, F.S.

⁶ Section 551.102(8), F.S.

⁷ Section 561.01(6), F.S. defines the Beverage Law to mean chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

alcoholic beverages regardless of alcoholic content. Liquor is defined in s. 565.01, F.S., to include “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors,” and to mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. Section 565.04, F.S., limits what can be sold by vendors licensed under s. 565.02(1)(a), F.S., and s. 565.045, F.S., provides regulations for consumption on the premises. Bottle clubs are defined in s. 561.01(15), F.S., to include commercial establishments that allow patrons to bring their own alcoholic beverages for consumption on the premises. The term does not include sporting facilities, licensed hotels, motels, or restaurants.

III. Effect of Proposed Changes:

Section 1 amends s. 402.82(1), F.S., to prohibit the use or acceptance of an EBT card at:

- Any establishment licensed to sell distilled spirits as a vendor and restricted in the types of products that can be sold by package stores under s. 565.04, F.S., and by restaurants and bars under s. 565.045, F.S., or by a bottle club as defined in s. 561.01, F.S.;
- An adult entertainment establishment as defined in s. 847.001, F.S.;
- A pari-mutuel facility as defined in s. 550.002, F.S.;
- A slot machine facility as defined in s. 551.102, F.S.;
- A commercial bingo facility that operates outside the provisions of s. 849.0931, F.S.; and
- A casino, gaming facility, or gambling facility, or any gaming activities authorized under part II of ch. 285, F.S.

The bill directs the department to develop enforcement procedures for the EBT program.

In addition, the bill makes two technical corrections, revising the terms “electronic benefit transfer” to “electronic benefits transfer” and “Department of Children and Family Services” to “Department of Children and Families,” as those terms appear in the section.

Section 2 provides an October 1, 2013 effective date.

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:

Owners of point-of-sale terminals and automated teller machines in prohibited locations will be required to program those machines so that any card issued with the Florida EBT Bank Identification Number will be rejected.⁸

C. Government Sector Impact:

According to the Department of Children and Families (DCF), while the current EBT vendor does not have the capability to block use of EBT cards in prohibited locations, a subsequent EBT vendor will be required to provide that service effective October 1, 2013.⁹ DCF does not anticipate an increase in the contract cost to implement the new requirement.

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 Regulated Industries on April 2, 2013:

The committee substitute clarifies the type of distilled spirit retail establishments and those gambling facilities where electronic benefits transfer cards may not be used or accepted. The committee substitute provides that use or acceptance of electronic benefits transfer cards is prohibited at the following locations or for the following activities:

- Establishments licensed under the Beverage Law sell distilled spirits (no longer restricted to those vendors selling distilled spirits containing 6 percent or more alcohol by volume);
- Adult entertainment establishments;
- Pari-mutuel facilities;
- Slot machine facilities;

⁸ See *supra* note 5.

⁹ Fla. Dep't. of Children and Families, *SB 1048 Staff Analysis and Economic Impact*, (March 20, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

- Commercial bingo facilities operating outside the provisions of s. 849.0931, F.S.; and casinos, gaming facilities, gambling facilities, or any gaming activities authorized under part II of ch. 285, F.S., (the Gaming Compact between the Seminole Tribe of Florida and the State of Florida, executed on April 7, 2010).

B. Amendments:

None.

By the Committee on Regulated Industries; and Senator Gardiner

580-03462-13

20131048c1

A bill to be entitled

An act relating to electronic benefits transfer cards; amending s. 402.82, F.S.; conforming terminology; restricting the use of electronic benefits transfer cards; providing that an electronic benefits transfer card may not be used or accepted at certain establishments licensed under the Beverage Law, an adult entertainment establishment, a pari-mutuel facility, a slot machine facility, an unauthorized commercial bingo facility, a casino, a gaming facility or gambling facility, or any gaming activities authorized under part II of ch. 285; providing an effective date.

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

Section 1. Section 402.82, Florida Statutes, is amended to read:

402.82 Electronic benefits ~~benefit~~ transfer program.—

(1) The Department of Children and Families ~~Family Services~~ shall establish an electronic benefits ~~benefit~~ transfer program for the dissemination of food assistance benefits and temporary cash assistance payments, including refugee cash assistance payments, asylum applicant payments, and child support disregard payments. If the Federal Government does not enact legislation or regulations providing for dissemination of supplemental security income by electronic benefits ~~benefit~~ transfer, the state may include supplemental security income in the electronic benefits ~~benefit~~ transfer program.

Page 1 of 2

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

580-03462-13

20131048c1

(2) The department shall, in accordance with applicable federal laws and regulations, develop minimum program requirements and other policy initiatives, including enforcement procedures, for the electronic benefits ~~benefit~~ transfer program.

(3) The department shall enter into public-private contracts for all provisions of electronic transfer of public assistance benefits.

(4) Use or acceptance of an electronic benefits transfer card is prohibited at the following locations or for the following activities:

(a) An establishment licensed under the Beverage Law to sell distilled spirits as a vendor and restricted as to the types of products that can be sold under ss. 565.04 and 565.045, or a bottle club as defined in s. 561.01.

(b) An adult entertainment establishment as defined in s. 847.001.

(c) A pari-mutuel facility as defined in s. 550.002.

(d) A slot machine facility as defined in s. 551.102.

(e) A commercial bingo facility that operates outside the provisions of s. 849.0931.

(f) A casino, gaming facility, or gambling facility, or any gaming activities authorized under part II of chapter 285.

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

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Transportation,
Tourism, and Economic Development, *Chair*
Appropriations
Appropriations Subcommittee on Finance and Tax
Environmental Preservation and Conservation
Ethics and Elections
Gaming
Judiciary
Military Affairs, Space, and Domestic Security
Rules

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR ANDY GARDINER

13th District

April 4, 2013

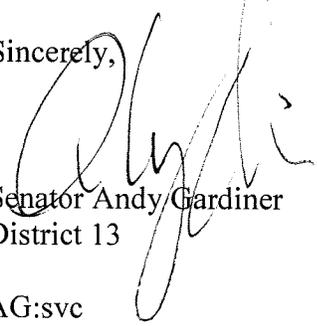
The Honorable Eleanor Sobel, Chair
Children, Families and Elder Affairs Committee
520 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Sobel,

Senate Bill 1048 Electronic Benefits Transfer Cards has been referred to your committee. This legislation prohibits the use of electronic benefits transfer cards at certain establishments. I respectfully request that Senate Bill 1048 be heard before your committee.

