

Tab 1	CS/SB 202 by CF, Bean ; (Similar to CS/H 0495) Florida Association of Centers for Independent Living					
736346	PCS	S		FP, AED		11/20 09:20 AM
720490	PCS:A	S	WD	FP, Bean	Delete L.94 - 145:	01/27 12:48 PM
582260	PCS:A	S	RCS	FP, Bean	Delete L.94 - 145:	01/27 03:29 PM

Tab 2	SB 380 by Abruzzo ; (Similar to CS/H 0101) Violation of an Injunction for Protection					
662912	PCS	S	RCS	FP, ACJ		01/27 03:29 PM

Tab 3	CS/CS/SB 618 by CA, CJ, Evers ; (Similar to H 1031) Prearrest Diversion Programs					
750328	A	S	RCS	FP, Bradley	Delete L.43 - 87:	01/27 03:30 PM
271866	AA	S	RCS	FP, Bradley	Delete L.42:	01/27 03:30 PM

Tab 4	SB 628 by Richter ; (Similar to H 1089) Fees for Records					
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Tab 5	SB 716 by Sobel (CO-INTRODUCERS) Sachs, Simpson, Margolis ; (Identical to H 0513) Florida Holocaust Memorial					
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Tab 6	CS/CS/SB 854 by RI, BI, Hukill ; (Similar to CS/H 0473) Funeral, Cemetery, and Consumer Services					
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Tab 7	SB 962 by Gaetz ; (Identical to H 1359) Vocational Rehabilitation					
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

FISCAL POLICY
Senator Flores, Chair
Senator Bradley, Vice Chair

MEETING DATE: Wednesday, January 27, 2016
TIME: 1:00—3:00 p.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Flores, Chair; Senator Bradley, Vice Chair; Senators Abruzzo, Bean, Clemens, Hays, Hukill, Legg, Margolis, Sachs, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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A proposed committee substitute for the following bill (CS/SB 202) is available:

1	CS/SB 202 Children, Families, and Elder Affairs / Bean (Similar CS/H 495)	Florida Association of Centers for Independent Living; Requiring that a specified agreement be maintained; requiring the program to provide additional support and services; requiring the program to reimburse the Florida Association of Centers for Independent Living for certain costs approved by the Advisory and Oversight Committee; revising the maximum amount of specified funds for each state attorney which may be used to administer the personal attendant and employment assistance program and to contract with the state attorneys participating in the tax collection enforcement diversion program, etc. CF 10/08/2015 Fav/CS AED 11/18/2015 Fav/CS FP 01/27/2016 Fav/CS	Fav/CS Yeas 9 Nays 0
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With subcommittee recommendation – Education

A proposed committee substitute for the following bill (SB 380) is available:

2	SB 380 Abruzzo (Similar CS/H 101)	Violation of an Injunction for Protection; Providing enhanced criminal penalties for a third or subsequent violation of an injunction for protection against specified acts of violence or a foreign protection order issued under specified provisions, etc. CJ 11/17/2015 Favorable ACJ 01/21/2016 Fav/CS FP 01/27/2016 Fav/CS	Fav/CS Yeas 9 Nays 0
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With subcommittee recommendation – Criminal and Civil Justice

COMMITTEE MEETING EXPANDED AGENDA

Fiscal Policy

Wednesday, January 27, 2016, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	CS/CS/SB 618 Community Affairs / Criminal Justice / Evers (Similar H 1031)	Prearrest Diversion Programs; Encouraging local communities and public or private educational institutions to implement prearrest diversion programs for certain offenders; authorizing law enforcement officers of participating law enforcement agencies, at their sole discretion, to issue civil citations to adults under specified circumstances; providing for criminal prosecution of adults who fail to complete the prearrest diversion program, etc. CJ 11/17/2015 Fav/CS CA 01/19/2016 Fav/CS FP 01/27/2016 Fav/CS	Fav/CS Yeas 9 Nays 0
4	SB 628 Richter (Similar H 1089)	Fees for Records; Adding the Agency for Persons with Disabilities to the list of specified state entities and vendors that pay a reduced fee per record for criminal history information for each name submitted, etc. CF 12/03/2015 Favorable ACJ 01/21/2016 Favorable FP 01/27/2016 Favorable	Favorable Yeas 8 Nays 0
With subcommittee recommendation – Criminal and Civil Justice			
5	SB 716 Sobel (Similar H 405, Identical H 513)	Florida Holocaust Memorial; Establishing the Florida Holocaust Memorial; providing for administration by the Department of Management Services; prohibiting the department from constructing and placing the memorial until certain conditions are met, etc. GO 01/11/2016 Favorable AGG 01/21/2016 Favorable FP 01/27/2016 Favorable	Favorable Yeas 10 Nays 0
With subcommittee recommendation – General Government			
6	CS/CS/SB 854 Regulated Industries / Banking and Insurance / Hukill (Similar CS/H 473)	Funeral, Cemetery, and Consumer Services; Revising required information for licensure to include e-mail addresses; revising the prohibition against withdrawal or transfer of assets within the care and maintenance trust fund to include an exception; requiring a licensed cemetery company to request a method for withdrawal from the cemetery company's care and maintenance trust fund; providing that an applicant for the embalmer apprentice program may not be licensed without a determination of character by the licensing authority, etc. BI 01/11/2016 Fav/CS RI 01/20/2016 Fav/CS FP 01/27/2016 Favorable	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Fiscal Policy

Wednesday, January 27, 2016, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 962 Gaetz (Identical H 1359)	Vocational Rehabilitation; Requiring the Division of Vocational Rehabilitation to initiate, by a specified date, a performance improvement plan designed to achieve specified goals; requiring the division to submit a performance report annually, by a specified date, to the Governor and the Legislature which includes specified information, etc. HE 01/11/2016 Favorable AED 01/21/2016 Favorable FP 01/27/2016 Favorable	Favorable Yeas 10 Nays 0

With subcommittee recommendation – Education

Other Related Meeting Documents

An electronic copy of the Appearance Request form is available to download from any Senate Committee page on the Senate's website, www.flSenate.gov.

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 Fiscal Policy

BILL: PCS/CS/SB 202 (736346)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Education); Children, Families, and Elder Affairs Committee and Senator Bean

SUBJECT: Florida Association of Centers for Independent Living

DATE: January 26, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 202 renames the James Patrick Memorial Work Incentive Personal Attendant Services Program as the James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program. The bill expands the use of the program to include services to disabled adults to assist them in securing and maintaining employment. The bill changes an existing oversight group to an oversight committee and revises its membership and responsibilities. The Florida Association for Independent Living will continue to provide administrative support from funds reserved for the program. The bill also increases the amount available to each state attorney that participates in the tax collection enforcement diversion program.

The bill has no fiscal impact on state funds.

II. Present Situation:

The James Patrick Memorial Work Incentive Personal Attendant Services Program

The James Patrick Memorial Work Incentive Personal Attendant Program (program) was established to provide personal care attendants to eligible persons with severe and chronic

disabilities of all kinds.¹ The program was established as a pilot in 2002² and made permanent and statewide in 2005.³ Currently, the Florida Endowment Foundation for Vocational Rehabilitation (also known as the Able Trust)⁴ is required to *enter* into an agreement with the Florida Association of Centers for Independent Living (FACIL) to administer the program.⁵

Eligibility

Persons eligible to participate in the program must:

- Be at least 18 years of age, a legal resident of this state, and significantly and chronically disabled;
- Require a personal care attendant for assistance with or support for at least two activities of daily living, such as bathing and dressing, as defined in s. 429.02, F.S.;
- Require a personal care attendant in order to accept a job or maintain substantial gainful employment; and
- Be able to acquire and direct a personal care attendant.⁶

Training

The FACIL must provide training to program participants on hiring and managing a personal care attendant. The FACIL must also, in cooperation with an oversight group, adopt and revise policies and procedures governing the personal care attendant program and the training program.⁷

Oversight Group

The purpose of the oversight group is to assure that the program is delivered in an appropriate, fair, and consistent manner.⁸ The oversight group includes, but is not limited to, the following members:

- A member of the FACIL;
- A person who is participating in the program;
- One representative from the Department of Revenue;
- One representative from the Department of Children and Families;
- One representative from the Division of Vocational Rehabilitation in the Department of Education;
- One representative from the Medicaid Program in the Agency for Health Care Administration;
- One representative from the Florida Endowment Foundation for Vocational Rehabilitation; and

¹ Section 413.402, F.S.

² Chapter 2002-286, L.O.F.

³ Chapter 2005-172, L.O.F.

⁴ See s. 413.615(5), F.S. The Able Trust is the not for profit direct support organization that is also known as the Florida Endowment Foundation for Vocational Rehabilitation. More information on the Able Trust can be found at: <http://www.abletrust.org/> (last visited Jan. 21, 2016).

⁵ Section 413.402, F.S.

⁶ Section 413.402(1), F.S.

⁷ Section 413.402(2)(a), F.S.

⁸ See Florida Association of Centers for Independent Living, Jimmy Patrick Memorial Work Incentive Program PAS Program Overview, available at: <http://floridacils.org/JPPASOverview.html> (last visited Jan. 21, 2016).

- One representative from the Brain and Spinal Cord Injury Program in the Department of Health.

Program Funding

There are two funding sources for the program:

- Tax Collection Enforcement Diversion Program;⁹ and
- Fees from the motorcycle specialty license plate.¹⁰

Tax Collection Enforcement Diversion Program

In conjunction with the establishment of the personal care attendant program, the Department of Revenue was directed, in cooperation with the FACIL and the Florida Prosecuting Attorneys Association, to select judicial circuits in which to operate a tax collection enforcement diversion program (tax diversion program) to collect unpaid sales taxes from delinquent business owners.¹¹ Fifty percent of the collections from the tax diversion program are deposited into the special reserve account of the Florida Endowment Foundation for Vocational Rehabilitation (Able Trust) to be used to operate the personal care attendant program and to contract with the state attorneys participating in the tax diversion program.¹² Currently, funds can be used to contract with state attorneys who participate in the tax diversion program in an amount not to exceed \$50,000 for each state attorney. All sixteen Centers for Independent Living in all 20 judicial circuits participate in the tax diversion program.¹³

Motorcycle Specialty (Bikers Care) License Plate Fees

The Department of Highway Safety and Motor Vehicles (DHSMV) offers a specialty license plate to any owner or lessee of a motorcycle who chooses to pay the additional cost. The DHSMV collects an annual use fee of \$20 from the sale of each motorcycle specialty license plate and distributes the fees to the Able Trust as custodial agent.¹⁴ The Able Trust is permitted to retain a maximum of 10 percent of the funds for administrative costs and distribute the remaining funds as follows:

- Twenty percent to the Brain and Spinal Cord Injury Program Trust Fund;
- Twenty percent to Prevent Blindness Florida;
- Twenty percent to the Blind Services Foundation of Florida;
- Twenty percent to the Foundation for Vocational Rehabilitation to support the personal care attendant program; and
- Twenty percent to the FACIL.¹⁵

⁹ Section 413.4021(1), F.S.

¹⁰ Section 320.08068(4)(d), F.S.

¹¹ Section 413.4021, F.S.

¹² Section 413.4021(1), F.S.

¹³ See Division of Vocational Rehabilitation, Centers for Independent Living Map, available at: http://rehabworks.org/cil_map.shtml (last visited on Jan. 21, 2016).

¹⁴ Section 320.08068, F.S.

¹⁵ Section 320.08068(4), F.S.

Administrative Expenses

FACIL program administrative expenses are paid from funds deposited with the Florida Endowment for Vocational Rehabilitation (Able Trust) pursuant to the Tax Collection Enforcement Diversion Program¹⁶ and the Motorcycle Specialty License Plate program.¹⁷ Currently, FACIL receives 12 percent of the funds paid to or on behalf of participants from funds deposited with the Able Trust to administer the program.¹⁸

III. Effect of Proposed Changes:

The James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program

Section 1 amends s. 413.402, F.S., to rename the James Patrick Memorial Work Incentive Personal Attendant Services Program as the James Patrick Memorial Work Incentive Personal Attendant Services *and Employment Assistance Program*. In addition to the provision of personal care attendants currently offered to eligible participants, the bill authorizes other support and services necessary to maintain competitive and integrated employment or self-employment to be made available by the program. The bill requires the Florida Endowment Foundation for Vocational Rehabilitation (Able Trust) to *maintain* an agreement with the FACIL to administer the program.

This bill defines the term “competitive and integrated employment” to mean employment in the public or private sector in which the employee earns comparable wages and benefits, commensurate with his or her qualifications and experience, and works in comparable conditions to those experienced by the general workforce in that industry or profession.

Eligibility

This bill revises eligibility requirements for participation in the program to include persons who:

- Require a personal care attendant *and, as needed, other support and services* to accept an *offer of employment and commence working or maintain competitive and integrated employment*; and
- Have the ability to acquire and direct *the support and services provided in the program, including the services of a personal care attendant*.

Training

The bill expands the types of training the FACIL must provide to program participants to include hiring and *management* of a personal care attendant *and other skills needed to effectively access and manage the support and services provided in the program*.

Oversight Committee

The bill renames the existing oversight group as the oversight committee and changes its membership and responsibilities. Under the bill the oversight committee must include:

¹⁶ Section 413.4021(1), F.S.

¹⁷ Section 320.08068(4)(d), F.S.

¹⁸ Section 413.402, F.S.

- The Director of the Division of Vocational Rehabilitation or his or her designee;
- A human resources professional or an individual who has significant experience managing and operating a business based in Florida appointed by the Speaker of the House of Representatives;
- A program participant appointed by the President of the Senate;
- The Director of the advisory council on brain and spinal cord injuries or his or her designee; and
- A financial management professional appointed by the Governor.

Representatives of the Medicaid program within the Agency for Health Care Administration, the Able Trust, the FACIL, the Department of Revenue, and the Department of Children and Families are removed from membership.

Additionally, the bill provides that the oversight committee is responsible for:

- Providing program oversight;
- Approving the program's annual operating budget for administration and oversight;
- Advising the FACIL on policies and procedures;
- Approving the maximum monthly reimbursement available to program participants; and
- Approving and maintaining a schedule of eligible services for which program participants may be reimbursed.

Program Funding

Administrative Expenses

The bill requires the FACIL to provide administrative support services to the program and the oversight committee to ensure the financial integrity of the program.

The bill changes the portion of the funds deposited with the Able Trust that are available to the FACIL to administer the program. Current law provides that the FACIL receives 12 percent of the funds paid to or on behalf of participants in the program to administer the program. The bill provides that costs associated with program administration and oversight in the annual operating budget approved by the oversight committee may not exceed 12 percent of the funds deposited with the Florida Endowment Foundation for Vocational Rehabilitation (Able Trust) for the program for the previous fiscal year or the budget approved for the previous fiscal year, whichever is greater.

Tax Collection Enforcement Diversion Program

Section 2 amends s. 413.4021, F.S., to increase the amount available to contract with the state attorneys participating in the tax collection enforcement diversion program to not more than \$75,000 per state attorney.

Motorcycle Specialty (Bikers Care) License Plate Fees

Section 3 amends s. 320.08068, F.S., to reflect the name change of the James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program and to clarify

that 20 percent of the funds from the sale of specialty motorcycle licenses must distributed to the *Florida Endowment* Foundation for Vocational Rehabilitation (Able Trust).

Section 4 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill expands the scope of services to disabled persons to include employment assistance to eligible program participants. The potential savings from increased employment of individuals with severe and chronic disabilities may be seen in reduced long-term care costs.

The bill also increases the amount of funds available to contract with the state attorneys' participating¹⁹ in the tax collection enforcement diversion program from \$50,000 to not more than \$75,000 for each state attorney.

VI. Technical Deficiencies:

None.

¹⁹ Currently there are 7 state attorneys' offices participate in the program: Jacksonville, Clearwater, Miami, Tampa, West Palm Beach, Fort Lauderdale, and Fort Meyers. *See* Revenue Estimating Conference, Tax Collection Enforcement Diversion Program (Sept. 3, 2015), Executive Summary.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 413.402, 413.4021, and 320.08068.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Education on November 18, 2015:

The committee substitute:

- Replaces the term “competitive employment” with “competitive and integrated employment.”
- Renames the Advisory and Oversight Committee as the Oversight Committee, adds approving the maximum monthly reimbursement available to program participants as one of its responsibilities, and changes the membership of the committee to include:
 - The director of the Division of Vocational Rehabilitation or his or her designee;
 - A human resources professional or an individual who has significant experience managing and operating a business based in Florida, appointed by the Speaker of the House of Representatives;
 - A program participant, appointed by the President of the Senate;
 - The director of the advisory council on brain and spinal cord injuries or his or her designee; and
 - A financial management professional, appointed by the Governor.
- Specifies that the annual operating budget for the program may not exceed 12 percent of the funds deposited from identified sources with the Florida Endowment Foundation for Vocational Rehabilitation for the previous fiscal year or the budget approved for the previous fiscal year, whichever is greater.

CS by Children, Families, and Elder Affairs on October 8, 2015:

The committee substitute removes the bill’s exemption from background screening for volunteers at a center for independent living. The CS revises the funding methodology for the administrative services provided by the Florida Association of Centers for Independent Living from 12 percent of expenditures to up to 12 percent of the program revenues. The association must have its budget for administrative services approved by the program’s advisory committee. The CS renames the advisory committee and revises its membership.

B. Amendments:

None.

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



LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/27/2016	.	
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The Committee on Fiscal Policy (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 94 - 145

and insert:

(b) In cooperation with the oversight council created in subsection (6), the Florida Association of Centers for Independent Living shall ~~oversight group described in paragraph (b)~~, adopt and, as necessary, revise the policies and procedures governing the operation of the ~~personal care attendant~~ program and the training required in paragraph (a). The oversight council shall recommend the maximum monthly reimbursement



12 provided to program participants. The oversight council shall
 13 also provide technical assistance to program participants and
 14 administrative support services to the program and implement
 15 appropriate internal financial controls to ensure program
 16 integrity program.

17 (5) The James Patrick Memorial Work Incentive Personal
 18 Attendant Services and Employment Assistance Program shall
 19 reimburse the Florida Association of Centers for Independent
 20 Living monthly for payments made to program participants and for
 21 costs associated with program administration and oversight in
 22 accordance with the annual operating budget approved by the
 23 board of directors of the association, taking into consideration
 24 recommendations made by the oversight council created under
 25 subsection (6). The annual operating budget for costs associated
 26 with activities of the association for program operation,
 27 administration, and oversight may not exceed 12 percent of the
 28 funds deposited with the Florida Endowment Foundation for
 29 Vocational Rehabilitation pursuant to ss. 320.08068(4)(d) and
 30 413.4021(1) for the previous fiscal year or the budget approved
 31 for the previous fiscal year, whichever amount is greater.

32 (6) The James Patrick Memorial Work Incentive Personal
 33 Attendant Services and Employment Assistance Program Oversight
 34 Council is created adjunct to the Department of Education for
 35 the purpose of providing program recommendations, recommending
 36 the maximum monthly reimbursement available to program
 37 participants, advising the Florida Association of Centers for
 38 Independent Living on policies and procedures, and recommending
 39 the program's annual operating budget for activities of the
 40 association associated with operations, administration, and



41 oversight. The oversight council shall also advise on and
42 recommend the schedule of eligible services for which program
43 participants may be reimbursed subject to the requirements and
44 limitations of paragraph (3)(c) which, at a minimum, must
45 include personal care attendant services. The oversight council
46 shall advise and make its recommendations under this section to
47 the board of directors of the association. The oversight council
48 is not subject to the control of or direction by the department,
49 and the department is not be responsible for providing staff
50 support or paying any expenses incurred by the oversight council
51 in the performance of its duties.

52 (a) The oversight council consists of the following
53 members:

- 54 1. The director of the division or his or her designee;
- 55 2. A human resources professional or an individual who has
56 significant experience managing and operating a business based
57 in this state, recommended by the Florida Chamber of Commerce
58 and appointed by the Governor;
- 59 3. A financial management professional, appointed by the
60 Governor;
- 61 4. A program participant, appointed by the Secretary of
62 Health or his or her designee;
- 63 5. The director of the Oversight Council on brain and
64 spinal cord injuries or his or her designee;
- 65 6. The director of the Florida Endowment Foundation for
66 Vocational Rehabilitation or his or her designee; and
- 67 7. The director of the Florida Association of Centers for
68 Independent Living or his or her designee.



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

71 And the title is amended as follows:

72 Delete lines 13 - 27

73 and insert:

74 with the oversight council for the James Patrick
75 Memorial Work Incentive Personal Attendant Services
76 and Employment Assistance Program, to adopt and revise
77 certain policies and procedures and to provide
78 technical assistance and support under certain
79 circumstances; requiring that the oversight council
80 recommend the maximum monthly reimbursement provided
81 to program participants; requiring the program to
82 reimburse the Florida Association of Centers for
83 Independent Living for certain costs approved by the
84 center's board of directors, taking into consideration
85 certain recommendations; prohibiting the program's
86 operation, administration, and oversight from
87 exceeding a certain percentage of the annual operating
88 budget; creating the James Patrick Memorial Work
89 Incentive Personal Attendant Services and Employment
90 Assistance Program Oversight Council adjunct to the
91 Department of Education; providing the council's
92 purpose; providing for council membership; amending s.
93 413.4021, F.S.;



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/27/2016	.	
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	.	

The Committee on Fiscal Policy (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 94 - 145

and insert:

(b) In cooperation with the oversight council created in subsection (6), the Florida Association of Centers for Independent Living shall ~~oversight group described in paragraph (b)~~, adopt and, as necessary, revise the policies and procedures governing the operation of the ~~personal care attendant~~ program and the training required in paragraph (a). The oversight council shall recommend the maximum monthly reimbursement



12 provided to program participants. The Florida Association of
13 Centers for Independent Living shall provide technical
14 assistance to program participants and administrative support
15 services to the program and implement appropriate internal
16 financial controls to ensure program integrity ~~program~~.
17 (5) The James Patrick Memorial Work Incentive Personal
18 Attendant Services and Employment Assistance Program shall
19 reimburse the Florida Association of Centers for Independent
20 Living monthly for payments made to program participants and for
21 costs associated with program administration and oversight in
22 accordance with the annual operating budget approved by the
23 board of directors of the association, taking into consideration
24 recommendations made by the oversight council created under
25 subsection (6). The annual operating budget for costs associated
26 with activities of the association for program operation,
27 administration, and oversight may not exceed 12 percent of the
28 funds deposited with the Florida Endowment Foundation for
29 Vocational Rehabilitation pursuant to ss. 320.08068(4)(d) and
30 413.4021(1) for the previous fiscal year or the budget approved
31 for the previous fiscal year, whichever amount is greater.
32 (6) The James Patrick Memorial Work Incentive Personal
33 Attendant Services and Employment Assistance Program Oversight
34 Council is created adjunct to the Department of Education for
35 the purpose of providing program recommendations, recommending
36 the maximum monthly reimbursement available to program
37 participants, advising the Florida Association of Centers for
38 Independent Living on policies and procedures, and recommending
39 the program's annual operating budget for activities of the
40 association associated with operations, administration, and



41 oversight. The oversight council shall also advise on and
42 recommend the schedule of eligible services for which program
43 participants may be reimbursed subject to the requirements and
44 limitations of paragraph (3)(c) which, at a minimum, must
45 include personal care attendant services. The oversight council
46 shall advise and make its recommendations under this section to
47 the board of directors of the association. The oversight council
48 is not subject to the control of or direction by the department,
49 and the department is not be responsible for providing staff
50 support or paying any expenses incurred by the oversight council
51 in the performance of its duties.

52 (a) The oversight council consists of the following
53 members:

- 54 1. The director of the division or his or her designee;
- 55 2. A human resources professional or an individual who has
56 significant experience managing and operating a business based
57 in this state, recommended by the Florida Chamber of Commerce
58 and appointed by the Governor;
- 59 3. A financial management professional, appointed by the
60 Governor;
- 61 4. A program participant, appointed by the Secretary of
62 Health or his or her designee;
- 63 5. The director of the Oversight Council on brain and
64 spinal cord injuries or his or her designee;
- 65 6. The director of the Florida Endowment Foundation for
66 Vocational Rehabilitation or his or her designee; and
- 67 7. The director of the Florida Association of Centers for
68 Independent Living or his or her designee.



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

71 And the title is amended as follows:

72 Delete lines 13 - 27

73 and insert:

74 with the oversight council for the James Patrick
75 Memorial Work Incentive Personal Attendant Services
76 and Employment Assistance Program, to adopt and revise
77 certain policies and procedures and to provide
78 technical assistance and support under certain
79 circumstances; requiring that the oversight council
80 recommend the maximum monthly reimbursement provided
81 to program participants; requiring the program to
82 reimburse the Florida Association of Centers for
83 Independent Living for certain costs approved by the
84 center's board of directors, taking into consideration
85 certain recommendations; prohibiting the program's
86 operation, administration, and oversight from
87 exceeding a certain percentage of the annual operating
88 budget; creating the James Patrick Memorial Work
89 Incentive Personal Attendant Services and Employment
90 Assistance Program Oversight Council adjunct to the
91 Department of Education; providing the council's
92 purpose; providing for council membership; amending s.
93 413.4021, F.S.;



736346

594-01580-16

Proposed Committee Substitute by the Committee on Fiscal Policy
(Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to the Florida Association of Centers for Independent Living; amending s. 413.402, F.S.; requiring that a specified agreement be maintained; renaming the James Patrick Memorial Work Incentive Personal Attendant Services Program as the James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program; defining a term; requiring the program to provide additional support and services; revising eligibility requirements; expanding the kinds of training required; requiring the association, in cooperation with the Oversight Committee for the James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program, to adopt and revise certain policies and procedures and to provide technical assistance and support under certain circumstances; providing that the maximum monthly reimbursement provided to program participants is subject to approval by the oversight committee; requiring the program to reimburse the Florida Association of Centers for Independent Living for certain costs approved by the oversight committee; prohibiting such reimbursement from exceeding a certain amount; establishing the oversight committee; providing the oversight committee's purpose; providing for committee membership; amending s. 413.4021, F.S.;



736346

594-01580-16

revising the maximum amount of specified funds for each state attorney which may be used to administer the personal attendant and employment assistance program and to contract with the state attorneys participating in the tax collection enforcement diversion program; amending s. 320.08068, F.S.; making a technical change; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Section 413.402, Florida Statutes, is amended to read:

413.402 James Patrick Memorial Work Incentive Personal eare Attendant Services and Employment Assistance Program.—The Florida Endowment Foundation for Vocational Rehabilitation shall maintain enter into an agreement, no later than October 1, 2008, with the Florida Association of Centers for Independent Living to administer the James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program and shall remit sufficient funds monthly to meet the requirements of subsection (5).

(1) As used in this section, the term "competitive and integrated employment" means employment in the public or private sector in which the employee earns comparable wages and benefits, commensurate with his or her qualifications and experience, and works in comparable conditions to those experienced by the general workforce in that industry or profession.



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57 (2) ~~The program shall~~ provide personal care attendants
58 and other support and services necessary to enable ~~to~~ persons
59 eligible under subsection (3) who have significant ~~severe~~ and
60 chronic disabilities to obtain or maintain competitive and
61 integrated employment, including self-employment of all kinds
62 and who are eligible under subsection (1). ~~Effective July 1,~~
63 ~~2008, the Florida Association of Centers for Independent Living~~
64 ~~shall receive 12 percent of the funds paid to or on behalf of~~
65 ~~participants from funds to be deposited with the Florida~~
66 ~~Endowment Foundation for Vocational Rehabilitation pursuant to~~
67 ~~ss. 320.08068(4)(d) and 413.4021(1) to administer the program.~~
68 ~~For the purpose of ensuring continuity of services, a memorandum~~
69 ~~of understanding shall be executed between the parties to cover~~
70 ~~the period between July 1, 2008, and the execution of the final~~
71 ~~agreement.~~

72 (3)~~(1)~~ In order to be eligible to participate in the
73 program, a person must:

74 (a) Be at least 18 years of age, be a legal resident of
75 this state, and be significantly and chronically disabled. ~~;~~

76 (b) As determined by a physician, psychologist, or
77 psychiatrist, require a personal care attendant for assistance
78 with or support for at least two activities of daily living as
79 defined in s. 429.02. ~~as determined by a physician,~~
80 ~~psychologist, or psychiatrist;~~

81 (c) Require a personal care attendant and, as needed, other
82 support and services in order to accept an offer of employment
83 and commence working or to a job or maintain competitive and
84 integrated substantial gainful employment.; ~~and~~

85 (d) Be able to acquire and direct the support and services



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86 provided pursuant to this section, including the services of a
87 personal care attendant.

88 (4)~~(2)~~(a) The Florida Association of Centers for
89 Independent Living shall provide program participants with
90 appropriate training to program participants on the hiring and
91 management of managing a personal care attendant and on other
92 self-advocacy skills needed to effectively access and manage the
93 support and services provided under this section. ~~and,~~

94 (b) In cooperation with the oversight committee established
95 in subsection (6), the Florida Association of Centers for
96 Independent Living shall oversight group described in paragraph
97 (b), adopt and, as necessary, revise the policies and procedures
98 governing the operation of the personal care attendant program
99 and the training program required in paragraph (a); however, the
100 maximum monthly reimbursement provided to program participants
101 is subject to approval by the oversight committee. The Florida
102 Association of Centers for Independent Living shall also provide
103 technical assistance to program participants and administrative
104 support services to the program and the oversight committee and
105 shall implement appropriate internal financial controls to
106 ensure program integrity.

107 (5) The James Patrick Memorial Work Incentive Personal
108 Attendant Services and Employment Assistance Program shall
109 reimburse the Florida Association of Centers for Independent
110 Living monthly for payments made to program participants and for
111 costs associated with program administration and oversight in
112 accordance with the annual operating budget approved by the
113 oversight committee established pursuant to subsection (6). The
114 annual operating budget for costs associated with program



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115 administration and oversight may not exceed 12 percent of the
116 funds deposited with the Florida Endowment Foundation for
117 Vocational Rehabilitation pursuant to ss. 320.08068(4)(d) and
118 413.4021(1) for the previous fiscal year or the budget approved
119 for the previous fiscal year, whichever amount is greater.

120 (6) The Oversight Committee for the James Patrick Memorial
121 Work Incentive Personal Attendant Services and Employment
122 Assistance Program is established for the purpose of providing
123 program oversight, approving the maximum monthly reimbursement
124 available to program participants, advising the Florida
125 Association of Centers for Independent Living on policies and
126 procedures, and approving the program's annual operating budget
127 for administration and oversight. The oversight committee shall
128 also approve and maintain the schedule of eligible services for
129 which program participants may be reimbursed subject to the
130 requirements and limitations of paragraph (3)(c) which, at a
131 minimum, must include personal care attendant services.

132 (a) The oversight committee shall consist of the following
133 members:

134 1. The director of the Division of Vocational
135 Rehabilitation or his or her designee;

136 2. A human resources professional or an individual who has
137 significant experience managing and operating a business based
138 in this state, appointed by the Speaker of the House of
139 Representatives;

140 3. A program participant, appointed by the President of the
141 Senate;

142 4. The director of the advisory council on brain and spinal
143 cord injuries or his or her designee; and



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144 5. A financial management professional, appointed by the
145 Governor.

146 (b) The appointed members shall serve for a term concurrent
147 with the term of the official who made the appointment and shall
148 serve at the pleasure of such official.

149 ~~(b) The oversight group shall include, but need not be~~
150 ~~limited to, a member of the Florida Association of Centers for~~
151 ~~Independent Living, a person who is participating in the~~
152 ~~program, and one representative each from the Department of~~
153 ~~Revenue, the Department of Children and Families, the Division~~
154 ~~of Vocational Rehabilitation in the Department of Education, the~~
155 ~~Medicaid program in the Agency for Health Care Administration,~~
156 ~~the Florida Endowment Foundation for Vocational Rehabilitation,~~
157 ~~and the Brain and Spinal Cord Injury Program in the Department~~
158 ~~of Health.~~

159 Section 2. Subsection (1) of section 413.4021, Florida
160 Statutes, is amended to read:

161 413.4021 Program participant selection; tax collection
162 enforcement diversion program.—The Department of Revenue, in
163 coordination with the Florida Association of Centers for
164 Independent Living and the Florida Prosecuting Attorneys
165 Association, shall select judicial circuits in which to operate
166 the program. The association and the state attorneys' offices
167 shall develop and implement a tax collection enforcement
168 diversion program, which shall collect revenue due from persons
169 who have not remitted their collected sales tax. The criteria
170 for referral to the tax collection enforcement diversion program
171 shall be determined cooperatively between the state attorneys'
172 offices and the Department of Revenue.



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173 (1) Notwithstanding ~~the provisions of~~ s. 212.20, 50 percent
174 of the revenues collected from the tax collection enforcement
175 diversion program shall be deposited into the special reserve
176 account of the Florida Endowment Foundation for Vocational
177 Rehabilitation, to be used to administer the James Patrick
178 Memorial Work Incentive Personal Care Attendant Services and
179 Employment Assistance Program and to contract with the state
180 attorneys participating in the tax collection enforcement
181 diversion program in an amount of not more than \$75,000 ~~\$50,000~~
182 for each state attorney.

183 Section 3. Paragraph (d) of subsection (4) of section
184 320.08068, Florida Statutes, is amended to read:

185 320.08068 Motorcycle specialty license plates.—

186 (4) A license plate annual use fee of \$20 shall be
187 collected for each motorcycle specialty license plate. Annual
188 use fees shall be distributed to The Able Trust as custodial
189 agent. The Able Trust may retain a maximum of 10 percent of the
190 proceeds from the sale of the license plate for administrative
191 costs. The Able Trust shall distribute the remaining funds as
192 follows:

193 (d) Twenty percent to the Florida Endowment Foundation for
194 Vocational Rehabilitation to support the James Patrick Memorial
195 Work Incentive Personal Care Attendant Services and Employment
196 Assistance Program pursuant to s. 413.402.

197 Section 4. This act shall take effect July 1, 2016.

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 Fiscal Policy

BILL: CS/CS/SB 202

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Education); Children, Families, and Elder Affairs Committee; and Senator Bean

SUBJECT: Florida Association of Centers for Independent Living

DATE: January 28, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 202 renames the James Patrick Memorial Work Incentive Personal Attendant Services Program as the James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program. The bill expands the use of the program to include services to adults with disabilities to assist them in securing and maintaining employment. The bill changes an existing oversight group to an oversight council and revises its membership and responsibilities. The Florida Association for Independent Living will continue to provide administrative support from funds reserved for the program. The bill also increases the amount available to each state attorney that participates in the tax collection enforcement diversion program.

The bill has no fiscal impact on state funds.

II. Present Situation:

The James Patrick Memorial Work Incentive Personal Attendant Services Program

The James Patrick Memorial Work Incentive Personal Attendant Program (program) was established to provide personal care attendants to eligible persons with severe and chronic

disabilities of all kinds.¹ The program was established as a pilot in 2002² and made permanent and statewide in 2005.³ Currently, the Florida Endowment Foundation for Vocational Rehabilitation (also known as the Able Trust)⁴ is required to *enter* into an agreement with the Florida Association of Centers for Independent Living (FACIL) to administer the program.⁵

Eligibility

Persons eligible to participate in the program must:

- Be at least 18 years of age, a legal resident of this state, and significantly and chronically disabled;
- Require a personal care attendant for assistance with or support for at least two activities of daily living, such as bathing and dressing, as defined in s. 429.02, F.S.;
- Require a personal care attendant in order to accept a job or maintain substantial gainful employment; and
- Be able to acquire and direct a personal care attendant.⁶

Training

The FACIL must provide training to program participants on hiring and managing a personal care attendant. The FACIL must also, in cooperation with an oversight group, adopt and revise policies and procedures governing the personal care attendant program and the training program.⁷

Oversight Group

The purpose of the oversight group is to assure that the program is delivered in an appropriate, fair, and consistent manner.⁸ The oversight group includes, but is not limited to, the following members:

- A member of the FACIL;
- A person who is participating in the program;
- One representative from the Department of Revenue;
- One representative from the Department of Children and Families;
- One representative from the Division of Vocational Rehabilitation in the Department of Education;
- One representative from the Medicaid Program in the Agency for Health Care Administration;
- One representative from the Florida Endowment Foundation for Vocational Rehabilitation; and

¹ Section 413.402, F.S.

² Chapter 2002-286, L.O.F.

³ Chapter 2005-172, L.O.F.

⁴ See s. 413.615(5), F.S. The Able Trust is the not for profit direct support organization that is also known as the Florida Endowment Foundation for Vocational Rehabilitation. More information on the Able Trust can be found at: <http://www.abletrust.org/> (last visited Jan. 21, 2016).

⁵ Section 413.402, F.S.

⁶ Section 413.402(1), F.S.

⁷ Section 413.402(2)(a), F.S.

⁸ See Florida Association of Centers for Independent Living, Jimmy Patrick Memorial Work Incentive Program PAS Program Overview, available at: <http://floridacils.org/JPPASOverview.html> (last visited Jan. 21, 2016).

- One representative from the Brain and Spinal Cord Injury Program in the Department of Health.

Program Funding

There are two funding sources for the program:

- Tax Collection Enforcement Diversion Program;⁹ and
- Fees from the motorcycle specialty license plate.¹⁰

Tax Collection Enforcement Diversion Program

In conjunction with the establishment of the personal care attendant program, the Department of Revenue was directed, in cooperation with the FACIL and the Florida Prosecuting Attorneys Association, to select judicial circuits in which to operate a tax collection enforcement diversion program (tax diversion program) to collect unpaid sales taxes from delinquent business owners.¹¹ Fifty percent of the collections from the tax diversion program are deposited into the special reserve account of the Florida Endowment Foundation for Vocational Rehabilitation (Able Trust) to be used to operate the personal care attendant program and to contract with the state attorneys participating in the tax diversion program.¹² Currently, funds can be used to contract with state attorneys who participate in the tax diversion program in an amount not to exceed \$50,000 for each state attorney. Currently, there are 7 state attorney's offices participating in the tax diversion program.¹³

Motorcycle Specialty (Bikers Care) License Plate Fees

The Department of Highway Safety and Motor Vehicles (DHSMV) offers a specialty license plate to any owner or lessee of a motorcycle who chooses to pay the additional cost. The DHSMV collects an annual use fee of \$20 from the sale of each motorcycle specialty license plate and distributes the fees to the Able Trust as custodial agent.¹⁴ The Able Trust is permitted to retain a maximum of 10 percent of the funds for administrative costs and distribute the remaining funds as follows:

- Twenty percent to the Brain and Spinal Cord Injury Program Trust Fund;
- Twenty percent to Prevent Blindness Florida;
- Twenty percent to the Blind Services Foundation of Florida;
- Twenty percent to the Foundation for Vocational Rehabilitation to support the personal care attendant program; and
- Twenty percent to the FACIL.¹⁵

⁹ Section 413.4021(1), F.S.

¹⁰ Section 320.08068(4)(d), F.S.

¹¹ Section 413.4021, F.S.

¹² Section 413.4021(1), F.S.

¹³ *Infra* note 20.

¹⁴ Section 320.08068, F.S.

¹⁵ Section 320.08068(4), F.S.

Administrative Expenses

FACIL program administrative expenses are paid from funds deposited with the Florida Endowment for Vocational Rehabilitation (Able Trust) pursuant to the Tax Collection Enforcement Diversion Program¹⁶ and the Motorcycle Specialty License Plate program.¹⁷ Currently, FACIL receives 12 percent of the funds paid to or on behalf of participants from funds deposited with the Able Trust to administer the program.¹⁸

III. Effect of Proposed Changes:

The James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program

Section 1 amends s. 413.402, F.S., to rename the James Patrick Memorial Work Incentive Personal Attendant Services Program as the James Patrick Memorial Work Incentive Personal Attendant Services *and Employment Assistance Program*. In addition to the provision of personal care attendants currently offered to eligible participants, the bill authorizes other support and services necessary to maintain competitive and integrated employment or self-employment to be made available by the program. The bill requires the Florida Endowment Foundation for Vocational Rehabilitation (Able Trust) to *maintain* an agreement with the FACIL to administer the program.

This bill defines the term “competitive and integrated employment” to mean employment in the public or private sector in which the employee earns comparable wages and benefits, commensurate with his or her qualifications and experience, and works in comparable conditions to those experienced by the general workforce in that industry or profession.

Eligibility

This bill revises eligibility requirements for participation in the program to include persons who:

- Require a personal care attendant *and, as needed, other support and services* to accept an *offer of employment and commence working or maintain competitive and integrated employment*; and
- Have the ability to acquire and direct *the support and services provided in the program, including the services of a personal care attendant*.

Training

The bill expands the types of training the FACIL must provide to program participants to include hiring and *management* of a personal care attendant *and other skills needed to effectively access and manage the support and services provided in the program*.

Oversight Council

The bill renames the existing oversight group as the oversight council and changes its membership and responsibilities. Under the bill the oversight council must include:

¹⁶ Section 413.402(1), F.S.

¹⁷ Section 320.08068(4)(d), F.S.

¹⁸ Section 413.402, F.S.

- The director of the division or his or her designee;
- A human resources professional or an individual who has significant experience managing and operating a business based in Florida recommended by the Florida Chamber of Commerce and appointed by the Governor;
- A program participant appointed by the Secretary of Health or his or her designee;
- The director of the advisory council on brain and spinal cord injuries or his or her designee;
- A financial management professional appointed by the Governor;
- The director of the Florida Endowment Foundation for Vocational Rehabilitation (Able Trust) or his or her designee; and
- The director of the FACIL or his or her designee.

Representatives of the Medicaid program within the Agency for Health Care Administration, the Department of Revenue, and the Department of Children and Families are removed from membership.

Additionally, the bill provides that the oversight council is established adjunct to Department of Education for the purpose of making recommendations to the board of directors of the FACIL on the following:

- The program's annual operating budget for operations, administration, and oversight;
- FACIL policies and procedures;
- The maximum monthly reimbursement available to program participants; and
- The schedule of eligible services for which program participants may be reimbursed.

The bill specifies that the oversight council is not subject to the control of or direction by the DOE, and the DOE is not responsible for providing staff support or paying any expenses incurred by the oversight council in the performance of its duties.

Program Funding

Administrative Expenses

The bill requires the FACIL to provide administrative and technical support services to the program and implement controls to ensure the financial integrity of the program.

The bill changes the portion of the funds deposited with the Able Trust that are available to the FACIL to administer the program. Current law provides that the FACIL receives 12 percent of the funds paid to or on behalf of participants in the program to administer the program. The bill provides that costs associated with program administration, operations, and oversight in the annual operating budget approved by the board of directors of the FACIL may not exceed 12 percent of the funds deposited with the Florida Endowment Foundation for Vocational Rehabilitation (Able Trust) for the program for the previous fiscal year or the budget approved for the previous fiscal year, whichever is greater.

Tax Collection Enforcement Diversion Program

Section 2 amends s. 413.4021, F.S., to increase the amount available to contract with the state attorneys participating in the tax collection enforcement diversion program to not more than \$75,000 per state attorney.

Motorcycle Specialty (Bikers Care) License Plate Fees

Section 3 amends s. 320.08068, F.S., to reflect the name change of the James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program and to clarify that 20 percent of the funds from the sale of specialty motorcycle licenses must be distributed to the *Florida Endowment* Foundation for Vocational Rehabilitation (Able Trust).

Section 4 provides an effective date of July 1, 2016.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill expands the scope of services to persons with disabilities to include employment assistance to eligible program participants. The potential savings from increased employment of individuals with severe and chronic disabilities may be seen in reduced long-term care costs.

The bill also increases the amount of funds available to contract with the state attorneys' participating¹⁹ in the tax collection enforcement diversion program from \$50,000 to not more than \$75,000 for each state attorney.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 413.402, 413.4021, and 320.08068.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Fiscal Policy on January 27, 2016:

The committee substitute:

- Replaces the term “competitive employment” with “competitive and integrated employment.”
- Renames the Advisory and Oversight Committee as the Oversight Council and establishes the council adjunct to the Department of Education.
- Requires the council to make certain recommendations and changes the membership of the council to include:
 - The director of the division or his or her designee;
 - A human resources professional or an individual who has significant experience managing and operating a business based in Florida recommended by the Florida Chamber of Commerce and appointed by the Governor;
 - A program participant, appointed by the Secretary of Health or his or her designee;
 - The director of the advisory council on brain and spinal cord injuries or his or her designee;
 - A financial management professional appointed by the Governor;
 - The director of the Florida Endowment Foundation for Vocational Rehabilitation or his or her designee; and
 - The director of the Florida Association of Centers for Independent Living or his or her designee.
- Specifies that the annual operating budget for the program may not exceed 12 percent of the funds deposited from identified sources with the Florida Endowment

¹⁹ Currently there are 7 state attorney's offices participate in the program: Jacksonville, Clearwater, Miami, Tampa, West Palm Beach, Fort Lauderdale, and Fort Meyers. *See* Revenue Estimating Conference, Tax Collection Enforcement Diversion Program (Sept. 3, 2015), Executive Summary.

Foundation for Vocational Rehabilitation for the previous fiscal year or the budget approved for the previous fiscal year, whichever is greater.

CS by Children, Families, and Elder Affairs on October 8, 2015:

The committee substitute removes the bill's exemption from background screening for volunteers at a center for independent living. The CS revises the funding methodology for the administrative services provided by the Florida Association of Centers for Independent Living from 12 percent of expenditures to up to 12 percent of the program revenues. The association must have its budget for administrative services approved by the program's advisory committee. The CS renames the advisory committee and revises its membership.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs; and
Senator Bean

586-00776-16

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1 A bill to be entitled
2 An act relating to the Florida Association of Centers
3 for Independent Living; amending s. 413.402, F.S.;
4 requiring that a specified agreement be maintained;
5 renaming the James Patrick Memorial Work Incentive
6 Personal Attendant Services Program as the James
7 Patrick Memorial Work Incentive Personal Attendant
8 Services and Employment Assistance Program; defining a
9 term; requiring the program to provide additional
10 support and services; revising eligibility
11 requirements; expanding the kinds of training
12 required; requiring the association, in consultation
13 with the Advisory and Oversight Committee, to adopt
14 and revise certain policies and procedures and to
15 provide technical assistance and support under certain
16 circumstances; requiring the program to reimburse the
17 Florida Association of Centers for Independent Living
18 for certain costs approved by the Advisory and
19 Oversight Committee; prohibiting such reimbursement
20 from exceeding a certain amount; establishing the
21 Advisory and Oversight Committee for the James Patrick
22 Memorial Work Incentive Personal Attendant Services
23 and Employment Assistance Program; providing the
24 committee's purpose; providing for committee
25 membership; amending s. 413.4021, F.S.; revising the
26 maximum amount of specified funds for each state
27 attorney which may be used to administer the personal
28 attendant and employment assistance program and to
29 contract with the state attorneys participating in the

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

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30 tax collection enforcement diversion program; amending
31 s. 320.08068, F.S.; making a technical change;
32 conforming a provision to changes made by the act;
33 providing an effective date.
34
35 Be It Enacted by the Legislature of the State of Florida:
36
37 Section 1. Section 413.402, Florida Statutes, is amended to
38 read:
39 413.402 James Patrick Memorial Work Incentive Personal care
40 Attendant Services and Employment Assistance Program.—The
41 Florida Endowment Foundation for Vocational Rehabilitation shall
42 ~~maintain~~ ~~enter into an agreement, no later than October 1, 2008,~~
43 with the Florida Association of Centers for Independent Living
44 to administer the James Patrick Memorial Work Incentive Personal
45 Attendant Services and Employment Assistance Program and shall
46 remit sufficient funds monthly to meet the requirements of
47 subsection (5).
48 (1) As used in this section, the term "competitive
49 employment" means employment in the public or private sector in
50 which the employee earns comparable wages and benefits,
51 commensurate with his or her qualifications and experience, and
52 works in comparable conditions to those experienced by the
53 general workforce in that industry or profession.
54 (2) The program shall ~~to~~ provide personal care attendants
55 and other support and services necessary to enable ~~to~~ persons
56 eligible under subsection (3) who have significant ~~severe~~ and
57 chronic disabilities to obtain or maintain competitive
58 employment, including self-employment of all kinds and who are

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

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59 eligible under subsection (1). ~~Effective July 1, 2008, The~~
 60 ~~Florida Association of Centers for Independent Living shall~~
 61 ~~receive 12 percent of the funds paid to or on behalf of~~
 62 ~~participants from funds to be deposited with the Florida~~
 63 ~~Endowment Foundation for Vocational Rehabilitation pursuant to~~
 64 ~~ss. 320.08068(4)(d) and 413.4021(1) to administer the program.~~
 65 ~~For the purpose of ensuring continuity of services, a memorandum~~
 66 ~~of understanding shall be executed between the parties to cover~~
 67 ~~the period between July 1, 2008, and the execution of the final~~
 68 ~~agreement.~~

69 (3)(1) In order to be eligible to participate in the
 70 program, a person must:

71 (a) Be at least 18 years of age, be a legal resident of
 72 this state, and be significantly and chronically disabled. ~~;~~

73 (b) As determined by a physician, psychologist, or
 74 psychiatrist, require a personal care attendant for assistance
 75 with or support for at least two activities of daily living as
 76 defined in s. 429.02, ~~as determined by a physician,~~
 77 psychologist, or psychiatrist;

78 (c) Require a personal care attendant and, as needed, other
 79 support and services in order to accept an offer of employment
 80 and commence working or to a job or maintain competitive
 81 substantial gainful employment. ~~;~~ and

82 (d) Be able to acquire and direct the support and services
 83 provided pursuant to this section, including the services of a
 84 personal care attendant.

85 (4)(2)(a) The Florida Association of Centers for
 86 Independent Living shall provide program participants with
 87 appropriate training to ~~program participants~~ on the hiring and

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88 management of managing a personal care attendant and on other
 89 self-advocacy skills needed to effectively access and manage the
 90 support and services provided under this section. ~~and,~~

91 (b) In consultation ~~cooperation~~ with the Advisory and
 92 Oversight Committee established in subsection (6), the Florida
 93 Association of Centers for Independent Living shall ~~oversight~~
 94 group described in paragraph (b), adopt new and revised and
 95 revise the policies and procedures governing the operation of
 96 the personal care attendant program and the training program
 97 required in paragraph (a), provide technical assistance to
 98 program participants, provide administrative support services
 99 for the program, including the implementation of appropriate
 100 internal financial controls to ensure program integrity, and
 101 provide administrative support for the Advisory and Oversight
 102 Committee.

103 (5) The James Patrick Memorial Work Incentive Personal
 104 Attendant Services and Employment Assistance Program shall
 105 reimburse the Florida Association of Centers for Independent
 106 Living monthly for payments made to program participants and for
 107 costs associated with program administration and oversight in
 108 accordance with the annual operating budget approved by the
 109 Advisory and Oversight Committee established pursuant to
 110 subsection (6). Such costs may not exceed 12 percent of the
 111 funds deposited with the Florida Endowment Foundation for
 112 Vocational Rehabilitation pursuant to ss. 320.08068(4)(d) and
 113 413.4021(1).

114 (6) The Advisory and Oversight Committee for the James
 115 Patrick Memorial Work Incentive Personal Attendant Services and
 116 Employment Assistance Program is established for the purpose of

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117 providing program oversight, advising the Florida Association of
 118 Centers for Independent Living on policies and procedures, and
 119 approving the program's annual operating budget for
 120 administration and oversight.