If you have any questions regarding this request, please do not hesitate to contact my office. Thank you for your time and consideration of this legislation.

Sincerely,


Senator Andy Gardiner
District 13

AG:svc

Cc: Claude Hendon, Staff Director

RECEIVED

APR 03 2013

Senate Committee
Children and Families

REPLY TO:

- 1013 East Michigan Street, Orlando, Florida 32806 (407) 428-5800
- 420 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5013

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ANDY GARDINER
13th District

COMMITTEES:
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development, *Chair*
Appropriations
Appropriations Subcommittee on Finance and Tax
Environmental Preservation and Conservation
Ethics and Elections
Gaming
Judiciary
Military Affairs, Space, and Domestic Security
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

April 4, 2013

The Honorable Eleanor Sobel, Chair
Children, Families and Elder Affairs Committee
520 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Sobel,

I respectfully request that my legislative assistant, Stacy VanCamp-Garcia, be allowed to present SB 1048 Electronic Benefits Transfer Cards in the Children, Families and Elder Affairs Committee meeting taking place April 8, 2013. I will be presenting a bill in another committee during this time.

If you should have any questions regarding this request, please do not hesitate to contact my office at 487-5013. Thank you for your time and consideration of this matter.

Sincerely,


Senator Andy Gardiner
District 13

AG: svc

Cc: Claude Hendon, Staff Director

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APR 05 2013

**Senate Committee
Children and Families**

REPLY TO:

- 1013 East Michigan Street, Orlando, Florida 32806 (407) 428-5800
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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)

4/8/13

Meeting Date

Topic EBT Card Restriction

Bill Number 1048
(if applicable)

Name JERI FLORA

Amendment Barcode _____
(if applicable)

Job Title Director, ACCESS Program

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Tallahassee, FL 32303
City State Zip

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Speaking: For Against Information *only*

Representing DCF

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/CS/SB 1210

INTRODUCER: Children, Families, and Elder Affairs Committee; Judiciary Committee; and Senator Soto

SUBJECT: Family Law

DATE: April 8, 2013 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|---------------|
| 1. | <u>Brown</u> | <u>Cibula</u> | <u>JU</u> | <u>Fav/CS</u> |
| 2. | <u>Peterson</u> | <u>Hendon</u> | <u>CF</u> | <u>Fav/CS</u> |
| 3. | _____ | _____ | <u>RC</u> | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 1210 revises the circumstances in which a court may deviate from or approve a request to deviate from the minimum amount of support required under child support guidelines. This bill authorizes a court to deviate from the child support guidelines based on a child's visitation with a parent as provided in a court-ordered time-sharing schedule or the particular time-sharing arrangement exercised by agreement of the parents.

This bill authorizes courts to take judicial notice in family cases of any court record in Florida, or of any court in a state, jurisdiction, or territory of the United States, when imminent danger is alleged, which precludes the opportunity to provide notice. If judicial notice is taken, the court must file proper notice of the matters judicially noticed within 2 business days. These provisions relate to family cases in which domestic violence is an issue.

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

This bill substantially amends the following sections of the Florida Statutes: 61.30, 90.204, 741.30, 784.046, and 784.0485.

II. Present Situation:

Child Support Guidelines

Child support guidelines are contained in s. 61.30(6), F.S., for the use of the court in determining child support. Guidelines take into account the combined monthly net income of the parents and the number of minor children of parties involved in a child support proceeding. The guidelines establish the minimum amount of support. These amounts may be increased for additional obligations, such as child care and health insurance costs of the children.¹ The court may also depart from the child support guidelines based on factors for deviation identified in law.² These are:

- Extraordinary medical, psychological, educational, or dental expenses.
- Independent income of a child or children.
- Documented financial support of a parent.
- Seasonal variation in income.
- The age of the child.
- Special needs.
- Total available assets of the obligee, obligor, and the child.
- The impact of federal tax treatment.
- An application of the child support guidelines schedule that requires a parent to pay another person more than 55 percent of his or her gross income for a current child support obligation.
- The parenting plan, such as where a child spends a significant amount of time, but less than 20 percent of overnight stays with a parent, or the refusal of a parent to participate in a child's activities.
- Any other adjustment needed to further equity for the parties.³

The First District Court of Appeal reviewed an administrative support order which provided for a deviation from child support guidelines.⁴ The administrative support order based its decision on one of the statutory factors for deviation from the guidelines. This factor allows deviation where a child spends less than 20 percent of overnight stays with a parent based on a parenting plan. The parents in the case, however, did not have a court-ordered parenting plan. The parents were never married to each other. However, a formal parenting plan would have been required as part of a divorce proceeding. Instead, they “decided visitation among themselves.”⁵ In reversing the administrative order, the court indicated:

a parenting plan is defined in section 61.046(14) as a court-approved parenting plan with a time-sharing arrangement than can be created through mediation and later

¹ Sections 61.30(7) and (8), F.S.

² Section 61.30(11)(a), F.S.

³ Section 61.30(11)(a)1. through 11., F.S.

⁴ *Dept. of Rev. v. Daly*, 74 So. 3d 165, 166 (Fla. 1st DCA 2011).

⁵ *Id.*

approved by a court, or approved by a court where the parties cannot agree. Thus, the plain language of the statute prohibits a trial court from deviating from the guidelines based on a verbal visitation agreement even where equity compels the deviation.^{6 7}

A court is also required to adjust the allocation of the burden of a child support award on the parents if a child spends a substantial amount of time with each parent.⁸ A child spends a substantial amount of time with a parent if a parent exercises time-sharing at least 20 percent of the overnights of the year.⁹

Child Support and the Department of Revenue

The Department of Revenue (the Department), in its capacity as a Title IV-D agency, is responsible for enforcing obligations for child support.¹⁰ These responsibilities include providing “services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations.”¹¹

Judicial Notice

Florida’s evidence code allows the court to take judicial notice of various matters.¹² These include:

- Acts and resolutions of Congress and the Florida Legislature.
- Decisional, constitutional, and public statutory law of every of other state, territory, and jurisdiction of the U.S.
- Contents of the Federal Register.
- Records of any court of this state or of any court of record of the U.S. or any other U.S. state, territory, or jurisdiction.
- Rules of court of this state, the U.S., or any other U.S. state, territory, or jurisdiction.¹³

Temporary Injunction Hearings

Florida law prohibits the admission of evidence other than verified pleadings or affidavits at ex parte hearings for temporary injunctions.¹⁴ These injunctions relate to underlying allegations of domestic violence; repeat violence, sexual violence, or dating violence; and stalking. Evidence

⁶ *Id.* at 168.