121 (a) The committee shall consist of the following members:

122 1. The director of the Division of Vocational
 123 Rehabilitation or his or her designee;

124 2. The executive director of the Department of Revenue or
 125 his or her designee;

126 3. The secretary of the Department of Children and Families
 127 or his or her designee;

128 4. The director of the advisory council on brain and spinal
 129 cord injuries or his or her designee;

130 5. A program participant, appointed by the President of the
 131 Senate;

132 6. A member of the Florida Independent Living Council,
 133 appointed by the Speaker of the House of Representatives;

134 7. A financial management professional, appointed by the
 135 Governor; and

136 8. Two ex officio, nonvoting members, one of whom
 137 designated by the chair of the Florida Endowment Foundation for
 138 Vocational Rehabilitation, and the other designated by the chair
 139 of the Florida Association of Centers for Independent Living.

140 (b) The appointed members shall serve for a term concurrent
 141 with the term of the official who made the appointment and shall
 142 serve at the pleasure of such official.

143 ~~(b) The oversight group shall include, but need not be~~
 144 ~~limited to, a member of the Florida Association of Centers for~~
 145 ~~Independent Living, a person who is participating in the~~

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146 ~~program, and one representative each from the Department of~~
 147 ~~Revenue, the Department of Children and Families, the Division~~
 148 ~~of Vocational Rehabilitation in the Department of Education, the~~
 149 ~~Medicaid program in the Agency for Health Care Administration,~~
 150 ~~the Florida Endowment Foundation for Vocational Rehabilitation,~~
 151 ~~and the Brain and Spinal Cord Injury Program in the Department~~
 152 ~~of Health.~~

153 Section 2. Subsection (1) of section 413.4021, Florida
 154 Statutes, is amended to read:

155 413.4021 Program participant selection; tax collection
 156 enforcement diversion program.—The Department of Revenue, in
 157 coordination with the Florida Association of Centers for
 158 Independent Living and the Florida Prosecuting Attorneys
 159 Association, shall select judicial circuits in which to operate
 160 the program. The association and the state attorneys' offices
 161 shall develop and implement a tax collection enforcement
 162 diversion program, which shall collect revenue due from persons
 163 who have not remitted their collected sales tax. The criteria
 164 for referral to the tax collection enforcement diversion program
 165 shall be determined cooperatively between the state attorneys'
 166 offices and the Department of Revenue.

167 (1) Notwithstanding ~~the provisions of~~ s. 212.20, 50 percent
 168 of the revenues collected from the tax collection enforcement
 169 diversion program shall be deposited into the special reserve
 170 account of the Florida Endowment Foundation for Vocational
 171 Rehabilitation, to be used to administer the James Patrick
 172 Memorial Work Incentive Personal Care Attendant Services and
 173 Employment Assistance Program and to contract with the state
 174 attorneys participating in the tax collection enforcement

586-00776-16 2016202c1

175 diversion program in an amount of not more than \$75,000 ~~\$50,000~~
176 for each state attorney.

177 Section 3. Paragraph (d) of subsection (4) of section
178 320.08068, Florida Statutes, is amended to read:

179 320.08068 Motorcycle specialty license plates.—

180 (4) A license plate annual use fee of \$20 shall be
181 collected for each motorcycle specialty license plate. Annual
182 use fees shall be distributed to The Able Trust as custodial
183 agent. The Able Trust may retain a maximum of 10 percent of the
184 proceeds from the sale of the license plate for administrative
185 costs. The Able Trust shall distribute the remaining funds as
186 follows:

187 (d) Twenty percent to the Florida Endowment Foundation for
188 Vocational Rehabilitation to support the James Patrick Memorial
189 Work Incentive Personal Care Attendant Services and Employment
190 Assistance Program pursuant to s. 413.402.

191 Section 4. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Fiscal Policy

Subject: Committee Agenda Request

Date: November 18, 2015

I respectfully request that **Senate Bill #202**, relating to Florida Association of Centers for Independent Living, be placed on the:

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

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/27/16

Meeting Date

202

Bill Number (if applicable)

Topic ~~FACT~~ JAMES PATRICK - Bill

Amendment Barcode (if applicable)

Name Stephen Wise

Job Title Stephen Wise Consulting

Address 4361 CHARLESTON Lw

Phone 904-759-6223

Street

JACKSONVILLE 71 32210

Email SRWISE@HIT.NET

City

State

Zip

Speaking: For Against Information

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

Representing FACIL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-28-16

Meeting Date

202

~~495~~

Bill Number (if applicable)

Topic John Patrick Personal Att. Services

Amendment Barcode (if applicable)

Name Linda Keen

Job Title Exec. Dir FL Assn. Centers for Indep. Living

Address 325 John Knox Rd.

Phone 574-6004

Street

Tallahassee

FL

32312

Email linda@floridacils.

City

State

Zip

Org

Speaking: For Against Information

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

Representing FL Assn of Ctrs for Indep. Living

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/27/2016

Meeting Date

202

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jim DEBEAUGRINE

Job Title _____

Address 215 S. MONROE, STE 802

Phone 850-508-8908

Street

Tallahassee, FL

32301

Email Jim-debeaugrine@comcast.net

City

State

Zip

Speaking: For Against Information

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

Representing Fla. Assn. of Centers for Independent Living

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/27/16
Meeting Date

202
Bill Number (if applicable)

Topic JP Pass

Amendment Barcode (if applicable)

Name Sarah Goldman

Job Title

Address 1417 Pullen Road #504

Phone (813) 892-9974

Tallahassee FL

32303

Email sarah.goldman17@gmail.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 Fiscal Policy

BILL: PCS/SB 380 (662912)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senator Abruzzo

SUBJECT: Violation of an Injunction for Protection

DATE: January 26, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 380 amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., to provide enhanced criminal penalties for a person who commits a third or subsequent violation of an injunction for protection or a foreign protection order against domestic violence, repeat violence, sexual violence, dating violence, stalking or cyberstalking. Currently, a person who violates an injunction for protection or a foreign protection order commits a misdemeanor of the first degree. The bill increases the penalty to a third degree felony for a person who has two or more prior convictions for violating an injunction for protection or foreign protection order and commits a third or subsequent violation against the same victim. A third degree felony is punishable by probation or up to a maximum of five years in prison and up to a \$5,000 fine.

The Criminal Justice Impact Conference met in October 2015, and estimated that SB 380, as filed, would have a positive indeterminate prison bed impact. This means that there would be an increase in the need for prison beds, but the amount of the increase cannot be determined. PCS/SB 380 likely would have a similar impact.

II. Present Situation:

Injunctions for Protection against Specified Acts of Violence

Domestic Violence

Section 741.30, F.S., governs the issuance of injunctions against domestic violence. Any person who is the victim of domestic violence¹ or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection against domestic violence.² The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.³ A hearing must be set at the earliest possible time after a petition is filed and the respondent must be personally served with a copy of the petition.⁴ At the hearing, specified injunctive relief may be granted if the court finds that the petitioner is:

- The victim of domestic violence; or
- Has reasonable cause to believe he or she is in imminent danger of becoming the victim of an act of domestic violence.⁵

An injunction can include:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner the exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner;
- Providing the petitioner with 100 percent of the time-sharing in a temporary parenting plan;
- Establishing temporary support for a minor child or children or the petitioner;
- Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent;
- Referring a petitioner to a certified domestic violence center;
- Ordering such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies, as provided in s. 741.30, F.S..⁶

If it appears to the court that an immediate and present danger of domestic violence exists when the petition is filed, the court may grant a temporary injunction *ex parte*.⁷ Temporary injunctions

¹ Section 741.28, F.S., defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

² Section 741.30(1)(a), F.S.

³ Section 741.30(3)(a), F.S.

⁴ Section 741.30(4), F.S.

⁵ Section 741.30(6)(a), F.S. Either party may move the court to modify or dissolve an injunction at any time pursuant to s. 741.30(6)(c) and (10), F.S.

⁶ *Id.*

⁷ Pursuant to s. 741.30(5), F.S., the court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, and providing the petitioner a temporary parenting plan.

are only effective for a fixed period that cannot exceed 15 days.⁸ The hearing on the petition must be set for a date on or before the date when the temporary injunction expires.⁹

Repeat, Dating, and Sexual Violence

Section 784.046, F.S., governs the issuance of injunctions against repeat violence,¹⁰ dating violence,¹¹ and sexual violence.¹² This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

Stalking and Cyberstalking

Section 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

Violation of an Injunction

A respondent violates the terms of an injunction for protection and a foreign protection order against domestic violence, repeat, dating or sexual violence, or stalking or cyberstalking by willfully:

- Refusing to vacate the dwelling that the parties share;¹³
- Going to, or is within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Committing an act of domestic violence against the petitioner;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's car; or

⁸ Section 741.30(5)(c), F.S.

⁹ Pursuant to s. 741.30(5)(c), F.S., the court may grant a continuance of the hearing for good cause, which may include obtaining service of process. A temporary injunction must be extended, if necessary, during any period of continuance.

¹⁰ Section 784.046(1)(b)(a), F.S., defines "repeat violence" as two incidents of violence or stalking committed by the respondent, one of which must have been within six months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.

¹¹ Section 784.046(1)(d), F.S., defines "dating violence" as violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. The existence of such a relationship is determined by considering the following factors: a dating relationship must have existed within the past six months; the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and the persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship.

¹² Section 784.046(1)(c), F.S., defines "sexual violence" as any one incident of: sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or any other forcible felony wherein a sexual act is committed or attempted.

¹³ This provision does not apply to injunctions for protection against stalking or cyberstalking pursuant to s. 784.0487, F.S.

- Refusing to surrender firearms or ammunition if ordered to do so by the court.¹⁴

A court can enforce a violation of an injunction for protection through civil or criminal contempt proceedings, or the state attorney may prosecute the violation as a first degree misdemeanor.¹⁵

Currently, a person who violates an injunction for protection or a foreign protection order commits a first degree misdemeanor, regardless of how many times the person has been convicted of this offense.¹⁶ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine.¹⁷

III. Effect of Proposed Changes:

Currently, a person who violates an injunction for protection or a foreign protection order commits a first degree misdemeanor. The bill amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., to enhance the criminal penalty to a third degree felony for a person who has two or more convictions for violating an injunction or foreign protection order and who subsequently commits a violation of any injunction or foreign protection order against the same victim. A third degree felony is punishable by probation or up to a maximum of five years in prison and up to a \$5,000 fine

The bill defines “conviction” to mean a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

The bill reenacts ss. 741.30, 741.315, 784.0485, and 901.15, F.S., to incorporate the changes made by this bill.

The bill is effective October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁴ Sections 741.31(4)(a), 784.047, and 784.0487(4), F.S.

¹⁵ Section 741.30(9)(a), F.S.

¹⁶ *Supra* note 14.

¹⁷ See ss. 775.082(4)(a) and 775.083(1)(d), F.S.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met in October 2015, and estimated that SB 380, as filed, would have a positive indeterminate prison bed impact.¹⁸ This means that the bill will increase the number of inmates incarcerated at the Department of Corrections, but the amount of the increase cannot be determined. PCS/CS 380 likely would have a similar impact.

The FDLE reported that in Fiscal Year 2014-2015, there were 210 convictions for repeat offenders violating ss. 741.31, 784.047, or 784.0487, F.S. The number of these convictions that were third or subsequent violations is not known. The incarceration rate for unranked third degree felonies was 10% in Fiscal Year 2014-2015, but it is possible that the nature of this offense and the fact that it must be at least the third conviction may result in a higher than average incarceration rate.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 741.30, 741.31, 741.315, 784.047, 784.0485, 784.0487, and 901.15 of the Florida Statutes.

¹⁸ The Florida Legislature, Office of Economic and Demographic Research, Criminal Justice Impact Conference, 2016 Narrative Analysis and Adopted Impacts, SB 380 (October 28, 2015).

¹⁹ *Id.*

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on January 21, 2016:

- Provides that a third or subsequent violation for which the penalty is elevated to a third degree felony may be for violation of any injunction or foreign protection order against the same victim.
- Republishes s. 741.30(9), F.S., to incorporate amendments made in the bill.

- B. **Amendments:**

None.



662912

594-02398-16

Proposed Committee Substitute by the Committee on Fiscal Policy
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to violation of an injunction for protection; amending ss. 741.31, 784.047, and 784.0487, F.S.; providing enhanced criminal penalties for a third or subsequent violation of an injunction for protection against specified acts of violence or a foreign protection order issued for the same victim under specified provisions; defining the term "conviction"; reenacting s. 741.30(9), F.S., relating to injunctions for protection against domestic violence, to incorporate the amendment made by the act to s. 741.31, F.S., in a reference thereto; reenacting s. 741.315(2), F.S., relating to recognition of foreign protection orders, to incorporate the amendments made by the act to ss. 741.31, 784.047, and 784.0487, F.S., in references thereto; reenacting s. 784.0485(9), F.S., relating to injunctions for protection against stalking, to incorporate the amendment made by the act to s. 784.0487, F.S., in a reference thereto; reenacting s. 901.15(6) and (7), F.S., relating to when arrest by an officer without warrant is lawful, to incorporate the amendment made by the act to ss. 741.31 and 784.047, F.S., in references thereto; providing an effective date.

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



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Section 1. Subsection (4) of section 741.31, Florida Statutes, is amended to read:

741.31 Violation of an injunction for protection against domestic violence.—

(4) (a) A person who willfully violates an injunction for protection against domestic violence issued pursuant to s. 741.30, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, by:

1. Refusing to vacate the dwelling that the parties share;
2. Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
3. Committing an act of domestic violence against the petitioner;
4. Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
5. Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
6. Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
7. Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or
8. Refusing to surrender firearms or ammunition if ordered to do so by the court



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57 commits a misdemeanor of the first degree, punishable as
58 provided in s. 775.082 or s. 775.083, except as provided in
59 paragraph (c).

60 (b)1. It is a violation of s. 790.233, and a misdemeanor of
61 the first degree, punishable as provided in s. 775.082 or s.
62 775.083, for a person to violate a final injunction for
63 protection against domestic violence by having in his or her
64 care, custody, possession, or control any firearm or ammunition.

65 2. It is the intent of the Legislature that the
66 disabilities regarding possession of firearms and ammunition are
67 consistent with federal law. Accordingly, this paragraph shall
68 not apply to a state or local officer as defined in s.
69 943.10(14), holding an active certification, who receives or
70 possesses a firearm or ammunition for use in performing official
71 duties on behalf of the officer's employing agency, unless
72 otherwise prohibited by the employing agency.

73 (c) A person who has two or more prior convictions for
74 violation of an injunction or foreign protection order, and who
75 subsequently commits a violation of any injunction or foreign
76 protection order against the same victim, commits a felony of
77 the third degree, punishable as provided in s. 775.082, s.
78 775.083 or s.775.084. For purposes of this paragraph, the term
79 "conviction" means a determination of guilt which is the result
80 of a plea or a trial, regardless of whether adjudication is
81 withheld or a plea of nolo contendere is entered.

82 Section 2. Section 784.047, Florida Statutes, is amended to
83 read:

84 784.047 Penalties for violating protective injunction
85 against violators.-



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86 (1) A person who willfully violates an injunction for
87 protection against repeat violence, sexual violence, or dating
88 violence, issued pursuant to s. 784.046, or a foreign protection
89 order accorded full faith and credit pursuant to s. 741.315 by:

90 (a)(1) Refusing to vacate the dwelling that the parties
91 share;

92 (b)(2) Going to, or being within 500 feet of, the
93 petitioner's residence, school, place of employment, or a
94 specified place frequented regularly by the petitioner and any
95 named family or household member;

96 (c)(3) Committing an act of repeat violence, sexual
97 violence, or dating violence against the petitioner;

98 (d)(4) Committing any other violation of the injunction
99 through an intentional unlawful threat, word, or act to do
100 violence to the petitioner;

101 (e)(5) Telephoning, contacting, or otherwise communicating
102 with the petitioner directly or indirectly, unless the
103 injunction specifically allows indirect contact through a third
104 party;

105 (f)(6) Knowingly and intentionally coming within 100 feet
106 of the petitioner's motor vehicle, whether or not that vehicle
107 is occupied;

108 (g)(7) Defacing or destroying the petitioner's personal
109 property, including the petitioner's motor vehicle; or

110 (h)(8) Refusing to surrender firearms or ammunition if
111 ordered to do so by the court,

112
113 commits a misdemeanor of the first degree, punishable as
114 provided in s. 775.082 or s. 775.083, except as provided in



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115 subsection (2).

116 (2) A person who has two or more prior convictions for
117 violation of an injunction or foreign protection order, and who
118 subsequently commits a violation of any injunction or foreign
119 protection order against the same victim, commits a felony of
120 the third degree, punishable as provided in s. 775.082, s.
121 775.083, or s. 775.084. For purposes of this subsection, the
122 term "conviction" means a determination of guilt which is the
123 result of a plea or a trial, regardless of whether adjudication
124 is withheld or a plea of nolo contendere is entered.

125 Section 3. Subsection (4) of section 784.0487, Florida
126 Statutes, is amended to read:

127 784.0487 Violation of an injunction for protection against
128 stalking or cyberstalking.—

129 (4) (a) A person who willfully violates an injunction for
130 protection against stalking or cyberstalking issued pursuant to
131 s. 784.0485, or a foreign protection order accorded full faith
132 and credit pursuant to s. 741.315, by:

133 1. (a) Going to, or being within 500 feet of, the
134 petitioner's residence, school, place of employment, or a
135 specified place frequented regularly by the petitioner and any
136 named family members or individuals closely associated with the
137 petitioner;

138 2. (b) Committing an act of stalking against the petitioner;

139 3. (c) Committing any other violation of the injunction
140 through an intentional unlawful threat, word, or act to do
141 violence to the petitioner;

142 4. (d) Telephoning, contacting, or otherwise communicating
143 with the petitioner, directly or indirectly, unless the



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144 injunction specifically allows indirect contact through a third
145 party;

146 5. (e) Knowingly and intentionally coming within 100 feet of
147 the petitioner's motor vehicle, whether or not that vehicle is
148 occupied;

149 6. (f) Defacing or destroying the petitioner's personal
150 property, including the petitioner's motor vehicle; or

151 7. (g) Refusing to surrender firearms or ammunition if
152 ordered to do so by the court,

153
154 commits a misdemeanor of the first degree, punishable as
155 provided in s. 775.082 or s. 775.083, except as provided in
156 paragraph (b).

157 (b) A person who has two or more prior convictions for
158 violation of an injunction or foreign protection order, and who
159 subsequently commits a violation of any injunction or foreign
160 protection order against the same victim, commits a felony of
161 the third degree, punishable as provided in s. 775.082, s.
162 775.083, or s. 775.084. For purposes of this paragraph, the term
163 "conviction" means a determination of guilt that is the result
164 of a plea or a trial, regardless of whether adjudication is
165 withheld or a plea of nolo contendere is entered.

166 Section 4. For the purpose of incorporating the amendment
167 made by this act to section 741.31, Florida Statutes, in a
168 reference thereto, subsection (9) of section 741.30, Florida
169 Statutes, is reenacted to read:

170 741.30 Domestic violence; injunction; powers and duties of
171 court and clerk; petition; notice and hearing; temporary
172 injunction; issuance of injunction; statewide verification



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173 system; enforcement; public records exemption.-

174 (9) (a) The court may enforce a violation of an injunction
175 for protection against domestic violence through a civil or
176 criminal contempt proceeding, or the state attorney may
177 prosecute it as a criminal violation under s. 741.31. The court
178 may enforce the respondent's compliance with the injunction
179 through any appropriate civil and criminal remedies, including,
180 but not limited to, a monetary assessment or a fine. The clerk
181 of the court shall collect and receive such assessments or
182 fines. On a monthly basis, the clerk shall transfer the moneys
183 collected pursuant to this paragraph to the State Treasury for
184 deposit in the Domestic Violence Trust Fund established in s.
185 741.01.

186 (b) If the respondent is arrested by a law enforcement
187 officer under s. 901.15(6) or for a violation of s. 741.31, the
188 respondent shall be held in custody until brought before the
189 court as expeditiously as possible for the purpose of enforcing
190 the injunction and for admittance to bail in accordance with
191 chapter 903 and the applicable rules of criminal procedure,
192 pending a hearing.

193 Section 5. For the purpose of incorporating the amendment
194 made by this act to sections 741.31, 784.047, and 784.0487,
195 Florida Statutes, in references thereto, subsection (2) of
196 section 741.315, Florida Statutes, is reenacted to read:

197 741.315 Recognition of foreign protection orders.-

198 (2) Pursuant to 18 U.S.C. s. 2265, an injunction for
199 protection against domestic violence issued by a court of a
200 foreign state must be accorded full faith and credit by the
201 courts of this state and enforced by a law enforcement agency as



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202 if it were the order of a Florida court issued under s. 741.30,
203 s. 741.31, s. 784.046, s. 784.047, s. 784.0485, or s. 784.0487,
204 and provided that the court had jurisdiction over the parties
205 and the matter and that reasonable notice and opportunity to be
206 heard was given to the person against whom the order is sought
207 sufficient to protect that person's right to due process. Ex
208 parte foreign injunctions for protection are not eligible for
209 enforcement under this section unless notice and opportunity to
210 be heard have been provided within the time required by the
211 foreign state or tribal law, and in any event within a
212 reasonable time after the order is issued, sufficient to protect
213 the respondent's due process rights.

214 Section 6. For the purpose of incorporating the amendment
215 made by this act to section 784.0487, Florida Statutes, in a
216 reference thereto, subsection (9) of section 784.0485, Florida
217 Statutes, is reenacted to read:

218 784.0485 Stalking; injunction; powers and duties of court
219 and clerk; petition; notice and hearing; temporary injunction;
220 issuance of injunction; statewide verification system;
221 enforcement.-

222 (9) (a) The court may enforce a violation of an injunction
223 for protection against stalking through a civil or criminal
224 contempt proceeding, or the state attorney may prosecute it as a
225 criminal violation under s. 784.0487. Any assessments or fines
226 ordered by the court enforcing such an injunction shall be
227 collected by the clerk of the court and transferred on a monthly
228 basis to the State Treasury for deposit into the Domestic
229 Violence Trust Fund.

230 (b) If the respondent is arrested by a law enforcement



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231 officer under s. 901.15(6) or for a violation of s. 784.0487,
232 the respondent shall be held in custody until brought before the
233 court as expeditiously as possible for the purpose of enforcing
234 the injunction and for admittance to bail in accordance with
235 chapter 903 and the applicable rules of criminal procedure,
236 pending a hearing.

237 Section 7. For the purpose of incorporating the amendment
238 made by this act to sections 741.31 and 784.047, Florida
239 Statutes, in references thereto, subsections (6) and (7) of
240 section 901.15, Florida Statutes, are reenacted to read:

241 901.15 When arrest by officer without warrant is lawful.—A
242 law enforcement officer may arrest a person without a warrant
243 when:

244 (6) There is probable cause to believe that the person has
245 committed a criminal act according to s. 790.233 or according to
246 s. 741.31 or s. 784.047 which violates an injunction for
247 protection entered pursuant to s. 741.30 or s. 784.046, or a
248 foreign protection order accorded full faith and credit pursuant
249 to s. 741.315, over the objection of the petitioner, if
250 necessary.

251 (7) There is probable cause to believe that the person has
252 committed an act of domestic violence, as defined in s. 741.28,
253 or dating violence, as provided in s. 784.046. The decision to
254 arrest shall not require consent of the victim or consideration
255 of the relationship of the parties. It is the public policy of
256 this state to strongly discourage arrest and charges of both
257 parties for domestic violence or dating violence on each other
258 and to encourage training of law enforcement and prosecutors in
259 these areas. A law enforcement officer who acts in good faith



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594-02398-16

260 and exercises due care in making an arrest under this
261 subsection, under s. 741.31(4) or s. 784.047, or pursuant to a
262 foreign order of protection accorded full faith and credit
263 pursuant to s. 741.315, is immune from civil liability that
264 otherwise might result by reason of his or her action.

265 Section 8. This act shall take effect October 1, 2016.

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 Fiscal Policy

BILL: CS/SB 380

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) and Senator Abruzzo

SUBJECT: Violation of an Injunction for Protection

DATE: January 27, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 380 amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., to provide enhanced criminal penalties for a person who commits a third or subsequent violation of an injunction for protection or a foreign protection order against domestic violence, repeat violence, sexual violence, dating violence, stalking or cyberstalking. Currently, a person who violates an injunction for protection or a foreign protection order commits a misdemeanor of the first degree. The bill increases the penalty to a third degree felony for a person who has two or more prior convictions for violating an injunction for protection or foreign protection order and commits a third or subsequent violation against the same victim. A third degree felony is punishable by probation or up to a maximum of five years in prison and up to a \$5,000 fine.

The Criminal Justice Impact Conference met in October 2015, and estimated that SB 380, as filed, would have a positive indeterminate prison bed impact. This means that there would be an increase in the need for prison beds, but the amount of the increase cannot be determined. PCS/SB 380 likely would have a similar impact.

II. Present Situation:

Injunctions for Protection against Specified Acts of Violence

Domestic Violence

Section 741.30, F.S., governs the issuance of injunctions against domestic violence. Any person who is the victim of domestic violence¹ or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection against domestic violence.² The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.³ A hearing must be set at the earliest possible time after a petition is filed and the respondent must be personally served with a copy of the petition.⁴ At the hearing, specified injunctive relief may be granted if the court finds that the petitioner is:

- The victim of domestic violence; or
- Has reasonable cause to believe he or she is in imminent danger of becoming the victim of an act of domestic violence.⁵

An injunction can include:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner the exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner;
- Providing the petitioner with 100 percent of the time-sharing in a temporary parenting plan;
- Establishing temporary support for a minor child or children or the petitioner;
- Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent;
- Referring a petitioner to a certified domestic violence center;
- Ordering such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies, as provided in s. 741.30, F.S..⁶

If it appears to the court that an immediate and present danger of domestic violence exists when the petition is filed, the court may grant a temporary injunction *ex parte*.⁷ Temporary injunctions

¹ Section 741.28, F.S., defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

² Section 741.30(1)(a), F.S.

³ Section 741.30(3)(a), F.S.

⁴ Section 741.30(4), F.S.

⁵ Section 741.30(6)(a), F.S. Either party may move the court to modify or dissolve an injunction at any time pursuant to s. 741.30(6)(c) and (10), F.S.

⁶ *Id.*

⁷ Pursuant to s. 741.30(5), F.S., the court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, and providing the petitioner a temporary parenting plan.

are only effective for a fixed period that cannot exceed 15 days.⁸ The hearing on the petition must be set for a date on or before the date when the temporary injunction expires.⁹

Repeat, Dating, and Sexual Violence

Section 784.046, F.S., governs the issuance of injunctions against repeat violence,¹⁰ dating violence,¹¹ and sexual violence.¹² This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

Stalking and Cyberstalking

Section 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

Violation of an Injunction

A respondent violates the terms of an injunction for protection and a foreign protection order against domestic violence, repeat, dating or sexual violence, or stalking or cyberstalking by willfully:

- Refusing to vacate the dwelling that the parties share;¹³
- Going to, or is within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Committing an act of domestic violence against the petitioner;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's car; or

⁸ Section 741.30(5)(c), F.S.

⁹ Pursuant to s. 741.30(5)(c), F.S., the court may grant a continuance of the hearing for good cause, which may include obtaining service of process. A temporary injunction must be extended, if necessary, during any period of continuance.

¹⁰ Section 784.046(1)(b)(a), F.S., defines "repeat violence" as two incidents of violence or stalking committed by the respondent, one of which must have been within six months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.

¹¹ Section 784.046(1)(d), F.S., defines "dating violence" as violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. The existence of such a relationship is determined by considering the following factors: a dating relationship must have existed within the past six months; the nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and the persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship.

¹² Section 784.046(1)(c), F.S., defines "sexual violence" as any one incident of: sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or any other forcible felony wherein a sexual act is committed or attempted.

¹³ This provision does not apply to injunctions for protection against stalking or cyberstalking pursuant to s. 784.0487, F.S.

- Refusing to surrender firearms or ammunition if ordered to do so by the court.¹⁴

A court can enforce a violation of an injunction for protection through civil or criminal contempt proceedings, or the state attorney may prosecute the violation as a first degree misdemeanor.¹⁵

Currently, a person who violates an injunction for protection or a foreign protection order commits a first degree misdemeanor, regardless of how many times the person has been convicted of this offense.¹⁶ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine.¹⁷

III. Effect of Proposed Changes:

Currently, a person who violates an injunction for protection or a foreign protection order commits a first degree misdemeanor. The bill amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., to enhance the criminal penalty to a third degree felony for a person who has two or more convictions for violating an injunction or foreign protection order and who subsequently commits a violation of any injunction or foreign protection order against the same victim. A third degree felony is punishable by probation or up to a maximum of five years in prison and up to a \$5,000 fine

The bill defines “conviction” to mean a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

The bill reenacts ss. 741.30, 741.315, 784.0485, and 901.15, F.S., to incorporate the changes made by this bill.

The bill is effective October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁴ Sections 741.31(4)(a), 784.047, and 784.0487(4), F.S.

¹⁵ Section 741.30(9)(a), F.S.

¹⁶ *Supra* note 14.

¹⁷ See ss. 775.082(4)(a) and 775.083(1)(d), F.S.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met in October 2015, and estimated that SB 380, as filed, would have a positive indeterminate prison bed impact.¹⁸ This means that the bill will increase the number of inmates incarcerated at the Department of Corrections, but the amount of the increase cannot be determined. PCS/CS 380 likely would have a similar impact.

The FDLE reported that in Fiscal Year 2014-2015, there were 210 convictions for repeat offenders violating ss. 741.31, 784.047, or 784.0487, F.S. The number of these convictions that were third or subsequent violations is not known. The incarceration rate for unranked third degree felonies was 10% in Fiscal Year 2014-2015, but it is possible that the nature of this offense and the fact that it must be at least the third conviction may result in a higher than average incarceration rate.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 741.30, 741.31, 741.315, 784.047, 784.0485, 784.0487, and 901.15 of the Florida Statutes.

¹⁸ The Florida Legislature, Office of Economic and Demographic Research, Criminal Justice Impact Conference, 2016 Narrative Analysis and Adopted Impacts, SB 380 (October 28, 2015).

¹⁹ *Id.*

IX. Additional Information:

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

CS by Fiscal Policy on January 27, 2016:

As recommended by the Appropriations Subcommittee on Criminal and Civil Justice, the committee substitute:

- Provides that a third or subsequent violation for which the penalty is elevated to a third degree felony may be for violation of any injunction or foreign protection order against the same victim.
- Republishes certain sections of the Florida Statutes to incorporate amendments made in the bill.

- B. **Amendments:**

None.

By Senator Abruzzo

25-00301A-16

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1 A bill to be entitled
 2 An act relating to violation of an injunction for
 3 protection; amending ss. 741.31, 784.047, and
 4 784.0487, F.S.; providing enhanced criminal penalties
 5 for a third or subsequent violation of an injunction
 6 for protection against specified acts of violence or a
 7 foreign protection order issued under specified
 8 provisions; providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Subsection (4) of section 741.31, Florida
 13 Statutes, is amended to read:
 14 741.31 Violation of an injunction for protection against
 15 domestic violence.—
 16 (4) (a) A person who willfully violates an injunction for
 17 protection against domestic violence issued pursuant to s.
 18 741.30, or a foreign protection order accorded full faith and
 19 credit pursuant to s. 741.315, by:
 20 1. Refusing to vacate the dwelling that the parties share;
 21 2. Going to, or being within 500 feet of, the petitioner's
 22 residence, school, place of employment, or a specified place
 23 frequented regularly by the petitioner and any named family or
 24 household member;
 25 3. Committing an act of domestic violence against the
 26 petitioner;
 27 4. Committing any other violation of the injunction through
 28 an intentional unlawful threat, word, or act to do violence to
 29 the petitioner;

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30 5. Telephoning, contacting, or otherwise communicating with
 31 the petitioner directly or indirectly, unless the injunction
 32 specifically allows indirect contact through a third party;
 33 6. Knowingly and intentionally coming within 100 feet of
 34 the petitioner's motor vehicle, whether or not that vehicle is
 35 occupied;
 36 7. Defacing or destroying the petitioner's personal
 37 property, including the petitioner's motor vehicle; or
 38 8. Refusing to surrender firearms or ammunition if ordered
 39 to do so by the court
 40
 41 commits a misdemeanor of the first degree, punishable as
 42 provided in s. 775.082 or s. 775.083, except as provided in
 43 paragraph (c).
 44 (b)1. It is a violation of s. 790.233, and a misdemeanor of
 45 the first degree, punishable as provided in s. 775.082 or s.
 46 775.083, for a person to violate a final injunction for
 47 protection against domestic violence by having in his or her
 48 care, custody, possession, or control any firearm or ammunition.
 49 2. It is the intent of the Legislature that the
 50 disabilities regarding possession of firearms and ammunition are
 51 consistent with federal law. Accordingly, this paragraph shall
 52 not apply to a state or local officer as defined in s.
 53 943.10(14), holding an active certification, who receives or
 54 possesses a firearm or ammunition for use in performing official
 55 duties on behalf of the officer's employing agency, unless
 56 otherwise prohibited by the employing agency.
 57 (c) A person who has two or more prior convictions for
 58 violation of an injunction and who commits any third or

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59 subsequent violation commits a felony of the third degree,
 60 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 61 For purposes of this paragraph, the term "conviction" means a
 62 determination of guilt that is the result of a plea or a trial,
 63 regardless of whether adjudication is withheld or a plea of nolo
 64 contendere is entered.

65 Section 2. Section 784.047, Florida Statutes, is amended to
 66 read:

67 784.047 Penalties for violating protective injunction
 68 against violators.-

69 (1) A person who willfully violates an injunction for
 70 protection against repeat violence, sexual violence, or dating
 71 violence, issued pursuant to s. 784.046, or a foreign protection
 72 order accorded full faith and credit pursuant to s. 741.315 by:

73 (a)(1) Refusing to vacate the dwelling that the parties
 74 share;

75 (b)(2) Going to, or being within 500 feet of, the
 76 petitioner's residence, school, place of employment, or a
 77 specified place frequented regularly by the petitioner and any
 78 named family or household member;

79 (c)(3) Committing an act of repeat violence, sexual
 80 violence, or dating violence against the petitioner;

81 (d)(4) Committing any other violation of the injunction
 82 through an intentional unlawful threat, word, or act to do
 83 violence to the petitioner;

84 (e)(5) Telephoning, contacting, or otherwise communicating
 85 with the petitioner directly or indirectly, unless the
 86 injunction specifically allows indirect contact through a third
 87 party;

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88 (f)(6) Knowingly and intentionally coming within 100 feet
 89 of the petitioner's motor vehicle, whether or not that vehicle
 90 is occupied;

91 (g)(7) Defacing or destroying the petitioner's personal
 92 property, including the petitioner's motor vehicle; or

93 (h)(8) Refusing to surrender firearms or ammunition if
 94 ordered to do so by the court,

95
 96 commits a misdemeanor of the first degree, punishable as
 97 provided in s. 775.082 or s. 775.083, except as provided in
 98 subsection (2).

99 (2) A person who has two or more prior convictions for
 100 violation of an injunction and who commits any third or
 101 subsequent violation commits a felony of the third degree,
 102 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 103 For purposes of this subsection, the term "conviction" means a
 104 determination of guilt that is the result of a plea or a trial,
 105 regardless of whether adjudication is withheld or a plea of nolo
 106 contendere is entered.

107 Section 3. Subsection (4) of section 784.0487, Florida
 108 Statutes, is amended to read:

109 784.0487 Violation of an injunction for protection against
 110 stalking or cyberstalking.-

111 (4) (a) A person who willfully violates an injunction for
 112 protection against stalking or cyberstalking issued pursuant to
 113 s. 784.0485, or a foreign protection order accorded full faith
 114 and credit pursuant to s. 741.315, by:

115 1.(a) Going to, or being within 500 feet of, the
 116 petitioner's residence, school, place of employment, or a

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117 specified place frequented regularly by the petitioner and any
 118 named family members or individuals closely associated with the
 119 petitioner;

120 ~~2.(b)~~ Committing an act of stalking against the petitioner;

121 ~~3.(c)~~ Committing any other violation of the injunction
 122 through an intentional unlawful threat, word, or act to do
 123 violence to the petitioner;

124 ~~4.(d)~~ Telephoning, contacting, or otherwise communicating
 125 with the petitioner, directly or indirectly, unless the
 126 injunction specifically allows indirect contact through a third
 127 party;

128 ~~5.(e)~~ Knowingly and intentionally coming within 100 feet of
 129 the petitioner's motor vehicle, whether or not that vehicle is
 130 occupied;

131 ~~6.(f)~~ Defacing or destroying the petitioner's personal
 132 property, including the petitioner's motor vehicle; or

133 ~~7.(g)~~ Refusing to surrender firearms or ammunition if
 134 ordered to do so by the court,

135

136 commits a misdemeanor of the first degree, punishable as
 137 provided in s. 775.082 or s. 775.083, except as provided in
 138 paragraph (b).

139 (b) A person who has two or more prior convictions for
 140 violation of an injunction and who commits any third or
 141 subsequent violation commits a felony of the third degree,
 142 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 143 For purposes of this paragraph, the term "conviction" means a
 144 determination of guilt that is the result of a plea or a trial,
 145 regardless of whether adjudication is withheld or a plea of nolo

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146 contendere is entered.

147 Section 4. This act shall take effect October 1, 2016.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Health and Human
Services
Communications, Energy, and Public Utilities
Community Affairs
Fiscal Policy
Regulated Industries

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Chair*

SENATOR JOSEPH ABRUZZO

Minority Whip
25th District

January 21st, 2016

The Honorable Anitere Flores

413 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairwoman Flores:

I respectfully request **Senate Bill 380, Violation of an Injunction for Protection**, be considered for placement on the Fiscal Policy committee agenda. This piece of legislation provides enhanced criminal penalties for a third or subsequent violation of an injunction for protection against domestic violence, repeat violence, sexual violence, dating violence, stalking or cyberstalking.

Thank you in advance for your consideration. Please feel free to notify me if I can provide you with any additional information.

Sincerely,

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

Joseph Abruzzo

Cc: Jennifer Hrdlicka, *Staff Director*

REPLY TO:

- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774 FAX: (888) 284-6495
- 110 Dr. Martin Luther King, Jr. Boulevard, Belle Glade, Florida 33430-3900 (561) 829-1410
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

ANDY GARDINER
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)

SB 380
Bill Number (if applicable)

Meeting Date _____

Topic Injunctions

Amendment Barcode (if applicable) _____

Name Jeanne Howard

Job Title Assistant State Attorney

Address 401 N. Dixie Hwy

Phone 561-355-7100

Street

WPP FL 33401

Email jhoward@sais.org

City

State

Zip

Speaking: For Against Information

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

Representing State Attorney Dave Aronberg and Florida Prosecutors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1.26.16

Meeting Date

380

Bill Number (if applicable)

Topic Protection Injunction

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe St. Ste. 204

Phone 577-3032

Street

Tall

City

FL

State

32301

Zip

Email barney@smart
justicealliance.org

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

01-27-16

Meeting Date

SB 0380

Bill Number (if applicable)

Topic Violation of an Injunction for Protection

Amendment Barcode (if applicable)

Name Charles Brown

Job Title Captain - Volusia County Sheriff's office / FSA

Address 123 W Indian Ave

Street

Phone 386-248-1777

Deland FL 32720

City

State

Zip

Email cbrown@veso.us

Speaking: For Against Information

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

Representing Volusia County Sheriff's office / F.S.A.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
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 Fiscal Policy

BILL: CS/CS/CS/SB 618

INTRODUCER: Fiscal Policy Committee; Community Affairs Committee; Criminal Justice Committee;
and Senator Evers

SUBJECT: Prearrest Diversion Programs

DATE: January 28, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 618 creates s. 901.40, F.S., to encourage local communities and public or private educational institutions to implement a prearrest diversion program. The bill prescribes a model program that local communities may adopt. The program allows a law enforcement officer, at the officer's sole discretion, to issue a civil citation to an adult who commits an eligible misdemeanor offense, admits to committing the offense, has not previously been arrested, and has not received a civil citation. An adult is ineligible for a civil citation if the misdemeanor involves a victim and the victim objects to the issuance of the citation.

An adult who agrees to a civil citation must successfully complete a program that includes interventions and community service hours. If the adult successfully completes the program, an arrest record may not be associated with the offense. If the adult does not successfully complete the program, the law enforcement agency that issued the citation shall criminally charge the adult for the original offense and refer the case to the state attorney to determine if prosecution is appropriate.

The bill has no impact on state funds. The creation of an adult civil citation program could result in cost savings for local governments. See Section V, Fiscal Impact Statement.

II. Present Situation:

Through the years the term “diversion” has been used broadly to refer to programs that allow an individual to avoid incarceration but still result in a criminal conviction. In recent years the term diversion has been used to refer to programs that address an individual’s behavior but do not result in a conviction. At either end of the diversion spectrum, the overriding goals are the same – to maximize the opportunity for success and minimize the likelihood of recidivism.¹

An example of diversion is prearrest diversion. One form of prearrest diversion is a civil citation program where a law enforcement officer may issue a civil citation to an individual who commits an eligible misdemeanor offense (as determined by the prearrest diversion program), meets other eligibility requirements, and agrees to participate in and successfully complete a program (interventions and sanctions, including community service hours). If the individual successfully completes the program, he or she does not have an arrest or arrest record.²

Juvenile civil citation programs are in operation throughout the state and are established by Florida law.³ Leon County also operates an adult civil citation program.⁴ Florida law does not specifically address adult civil citation programs or other prearrest diversion programs for adults.

Juvenile Civil Citation

Section 985.12, F.S., establishes a juvenile civil citation program for the purpose of providing an alternative to custody by the Department of Juvenile Justice (DJJ) for children who commit nonserious delinquent acts. The DJJ must “encourage and assist in the implementation and improvement of civil citation programs or other similar diversion programs around the state.”⁵ These programs are discretionary⁶ and exist at the local level with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency involved. Civil citation programs require the youth to complete no more than 50 community service hours, and may require participation in intervention services appropriate to the identified needs of the youth, including family counseling, urinalysis monitoring, and substance abuse and mental health treatment services.⁷

A law enforcement officer is authorized to issue a civil citation to a youth who admits having committed a misdemeanor. At the time a civil citation is issued, the law enforcement officer

¹ Center for Health and Justice at TASC, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives* (December 2013), pg. 6 and 8, available at http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf (last visited January 21, 2016).

² Civil Citation Network, *Adult Civil Citation Program*, (revised September 2013), pg. 2, available at <http://www.discvillage.com/DOCS/AdultCivilCitationBrochure.pdf> (last visited January 21, 2016).

³ Section 985.12, F.S.

⁴ Sean Rossman, Tallahassee Democrat, *Adult Civil-Citations Program Announced*, (November 1, 2012) available at <http://www.tallahassee.com/article/20121101/NEWS01/311010036/Adult-civil-citations-program-announced> (last visited January 21, 2016).

⁵ Section 985.12(1), F.S.

⁶ See example, Nineteenth Judicial Circuit Court of Florida, Programs and Services, Juvenile, Civil Citation, *Juvenile Programs – Civil Citation*, available at <http://www.circuit19.org/programs/prgjuvenilecc.html> (last visited January 21, 2016).

⁷ Section 985.12(1), F.S.

must advise the youth that he or she has the option of refusing the civil citation and of being referred to the DJJ. The youth may refuse the civil citation at any time before completion of the work assignment.⁸

The youth is required to report to a community service performance monitor within 7 working days after the civil citation has been issued, and must complete at least 5 community service hours per week. If the youth fails to timely report or complete a work assignment, fails to timely comply with assigned intervention services, or commits a subsequent misdemeanor, the law enforcement officer must issue a report to the DJJ alleging that the youth has committed a delinquent act, thereby initiating formal judicial processing.⁹

Adult Civil Citation

The American Bar Association has observed: “Although Florida’s civil citation programs are focused on juveniles, the guidelines and principles inherent in the programs are generally applicable to adults, as well.”¹⁰ Leon County currently operates an adult civil citation program (ACCP).

The Leon County Adult Civil Citation Process

A law enforcement office has the discretion to issue a civil citation once probable cause has been determined to arrest an adult and the officer has advised the adult of his or her Miranda rights and obtained an admission.¹¹ The law enforcement officer must then verify whether the adult meets all of the following criteria:

- The offense is one of the following misdemeanor offenses:
 - Possession of alcohol by a person under 21 years of age;
 - Possession of less than 20 grams of marijuana;
 - Possession of drug paraphernalia;
 - An open house party violation;
 - Selling or giving alcoholic beverages to a minor;
 - Criminal mischief (restitution may not exceed \$50);¹²
 - Trespass;
 - Non-domestic battery or assault;
 - Petit theft (restitution may not exceed \$50); or
 - Disorderly conduct.
- The adult resides within the Second Judicial Circuit;¹³ and

⁸ Section 985.12(6), F.S.

⁹ Section 985.12(4) and (5), F.S.

¹⁰ American Bar Association, Criminal Justice Section, *State Policy Implementation Project*, pg. 5, available at http://www.americanbar.org/content/dam/aba/administrative/criminal_justice/spip_civilcitations.authcheckdam.pdf (last visited January 21, 2015).

¹¹ Civil Citation Network, Pilot Adult Civil Citation Program, *Implementation Guide*, Second Judicial Circuit of Florida, (August 2013), pg. 4, available at <http://www.civilcitationnetwork.com/docs/Implementation-Guide.pdf> (last visited January 21, 2016).

¹² Restitution may be a sanction or condition of diversion. *Supra* note 11 at 3.

¹³ The Second Judicial Circuit includes the following counties: Franklin; Gadsden; Jefferson; Leon; Liberty; and Wakulla. *See* Florida’s Second Judicial Circuit, *Court Map*, available at <http://2ndcircuit.leoncountyfl.gov/> (last visited January 21, 2016). *Supra* note 11 at 2-3.

- The adult is a first-time adult offender (no previous arrest as an adult and no previous adult civil citation).¹⁴

If the officer determines that the adult is eligible to participate in the ACCP and that a civil citation is appropriate, the officer then must explain to the adult that participation in the ACCP is voluntary.¹⁵ If the adult chooses not to participate in the ACCP, the officer either issues a Notice to Appear (NTA) or transports the adult to the jail for formal booking.¹⁶

If the adult agrees to participate in the ACCP, the officer issues a civil citation and the adult has 7 days to report to DISC Village, Inc.,¹⁷ for intake and assessment. Based on the results of the assessment and initial drug screening, the provider creates an individualized intervention plan. The intervention plan includes:

- Counseling sessions (at least three with a behavioral health specialist);
- Drug screening;
- Online educational intervention modules;
- Community service hours; and
- A program fee.¹⁸

If the adult successfully completes all sanctions and intervention services, the social services provider notifies the referring law enforcement agency and the person does not have an arrest record.¹⁹

If the participant does not successfully complete the program, the referring law enforcement agency is notified and then contacts the adult and attempts to issue a NTA. If the adult does not comply with arrangements to receive a NTA, an arrest affidavit and warrant are submitted. Subsequently, the adult may face prosecution if the state attorney determines that prosecution is appropriate.²⁰

Statistics on the Leon County Adult Civil Citation Program

Since March of 2013, approximately 1,000 adult civil citations have been issued by the Tallahassee Police Department and Leon County Sheriff's Office.²¹ From March of 2013 to

¹⁴ A prior juvenile civil citation does not make the adult ineligible. *Supra* note 11 at 3.

¹⁵ *Supra* note 11 at 4.

¹⁶ *Supra* note 11 at 3.

¹⁷ DISC Village, Inc., is a non-profit social services provider. DISC Village, Inc., also operates the juvenile assessment center and juvenile civil citation program that serve counties in the Second Judicial Circuit. *See Disc Village*, available at <http://www.discvillage.com/home.html> (last visited January 21, 2016).

¹⁸ *Supra* note 11 at 5, 9-10, and 12.

¹⁹ *Id.* at 12.

²⁰ *Id.*

²¹ FSJA Adult Civil Citation, *SB 618 QA for Senate Staff*, (revised November 5, 2015), provided by Greg Frost, President of the Civil Citation Network. (On file with the Senate Committee on Fiscal Policy).

August of 2015, approximately 850 adult civil citations were issued.²² Fifty-four percent of the citations issued were for petit theft.²³

Approximately 80 percent of the ACCP participants successfully completed the program. The successful completion rate for each offense was:

- 93 percent for criminal mischief;
- 90 percent for possession of alcohol by a person under 21 years of age;
- 84 percent for petit theft;
- 80 percent for possession of less than 20 grams of marijuana;
- 68 percent for non-domestic battery or assault; and
- 68 percent for other offenses.²⁴

Of those who successfully completed the ACCP, the rearrest rate was 6 percent. Of those who did not successfully complete the program, the rearrest rate was 43 percent.²⁵

III. Effect of Proposed Changes:

The bill creates s. 901.40, F.S., to encourage local communities and public or private educational institutions to implement a prearrest diversion program. The bill provides a framework for a model adult civil citation program. The program allows a law enforcement officer, at the officer's sole discretion, to issue a civil citation to an adult who:

- Commits an eligible misdemeanor offense (as determined by the program);
- Admits to committing the offense; and
- Has not previously been arrested;
- Has not previously received an adult civil citation. An adult is ineligible for a civil citation if the misdemeanor involves a victim and the victim objects to the issuance of the citation.

The model program requires a steering committee to develop policies and procedures for the program, including, eligibility criteria, program implementation and operation, and the fee to be paid by adults participating in the program. The steering committee must be composed of:

- Representatives of the law enforcement agencies participating in the program;
- A representative of the program services provider;
- A public defender or his or her designee;
- A state attorney or his or her designee;
- A clerk of the circuit court or his or her designee; and
- Other interested stakeholders.

²² *Id.* Information regarding ACCP participants comes from data provided by DISC Village, Inc. This data was aggregated by Dr. Albert Kopak, an assistant professor with the Department of Criminology and Criminal Justice, Western Carolina University.

²³ *Id.* Other offenses: Possession of less than 20 grams of marijuana (24 percent); possession of alcohol by a person under 21 year of age (9 percent); non-domestic battery or assault (4 percent); possession of drug paraphernalia (3 percent); criminal mischief (2 percent); trespass (1 percent); and other offenses (1 percent).

²⁴ *Id.*

²⁵ *Id.*

The misdemeanor offenses that qualify for a prearrest diversion program include, but are not limited to:

- Disorderly conduct;
- Open house parties;
- Petit theft of property valued at less than \$50;
- Possession of alcohol by a person younger than 21 years of age;
- Possession of 20 grams or less of cannabis;
- Selling or providing alcoholic beverages to a minor; and
- Trespass in structure or conveyance.

The model program requires an adult who receives a civil citation to report for intake and be provided appropriate assessment, intervention, education, and behavioral health care services. While in the program, the adult must complete the required community service hours and pay restitution.

The model program provides that if the adult successfully completes the program, an arrest record may not be associated with the offense. If the adult does not successfully complete the program, the law enforcement agency that issued the citation must criminally charge the adult for the original offense and refer the case to the state attorney to determine if prosecution is appropriate.