⁷ The parent’s informal parenting agreement may have been an adequate basis for a court to deviate from the child support guidelines before s. 61.30, F.S., was amended in 2008. In 2008, the Legislature through s. 16, ch. 2008-61, L.O.F., replaced references to “shared parental arrangement” with “parenting plan.”

⁸ Section 61.30(11)(b), F.S.

⁹ Section 61.30(11)(b)8, F.S.

¹⁰ Section 409.25995, identifies the Department of Revenue (department) as the state Title IV-D agency. Pursuant to s. 409.2563(1)(f), F.S., a Title IV-D case is defined as a case or proceeding in which the department provides child support services within the scope of Title IV-D of the Social Security Act (42 U.S.C. ss. 651 et. seq.)

¹¹ 42 U.S.C.A. §654 (4)(A).

¹² Judicial notice is defined as “A court's acceptance, for purposes of convenience and without requiring a party's proof, of a well-known and indisputable fact.” BLACK’S LAW DICTIONARY (9th ed. 2009).

¹³ Section 90.202, F.S.

¹⁴ Sections 741.30(5)(b), 784.046(6)(b), and 784.0485, F.S.

other than verified pleadings or affidavits may be admitted, however, if adequate notice and an opportunity to be present is provided to the respondent.

III. Effect of Proposed Changes:

This bill revises the circumstances in which a court may deviate from or approve a request to deviate from the minimum amount of support required under child support guidelines. This bill authorizes a court to deviate from the child support guidelines based on a child's visitation with a parent as provided in a court-ordered time-sharing schedule or the particular time-sharing arrangement exercised by agreement of the parents.

This bill authorizes courts to take judicial notice in family cases of any court record in Florida, or of any court in a state, jurisdiction, or territory of the United States, when imminent danger is alleged, which precludes an opportunity to provide advance notice to the parties. If judicial notice is taken, the court must file proper notice of the matters judicially noticed within 2 business days. These provisions relate to family cases in which domestic violence is an issue. Family law cases include:

dissolution of marriage, annulment, support unconnected with dissolution of marriage, paternity, child support, Uniform Interstate Family Support Act, custodial care of and access to children, proceedings for temporary or concurrent custody of minor children by extended family, adoption, name change, declaratory judgment actions related to premarital, marital, or postmarital agreements, civil domestic, repeat violence, dating violence, and sexual violence injunctions, juvenile dependency, termination of parental rights, juvenile delinquency, emancipation of a minor, CINS/FINS, truancy, and modification and enforcement of orders entered in these cases.¹⁵

This bill also creates an exception to the current limits placed on admissibility of evidence at ex parte temporary injunction hearing. These hearings relate to temporary injunctions sought for domestic violence; repeat violence, sexual violence, or dating violence; and stalking. This bill will allow judicial notice to be taken of records other than verified pleadings or affidavits, without providing a respondent advance notice and an opportunity to be present.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁵ Rule 2.545(d)(2.), Rules of Jud. Admin.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of State Courts Administrator anticipates a fiscal impact resulting from the bill in the following respects:

- The bill includes amendments to ch. 61, F.S., that will impact the workload of the judiciary with regard to administrative child support cases that are heard in the circuit court and family law cases in which the parties are pro se litigants. However, the extent of the impact is unquantifiable at this time.
- The new provision amending 90.204, F.S., will affect court workload to the extent that when it is invoked, the court will be required to file notice in the pending case of the matters judicially noticed. However, fiscal impact is indeterminate.

The Department of Children and Families does not expect a fiscal impact.

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/CS by Children, Families, and Elder Affairs on April 8, 2013:

- The CS made a technical correction in section 1 changing the term “particular time-sharing schedule exercised by agreement of the parties” to “particular time-sharing arrangement exercised by agreement of the parties” and adding an additional reference to the term.

- The CS removed section 3 of the bill, which limited the Department's authority in child support and paternity determination proceedings, and removed sections 7-9, which contained conforming cross-references.

CS by Judiciary on April 1, 2013:

The committee substitute amends s. 409.2564, F.S., to limit the situations in which a parent is eligible for assistance from the Department in determining paternity, establishing a child support obligation, or enforcing or modifying a support obligation.

A parent is only eligible for assistance from the Department if:

- The parent or a child is receiving public assistance; or
- The custodial parent or the parent entitled to receive support has requested assistance from the department and has applied for services under Title IV-D of the Social Security Act.

The committee substitute prohibits the Department from providing assistance to a parent who has retained private counsel, unless the parent, the other parent, or the children are receiving public assistance.

B. Amendments:

None.



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LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: RCS | . | |
| 04/09/2013 | . | |
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The Committee on Children, Families, and Elder Affairs (Clemens) recommended the following:

Senate Amendment (with title amendment)

Delete lines 35 - 119
and insert:

Section 1. Subsection (11) of section 61.30, Florida Statutes, is amended to read:

61.30 Child support guidelines; retroactive child support.—

(11) (a) The court may adjust the total minimum child support award, or either or both parents' share of the total minimum child support award, based upon the following deviation factors:

1. Extraordinary medical, psychological, educational, or



667260

- 13 dental expenses.
- 14 2. Independent income of the child, not to include moneys
15 received by a child from supplemental security income.
- 16 3. The payment of support for a parent which has been
17 regularly paid and for which there is a demonstrated need.
- 18 4. Seasonal variations in one or both parents' incomes or
19 expenses.
- 20 5. The age of the child, taking into account the greater
21 needs of older children.
- 22 6. Special needs, such as costs that may be associated with
23 the disability of a child, that have traditionally been met
24 within the family budget even though fulfilling those needs will
25 cause the support to exceed the presumptive amount established
26 by the guidelines.
- 27 7. Total available assets of the obligee, obligor, and the
28 child.
- 29 8. The impact of the Internal Revenue Service Child &
30 Dependent Care Tax Credit, Earned Income Tax Credit, and
31 dependency exemption and waiver of that exemption. The court may
32 order a parent to execute a waiver of the Internal Revenue
33 Service dependency exemption if the paying parent is current in
34 support payments.
- 35 9. An application of the child support guidelines schedule
36 that requires a person to pay another person more than 55
37 percent of his or her gross income for a child support
38 obligation for current support resulting from a single support
39 order.
- 40 10. The particular parenting plan, a court-ordered time-
41 sharing schedule, or a time-sharing arrangement exercised by



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42 agreement of the parties, such as where the child spends a
43 significant amount of time, but less than 20 percent of the
44 overnights, with one parent, thereby reducing the financial
45 expenditures incurred by the other parent; or the refusal of a
46 parent to become involved in the activities of the child.