Counties and municipalities are not preempted from enacting noncriminal sanctions for a violation of an ordinance or other violation. Counties, municipalities, and public or private educational institutions are not preempted from creating their own models for a prearrest diversion program for adults. However, if a prearrest diversion program is implemented, then the program is required to share information with other programs.

The bill is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not mandate that local governments create a prearrest diversion program for adults; it only “encourages” the creation of such a program. Additionally, criminal laws are excluded from Article VII, section 18 of the Florida Constitution, relating to state mandates that affect revenues and expenditures of local governments.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Under the Leon County model, an eligible adult who chooses to participate in the ACCP must pay a program fee, but this fee may be waived if the participant does not have the means to pay it.

C. Government Sector Impact:

The bill has no impact on state funds.

The bill does not mandate that local governments or public or private educational institutions create a prearrest diversion program for adults. Under the Leon County model, the adult civil citation program is self-sustaining (paid for by program fees). Creation of an adult civil citation program could result in cost savings (e.g., reduced detention/confinement costs and booking/arrest-processing costs), depending on the number of eligible offenses, other eligibility criteria chosen, the pool of eligible adults, the number of participating law enforcement agencies, the use of civil citations by those agencies, and any impact the program may have in reducing arrests.

If a prearrest diversion program is implemented, then the program is required to share information with other programs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Florida law does not specifically address adult civil citation programs or other prearrest diversion programs for adults. If the bill were to become law, the law would specifically indicate that the Legislature encourages the creation of such programs.

The approach taken by the bill affords law enforcement officers complete discretion in the decision to arrest or issue a civil citation. The Florida Supreme Court has remarked that “the discretionary judgmental power granted a police officer to make an arrest and enforce the law” is “considered basic to the police power function of governmental entities and is recognized as critical to a law enforcement officer’s ability to carry out his duties.”²⁶

VIII. Statutes Affected:

This bill creates section 901.40 of the Florida Statutes.

²⁶ *Everton v. Willard*, 468 So.2d 936, 938 (Fla.1985).

IX. Additional Information:

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

CS/CS/CS by Fiscal Policy on January 27, 2016:

The CS:

- Requires, if a prearrest diversion program is implemented, that a program share information with other prearrest diversion programs;
- Clarifies when a civil citation may be issued under the model program;
- Requires an adult who receives a civil citation under the model program to pay restitution as part of his or her participation;
- Adds a public defender, state attorney and clerk of the circuit court to the steering committee that is recommended for the model program; and
- Makes technical changes.

CS/CS by Community Affairs on January 19, 2016:

Recommends a steering committee to help develop policies and procedures for the prearrest diversion program; removes simple battery and assault from the list of qualifying offenses; clarifies that a county or municipality may create its own model for a program; and provides that a county, municipality, or public or private entity is not preempted from enacting noncriminal sanctions for a violation of an ordinance or other violation.

CS by Criminal Justice on November 17, 2015:

- Encourages public or private educational institutions to implement a prearrest diversion program that affords certain adults who fulfill specified intervention and community service obligations the opportunity to avoid an arrest record.
- Authorizes the prearrest diversion program to determine eligible “misdemeanor” offenses rather than eligible “nonviolent” misdemeanor offenses.
- Clarifies that an adult with a prior arrest as an adult is ineligible to receive a civil citation.
- Provides that an adult is ineligible to receive a civil citation if the misdemeanor involves a victim and the victim objects to the issuance of the citation.
- Provides that a prearrest diversion program shall also provide appropriate assessment, intervention, and education services to an adult in the program.
- Specifies some misdemeanor offenses the prearrest diversion program may wish to consider as eligible misdemeanor offenses.
- Clarifies that the law enforcement agency that issued a citation to an adult shall criminally charge the adult for the original offense if the adult does not successfully complete the prearrest diversion program and shall refer the case to the state attorney to determine if prosecution is appropriate.

B. Amendments:

None.

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



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/27/2016	.	
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	.	
	.	

The Committee on Fiscal Policy (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 43 - 87
and insert:
obligations. If a prearrest diversion program is implemented, the program must share information with other prearrest diversion programs.

(2) MODEL ADULT CIVIL CITATION PROGRAM.—Local communities and public or private educational institutions may adopt a program that does the following:



11 (a) Law enforcement officers, at their sole discretion, may
12 issue civil citations to certain adults who commit a qualifying
13 nonviolent misdemeanor offense listed in subsection (3). A civil
14 citation may be issued only if the adult admits that he or she
15 committed the offense and if the adult has not previously been
16 arrested and has not received an adult civil citation. However,
17 an adult may not be issued a civil citation if the nonviolent
18 misdemeanor offense involves a victim and the victim objects to
19 issuance of the civil citation.

20 (b) An adult who receives a civil citation shall report for
21 intake as required by the local prearrest diversion program and
22 shall be provided appropriate assessment, intervention,
23 education, and behavioral health care services. While in the
24 local prearrest diversion program, the adult shall perform
25 community service hours as specified by the local prearrest
26 diversion program. The adult shall pay restitution due to the
27 victim as a requirement of the prearrest diversion program. If
28 the adult does not successfully complete the prearrest diversion
29 program, the law enforcement agency that issued the civil
30 citation shall criminally charge the adult for the original
31 offense and refer the case to the state attorney to determine if
32 prosecution is appropriate. If the adult successfully completes
33 the program, an arrest record may not be associated with the
34 offense.

35 (c) A steering committee shall be created for the prearrest
36 diversion program to develop policies and procedures for the
37 program, including, but not limited to, eligibility criteria,
38 program implementation and operation, and the fee to be paid by
39 adults participating in the program. At a minimum, the steering



750328

40 committee must be composed of representatives of the law
41 enforcement agencies participating in the program, a
42 representative of the program services provider, and other
43 interested stakeholders.

44 (3) QUALIFYING OFFENSES.—Nonviolent misdemeanor offenses
45 that qualify for a prearrest diversion program include, but are
46 not limited to:

47 (a) Disorderly conduct in violation of s. 877.03.

48 (b) An open house party in violation of s. 856.015.

49 (c) Petit theft of property valued at less than \$50 in
50 violation of s. 812.014.

51 (d) Possession of alcohol by a person younger than 21 years
52 of age in violation of s. 856.015.

53 (e) Possession of 20 grams or less of cannabis in violation
54 of s. 893.13.

55 (f) Selling or providing alcoholic beverages to a minor in
56 violation of s. 562.11.

57 (g) Trespass in a structure or conveyance in violation of
58 s. 810.08.

59
60 ===== T I T L E A M E N D M E N T =====

61 And the title is amended as follows:

62 Delete lines 6 - 16

63 and insert:

64 for certain offenders; requiring that a prearrest
65 diversion program share information with other
66 prearrest diversion programs under certain
67 circumstances; authorizing law enforcement officers of
68 participating law enforcement agencies, at their sole



750328

69 discretion, to issue civil citations to adults under
70 specified circumstances; requiring an adult who is
71 issued a civil citation by a participating law
72 enforcement agency to report for intake as required by
73 the prearrest diversion program; requiring the
74 provision of appropriate behavioral health care
75 services; requiring that an adult who is issued a
76 civil citation fulfill a community service
77 requirement; requiring the adult to pay restitution to
78 a victim; providing for criminal prosecution of



271866

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/27/2016	.	
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	.	

The Committee on Fiscal Policy (Bradley) recommended the following:

1 **Senate Amendment to Amendment (750328)**

2

3 Delete line 42

4 and insert:

5 representative of the program services provider, a public
6 defender or his or her designee, a state attorney or his or her
7 designee, a clerk of the circuit court or his or her designee,
8 and other

By the Committees on Community Affairs; and Criminal Justice;
and Senator Evers

578-02306-16

2016618c2

A bill to be entitled

An act relating to prearrest diversion programs;
creating s. 901.40, F.S.; encouraging local
communities and public or private educational
institutions to implement prearrest diversion programs
for certain offenders; authorizing law enforcement
officers of participating law enforcement agencies, at
their sole discretion, to issue civil citations to
adults under specified circumstances; requiring an
adult who is issued a civil citation by a
participating law enforcement agency to report for
intake as required by the prearrest diversion program;
requiring the provision of appropriate behavioral
health care services; requiring that an adult who is
issued a civil citation fulfill a community service
requirement; providing for criminal prosecution of
adults who fail to complete the prearrest diversion
program; prohibiting an arrest record from being
associated with a certain offense for adults who
successfully complete the program; establishing a
steering committee for the prearrest diversion
program; providing duties and membership of the
committee; specifying the nonviolent misdemeanor
offenses that are eligible for the prearrest diversion
program; providing applicability; providing an
effective date.

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

Section 1. Section 901.40, Florida Statutes, is created to
read:

Page 1 of 4

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

578-02306-16

2016618c2

901.40 Prearrest diversion programs.—

(1) INTENT.—The Legislature encourages local communities
and public or private educational institutions to implement
prearrest diversion programs that afford certain adults who
fulfill specified intervention and community service obligations
the opportunity to avoid an arrest record. The Legislature does
not mandate that a particular prearrest diversion program for
adults be adopted but finds that the adoption of the model
provided in this section would allow certain adults to avoid an
arrest record while ensuring that those adults receive
appropriate intervention and fulfill community service
obligations. The Legislature further encourages that a prearrest
diversion program share information with other prearrest
diversion programs.

(2) MODEL ADULT CIVIL CITATION PROGRAM.—

(a) Law enforcement officers, at their sole discretion, may
issue civil citations to certain adults who commit a qualifying
nonviolent misdemeanor offense listed in subsection (3). A civil
citation may be issued only if the adult admits that he or she
committed the offense and if the adult has not previously
received a civil citation. However, an adult may not be issued a
civil citation if the nonviolent misdemeanor offense involves a
victim and the victim objects to issuance of the civil citation.

(b) An adult who receives a civil citation shall report for
intake as required by the local prearrest diversion program and
shall be provided appropriate assessment, intervention,
education, and behavioral health care services. While in the
local prearrest diversion program, the adult shall perform
community service hours as specified by the local prearrest

Page 2 of 4

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

578-02306-16

2016618c2

61 diversion program. If the adult does not successfully complete
 62 the prearrest diversion program, the law enforcement agency that
 63 issued the civil citation shall criminally charge the adult for
 64 the original offense and refer the case to the state attorney to
 65 determine if prosecution is appropriate. If the adult
 66 successfully completes the program, an arrest record may not be
 67 associated with the offense.

68 (c) A steering committee shall be created for the prearrest
 69 diversion program to develop policies and procedures for the
 70 program, including, but not limited to, eligibility criteria,
 71 program implementation and operation, and the fee to be paid by
 72 adults participating in the program. At a minimum, the steering
 73 committee shall be composed of representatives of the law
 74 enforcement agencies participating in the program, a
 75 representative of the program services provider, and other
 76 interested stakeholders.

77 (3) QUALIFYING OFFENSES.—Nonviolent misdemeanor offenses
 78 that qualify for a prearrest diversion program include, but are
 79 not limited to:

80 (a) Disorderly conduct.

81 (b) An open house party in violation of s. 856.015(2).

82 (c) Petit theft of stolen property valued at less than \$50.

83 (d) Possession of alcohol by a person younger than 21 years
 84 of age.

85 (e) Possession of 20 grams or less of cannabis.

86 (f) Selling or providing alcoholic beverages to a minor.

87 (g) Trespass in a structure or conveyance.

88 (4) APPLICABILITY.—This section does not preempt a county
 89 or municipality from enacting noncriminal sanctions for a

578-02306-16

2016618c2

90 violation of an ordinance or other violation, and does not
 91 preempt a county, a municipality, or a public or private
 92 educational institution from creating its own model for a
 93 prearrest diversion program for adults.

94 Section 2. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Flores
Chair, Committee on Fiscal Policy

Subject: Committee Agenda Request

January 19, 2016

Dear Senator Flores,

I respectfully request that **Senate Bill 618**, regarding **Prearrest Diversion Programs**, be placed on the:

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

C

A handwritten signature in cursive script that reads "Greg Evers".

Senator Greg Evers
Florida Senate, District 2

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/27/2016

Meeting Date

618

Bill Number (if applicable)

Topic Pre-Arrest Diversion

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Public Defender, 2nd Circuit

Address 301 S. Monroe Street

Phone 850.606.1000

Street

Tallahassee

Florida

32301

Email nancy.daniels@flpd02.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/27/16
Meeting Date

5B618
Bill Number (if applicable)

Topic PREARREST DIVERSION

Amendment Barcode (if applicable)

Name GREG FROST

Job Title PRESIDENT

Address 3333 W. PENSACOLA
Street

Phone 850-544-7350

TALLAHASSEE FL 32302
City State Zip

Email GREG@CIVILCITATION
NETWORK.COM

Speaking: For Against Information

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

Representing CIVIL CITATION NETWORK

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

27 Jan 2016
Meeting Date

618
Bill Number (if applicable)

Topic Adult Civil Citation

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Legislative Affairs

Address 2868 Mahan Dr
Street
Tallahassee FL 32308
City State Zip

Phone 878-2196

Email jill@fudaa.org

Speaking: For Against Information

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

Representing Florida Alcohol & Drug Abuse Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

01/27/16
Meeting Date

SB 0618
Bill Number (if applicable)

Topic PREARREST DIVERSION PROGRAMS

Amendment Barcode (if applicable)

Name LOU MARINO

Job Title LIEUTENANT - VOLUSIA COUNTY SHERIFF'S OFFICE

Address 123 WEST INDIANA AVENUE Phone (386) 248 1777

Street

DELAND, FL

City

State

32720

Zip

Email lmarino@vcsso.us

Speaking: For Against Information

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

Representing FLORIDA SHERIFF'S ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-27-16

Meeting Date

618

Bill Number (if applicable)

Topic CIVIL CITATIONS

Amendment Barcode (if applicable)

Name Laura Youmans

Job Title _____

Address _____

Phone _____

Street

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-26-16

Meeting Date

618

Bill Number (if applicable)

Topic Precarrest Diversion

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe, Ste. 201

Phone 577-3032

Street

Tall

City

FL

State

32301

Zip

barney@smart

Email justicealliance.org

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

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.



CIVIL CITATION NETWORK

Making a Positive Change in the Right Direction



Our Mission

The Civil Citation Network® is a non-profit organization created and supported through a private foundation. Our mission is to advocate the use of adult and juvenile civil citations with integrated intervention services. Communities across the country have access to the Network's research and evaluation services, data resources, integrated technology platform, and technical assistance related to implementation of civil citation programs. Through participating communities the law enforcement direct diversion model improves public safety and reduces criminal justice system costs. Equally important, individuals are held accountable for committing a minor crime without the life-long negative consequences of being arrested.



A Call for Reform

President's Task Force on 21st Century Policing

“Law enforcement agencies should consider adopting preferences for seeking ‘least harm’ resolutions, such as diversion programs or warnings and citations in lieu of arrest for minor infractions.”

American Bar Association

“The ABA urges states to implement civil citation programs for non-violent, minor misdemeanors to promote judicial efficiency and save taxpayer money.”

Florida Tax Watch

“The state should put in place the guidelines for an Adult Civil Citation program, patterned on the existing Juvenile Civil Citation program, which offers an alternative process to misdemeanor arrest for first-time nonviolent youth offenders. The adult program must include law enforcement discretion, as the responding officer is still in the best position to determine whether the use of civil citation is preferred to actual arrest.



Criminal Arrests Result in Collateral Damage and Racial Disparity

“Yet too often we see ordinary people, some even our neighbors, held for minor violations such as driving with a suspended license, public intoxication, or shoplifting because they cannot afford bail as low as \$500. Single parents may lose custody of their children, sole wage-earners in families, their jobs...”

[Center on Sentencing and Corrections. (February 2015) “Incarceration’s Front Door: The misuse of Jails in America,” Vera Institute of Justice.]

“Prosecutors, judges and defense counsel must pay more attention to the collateral consequences of convictions. In many jurisdictions, after an individual is convicted of an offense and completes his or her sentence (by serving time, paying a fine or completing probation or parole), the individual nevertheless faces a life sentence of disqualification and deprivation of educational, employment, housing and other opportunities. “

[American Bar Association and NAACP Legal Defense and Educational Fund: (July 2015) “Joint Statement on Eliminating Bias in the Criminal Justice System,” http://www.americanbar.org/content/dam/aba/images/abanews/aba-ldf_statement.pdf



Criminal Arrests Result in Collateral Damage and Racial Disparity

“The War on Marijuana in Black and White.”
Comparison of Marijuana arrest rates in Florida for
blacks and whites:



[www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf]

All counties with racial disparities
above the national average (3.73)



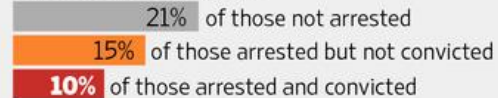


Economic Erosion as a Result of Arrests

Impact | What happens after arrest

A national survey of youth indicates that being arrested by the age of 23, regardless of whether convicted, correlates with negative outcomes in one's life. Below, indicators of respondents who have been arrested (convicted and not convicted) compared with those not arrested.

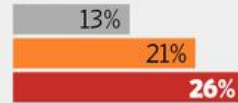
Own a home at age 25



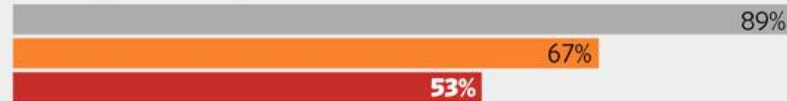
Median income at age 25



Household income below poverty line at age 25



With high school diploma (or more)



With college degree (or more)



Source: Tia Stevens Andersen of University of South Carolina's analysis of a National Longitudinal Survey of Youth conducted in 1997-2010 by the Labor Department which studied 8,984 people born in 1980-84

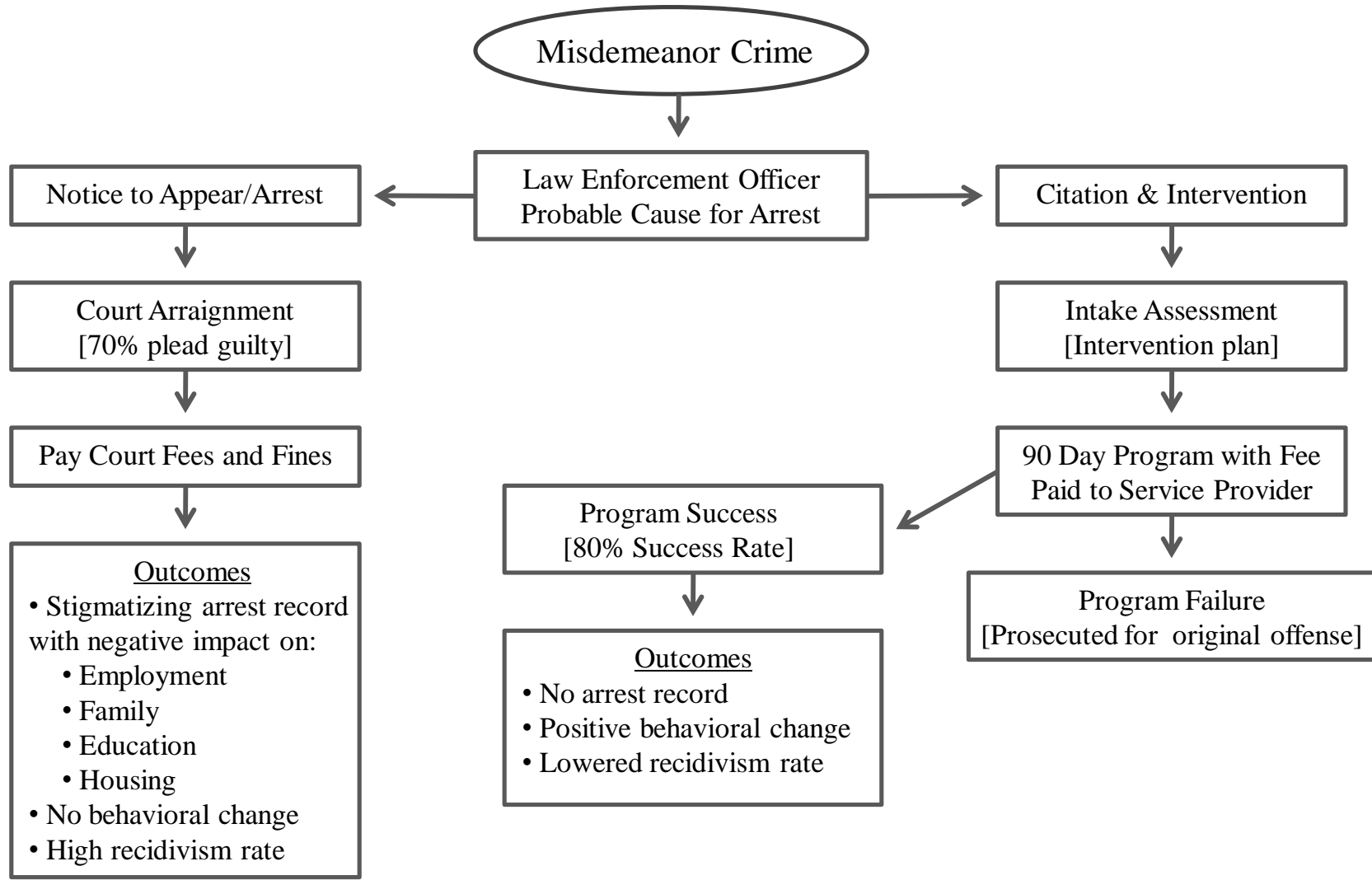
The Wall Street Journal

The Center for American Progress in their report, *"One Strike and You're Out,"* estimates that employment losses due to criminal records resulted in a \$65 billion loss in gross domestic product during 2008.

As Arrest Records Rise Americans Find Consequences can Last a Lifetime: Wall Street Journal, August 18, 2014. [<http://www.wsj.com/articles/as-arrest-records-rise-americans-find-consequences-can-last-a-lifetime-1408415402>]



Law Enforcement Direct Diversion Model





Law Enforcement Process

- Law enforcement officer makes contact with offender
- Offender is cooperative, honest, and admits wrongdoing
- Law enforcement officer has the discretion to issue a civil citation
- Offender is issued a citation and assigned community service by the law enforcement officer

Former Florida Supreme Court Chief Justice Gerald Kogan, “The future consequences of even a minor criminal conviction can change the course of a defendant’s life.”

Three Minute Justice: Haste and Waste in Florida’s Misdemeanor Courts



Intervention Process

- Participant must contact community provider agency within seven days
- Intake and assessment are completed
- Evidenced-based assessment tools and drug screenings are used as part of the initial assessment
 - ✓ Criminogenic behavioral factors
 - ✓ Substance use disorders
 - ✓ Mental health illnesses
- Based on the participant's assessment an individualized intervention plan is developed



Individualized Intervention Plan

- Counseling sessions – at least three with behavioral health specialist
 - ✓ Cognitive behavioral therapy
 - ✓ Motivational interviewing
- Drug screening
 - ✓ All participants have at least one screening
 - ✓ Depending on charge and results may have up to three
- Online intervention modules
 - ✓ Drug education
 - ✓ Anger management
 - ✓ Decision making
 - ✓ Petit theft
- Community service hours
 - ✓ Assigned by law enforcement officer – up to 25 hours
 - ✓ Case manager monitors and may increase hours
- Program fee
 - ✓ Payments made by participants, flexible payment system, and a payment waiver may be requested



Economic Benefits of Citations Vs. Citations



A National Institute of Health study* found that the criminal justice system cost to process a simple theft offense is \$2,879.

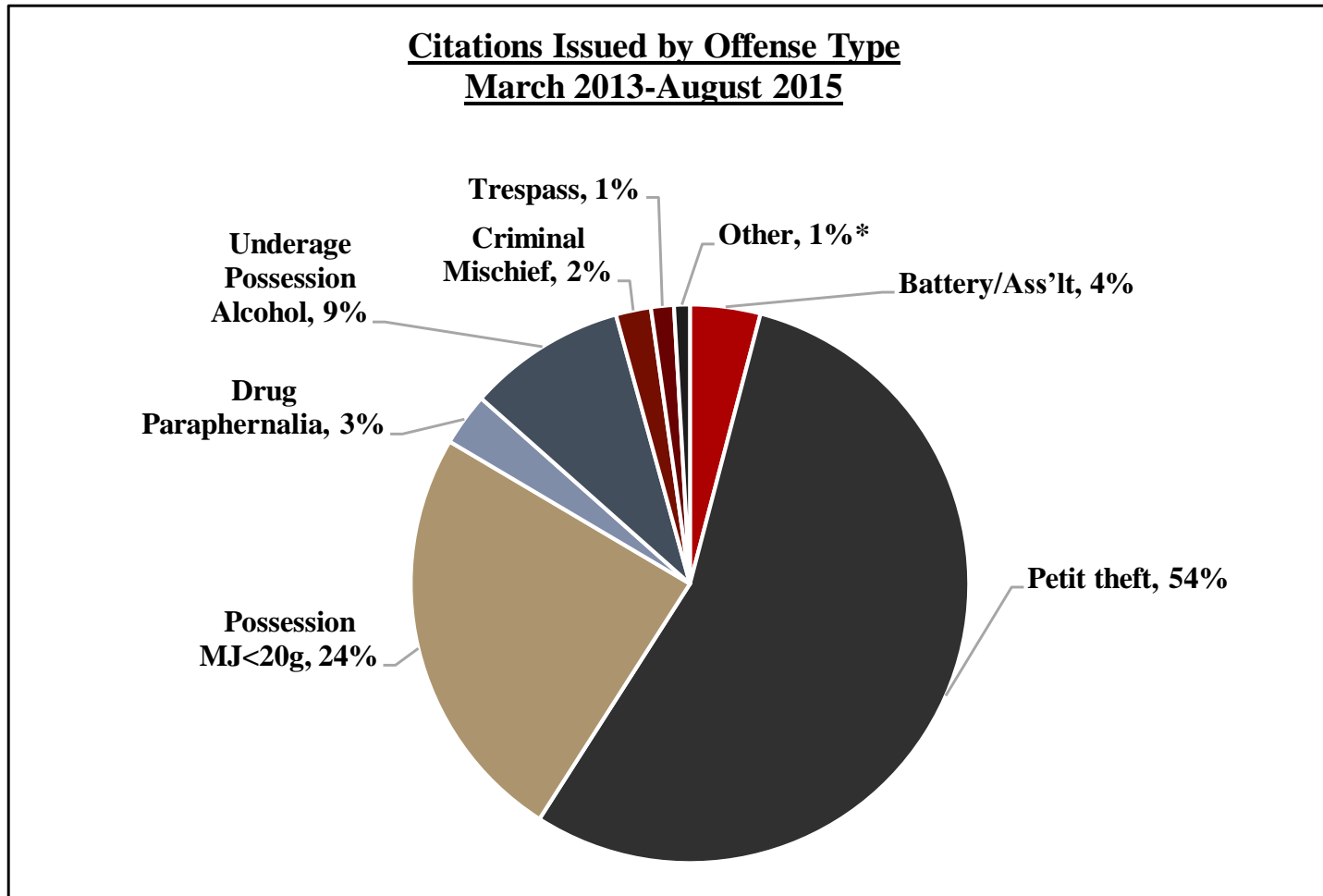
* *The Cost of Crime to Society: New Crime Specific Estimates for Policy and Program Evaluation – Drug Alcohol Depend.* 2010, April 1: 98-109
[<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2835847>]



The Civil Citation Network estimates the average cost to issue an adult civil citation is approximately \$200 – Law enforcement agency time to issue, monitor, and close-out successful citations.