47 11. Any other adjustment that is needed to achieve an
48 equitable result which may include, but not be limited to, a
49 reasonable and necessary existing expense or debt. Such expense
50 or debt may include, but is not limited to, a reasonable and
51 necessary expense or debt that the parties jointly incurred
52 during the marriage.

53 (b) Whenever a particular parenting plan, a court-ordered
54 time-sharing schedule, or a time-sharing arrangement exercised
55 by agreement of the parties provides that each child spend a
56 substantial amount of time with each parent, the court shall
57 adjust any award of child support, as follows:

58 1. In accordance with subsections (9) and (10), calculate
59 the amount of support obligation apportioned to each parent
60 without including day care and health insurance costs in the
61 calculation and multiply the amount by 1.5.

62 2. Calculate the percentage of overnight stays the child
63 spends with each parent.

64 3. Multiply each parent's support obligation as calculated
65 in subparagraph 1. by the percentage of the other parent's
66 overnight stays with the child as calculated in subparagraph 2.

67 4. The difference between the amounts calculated in
68 subparagraph 3. shall be the monetary transfer necessary between
69 the parents for the care of the child, subject to an adjustment
70 for day care and health insurance expenses.



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71 5. Pursuant to subsections (7) and (8), calculate the net
72 amounts owed by each parent for the expenses incurred for day
73 care and health insurance coverage for the child.

74 6. Adjust the support obligation owed by each parent
75 pursuant to subparagraph 4. by crediting or debiting the amount
76 calculated in subparagraph 5. This amount represents the child
77 support which must be exchanged between the parents.

78 7. The court may deviate from the child support amount
79 calculated pursuant to subparagraph 6. based upon the deviation
80 factors in paragraph (a), as well as the obligee parent's low
81 income and ability to maintain the basic necessities of the home
82 for the child, the likelihood that either parent will actually
83 exercise the time-sharing schedule set forth in the parenting
84 plan, a court-ordered time-sharing schedule, or a particular
85 time-sharing arrangement exercised by agreement of the parties
86 ~~granted by the court~~, and whether all of the children are
87 exercising the same time-sharing schedule.

88 8. For purposes of adjusting any award of child support
89 under this paragraph, "substantial amount of time" means that a
90 parent exercises time-sharing at least 20 percent of the
91 overnights of the year.

92 (c) A parent's failure to regularly exercise the time-
93 sharing schedule set forth in the parenting plan, a court-
94 ordered ~~or agreed~~ time-sharing schedule, or a particular time-
95 sharing arrangement exercised by agreement of the parties not
96 caused by the other parent which resulted in the adjustment of
97 the amount of child support pursuant to subparagraph (a)10. or
98 paragraph (b) shall be deemed a substantial change of
99 circumstances for purposes of modifying the child support award.



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100 A modification pursuant to this paragraph is retroactive to the
101 date the noncustodial parent first failed to regularly exercise
102 the court-ordered or agreed time-sharing schedule.

103
104 ===== T I T L E A M E N D M E N T =====

105 And the title is amended as follows:

106 Delete line 4

107 and insert:

108 schedules or time-sharing arrangements as a factor in
109 the adjustment of awards of



641288

LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: RCS | . | |
| 04/09/2013 | . | |
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The Committee on Children, Families, and Elder Affairs (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 136 - 161.

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

And the title is amended as follows:

Delete lines 15 - 22

and insert:

of Judicial Administration; amending ss.

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LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: RCS | . | |
| 04/09/2013 | . | |
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The Committee on Children, Families, and Elder Affairs (Hays)
recommended the following:

Senate Amendment (with title amendment)

Delete lines 214 - 251.

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

And the title is amended as follows:

Delete lines 29 - 30

and insert:

providing an effective

By the Committee on Judiciary; and Senator Soto

590-03363-13

20131210c1

A bill to be entitled

An act relating to family law; amending s. 61.30, F.S.; providing for consideration of time-sharing schedules as a factor in the adjustment of awards of child support; amending s. 90.204, F.S.; authorizing judges in family cases to take judicial notice of certain court records without prior notice to the parties when imminent danger to persons or property has been alleged and it is impractical to give prior notice; providing for a deferred opportunity to present evidence; requiring a notice of such judicial notice having been taken to be filed within a specified period; providing that the term "family cases" has the same meaning as provided in the Rules of Judicial Administration; amending s. 409.2564, F.S.; providing that the Department of Revenue may not undertake certain actions regarding paternity or support except in certain circumstances; providing that a parent is not eligible to receive assistance from the department for certain actions if the parent is being represented by a private attorney unless public assistance is being received; amending ss. 741.30, 784.046, and 784.0485, F.S.; creating an exception to a prohibition against using evidence other than the verified pleading or affidavit in an ex parte hearing for a temporary injunction for protection against domestic violence, repeat violence, sexual violence, dating violence, or stalking; amending ss. 61.14, 61.1814, and 61.30, F.S.;

Page 1 of 9

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

590-03363-13

20131210c1

conforming cross-references; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (11) of section 61.30, Florida Statutes, are amended to read:

61.30 Child support guidelines; retroactive child support.—

(11) (a) The court may adjust the total minimum child support award, or either or both parents' share of the total minimum child support award, based upon the following deviation factors:

1. Extraordinary medical, psychological, educational, or dental expenses.

2. Independent income of the child, not to include moneys received by a child from supplemental security income.

3. The payment of support for a parent which has been regularly paid and for which there is a demonstrated need.

4. Seasonal variations in one or both parents' incomes or expenses.

5. The age of the child, taking into account the greater needs of older children.

6. Special needs, such as costs that may be associated with the disability of a child, that have traditionally been met within the family budget even though fulfilling those needs will cause the support to exceed the presumptive amount established by the guidelines.

7. Total available assets of the obligee, obligor, and the child.

Page 2 of 9

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

590-03363-13

20131210c1

59 8. The impact of the Internal Revenue Service Child &
60 Dependent Care Tax Credit, Earned Income Tax Credit, and
61 dependency exemption and waiver of that exemption. The court may
62 order a parent to execute a waiver of the Internal Revenue
63 Service dependency exemption if the paying parent is current in
64 support payments.

65 9. An application of the child support guidelines schedule
66 that requires a person to pay another person more than 55
67 percent of his or her gross income for a child support
68 obligation for current support resulting from a single support
69 order.

70 10. The particular parenting plan, court-ordered time-
71 sharing schedule, or particular time-sharing schedule exercised
72 by agreement of the parties, such as where the child spends a
73 significant amount of time, but less than 20 percent of the
74 overnights, with one parent, thereby reducing the financial
75 expenditures incurred by the other parent; or the refusal of a
76 parent to become involved in the activities of the child.

77 11. Any other adjustment that is needed to achieve an
78 equitable result which may include, but not be limited to, a
79 reasonable and necessary existing expense or debt. Such expense
80 or debt may include, but is not limited to, a reasonable and
81 necessary expense or debt that the parties jointly incurred
82 during the marriage.

83 (b) Whenever a particular parenting plan, court-ordered
84 time-sharing schedule, or particular time-sharing schedule
85 exercised by agreement of the parties provides that each child
86 spend a substantial amount of time with each parent, the court
87 shall adjust any award of child support, as follows:

590-03363-13

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88 1. In accordance with subsections (9) and (10), calculate
89 the amount of support obligation apportioned to each parent
90 without including day care and health insurance costs in the
91 calculation and multiply the amount by 1.5.

92 2. Calculate the percentage of overnight stays the child
93 spends with each parent.

94 3. Multiply each parent's support obligation as calculated
95 in subparagraph 1. by the percentage of the other parent's
96 overnight stays with the child as calculated in subparagraph 2.

97 4. The difference between the amounts calculated in
98 subparagraph 3. shall be the monetary transfer necessary between
99 the parents for the care of the child, subject to an adjustment
100 for day care and health insurance expenses.

101 5. Pursuant to subsections (7) and (8), calculate the net
102 amounts owed by each parent for the expenses incurred for day
103 care and health insurance coverage for the child.

104 6. Adjust the support obligation owed by each parent
105 pursuant to subparagraph 4. by crediting or debiting the amount
106 calculated in subparagraph 5. This amount represents the child
107 support which must be exchanged between the parents.

108 7. The court may deviate from the child support amount
109 calculated pursuant to subparagraph 6. based upon the deviation
110 factors in paragraph (a), as well as the obligee parent's low
111 income and ability to maintain the basic necessities of the home
112 for the child, the likelihood that either parent will actually
113 exercise the time-sharing schedule set forth in the parenting
114 plan granted by the court, and whether all of the children are
115 exercising the same time-sharing schedule.

116 8. For purposes of adjusting any award of child support

590-03363-13 20131210c1

117 under this paragraph, "substantial amount of time" means that a
118 parent exercises time-sharing at least 20 percent of the
119 overnights of the year.

120 Section 2. Subsection (4) is added to section 90.204,
121 Florida Statutes, to read:

122 90.204 Determination of propriety of judicial notice and
123 nature of matter noticed.-

124 (4) In family cases, the court may take judicial notice of
125 any matter described in s. 90.202(6) when imminent danger to
126 persons or property has been alleged and it is impractical to
127 give prior notice to the parties of the intent to take judicial
128 notice. Opportunity to present evidence relevant to the
129 propriety of taking judicial notice under subsection (1) may be
130 deferred until after judicial action has been taken. If judicial
131 notice is taken under this subsection, the court shall, within 2
132 business days, file a notice in the pending case of the matters
133 judicially noticed. For purposes of this subsection, the term
134 "family cases" has the same meaning as provided in the Rules of
135 Judicial Administration.

136 Section 3. Subsections (4) through (13) of section
137 409.2564, Florida Statutes, are renumbered as subsections (5)
138 through (14), respectively, and a new subsection (4) is added to
139 that section, to read:

140 409.2564 Actions for support.-

141 (4)(a) The Department of Revenue shall not undertake an
142 action to determine paternity, to establish an obligation of
143 support, or to enforce or modify an obligation of support
144 unless:

145 1. Public assistance is being received by one of the

590-03363-13 20131210c1

146 parents, both parents, or the dependent child or children; or

147 2. The custodial parent or the parent entitled to receive
148 support has requested the Department of Revenue's assistance in
149 enforcing or modifying a child support order and has filed a
150 signed application for services under Title IV-D of the Social
151 Security Act.

152 (b) Notwithstanding subparagraph (a)2., a parent is not
153 eligible to receive assistance from the Department of Revenue to
154 determine paternity, to establish an obligation of support, or
155 to enforce or modify an obligation of support, whichever is
156 applicable, if that parent is being represented by a private
157 attorney in proceedings to determine paternity, to establish an
158 obligation of support, or to enforce or modify an obligation of
159 support, whichever is applicable, unless public assistance is
160 being received by that parent, the other parent, or the
161 dependent child or children.

162 Section 4. Paragraph (b) of subsection (5) of section
163 741.30, Florida Statutes, is amended to read:

164 741.30 Domestic violence; injunction; powers and duties of
165 court and clerk; petition; notice and hearing; temporary
166 injunction; issuance of injunction; statewide verification
167 system; enforcement; public records exemption.-

168 (5)

169 (b) Except as provided in s. 90.204, in a hearing ex parte
170 for the purpose of obtaining such ex parte temporary injunction,
171 no evidence other than verified pleadings or affidavits shall be
172 used as evidence, unless the respondent appears at the hearing
173 or has received reasonable notice of the hearing. A denial of a
174 petition for an ex parte injunction shall be by written order

590-03363-13

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175 noting the legal grounds for denial. When the only ground for
 176 denial is no appearance of an immediate and present danger of
 177 domestic violence, the court shall set a full hearing on the
 178 petition for injunction with notice at the earliest possible
 179 time. Nothing herein affects a petitioner's right to promptly
 180 amend any petition, or otherwise be heard in person on any
 181 petition consistent with the Florida Rules of Civil Procedure.