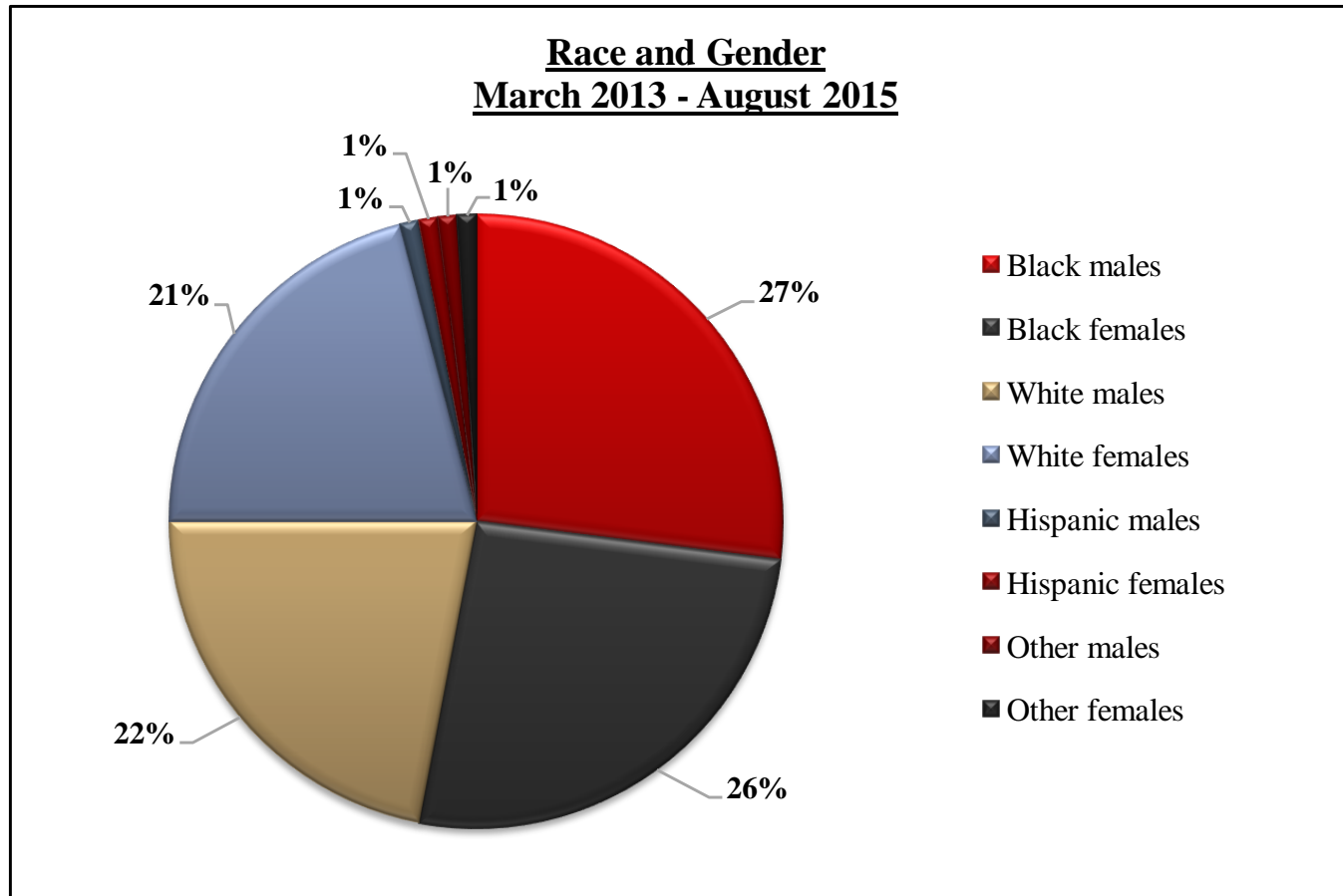
Tallahassee/Leon County Program Outcomes



* "Other" category includes disorderly conduct, open house party, serving alcohol to minor.

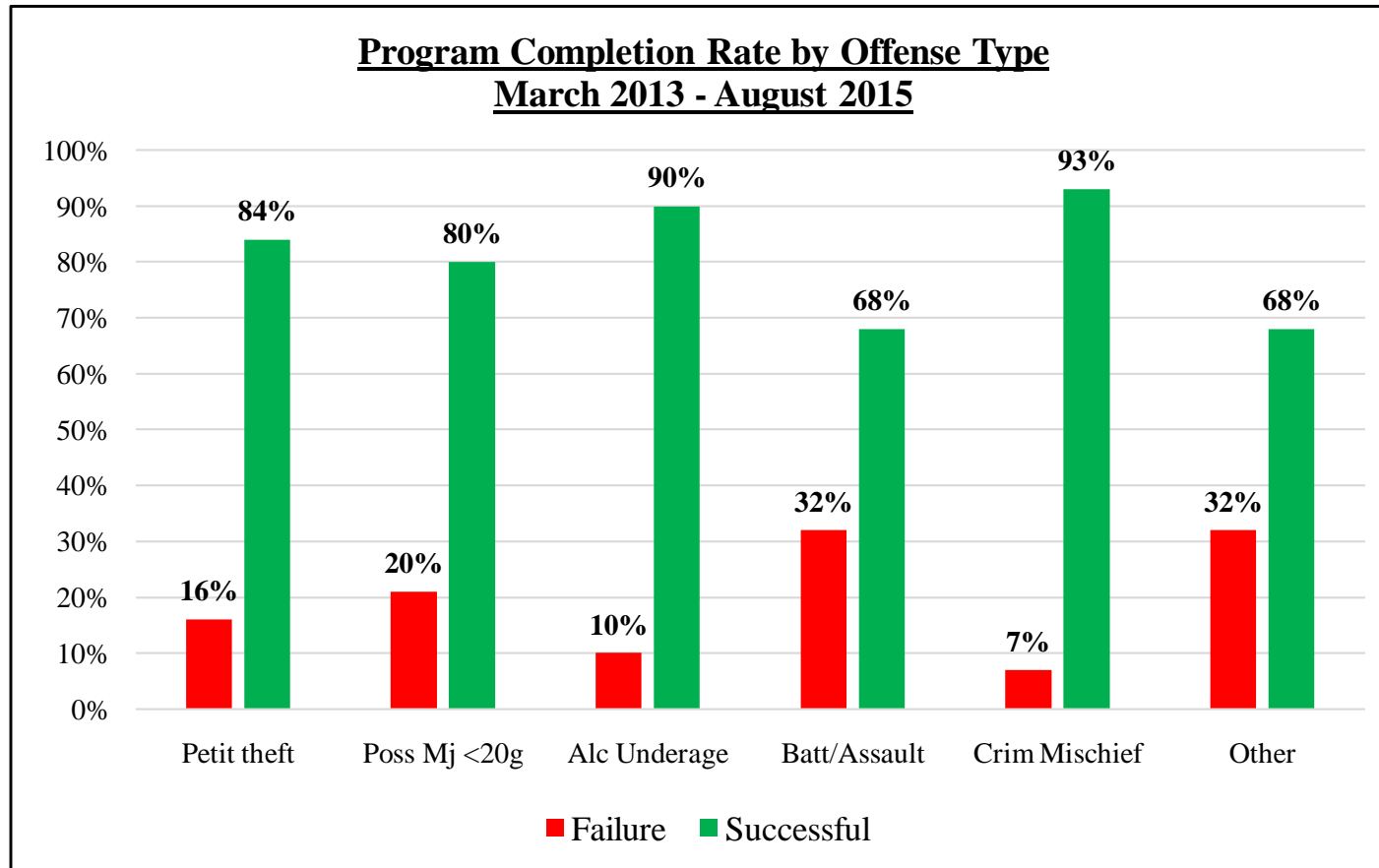


Tallahassee/Leon County Program Outcomes



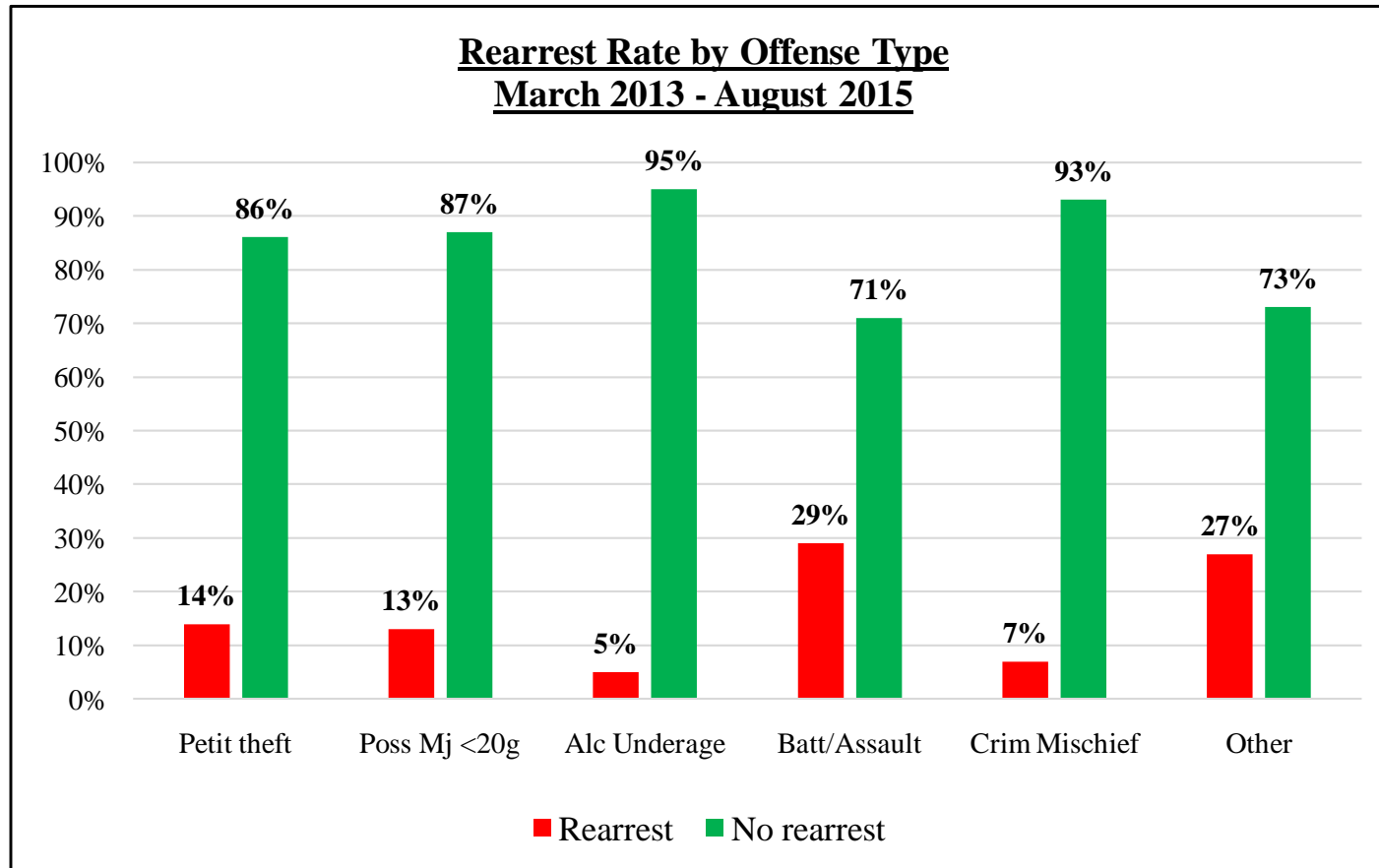


Tallahassee/Leon County Program Outcomes



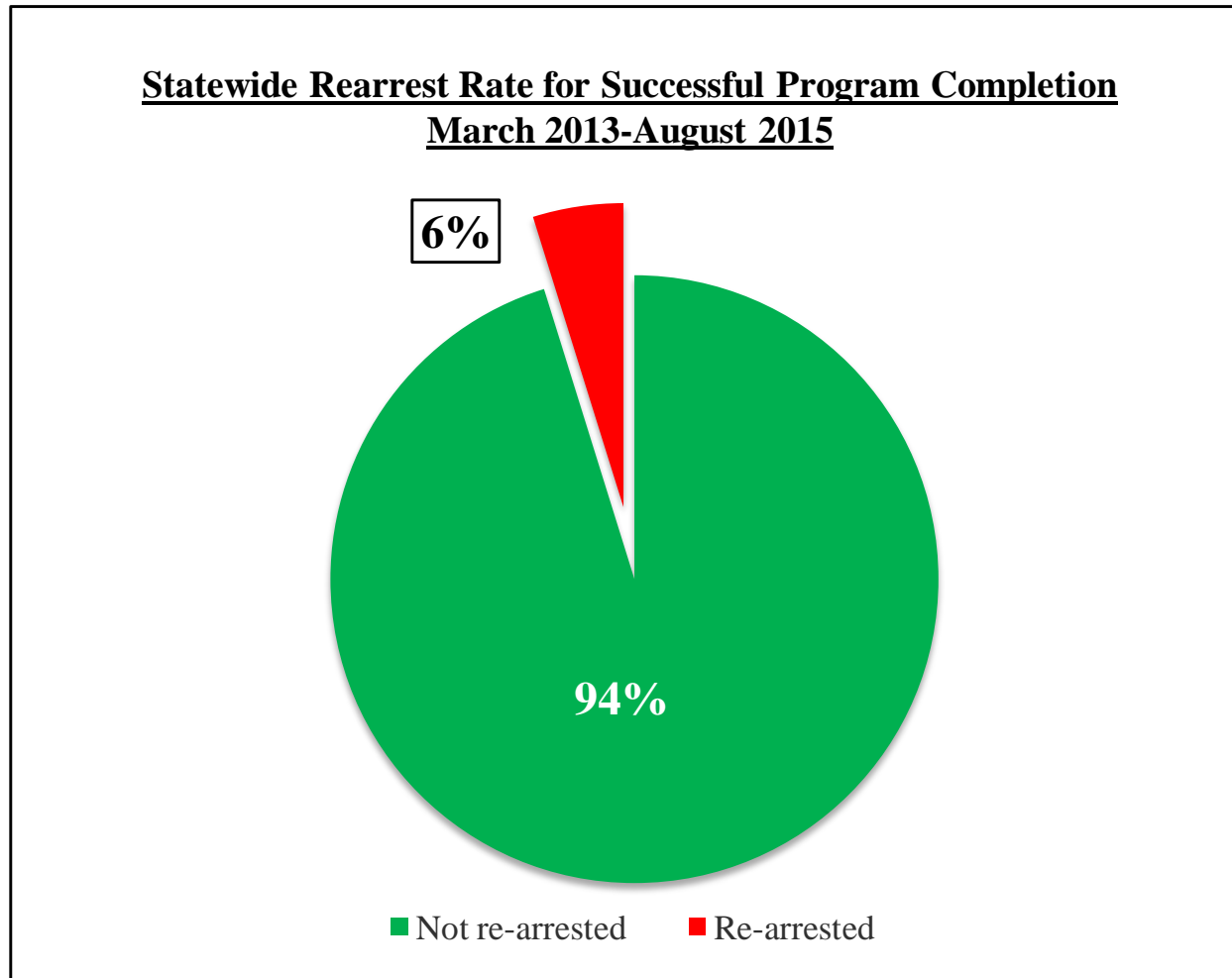


Tallahassee/Leon County Program Outcomes





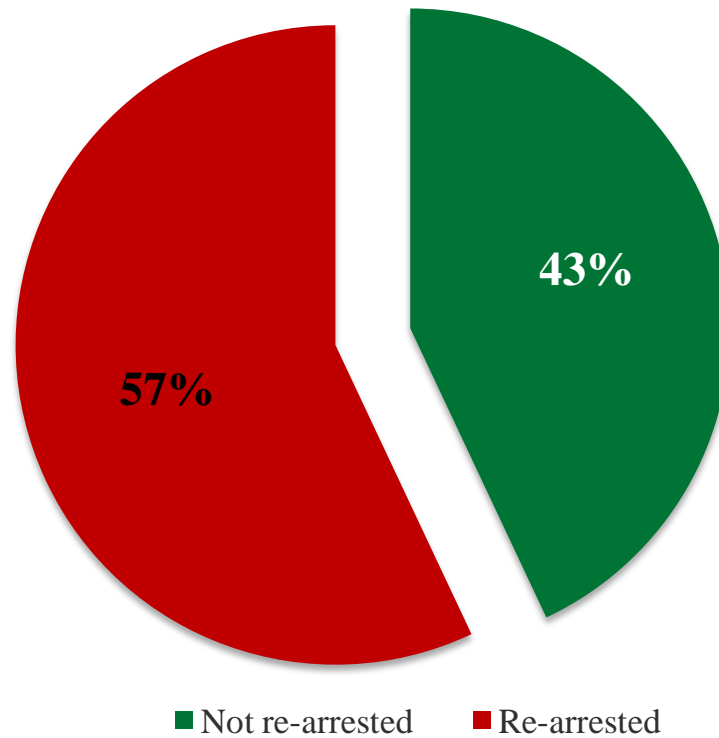
Tallahassee/Leon County Program Outcomes





Tallahassee/Leon County Program Outcomes

Statewide Rearrest Rate for Unsuccessful Program Termination
March 2013-August 2015





Barriers to Implementation

Florida Courts System Revenue

- The Conference of State Court Administrators: “Most courts agree that court costs imposed in criminal proceedings must bear a reasonable relationship to the expenses of prosecution.”
- Florida’s court system generates approximately \$1 billion annually. This is more than the cost to operate the court system which accounts for less than 1% of the overall State budget – Florida Office of the State Court Administrator Website
- Extensive implementation of pre-arrest diversion programs throughout the state may require adjustment to the current budget allocation formula for operating Florida’s court system. The economic benefits far outweigh any necessary adjustment.



Barriers to Implementation

Legislative Approval

Florida's highly successful Juvenile Civil Citation program was enrolled in Florida Statutes 2006. The endorsement of the Legislature provided many communities with the confidence to implement the use of juvenile civil citations.

Approving the proposed Adult Civil Citation bill will spur program expansion and realize statewide benefits more rapidly.



The Time to Act is Now!

The calls for reform are truly bipartisan, but there is a lot of work to be done!

Supporting community justice through the use of civil citations with intervention services provides a new, practical tool that has immediate impact on local communities and is an essential part of strategic reform to our criminal justice system.

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 Fiscal Policy

BILL: SB 628

INTRODUCER: Senator Richter

SUBJECT: Fees for Records

DATE: January 26, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Sanders</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

I. Summary:

SB 628 adds the Agency for Persons with Disabilities to the list of specified state entities and vendors that pay a reduced fee per record for state and national criminal history information for each name submitted to the Florida Department of Law Enforcement (FDLE).

The bill has an effective date of July 1, 2016, and has a minimal fiscal impact to the FDLE.

II. Present Situation:

Until May 25, 2015, the Department of Children and Families (DCF) performed background screening services for the Agency for Persons with Disabilities (agency). The agency's providers, vendors, employers, and Consumer Directed Care Plus participants and representatives were charged screening fees for state criminal records checks of \$8.00.

Beginning in May 2015, the agency migrated to the state Provider Background Screening Clearinghouse which required the agency's screenings to be processed separately from the DCF's screenings. Consequently, the agency's providers, vendors, employers, and Consumer Directed Care Plus participants and representatives were charged \$24.00 per screening submitted.

III. Effect of Proposed Changes:

The bill will add the Agency for Persons with Disabilities to the list of other state agencies that offer vendors and providers reduced cost for background screenings, from \$24.00 per screening submitted to \$8.00 per screening submitted.¹

The bill is effective July 1, 2016.

¹ Section 943.053(3)(b), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will decrease the cost of a background screening from \$24.00 to \$8.00 per name submitted for the agency's providers, vendors, employers, and Consumer Directed Care Plus participants and representatives.

C. Government Sector Impact:

The fee paid to the FDLE will decrease from \$24.00 per name submitted to \$8.00 per name submitted for state and national criminal history records checks. The FDLE indicates a projected annual revenue loss of \$115,200 to the Operating Trust Fund.²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.053 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 110.1127, 435.04, 496.4101, and 943.0542.

² Florida Department of Law Enforcement, *2016 Legislative Bill Analysis SB 628*, (November 25, 2015), (on file with the Senate Committee on Fiscal Policy).

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Richter

23-00543-16

2016628__

1 A bill to be entitled
 2 An act relating to fees for records; amending s.
 3 943.053, F.S.; adding the Agency for Persons with
 4 Disabilities to the list of specified state entities
 5 and vendors that pay a reduced fee per record for
 6 criminal history information for each name submitted;
 7 reenacting ss. 110.1127(4), 435.04(1)(e),
 8 496.4101(3)(b), and 943.0542(2)(c), F.S., relating to
 9 employee background screenings and investigations,
 10 level 2 screening standards, licensure of professional
 11 solicitors and certain employees thereof, and access
 12 to criminal history information provided by the
 13 Department of Law Enforcement to qualified entities,
 14 respectively, to incorporate the amendment made to s.
 15 943.053, F.S., in references thereto; providing an
 16 effective date.
 17
 18 Be It Enacted by the Legislature of the State of Florida:
 19
 20 Section 1. Subsection (3) of section 943.053, Florida
 21 Statutes, is amended to read:
 22 943.053 Dissemination of criminal justice information;
 23 fees.—
 24 (3)(a) Criminal history information, including information
 25 relating to minors, compiled by the Criminal Justice Information
 26 Program from intrastate sources shall be available on a priority
 27 basis to criminal justice agencies for criminal justice purposes
 28 free of charge. After providing the program with all known
 29 personal identifying information, persons in the private sector

Page 1 of 4

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

23-00543-16

2016628__

30 and noncriminal justice agencies may be provided criminal
 31 history information upon tender of fees as established in this
 32 subsection and in the manner prescribed by rule of the
 33 Department of Law Enforcement. Any access to criminal history
 34 information by the private sector or noncriminal justice
 35 agencies as provided in this subsection shall be assessed
 36 without regard to the quantity or category of criminal history
 37 record information requested.
 38 (b) The fee per record for criminal history information
 39 provided pursuant to this subsection and s. 943.0542 is \$24 per
 40 name submitted, except that the fee for the guardian ad litem
 41 program and vendors of the Department of Children and Families,
 42 the Department of Juvenile Justice, the Agency for Persons with
 43 Disabilities, and the Department of Elderly Affairs shall be \$8
 44 for each name submitted; the fee for a state criminal history
 45 provided for application processing as required by law to be
 46 performed by the Department of Agriculture and Consumer Services
 47 shall be \$15 for each name submitted; and the fee for requests
 48 under s. 943.0542, which implements the National Child
 49 Protection Act, shall be \$18 for each volunteer name submitted.
 50 The state offices of the Public Defender shall not be assessed a
 51 fee for Florida criminal history information or wanted person
 52 information.
 53 Section 2. For the purpose of incorporating the amendment
 54 made by this act to section 943.053, Florida Statutes, in a
 55 reference thereto, subsection (4) of section 110.1127, Florida
 56 Statutes, is reenacted to read:
 57 110.1127 Employee background screening and investigations.—
 58 (4) Background screening and investigations shall be

Page 2 of 4

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

23-00543-16

2016628__

59 conducted at the expense of the employing agency. If
 60 fingerprinting is required, the fingerprints shall be taken by
 61 the employing agency, a law enforcement agency, or a vendor as
 62 authorized pursuant to s. 435.04, submitted to the Department of
 63 Law Enforcement for state processing, and forwarded by the
 64 Department of Law Enforcement to the Federal Bureau of
 65 Investigation for national processing. The agency or vendor
 66 shall remit the processing fees required by s. 943.053 to the
 67 Department of Law Enforcement.