182 Section 5. Paragraph (b) of subsection (6) of section
 183 784.046, Florida Statutes, is amended to read:

184 784.046 Action by victim of repeat violence, sexual
 185 violence, or dating violence for protective injunction; dating
 186 violence investigations, notice to victims, and reporting;
 187 pretrial release violations; public records exemption.-

188 (6)

189 (b) Except as provided in s. 90.204, in a hearing ex parte
 190 for the purpose of obtaining such temporary injunction, no
 191 evidence other than the verified pleading or affidavit shall be
 192 used as evidence, unless the respondent appears at the hearing
 193 or has received reasonable notice of the hearing.

194 Section 6. Paragraph (b) of subsection (5) of section
 195 784.0485, Florida Statutes, is amended to read:

196 784.0485 Stalking; injunction; powers and duties of court
 197 and clerk; petition; notice and hearing; temporary injunction;
 198 issuance of injunction; statewide verification system;
 199 enforcement.-

200 (5)

201 (b) Except as provided in s. 90.204, in a hearing ex parte
 202 for the purpose of obtaining such ex parte temporary injunction,
 203 evidence other than verified pleadings or affidavits may not be

590-03363-13

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204 used as evidence, unless the respondent appears at the hearing
 205 or has received reasonable notice of the hearing. A denial of a
 206 petition for an ex parte injunction shall be by written order
 207 noting the legal grounds for denial. If the only ground for
 208 denial is no appearance of an immediate and present danger of
 209 stalking, the court shall set a full hearing on the petition for
 210 injunction with notice at the earliest possible time. This
 211 paragraph does not affect a petitioner's right to promptly amend
 212 any petition, or otherwise be heard in person on any petition
 213 consistent with the Florida Rules of Civil Procedure.

214 Section 7. Paragraph (c) of subsection (1) of section
 215 61.14, Florida Statutes, is amended to read:

216 61.14 Enforcement and modification of support, maintenance,
 217 or alimony agreements or orders.-

218 (1)

219 (c) For each support order reviewed by the department as
 220 required by s. 409.2564(12) ~~409.2564(11)~~, if the amount of the
 221 child support award under the order differs by at least 10
 222 percent but not less than \$25 from the amount that would be
 223 awarded under s. 61.30, the department shall seek to have the
 224 order modified and any modification shall be made without a
 225 requirement for proof or showing of a change in circumstances.

226 Section 8. Paragraph (e) of subsection (2) of section
 227 61.1814, Florida Statutes, is amended to read:

228 61.1814 Child Support Enforcement Application and Program
 229 Revenue Trust Fund.-

230 (2) With the exception of fees required to be deposited in
 231 the Clerk of the Court Child Support Enforcement Collection
 232 System Trust Fund under s. 61.181(2) (b) and collections

590-03363-13

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233 determined to be undistributable or unidentifiable under s.
234 409.2558, the fund shall be used for the deposit of Title IV-D
235 program income received by the department. Each type of program
236 income received shall be accounted for separately. Program
237 income received by the department includes, but is not limited
238 to:

239 (e) Fines imposed under ss. 409.256(7)(b), 409.2464(8)
240 ~~409.2564(7)~~, and 409.2578; and

241 Section 9. Paragraph (c) of subsection (1) of section
242 61.30, Florida Statutes, is amended to read:

243 61.30 Child support guidelines; retroactive child support.-

244 (1)

245 (c) For each support order reviewed by the department as
246 required by s. 409.2564(12) ~~409.2564(11)~~, if the amount of the
247 child support award under the order differs by at least 10
248 percent but not less than \$25 from the amount that would be
249 awarded under this section, the department shall seek to have
250 the order modified and any modification shall be made without a
251 requirement for proof or showing of a change in circumstances.

252 Section 10. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DARREN SOTO

Deputy Democratic Whip
14th District

COMMITTEES:

Judiciary, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General Government
Community Affairs
Environmental Preservation and Conservation
Ethics and Elections

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

April 4, 2013

The Honorable Eleanor Sobel
Committee on Children, Families, and Elder Affairs
520 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairwoman Sobel,

I respectfully request that Senate Bill 1210, Family Law, be placed on the agenda as soon as possible.

Senate Bill 1210 would provide for consideration of time-sharing schedules as a factor in the adjustment of awards of child support. The court would have the authorization in family cases to take judicial notice of certain court records without prior notice to the parties when imminent danger to persons or property has been alleged and it is impractical to give prior notice. The opportunity to present evidence relevant to the propriety of taking judicial notice may be deferred until after judicial action has been taken.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto
State Senator, District 14

Cc: Lynn Wells, Committee Administrative Assistant

RECEIVED

APR 04 2013

Senate Committee
Children and Families

REPLY TO:

220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

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)

4/8/13

Meeting Date

Judicial Notice Provisions

SB 1210

Bill Number (if applicable)

Topic Family Law/Judicial Notice

Name Eric Maclure

Amendment Barcode (if applicable)

Job Title Director, Intergov. Relations, State Court Administrator's Office

Address 500 South Dural Street

Phone 850-922-5692

Tallahassee, FL 32399

E-mail macluree@flcourts.org

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

Judicial Notice Provisions

Representing State Courts System

Appearing at request of Chair: 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
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 1680

INTRODUCER: Senator Altman

SUBJECT: Public Records and Public Meetings/State Child Abuse Death Review Committee or Local Committee

DATE: April 5, 2013 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Preston | Hendon | CF | Favorable |
| 2. | _____ | _____ | GO | _____ |
| 3. | _____ | _____ | RC | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

SB 1680 makes a number of changes to s. 383.412, F.S., relating to the State Child Abuse Death Review Committee (CADR) and local child abuse death review committees within the Department of Health. The bill removes the requirement that closed portions of meetings of the CADR or local committees be recorded, as well as the requirement that no portion of a closed meeting be off the record. The bill also removes the requirement that the CADR or local committee maintain the recording of the closed portion of the meeting.

The bill is not anticipated to have a fiscal impact on state or local governments and provides an effective date of July 1, 2013.

This bill substantially amends section 383.412 of the Florida Statutes.

II. Present Situation:

Public Records and Open Meetings

State Constitution

Article I, s. 24(a) of the State Constitution sets forth the state’s public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

The Legislature, however, may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Florida Statutes: Public Records Law

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Florida Statutes: Public Meetings Law

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.² The board or commission must provide reasonable notice of all public meetings.³ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.⁴ Minutes of a public meeting must be promptly recorded and be open to public inspection.⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act⁶ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.

¹ Section 24(c), Art. I of the State Constitution

² Section 286.011(1), F.S.

³ *Id.*

⁴ Section 286.011(6), F.S.

⁵ Section 286.011(2), F.S.

⁶ *See* s. 119.15, F.S.

- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Child Abuse Death Review Committee

Current law establishes the State Child Abuse Death Review Committee (CADR) and local child abuse death review committees within the Department of Health (DOH).⁷ The purpose of the CADR is prevention of child deaths as a result of abuse or neglect.

The CADR is tasked with reviewing the facts and circumstances of the deaths of children whose deaths have been investigated by the Department of Children and Families and closed with a "verified" finding of child abuse or neglect. The purpose of the child death review is to:⁸

- Develop a community based approach to address child abuse deaths and contributing factors;
- Achieve a greater understanding of the causes and contributing factors of deaths resulting from child abuse or neglect;
- Identify gaps, deficiencies or problems in service delivery to children and families by public and private agencies that may be related to child abuse deaths; and
- Develop and implement data-driven recommendations for reducing child abuse and neglect deaths.

The state committee must prepare an annual statistical report to be presented to the Governor and the Legislature containing recommendations to reduce preventable child deaths.⁹ The CADR is composed of 18 members, including experts from the medical, law enforcement, social services, and advocacy professions who convene every other month to examine the circumstances leading to child deaths.¹⁰

Local child abuse death review committees also conduct reviews of the verified deaths of children in their respective communities to develop prevention campaigns and prepare recommendations for improving local practices in child protection and support services to families. There are 23 local committees that provide coverage for Florida's 67 counties.¹¹

Public Record and Public Meeting Exemptions for CADR

Current law provides a public record exemption for any information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by and which information is held by the CADR or a local committee.¹² It

⁷ Section 383.402(1), F.S.

⁸ *Id.*

⁹ Section 383.402(3)(c), F.S.

¹⁰ Section 383.402(2)(a) and (b), F.S.

¹¹ Child Abuse Death Review Committee, Annual Report (Dec. 2012), available at www.flcadr.org/reports.html (last visited April 2, 2013).

¹² Section 383.412(2)(a), F.S.

also provides that portions of meetings of the CADR or a local committee at which confidential or exempt information is discussed are exempt from public meeting requirements.¹³

In 2010, the law was amended to require that the closed portion of a meeting of the CADR or local committee be recorded. In addition, a public record exemption was created to protect the release of such recording. No portion of the meeting may be off the record, and the recording must be maintained by the CADR or local committee.¹⁴

The CADR has indicated that the recording requirement has had a negative impact on both the state and local committees, because the members need to be able to speak candidly about the individual cases in order to make prevention recommendations.¹⁵ The recording requirement has impacted local committees in some areas due to the reluctance of some law enforcement, state attorney offices and other agencies to openly discuss confidential information that is being recorded.¹⁶

III. Effect of Proposed Changes:

The bill removes the requirement that closed portions of meetings of the CADR or local committees be recorded, as well as the requirement that no portion of a closed meeting be off the record. The bill also removes the requirement that the CADR or local committee must maintain the recording of the closed portion of the meeting.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill revises the public records requirement related to closed portions of meetings held by the CADR or local child abuse death review committees.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹³ Section 383.412(3)(a), F.S.

¹⁴ Chapter 2010-40, L.O.F.

¹⁵ E-mail from Special Agent Terry Thomas, Chairperson, State Child Abuse Death Review Committee (Apr.3, 2013) (on file with the Committee on Children, Families and Elder Affairs).

¹⁶ *Id.*

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 32-35 of the bill remove the requirement for the CADR or the local committee to record closed portions of meetings and to maintain such recording. If a recording is not being made and maintained, then the public record exemption for such recording on lines 36-38 of the bill would appear to be unnecessary.

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.

By Senator Altman

16-00944-13

20131680__

A bill to be entitled

An act relating to public records and public meetings exemptions; amending s. 383.412, F.S.; eliminating requirements that the closed portion of a meeting of the State Child Abuse Death Review Committee or a local committee at which specified identifying information is discussed be recorded, that no portion of such closed meeting be off the record, and that the recording be maintained by the state committee or a local committee; providing an effective date.

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

Section 1. Subsection (2) of section 383.412, Florida Statutes, is reenacted and subsection (3) of that section is amended to read:

383.412 Public records and public meetings exemptions.—

(2) (a) Any information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by and which information is held by the State Child Abuse Death Review Committee or a local committee is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Information made confidential or exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution that is obtained by the State Child Abuse Death Review Committee or a local committee shall retain its confidential or exempt status.

(3) (a) Portions of meetings of the State Child Abuse Death Review Committee or a local committee at which information made

Page 1 of 2

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

16-00944-13

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confidential and exempt pursuant to subsection (2) is discussed are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. ~~The closed portion of a meeting must be recorded, and no portion of the closed meeting may be off the record. The recording shall be maintained by the State Child Abuse Death Review Committee or a local committee.~~

(b) A ~~The~~ recording of a closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military Affairs, Space, and Domestic Security, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Criminal Justice
Environmental Preservation and Conservation

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR THAD ALTMAN

16th District

March 14, 2013

The Honorable Eleanor Sobel
Senate Committee on Children, Families, and Elder Affairs, Chair
410 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairwoman Sobel:

I respectfully request that SB 1680, related to *Public Records and Public Meetings/State Child Abuse Death Review Committee Local Committee*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Thad Altman".