68 Section 3. For the purpose of incorporating the amendment
 69 made by this act to section 943.053, Florida Statutes, in a
 70 reference thereto, paragraph (e) of subsection (1) of section
 71 435.04, Florida Statutes, is reenacted to read:

72 435.04 Level 2 screening standards.-

73 (1)

74 (e) Vendors who submit fingerprints on behalf of employers
 75 must:

76 1. Meet the requirements of s. 943.053; and

77 2. Have the ability to communicate electronically with the
 78 state agency accepting screening results from the Department of
 79 Law Enforcement and provide the applicant's full first name,
 80 middle initial, and last name; social security number or
 81 individual taxpayer identification number; date of birth;
 82 mailing address; sex; and race.

83 Section 4. For the purpose of incorporating the amendment
 84 made by this act to section 943.053, Florida Statutes, in a
 85 reference thereto, paragraph (b) of subsection (3) of section
 86 496.4101, Florida Statutes, is reenacted to read:

87 496.4101 Licensure of professional solicitors and certain

23-00543-16

2016628__

88 employees thereof.-

89 (3)

90 (b) Fees for state and federal fingerprint processing and
 91 fingerprint retention fees shall be borne by the applicant. The
 92 state cost for fingerprint processing is that authorized in s.
 93 943.053(3)(b) for records provided to persons or entities other
 94 than those specified as exceptions therein.

95 Section 5. For the purpose of incorporating the amendment
 96 made by this act to section 943.053, Florida Statutes, in a
 97 reference thereto, paragraph (c) of subsection (2) of section
 98 943.0542, Florida Statutes, is reenacted to read:

99 943.0542 Access to criminal history information provided by
 100 the department to qualified entities.-

101 (2)

102 (c) Each such request must be accompanied by payment of a
 103 fee for a statewide criminal history check by the department
 104 established by s. 943.053, plus the amount currently prescribed
 105 by the Federal Bureau of Investigation for the national criminal
 106 history check in compliance with the National Child Protection
 107 Act of 1993, as amended. Payments must be made in the manner
 108 prescribed by the department by rule.

109 Section 6. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

January 22, 2016

The Honorable Anitere Flores, Chair
Committee on Fiscal Policy
225 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Flores:

Senate Bill 628 relating to Fees for Records has been referred to your committee. I would appreciate your consideration to place this bill on your committee's agenda at the earliest opportunity.

Sincerely,

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

Garrett Richter

cc: Jennifer Hrdlicka, 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

ANDY GARDINER
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)

1-27-14

Meeting Date

Righter

SB 628

Bill Number (if applicable)

Topic fees for records

Amendment Barcode (if applicable)

Name Margaret S. Hooper

Job Title Public Policy Coordinator

Address 124 Merritt Drive #203

Phone 850-921-7263

Street

Tallahassee

State

FL

Zip

Email Margaret.D@FDDC.org

City

Speaking: For Against Information

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

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.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/27/16

Meeting Date

628

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name ROBERT BROWN

Job Title LEGISLATIVE AFFAIRS DIRECTOR

Address _____

Phone _____

Street

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing AGENCY FOR PERSONS WITH DISABILITIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

The Honorable Anitere Flores, Chair
Committee on Fiscal Policy
225 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Flores:

Thank you for placing Senate Bill 628, relating to Fees for Records, on the committee's agenda. Unfortunately, my schedule may not allow me to be present to personally present this bill. I would request that my aide, Becky Kokkinos, be allowed to present this bill should I not be able to attend.

Thank you for your consideration.

Sincerely,

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

Garrett Richter

cc: Jennifer Hrdlicka, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
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Senate's Website: www.flsenate.gov

ANDY GARDINER
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 Fiscal Policy

BILL: SB 716

INTRODUCER: Senator Sobel and others

SUBJECT: Florida Holocaust Memorial

DATE: January 26, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

I. Summary:

SB 716 establishes the Florida Holocaust Memorial. The memorial is to recognize and commemorate the millions of people, including six million Jews, murdered by the Nazis and their collaborators before and during World War II in Europe, and to honor the survivors of the Holocaust.

The bill requires the Department of Management Services (DMS) to administer the memorial and to designate an appropriate public area for the memorial on the Capitol Complex. The DMS must construct the memorial after considering the recommendations of the Florida Historical Commission and coordinate with the Division of Historical Resources of the Department of State in regards to the memorial's design and placement.

The bill has an indeterminate fiscal impact.

The bill is effective July 1, 2016.

II. Present Situation:

The Holocaust

The Holocaust was the systematic, bureaucratic, state-sponsored persecution and murder of millions of people, including six million Jews, by the Nazi regime and its collaborators during World War II. The Nazi regime also targeted other groups, including the Romani people, the disabled, some Slavic peoples (Poles, Russians, and others), Communists, Socialists, Jehovah's Witnesses, and homosexuals.¹

¹ United State Holocaust Memorial Museum, Learn about the Holocaust, Holocaust Encyclopedia, *Introduction to the Holocaust*, (last updated August 18, 2015), <http://www.ushmm.org/wlc/en/article.php?ModuleId=10005143> (last visited on January 22, 2016).

Holocaust Memorials and Museums in Florida

There are numerous Holocaust memorials, monuments and museums worldwide. Florida has five memorials and museums which include: the Florida Holocaust Museum in St. Petersburg,² the Holocaust Memorial Resource and Education Center of Florida in Maitland,³ the Holocaust Museum and Education Center of Southwest Florida in Naples,⁴ the Holocaust Memorial in Miami Beach,⁵ and a Holocaust Memorial on the Temple B'Nai Israel property in Clearwater.⁶

Managing Agency for the Capitol Center

Section 272.03(1), F.S., provides that the Capitol Center⁷ is under the general control and supervision of the Department of Management Services (DMS),⁸ which includes the management and maintenance of both the grounds and buildings.⁹ Additionally, the DMS has the authority to provide for the establishment of parks, walkways, and parkways on the grounds of the Capitol Center.¹⁰ This responsibility has historically included assistance in establishing and maintaining public memorials throughout the Capitol Center, including project management oversight of the design and construction of memorials.¹¹ After an entity is assigned a designated space within the Capitol Center for an exhibit, the entity is the manager of the exhibit's content and display, in consultation with the DMS.¹²

Capitol Complex Monuments

The construction and placement of a monument¹³ on the premises of the Capitol Complex is prohibited unless authorized by general law and unless the design and placement of the monument is approved by the DMS after considering the recommendations of the Florida Historical Commission.¹⁴ Additionally, the DMS must coordinate with the Division of Historical Resources of the Department of State regarding a monument's design and placement.¹⁵ The

² Florida Holocaust Museum, <https://www.flholocaustmuseum.org/> (last visited on January 22, 2016).

³ Holocaust Memorial Resource & Education Center of Florida, <http://www.holocaustedu.org/> (last visited on January 22, 2016).

⁴ The Holocaust Museum & Education Center of Southwest Florida, <http://www.holocaustmuseumsfl.org/> (last visited on January 22, 2016).

⁵ Holocaust Memorial Miami Beach, <http://holocaustmemorialmiamibeach.org/about/history/> (last visited on January 22, 2016).

⁶ Holocaust Memorial – Clearwater, FL., http://www.waymarking.com/waymarks/WM7JP0_Holocaust_Memorial_Clearwater_FL (last visited on January 22, 2016).

⁷ Section 272.12, F.S., describes the Tallahassee area bounded by Martin Luther King, Jr. Boulevard, College Avenue, Franklin Boulevard, East Jefferson Street, and the Seaboard Coastline Railway right-of-way as the Capitol Center.

⁸ Section 272.03, F.S.

⁹ Section 272.09, F.S.

¹⁰ Section 272.07, F.S.

¹¹ Department of Management Services, Senate Bill 608 Agency Legislative Bill Analysis (February 19, 2014) (on file with the Governmental Oversight and Accountability Committee).

¹² *Id.*

¹³ Section 265.111(1), F.S., defines the term “monument” to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of significant person or event in Florida history. The term does not include any “Official Florida Historical Marker” as defined in s. 267.021, F.S.

¹⁴ Section 265.111(2), F.S.

¹⁵ *Id.*

DMS, in consultation with the Florida Historical Commission, is required to set aside an area of the Capitol Complex to be dedicated as a memorial garden for the placement of authorized monuments.¹⁶

Division of Historical Resources

The Division of Historical Resources is established within the Department of State¹⁷ and is charged with encouraging identification, evaluation, protection, preservation, collection, conservation, and interpretation of, and public access to, information about Florida's historic sites and properties and objects related to Florida's history and culture. This includes cooperating with, advising and assisting federal and state agencies and local governments in carrying out their historic preservation responsibilities.¹⁸

Florida Historical Commission

The Florida Historical Commission (commission) was established in 2001 to enhance public participation and involvement in the preservation and protection of the state's historic and archaeological sites and properties.¹⁹ The commission is part of the Department of State and is tasked with advising and assisting the Division of Historical Resources in carrying out its programs, duties, and responsibilities.²⁰

The commission is composed of 11 members: seven members who are appointed by the Governor in consultation with the Secretary of State, two members who are appointed by the President of the Senate, and two members who are appointed by the Speaker of the House of Representatives.²¹

The commission is required to provide assistance, advice, and recommendations to the Division of Historical Resources in a variety of areas. One of those areas involves providing recommendations to the DMS on the design and placement of monuments authorized by general law to be placed on the premises of the Capitol Complex pursuant to s. 265.111, F.S.²²

III. Effect of Proposed Changes:

Section 1 creates s. 265.005, F.S., to establish the Florida Holocaust Memorial. The DMS is required to administer the memorial and set aside an appropriate public area for the memorial on the premises of the Capitol Complex, as defined in s. 281.101, F.S.²³

¹⁶ Section 265.111(3), F.S.

¹⁷ Section 20.10(2)(b), F.S.

¹⁸ Section 267.031, F.S., and Florida Division of Historical Resources, About, *Program Areas*, <http://dos.myflorida.com/historical/about/program-areas/> (last visited on January 22, 2016).

¹⁹ Chapter 2001-199, L.O.F.

²⁰ Section 267.0612, F.S.

²¹ Section 267.0612(1)(a)1., F.S.

²² Section 267.0612(9), F.S.

²³ The bill specifies that the memorial will not be on the State Capitol Circle Office Complex. The "Capitol Complex" is generally the buildings bound by Monroe Street, Jefferson Street, Duval Street, and Gaines Street in Tallahassee.

The bill requires the DMS to construct and place the memorial after it has considered the recommendations of the Florida Historical Commission and to coordinate with the Division of Historical Resources of the Department of State regarding the memorial's design and placement.

Section 2 provides the bill is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The cost to construct the memorial is indeterminate, as the design for the memorial has not been completed. Although the cost is indeterminate, as a comparison, during the 2014 Session the Legislature appropriated \$250,000 for the Fallen Firefighter Memorial.²⁴ In addition, several other statutorily authorized Capitol Complex memorials, are administered by direct-support organizations without funding from the state.²⁵

VI. Technical Deficiencies:

None.

²⁴ Specific Appropriation Item 2739A, Ch. 2014-51, L.O.F.

²⁵ Among the statutorily authorized Capitol Complex memorials that are administered without state funds are the Florida Veterans' Walk of Honor (s. 265.0031, F.S.); the Florida Veterans' Memorial Garden (s. 265.0031, F.S.); and the POW-MIA Chair of Honor Memorial (s. 265.00301, F.S.).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 265.005 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Sobel

33-00615B-16

2016716__

A bill to be entitled

An act relating to the Florida Holocaust Memorial; creating s. 265.005, F.S.; providing legislative intent; establishing the Florida Holocaust Memorial; providing for administration by the Department of Management Services; prohibiting the department from constructing and placing the memorial until certain conditions are met; providing an effective date.

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

Section 1. Section 265.005, Florida Statutes, is created to read:

265.005 Florida Holocaust Memorial.-

(1) It is the intent of the Legislature to recognize and commemorate the millions of people, including six million Jews, murdered by the Nazis and their collaborators before and during World War II in Europe and to honor the survivors of the Holocaust through the establishment of the Florida Holocaust Memorial.

(2) There is established the Florida Holocaust Memorial.

(a) The memorial is administered by the Department of Management Services.

(b) The Department of Management Services shall set aside an appropriate public area for the memorial on the premises of the Capitol Complex, as defined in s. 281.01, but not including the State Capital Circle Office Complex. The department shall construct and place the Florida Holocaust Memorial after it has considered the recommendations of the Florida Historical

Page 1 of 2

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

33-00615B-16

2016716__

Commission as required pursuant to ss. 265.111 and 267.0612(9) and coordinated with the Division of Historical Resources of the Department of State regarding the memorial's design and placement.

Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Health Policy, *Vice Chair*
Agriculture
Education Pre-K-12
Appropriations Subcommittee on Health
and Human Services

SENATOR ELEANOR SOBEL

33rd District

January 21, 2015

Senator Anitere Flores, Chair
Committee on Fiscal Policy
413 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chair Flores,

This letter is to request that **SB 716** relating to **Florida Holocaust Memorial** be placed on the agenda of the next scheduled meeting of the Committee on Fiscal Policy.

This bill recognizes and commemorates the millions of people, including six million Jews, murdered by the Nazis and their collaborators before and during World War II in Europe and to honor the survivors of the Holocaust through the establishment of the Florida Holocaust Memorial. The bill provides for administration by the Department of Management Services and prohibits the department from constructing and placing the memorial until certain conditions are met.

Thank you for your consideration of this request.

With Best Regards,

A handwritten signature in cursive script that reads "Eleanor Sobel".

Eleanor Sobel
State Senator, 33rd District

REPLY TO:

- The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
- 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

ANDY GARDINER
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)

1/27/16
Meeting Date

716
Bill Number (if applicable)

Topic HOLOCAUST MEMORIAL

Amendment Barcode (if applicable)

Name Steve UHLFELDER

Job Title LOBBYIST

Address 519 E. DARL AVE

Phone 980-6435

TALLAHASSEE

Email Steve@SALAW.net

City State Zip

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 Fiscal Policy

BILL: CS/CS/SB 854

INTRODUCER: Regulated Industries Committee; Banking and Insurance Committee; and Senator Hukill

SUBJECT: Funeral, Cemetery, and Consumer Services

DATE: January 26, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 854 amends ch. 497, F.S., the Florida Funeral, Cemetery, and Consumer Services Act (act), and the licensure requirements related to funerals and cemeteries regulated by the Department of Financial Services (department) and the Board of Funeral, Cemetery, and Consumer Services (board).

The bill:

- Creates definitions;
- Requires an applicant for embalmer apprentice to be of good character;
- Requires an e-mail address for licensure and allows the department to use email as a means of notification;
- Requires the department adopt rules regarding discipline for miscellaneous financial errors;
- Specifies that disputes regarding the division of cremated remains must be resolved by the courts;
- Specifies cremated remains are not property and not subject to partition by a court unless a legally authorized person consents;
- Provides a consistent deposit requirement for graves, mausoleums, and columbaria;
- Specifies that care and maintenance (C&M) trusts must be maintained by a cemetery company so that the grounds, structures, and improvements of a cemetery are maintained;
- Requires withdrawals from C&M trusts to cemetery companies must be done through one of two specified methods;

- Requires the board and department to adopt rules concerning C&M trusts;
- Clarifies that the C&M trust annual report must include the fair market value of the trust;
- Prohibits a trustee from investing in or counting as assets life insurance policies or annuity contracts and allows the trustee to allocate and divide capital gains and losses;
- Grants the board rulemaking authority to classify items sold in preneed contracts as services, cash advances, or merchandise;
- Requires a preneed licensee to deposit all preneed contract funds into a trust upon electing inactive status;
- Clarifies when a preneed contract may be made irrevocable, for purposes of a person qualifying for assistance programs such as Medicaid and Supplemental Security Income;
- Requires preneed licensees to provide an annual report to the department on trust accounts;
- Repeals the servicing agent exemption from preneed licensure;
- Repeals s. 497.461, F.S., which allows the use of surety bonding in lieu of the requirement for a preneed licensee to establish a trust for the deposit of funds; those licensees that have bonds in place prior to July 1, 2016 may continue to use them; and
- Requires cemetery companies to remit unexpended monies paid on irrevocable preneed contracts to the Agency Health Care Administration for deposit into the Medical Care Trust Fund after the beneficiary's final disposition

The bill is not expected to have a fiscal impact on the state. See Section V, Fiscal Impact Statement.

The bill is effective July 1, 2016.

II. Present Situation:

Chapter 497, F.S., the Florida Funeral, Cemetery, and Consumer Services Act (act), provides for the regulatory oversight of the death care industry, which includes the following individual and entity licenses:

- Brokers of burial rights;
- Cemeteries;
- Central embalming facilities;
- Cinerator facilities;
- Direct disposer and direct disposal establishments;
- Embalmers (including apprentices, interns, and by endorsement);
- Funeral directors and funeral establishments (including interns);
- Preneed, preneed branches, and preneed sales agents;
- Monument establishments (including builders and retailers) and monument establishment sales agents;
- Refrigeration facilities;
- Removal facilities; and
- Training facilities.¹

¹ Department of Financial Services, Division of Funeral, Cemetery, and Consumer Services, *Who We Regulate: Regulated Categories & Number of Licensees*, (Oct. 10, 2014), available at <http://www.myfloridacfo.com/Division/FuneralCemetery/About/Whoweregulate.htm> (last accessed Jan. 23, 2016).

The act is administered jointly by the Division of Funeral, Cemetery, and Consumer Services (division) of the Department of Financial Services (department) and the Board of Funeral, Cemetery, and Funeral Services (board).²

Legally Authorized Persons & the Disposition of Human Remains

The act sets forth the order or priority of persons (legally authorized persons) who are authorized to direct the disposition of human remains. The priority order of a legally authorized person is:

- The deceased, when a written inter vivos³ authorizations and directions are provided;
- The person designated by the deceased as authorized to direct disposition pursuant to Pub. L. No. 109-163, s. 564, as listed on the deceased's United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, if the deceased died while serving military service as described in 10 U.S.C. s. 1481(a)(1)-(8) in any branch of the United States Armed Forces, United States Reserve Forces, or National Guard;
- The surviving spouse;⁴
- A son or daughter who is 18 years of age or older;
- A parent;
- A brother or sister who is 18 years of age or older;
- A grandchild who is 18 years of age or older;
- A grandparent; or
- Another person in the next degree of kinship.⁵

However, current usage of the above terms throughout the act is inconsistent, leading to uncertainty and potential disputes among heirs regarding the disposition of human remains. Such disputes can also involve funeral homes and other licensees under the act, because they receive, store, and process the remains.⁶

Scope of Funeral Directing

The act sets forth the scope of the practice of funeral directing which may be performed only by a licensed funeral director. Currently, one of the permitted practices is planning or arranging, on an at-need basis, the details of funeral services, embalming, cremation, or other services relating to the final disposition of human remains with the decedent's family, friends, or other person responsible for such services.⁷

² Section 497.103, F.S.

³ An *inter vivos* authorization is one made during the life of the deceased "between the living; from one living person to another." See BLACK'S LAW DICTIONARY, *What is INTER VIVOS*, available at <http://thelawdictionary.org/inter-vivos/> (last accessed Jan. 23, 2016).

⁴ Unless the spouse has been arrested for committing an act of domestic violence, as defined in s. 741.28, F.S., against the deceased that resulted in or contributed to the death of the deceased. Section 497.005(39)(c), F.S.

⁵ Section 497.005(39), F.S. The definition also identifies persons who may willingly assume responsibility as the legally authorized person when no family member exists or is available.

⁶ Florida Department of Financial Services, Agency Analysis of 2016 Senate Bill 854 (Nov. 30, 2015) (on file with the Senate Committee on Regulated Industries).

⁷ Section 497.372, F.S.

Applicants for the Embalmer Apprentice Program

Applicants for the following licenses require demonstration of good character:

- Cemetery companies – s. 497.263(2)(p), F.S.;
- Brokers of burial rights – s. 497.281(2)(d), F.S.;
- Embalmers and embalmers by endorsement – ss. 497.368(1)(c) and 497.369(1)(d), F.S.;
- Funeral directors and funeral directors by endorsement - ss. 497.373(1)(c) and 497.374(1)(d), F.S.;
- Funeral establishments – s. 497.380(4), F.S.;
- Removal services, refrigeration services, and centralized embalming facilities - s. 497.385(1)(a) and (2)(f), F.S.;
- Preneed licensees – s. 497.453(2)(f), F.S.;
- Direct disposers and direct disposal establishments – ss. 497.602(3)(f) and 497.604(3)(c), F.S.; and
- Cinerator facilities – s. 497.606(3)(d), F.S.

However, no such requirement currently exists for applicants for the embalmer apprentice program.

E-mail Notifications

The act requires the department to administer a licensing system to process and track applications, renewals, and fees. The department is authorized to require specified information in its application forms, such as the applicant's work history, criminal history, and business plans. Application forms adopted by rule require the e-mail address of the applicant or licensee as a means of correspondence for the department.⁸

Burial Fees

A burial right is the right to use a grave space, mausoleum, columbarium, ossuary, or scattering garden for the interment, entombment, inurnment, or other disposition of human remains or cremated remains.⁹ While cemetery companies may collect fees for the sale of burial rights, merchandise, or services, they may only charge certain fees for the use of any burial right, merchandise, or service, such as sales tax and any interest on unpaid balances. Another permissible fee is the cost of transferring burial rights from one purchaser to another, which current law caps at \$50. The price cap has not been adjusted since 1993.¹⁰

Sale of Personal Property or Services by Cemetery Companies

Currently, s. 497.283, F.S., requires cemetery companies that sell personal property or services in connection with burial or commemorative services to deliver such goods or to perform such services within 120 days of receiving final payment, except for preneed contracts. "Delivery" of goods means actual delivery and installation at the time of need or at the request of the owner or

⁸ Section 497.141, F.S.

⁹ Section 497.005(7), F.S.

¹⁰ Section 497.277, F.S.

owner's agent.¹¹ However, s. 497.283(2)(c), F.S., provides an alternative delivery method, limited to those manufacturers of outer burial receptacles who sell to cemetery companies and funeral establishments and show evidence of "financial responsibility" as set forth in s. 497.461, F.S. (relating to surety bonding as an alternative to trust deposit for preneed licensees).

Care & Maintenance Trust Funds

Cemetery companies that own or control cemetery lands and property are required to ensure that the grounds, structures, and improvements of a cemetery are well cared for and maintained in a proper and dignified condition.¹² To achieve this, the act requires cemetery companies to establish care and maintenance (C&M) trust funds with state or national trust companies or banks or savings and loan associations with trust powers.¹³

Net Income Trusts vs. Total Return Unitrusts

Since 1959, the act has required that the net income of these trust funds may only be used for the care and maintenance of the cemetery and monuments (excluding the cleaning, refinishing, repairing, or replacement of monuments) and reasonable costs of administering care, maintenance, and the trust fund.¹⁴

While the act does not define "net income," it has been understood to include only cash received by the trust as interest or dividends from trust investments, not capital gains (which are treated as accretions to principal, not income). This view has been largely informed by trust practices codified in other parts of Florida law. As such, cemetery owners have an economic incentive to invest their C&M trust funds to maximize payments of current interest or cash dividends (e.g., government securities and corporate bonds), as opposed to investing in items that provide capital appreciation (e.g., corporate stocks).¹⁵ The act does not specify the permissible mix of income-producing versus capital appreciation investments for C&M trusts funds, but authorizes trustees of a C&M trust fund to invest only in those investments as are allowed for the State Board of Administration.¹⁶

Another type of trust known as the "total return trust" allows the trustee to focus on the total return and to maximize growth of both income and principal by accounting for both income and capital appreciation. One type of total return trust is the unitrust. With the unitrust, the trustee distributes a percentage of the trust based on the fair market value of its assets, regardless of income earned or the original amount invested in the trust.¹⁷ As opposed to withdrawing only income, the unitrust allows cemeteries to withdraw a percentage, no less than 3 percent and no

¹¹ Section 497.283(2)(b), F.S.

¹² Section 497.262, F.S.

¹³ Section 497.266, F.S. The appointments of these institutional trustees are subject to the approval of the board. These trustees are subject to investment limitations and annual financial reporting requirements in the act. *See* s. 497.269, F.S.

¹⁴ Section 497.267, F.S.

¹⁵ Department of Financial Services, Division of Funeral, Cemetery and Consumer Services, *Unitrust Concept for Cemetery Care & Maintenance Trust Funds: Background and Analysis*, p. 4 (Dec. 15, 2015), (on file with the Senate Committee on Regulated Industries).

¹⁶ *Id.* *See also* ss. 497.266(4) and 497.458(5)(a), F.S., and permissible investment statute for the State Board of Administration, s. 215.47(1), F.S.

¹⁷ Lauren Moore, American Cemetery, *Perpetual Care Roundtable*, pp. 32-33, (January 2014) (on file with the Senate Committee on Regulated Industries).

more than 5 percent, of the total fair market value of the trust for annual care and maintenance.¹⁸ Chapter 731 and s. 738.1041, F.S, currently provide the laws and rules for unitrusts.

Typically, a unitrust:

- Produces a return of 2 to 4 percent greater than an income trust;
- Allows cemetery operators to receive larger distributions (on average and over time);
- Grows principal at a greater rate than an income trust; and
- Shows exactly how much funds will be available for withdrawal in advance, which is important for budgeting purposes.¹⁹

According to the department, the unitrust concept as applied to cemetery C&M trusts has been recently approved for use in three states (Iowa, Missouri, and Tennessee).²⁰

Preneed Contracts

A “preneed contract” is any arrangement or method, of which the provider of funeral merchandise or service has actual knowledge, whereby any person agrees to sell burial merchandise or burial service in the future.²¹ Examples of “burial merchandise” are caskets, outer burial containers, urns, monuments, floral arrangements, and register books, and “burial service” includes any service offered or provided in connection with the final disposition, memorialization, interment, entombment, inurnment, or other disposition of human remains or cremated remains.²²

Preneed sales requires a seller of burial merchandise or service to obtain a preneed license and also be licensed as a funeral establishment, cemetery company, direct disposal establishment, or monument establishment.²³

III. Effect of Proposed Changes:

Definitions

Section 1 amends s. 497.005, F.S., to define the following terms:

- “Beneficiary” means a natural person expressly identified in a preneed contract as the person for whom funeral merchandise or services are intended;
- “Capital gain” or “capital loss” means a change in the value of a capital asset, such as investment or real estate, which gives the asset a different worth than the purchase price. The gain or loss is not realized until the asset is sold;
- “Fair market value” means the fair market value of assets held by a trust as of a specific date, assuming all assets of the trust are sold on that specific date;

¹⁸ *Supra* note 15 at 5.