Thad Altman
TA/rk

CC: Claude Hendon, Staff Director, 520 Knott Building

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MAR 14 2013

Senate Committee
Children and Families

REPLY TO:

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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:
Military Affairs, Space, and Domestic Security,
Chair
Budget - Subcommittee on Finance and Tax,
Vice Chair
Budget
Budget - Subcommittee on Higher Education
Appropriations
Communications, Energy, and Public Utilities
Education Pre-K - 12
Higher Education
Reapportionment
Regulated Industries

SENATOR THAD ALTMAN

16th District

April 5, 2013

The Honorable Eleanor Sobel
Senate Committee on Children, Families, and Elder Affairs, Chair
410 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairwoman Sobel:

Senate Bill 1680, related to *Public Records and Public Meetings/State Child Abuse Death Review Committee or Local Committee*, is on the Children, Families, and Elder Affairs Committee agenda on April 8, 2013.

Because of a conflict, I will be unable to attend. Please recognize my Legislative Aide, Selene Bruns, to present SB 1680, on my behalf.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Thad Altman".

Thad Altman/svb

REPLY TO:

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5053

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:

Military Affairs, Space, and Domestic Security, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Criminal Justice
Environmental Preservation and Conservation

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR THAD ALTMAN
16th District

April 5, 2013

The Honorable Eleanor Sobel, Chair
Senate Committee on Children, Families, and Elder Affairs
410 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

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APR 05 2013

**Senate Committee
Children and Families**

Dear Chairwoman Sobel:

I respectfully request an excused absence for the Committee on Children, Families, and Elder Affairs meeting on April 8, 2013 at 4:00 pm. Please contact me or my Legislative Assistants Rick Kendust or Selene Bruns if you have any questions.

Thank you for your consideration.

Sincerely,

Thad Altman/svb

cc: Claude Hendon, Staff Director, 520 Knott Building
Lynn Wells, Committee Administrative Assistant, 520 Knott Building

REPLY TO:

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: LL 37
Caption: Senate Children, Families, and Elder Affairs Committee

Case:

Type:
Judge:

Started: 4/8/2013 4:06:39 PM
Ends: 4/8/2013 5:16:47 PM **Length:** 01:10:09

4:06:45 PM Meeting called to order
4:06:56 PM Chair Sobel
4:08:39 PM Roll call
4:08:58 PM Chair Sobel
4:09:06 PM CS/SB 226 by Sen. Ring
4:09:16 PM Sen. Ring presents his bill
4:10:22 PM Chair Sobel
4:10:30 PM Public Testimony
4:10:40 PM Margaret Hooper waves time in support
4:11:00 PM Vote on SB 226
4:11:40 PM Chair Sobel
4:11:56 PM SB 736
4:12:25 PM Public Testimony
4:12:43 PM Josh Aubuchon waves time in support
4:12:45 PM Vote on SB 736
4:13:22 PM SB 1048 by Senator Gardiner
4:13:46 PM Stacy Vancamp-Garcia, Sen. Gardiner's aide, presents the bill
4:14:44 PM Jeri Floria, DCF, waves time in support
4:14:52 PM Sen. Dean
4:15:25 PM Stacy Vancamp-Garcia
4:16:43 PM Sen. Dean
4:17:50 PM Chair Sobel
4:19:20 PM Vote on SB 1048
4:20:03 PM SB 1210 by Sen. Soto
4:20:05 PM SB 1210 presented by Christine Aleknavich, Sen. Soto's aide
4:20:27 PM AM 667260 by Sen. Thompson
4:21:07 PM Chair Sobel
4:21:22 PM Amendment adopted
4:21:32 PM AM 641288 by Sen. Hays
4:22:08 PM AM adopted
4:22:10 PM AM 657530 by Sen. Hays
4:22:27 PM Amendment adopted
4:22:43 PM Eric Maclure, OSCA, waves in support of the bill
4:23:03 PM Chair Sobel
4:23:17 PM Vote on SB 1210
4:23:43 PM SB 1680 by Sen. Altman
4:23:58 PM SB 1680 presented by Selene Bruns, Sen. Altman's aide
4:24:23 PM Chair Sobel
4:24:43 PM Selene Bruns
4:25:08 PM Vote on SB 1680
4:25:36 PM Chair Sobel - Senator Altman excused from today's meeting
4:25:41 PM Chair Sobel
4:25:44 PM SB 58 by Sen. Hays
4:25:58 PM SB 58 presented by Sen. Hays
4:27:40 PM Chair Sobel
4:27:48 PM Public Testimony
4:28:04 PM Laila Abdelajis - Emerge USA
4:28:19 PM Terry Kemple waves in support
4:28:44 PM Carlos Osorio - International Law Section of the Florida Bar - speaks in opposition
4:33:53 PM John McMahon waves in support of the bill
4:34:03 PM David Barkey - Anti-Defamation League - speaks against the bill
4:38:43 PM Rep. Metz speaks in support of the bill

4:42:45 PM Chair Sobel
4:44:04 PM Rep. Metz
4:44:58 PM Chair Sobel
4:45:00 PM Christopher Rumbold speaks in opposition of the bill
4:50:02 PM Chair Sobel
4:50:06 PM Lee Boyland - VDAL - speaks in support of the bill
4:52:19 PM Ron Balbao - ACLU of Florida - Speaks in opposition of the bill
4:53:42 PM Major Joe Oblack speaks in support of the bill
4:54:49 PM Bennett Lewis - Retired Lt. General of the US Army - speaks in support of the bill
4:58:14 PM Sarah Johnson
4:58:19 PM Ron Georgalis speaks in opposition of the bill
5:00:05 PM Robert Wilder waves in support
5:00:11 PM Emma Miller speaks in support
5:00:36 PM Zoila Walter waves in support
5:00:42 PM Eva Pelt waves in opposition
5:00:53 PM Linda Geller-Schwartz speaks in opposition of the bill
5:02:57 PM Dennis Miller waves in support of the bill
5:03:08 PM Mark Schlakman speaks in opposition of the bill
5:07:21 PM Joanne Sininsky waves in opposition of the bill
5:07:29 PM Ted Ralston speaks in support of the bill
5:09:18 PM Amy Datz waves in opposition
5:09:46 PM Ms. Davis waves her time in opposition
5:09:54 PM AM 494970
5:10:16 PM AM 494970 withdrawn by Diaz de la Portilla
5:10:32 PM Chair Sobel
5:13:44 PM Sen. Hays closes on his bill
5:15:22 PM Vote on SB 58
5:16:35 PM Meeting adjourned