¹⁹ *Supra* note 17 at 33.

²⁰ *Supra* note 15 at pp. 2, 5, 11-15. Cemetery unitrusts may be used in Iowa beginning in 2016, while they were authorized in Missouri in 2009 and in Tennessee in 2006. It appears unitrusts have typically been used for the long-term higher education and charitable foundation endowment trusts.

²¹ Section 497.005(56), F.S.

²² Section 497.005(6) and (7), F.S.

²³ Section 497.452, F.S. The statute exempts certain cemeteries owned by religious institutions from preneed licensure.

- “Income” means earnings on trust assets, including interest, dividends, and other income earned on the principal;
- “Net income” means, in relation to a trust, ordinary income minus any income distributions for items such as trust expenses. For purposes of this definition, “ordinary income” means, in relation to a trust, any earnings on trust assets, including interest and dividends received on property derived from the use of the trust principal, but does not include capital gains or capital losses;
- “Purchaser” means a natural person who has executed a preneed contract with or seeks at-need funeral merchandise or services from a licensee; and
- “Total return withdrawal percentage” means a percentage, not to exceed 5 percent, of the fair market value of a trust.

Disciplinary Grounds

Section 4 amends s. 497.152, F.S., to replace the term “his or her representative or legal guardian” with “a legally authorized person.” The board currently provides by rule the criteria for identifying minor, nonwillful trust remittance deficiencies. If the remittance deficiencies falling within such criteria are fully corrected within 30 days after notice, then they do not constitute grounds for disciplinary action *or a fine*.

Cremated Remains

Section 30 amends s. 497.607, F.S., to add the term “legally authorized” person and clarifies that the legally authorized person’s written authorization to perform a cremation may include a declaration of intent as to the cremation procedure. The bill also specifies that cremated remains are not property and are not subject to partition by a court. Any partition requires consent of the appropriate legally authorized person.

Embalmer Apprentice Applicants

Section 15 amends s. 497.371, F.S., to specify that an applicant for the embalmer apprentice program cannot be issued a license by the board unless it determines the applicant is of good character and has not demonstrated a history of lack of trustworthiness or integrity in business or professional matters.

Email

Sections 2 and 3 amend ss. 497.141 and 497.146, F.S., to include an email address as information the department can require for licensure and allows the department to use email as a means of notification.

Care & Maintenance Trust Funds

Section 8 creates s. 497.2675, F.S., as a C&M trust distribution statute. Specifically, this section:

- Requires the board and department to adopt rules in accordance with ss. 497.267 and 497.268, F.S., that must include:

- Reporting requirements for a cemetery licensed under ch. 497, F.S., including the requirement that specific reports be made on forms designed and approved by the board by rule; and
- Rules addressing a cemetery licensed under ch. 497, F.S., who's pro rata share of the fair market value of the trust has not grown over a 3-year average, including limiting withdrawals from the C&M trust fund, and any exceptions approved by the board.
- Requires each cemetery company licensed under ch. 497, F.S., to select one of the two methods for withdrawals from the cemetery company's C&M trust fund:
 - *Net income withdrawal method*, which allows the net income to be withdrawn from the trust, as earned, on a monthly basis; or
 - *Total return withdrawal method (unitrust)*, where a licensee must multiply the average fair market value of its pro rata share of the trust by the total return withdrawal percentage and may withdraw one-fourth of that amount at least quarterly beginning the first quarter of the new trust year. The initial total return withdrawal percentage elected by the licensee may not increase the total return withdrawal percentage for that quarter. For purposes of this method, "average fair market value" means, in relation to a trust, the average of the fair market value of each asset held by the trust at the beginning of the current year and in each of the 2 previous years, or for the entire term of the trust if there are less than 2 previous years, and adjusted as follows:
 - If assets are added to the trust during the years used to determine the average, the amount of each addition is added to all years in which such addition is not included; and
 - If assets are distributed from the trust during the years used to determine the average, other than in satisfaction of the unitrust amount, as defined in s. 738.1041, F.S., the amount of each distribution is subtracted from all other years in which such distribution is not included.
- Requires taxes on capital gains, if any, to be paid from the trust principal, without regard to the withdrawal method selected.

Sections 6 and 7 update financial and trust terms in existing C&M trust statutes:

- **Section 6** amends s. 497.266, F.S., to substitute "assets" for "corpus" and provide that withdrawals and transfers of such assets must be in accordance with the new C&M distribution statute, s. 497.2675, F.S. The bill also provides that the trustee may distribute "withdrawals" from the trust instead of "principal and income."
- **Section 7** amends s. 497.267, F.S., governing the disposition of monies from a C&M trust, to remove the term "net income" and replace it with "withdrawals." This change now requires that withdrawals from the C&M trust fund must be used only for the care and maintenance of the cemetery. The bill also requires the cemetery company, at that the time of sale or receiving of an initial deposit, to provide a written instrument that specifically states the purposes for which withdraws from the trust fund must be used. The revision is necessary to accommodate the use of a unitrust, as withdrawals are not based on the net income of the trust under **Section 8** of the bill.

Section 10 amends s. 497.269, F.S., to clarify that the annual report must record the fair market value of the C&M trust fund.

Burial Fees

Section 9 amends s. 497.268, F.S., to provide a consistent deposit requirement for graves, mausoleums, and columbaria which are all “burial rights” and clarify that 10 percent of all sales of burial rights must be deposited into the C&M trust fund. A \$25 minimum must be deposited for each post-1993 sale of a burial right, and \$25 for each burial right provided without charge.

Preneed Contracts

Section 5 amends the rulemaking authority in s. 497.161, F.S., to provide the board with the authority to make rules that establish conditions of use for insurance as a funding mechanism for a preneed contract, if such rules are not inconsistent with part IV of the act (relating to preneed sales) and the Florida Insurance Code.

Section 18 amends s. 497.452(2)(c), F.S., to repeal the servicing agent exemption from preneed licensure. This exemption is not currently used.

Section 19 amends s. 497.454, F.S., to allow for approval of “electronic or paper” preneed contracts and remove a cross-reference to s. 497.461, F.S., which is repealed in **Section 24**.

Section 21 amends s. 497.458, F.S., which specifies the methods by which proceeds received on preneed contracts may be distributed. The bill grants the board rulemaking authority to classify items sold in preneed contracts as services, cash advances, or merchandise. Under current law and in the bill, these three different types of items trigger different trust deposit requirements.

The bill requires the trustee to file an annual report with the department regarding each preneed trust account held by a trustee at any time during the previous calendar year. The report must contain information identifying the trustee; the licensee to whom the report relates; the trust account number; the beginning and ending trust balance; and, as may be specified by department rule, a list of receipts showing the date and amount of any disbursement. The report must be signed by the trustee’s account manager and be formatted and submitted pursuant to department rule. The first report is due April 1, 2018, and subsequent annual reports must be submitted on or before April 1.

The bill prohibits a trustee from investing in or counting as assets life insurance policies or annuity contracts. Trust investments in real estate may not exceed 25 percent of trust assets. The bill allows the trustee to allocate and divide capital gains and losses. Current law also allows the allocation and division of assets, liabilities, income, and expenses.

All references to s. 497.461, F.S., are deleted because it is repealed in **Section 24**.

Section 22 amends s. 497.459(6)(a), F.S., to specify that preneed contracts cannot restrict any purchaser who is the beneficiary of the preneed contract and is a qualified applicant for, or recipient of, Medicaid, Supplemental Security Income, or temporary cash assistance from making her or his contract irrevocable. Additionally, the bill clarifies that a preneed contract

made irrevocable pursuant to this section cannot be canceled during the life or after the death of the contract purchaser or beneficiary.²⁴

The bill requires unexpended monies spent on an irrevocable contract to be remitted to the Agency for Health Care Administration for deposit into the Medical Care Trust Fund after the beneficiary's final disposition.

Section 24 repeals s. 497.461, F.S., which currently allows a preneed licensee to use surety bonds instead of depositing moneys collected on preneed licensure sales into the trust. The use of surety bonds is not widely utilized within the industry. **Section 25** of the bill specifies that the repeal of s. 497.461, F.S., does not affect preneed licensees who have elected to maintain a surety bond in lieu of depositing funds into a trust as of July 1, 2016. **Section 26** of the bill eliminates the letter of credit as an alternative to trust deposits, as it primarily relates to the use of surety bonds that are being repealed in **Section 24**.

Section 27 amends s. 497.464, F.S., to apply the trust deposit requirements of s. 497.458(1), (3), and (6), F.S., to alternative preneed contracts. Currently those requirements are not applicable. The bill also remove a cross-reference to s. 497.461, F.S., which is repealed in **Section 24**.

Section 28 amends s. 497.465, F.S., to provide that upon becoming inactive, a preneed licensee must cease all preneed sales to the public. All of the funds received on or after the date on which it became inactive from sales of preneed contracts sold before coming inactive must be deposited into the trust. The bill also removes the qualifier "unaudited or audited" from financial statements.

Technical Changes

Section 11 amends s. 497.273, F.S., and **Section 12** amends s. 497.274, F.S., to make technical changes that replace the terms "decedent or other" and "family or next of kin" with "legally authorized person."

Section 13 amends s. 497.283, F.S., to remove a cross-reference to s. 497.461, F.S., which is repealed in **Section 24**.

Section 14 amends s. 497.286(3), F.S., to add the term "or legally authorized person."

Section 16 amends s. 497.372, F.S., to clarify the duties of a funeral director.

Section 17 amends s. 497.381, F.S., to replace the term "next of kin of a deceased person" with "legally authorized person."

Section 20 amends s. 497.456, F.S., to remove a cross-reference to s. 497.461, F.S., which is repealed in **Section 24** and replaces "income" with the term "appreciation."

²⁴ Section 1 of the bill creates definitions of "purchaser" and "beneficiary" in s. 497.005, F.S.

Section 23 amends s. 497.460, F.S., to add the term “fair market value” and replace the term “heirs or personal representative of the contract beneficiary” with “legally authorized person.”

Section 29 amends s. 497.601, F.S., to replace the term “the decedent’s next of kin” with “legally authorized person.”

Effective Date

Section 31 provides that the bill is effective July 1, 2016.

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 unitrust proposal may provide a benefit to cemetery licensees in the form of increased annual distributions to licensed cemeteries to defray cemetery care and maintenance expenses.²⁵

A preneed licensee may experience costs to provide the department with an annual trustee report. A preneed trustee may charge increased fees to provide the report, however, the department indicates that the trustees currently provide the necessary information to the licensees. The department estimated a recurring cost of \$250 annually for a preneed licensee.²⁶

Licensees may have to provide email address to the department in order to maintain their licenses, including receipt of renewal notices via email.

²⁵ Florida Department of Financial Services, Agency Analysis of 2016 Senate Bill 854 (Nov. 30, 2015).

²⁶ *Id.*

C. **Government Sector Impact:**

The bill is not expected to have an impact on state funds.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

The department will be required to develop rules to implement the provisions of the bill.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 497.005, 497.141, 497.146, 497.152, 497.266, 497.267, 497.268, 497.269, 497.273, 497.274, 497.283, 497.286, 497.371, 497.372, 497.381, 497.452, 497.454, 497.456, 497.458, 497.459, 497.460, 497.462, 497.464, 497.465, 497.601, and 497.607.

This bill creates section 497.2675 of the Florida Statutes.

This bill repeals section 497.461 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

CS/CS/SB 854 by Regulated Industries on January 20, 2016:

- The maximum \$50 fee cap in current law for charges paid for transferring burial rights from one purchaser to another is unchanged (*see* s. 497.277(2), F.S.)
- Current law requiring the deposit to a C&M trust for a preneed sale of merchandise remains the greater of 30 percent of the purchase price collected or 110 percent of the wholesale cost.
- Cremated remains are not property that may be partitioned (divided) by a court.

CS by Banking and Insurance on January 11, 2016:

The CS conforms to provisions in HB 473:

- Lines 5-6 change the definition of "purchaser" as compared to what was filed.
- Lines 58-78 amend s. 497.146, F.S., as it relates to email notification.
- Line 178 makes a technical cross-reference change.
- Lines 547-549 provides rulemaking authority regarding rules to classify items as merchandise, services, or cash advance.
- Lines 608-610 adds a provision prohibiting investment of preneed trust assets in insurance policies, and limits real estate investments to 25% of trust assets.
- Lines 669-672 adds language that certain preneed trust funds for unused irrevocable preneed contracts are to be remitted to an Agency for Health Care Administration trust fund.

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 Committees on Regulated Industries; and Banking and Insurance; and Senator Hukill

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1 A bill to be entitled
 2 An act relating to funeral, cemetery, and consumer
 3 services; amending s. 497.005, F.S.; defining terms;
 4 amending s. 497.141, F.S.; revising required
 5 information for licensure to include e-mail addresses;
 6 requiring the Department of Financial Services to
 7 include e-mail notification as a means to administer
 8 the licensing process; amending s. 497.146, F.S.;
 9 revising required information for current licensees to
 10 include an address for e-mail notification; providing
 11 for rulemaking relating to electronic reporting;
 12 amending s. 497.152, F.S.; conforming provisions to
 13 changes made by the act; requiring, rather than
 14 authorizing, the Board of Funeral, Cemetery, and
 15 Consumer Services to provide certain criteria;
 16 prohibiting the board from requiring a fine when
 17 certain deficiencies are fully corrected within a
 18 specified period; amending s. 497.161, F.S.; revising
 19 requirements for rules of the licensing authority;
 20 amending s. 497.266, F.S.; revising the prohibition
 21 against withdrawal or transfer of assets within the
 22 care and maintenance trust fund to include an
 23 exception; amending s. 497.267, F.S.; revising
 24 provisions relating to the disposition of withdrawals
 25 from the care and maintenance trust fund; creating s.
 26 497.2675, F.S.; requiring the board to adopt certain
 27 rules; requiring a licensed cemetery company to
 28 request a method for withdrawal from the cemetery
 29 company's care and maintenance trust fund; providing
 30 requirements for such methods; requiring that taxes on
 31 capital gains be paid from the trust principal;

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32 amending s. 497.268, F.S.; conforming provisions to
 33 changes made by the act; deleting a required deposit
 34 in a cemetery company's care and maintenance trust
 35 fund for mausoleums or columbaria; deleting the
 36 requirement that taxes on capital gain be paid from
 37 the trust corpus; amending s. 497.269, F.S.; requiring
 38 a trustee to annually furnish financial reports that
 39 record the fair market value of the care and
 40 maintenance trust fund; amending ss. 497.273 and
 41 497.274, F.S.; conforming provisions to changes made
 42 by the act; amending ss. 497.283 and 497.286, F.S.;
 43 conforming provisions to changes made by the act;
 44 amending s. 497.371, F.S.; providing that an applicant
 45 for the embalmer apprentice program may not be
 46 licensed without a determination of character by the
 47 licensing authority; amending ss. 497.372 and 497.381,
 48 F.S.; conforming provisions to changes made by the
 49 act; amending s. 497.452, F.S.; deleting an exception
 50 that prohibits a person from receiving specified funds
 51 without holding a valid preneed license; amending ss.
 52 497.454 and 497.456, F.S.; conforming provisions to
 53 changes made by the act; amending s. 497.458, F.S.;
 54 revising requirements relating to the disposition of
 55 proceeds on a preneed contract; authorizing the board
 56 to specify criteria for the classification of items
 57 sold in a preneed contract; requiring the trustee to
 58 furnish the department with an annual report regarding
 59 preneed licensee trust accounts beginning on a
 60 specified date; providing requirements for the annual

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61 report; revising which investments a trustee of a
 62 trust has the power to invest in; deleting provisions
 63 relating to the preneed licensee; amending s. 497.459,
 64 F.S.; prohibiting certain preneed contracts from being
 65 canceled during the life or after the death of the
 66 contract purchaser or beneficiary; requiring
 67 unexpended moneys on an irrevocable contract to be
 68 deposited into the Medical Care Trust Fund under
 69 certain circumstances; amending s. 497.460, F.S.;
 70 conforming provisions to changes made by the act;
 71 repealing s. 497.461, F.S., relating to the
 72 authorization for a preneed licensee to elect surety
 73 bonding as an alternative to depositing funds into a
 74 trust; amending s. 497.462, F.S.; deleting obsolete
 75 references to surety bonds; amending s. 497.464, F.S.;
 76 conforming provisions to changes made by the act;
 77 amending s. 497.465, F.S.; requiring an inactive
 78 preneed licensee to deposit a specified amount of
 79 funds received on certain preneed contracts into the
 80 trust upon a specified time; amending ss. 497.601 and
 81 497.607, F.S.; specifying that cremated remains are
 82 not property; requiring a division of cremated remains
 83 to be consented to by certain persons; providing that
 84 a dispute shall be resolved by a court of competent
 85 jurisdiction; conforming provisions to changes made by
 86 the act; providing an effective date.

87
 88 Be It Enacted by the Legislature of the State of Florida:
 89

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90 Section 1. Present subsections (5) through (8), (9) through
 91 (31), (32) through (38), (39) through (46), (47) through (61),
 92 (62) through (70), and (71) of section 497.005, Florida
 93 Statutes, are redesignated as subsections (6) through (9), (11)
 94 through (33), (35) through (41), (43) through (50), (52) through
 95 (66), (68) through (76), and (78), respectively, and new
 96 subsections (5), (10), (34), (42), (51), (67), and (77) are
 97 added to that section, to read:

98 497.005 Definitions.—As used in this chapter, the term:

99 (5) "Beneficiary" means a natural person expressly
 100 identified in a preneed contract as the person for whom funeral
 101 merchandise or services are intended.

102 (10) "Capital gain" or "capital loss" means a change in the
 103 value of a capital asset, such as investment or real estate,
 104 which gives the asset a different worth than the purchase price.
 105 The gain or loss is not realized until the asset is sold.

106 (34) "Fair market value" means the fair market value of
 107 assets held by a trust as of a specific date, assuming all
 108 assets of the trust are sold on that specific date.

109 (42) "Income" means earnings on trust assets, including
 110 interest, dividends, and other income earned on the principal.

111 (51) "Net income" means, in relation to a trust, ordinary
 112 income minus any income distributions for items such as trust
 113 expenses. For purposes of this subsection, "ordinary income"
 114 means, in relation to a trust, any earnings on trust assets,
 115 including interest and dividends received on property derived
 116 from the use of the trust principal, but does not include
 117 capital gains or capital losses.

118 (67) "Purchaser" means a person who executes a preneed or

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119 an at-need contract with a licensee for merchandise or services.
 120 (77) "Total return withdrawal percentage" means a
 121 percentage, not to exceed 5 percent, of the fair market value of
 122 a trust.

123 Section 2. Subsections (2) and (11) of section 497.141,
 124 Florida Statutes, are amended to read:

125 497.141 Licensing; general application procedures.—

126 (2) Any person desiring to be licensed shall apply to the
 127 licensing authority in writing using such forms and procedures
 128 as may be prescribed by rule. The application for licensure
 129 shall include the applicant's social security number if the
 130 applicant is a natural person; otherwise, the applicant's
 131 federal tax identification number shall be included.
 132 Notwithstanding any other provision of law, the department is
 133 the sole authority for determining the forms and form contents
 134 to be submitted for initial licensure and licensure renewal
 135 application. Such forms and the information and materials
 136 required by such forms may include, as appropriate,
 137 demographics, education, work history, personal background,
 138 criminal history, finances, business information, signature
 139 notarization, performance periods, reciprocity, local government
 140 approvals, supporting documentation, periodic reporting
 141 requirements, fingerprint requirements, continuing education
 142 requirements, business plans, character references, e-mail
 143 addresses, and ongoing education monitoring. Such forms and the
 144 information and materials required by such forms may also
 145 include, to the extent such information or materials are not
 146 already in the possession of the department or the board,
 147 records or information as to complaints, inspections,

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148 investigations, discipline, and bonding. The application shall
 149 be supplemented as needed to reflect any material change in any
 150 circumstance or condition stated in the application that takes
 151 place between the initial filing of the application and the
 152 final grant or denial of the license and that might affect the
 153 decision of the department or the board. After an application by
 154 a natural person for licensure under this chapter is approved,
 155 the licensing authority may require the successful applicant to
 156 provide a photograph of himself or herself for permanent
 157 lamination onto the license card to be issued to the applicant,
 158 pursuant to rules and fees adopted by the licensing authority.

159 (11) The department shall implement a system for
 160 administration of the overall licensing process, including e-
 161 mail notification for the processing and tracking of
 162 applications for licensure, the issuance of licenses approved by
 163 the board, the tracking of licenses issued, the administration
 164 of the license renewal process, and the collection and
 165 processing of fees related to those activities. The system may
 166 use staff and facilities of the department or the department may
 167 enter into a contract for all or any part of such system, upon
 168 such terms and conditions as the department deems advisable, and
 169 such contract may be with another government agency or a private
 170 business.

171 Section 3. Section 497.146, Florida Statutes, is amended to
 172 read:

173 497.146 Licensing; address of record; changes; licensee
 174 responsibility.—Each licensee under this chapter is responsible
 175 for notifying the department in writing of the licensee's
 176 current e-mail address, business and residence mailing address,

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177 and the street address of the licensee's primary place of
 178 practice and shall notify the department ~~in writing~~ within 30
 179 days after any change in such information, in accordance with
 180 procedures and forms prescribed by rule. Notwithstanding any
 181 other provision of law, electronic notification service by
 182 ~~regular mail~~ to a licensee's last known e-mail address of record
 183 or preferred street address of record with the department
 184 constitutes adequate and sufficient notice to the licensee for
 185 any official communication to the licensee by the board or the
 186 department, except when other service is expressly required by
 187 this chapter. The department may adopt rules, forms, and
 188 procedures, including a procedure for electronic reporting of
 189 the data provided pursuant to this section. Rules may be adopted
 190 establishing forms and procedures for licensees to provide the
 191 notice required by this section.

192 Section 4. Paragraphs (b) and (e) of subsection (8),
 193 paragraph (d) of subsection (12), paragraphs (b) and (c) of
 194 subsection (14), and paragraph (b) of subsection (15) of section
 195 497.152, Florida Statutes, are amended to read:

196 497.152 Disciplinary grounds.—This section sets forth
 197 conduct that is prohibited and that shall constitute grounds for
 198 denial of any application, imposition of discipline, or other
 199 enforcement action against the licensee or other person
 200 committing such conduct. For purposes of this section, the
 201 requirements of this chapter include the requirements of rules
 202 adopted under authority of this chapter. No subsection heading
 203 in this section shall be interpreted as limiting the
 204 applicability of any paragraph within the subsection.

205 (8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF HUMAN

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206 REMAINS.—

207 (b) Refusing to surrender promptly the custody of a dead
 208 human body upon the express order of the ~~person~~ legally
 209 authorized person to such person's ~~its~~ custody; however, this
 210 provision shall be subject to any state or local laws or rules
 211 governing custody or transportation of dead human bodies.

212 (e) Failing to obtain written authorization from a legally
 213 authorized person before ~~the family or next of kin of the~~
 214 ~~deceased prior to~~ entombment, interment, disinterment,
 215 disentombment, or disinurnment of the remains of any human
 216 being.

217 (12) DISCLOSURE REQUIREMENTS.—

218 (d) Failure by a funeral director to make full disclosure
 219 in the case of a funeral or direct disposition with regard to
 220 the use of funeral merchandise that is not to be disposed of
 221 with the body or failure to obtain written permission from a
 222 legally authorized person ~~the purchaser~~ regarding disposition of
 223 such merchandise.

224 (14) OBLIGATIONS REGARDING COMPLAINTS AND CLAIMS BY
225 CUSTOMERS.—

226 (b) Committing or performing with such frequency as to
 227 indicate a general business practice any of the following:

228 1. Failing to acknowledge and act promptly upon
 229 communications from a licensee's customers and their
 230 representatives with respect to claims or complaints relating to
 231 the licensee's activities regulated by this chapter.

232 2. Denying claims or rejecting complaints received by a
 233 licensee from a customer or customer's representative, relating
 234 to the licensee's activities regulated by this chapter, without

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235 first conducting reasonable investigation based upon available
236 information.

237 3. Attempting to settle a claim or complaint on the basis
238 of a material document that was altered without notice to, or
239 without the knowledge or consent of, the contract purchaser or a
240 legally authorized person ~~her or his representative or legal~~
241 ~~guardian~~.

242 4. Failing within a reasonable time to affirm or deny
243 coverage of specified services or merchandise under a contract
244 entered into by a licensee upon written request of the contract
245 purchaser or a legally authorized person ~~her or his~~
246 ~~representative or legal guardian~~.

247 5. Failing to promptly provide, in relation to a contract
248 for funeral or burial merchandise or services entered into by
249 the licensee or under the licensee's license, a reasonable
250 explanation to the contract purchaser or a legally authorized
251 person ~~her or his representative or legal guardian~~ of the
252 licensee's basis for denying or rejecting all or any part of a
253 claim or complaint submitted.

254 (c) Making a material misrepresentation to a contract
255 purchaser or a legally authorized person ~~her or his~~
256 ~~representative or legal guardian~~ for the purpose and with the
257 intent of effecting settlement of a claim or complaint or loss
258 under a prepaid contract on less favorable terms than those
259 provided in, and contemplated by, the prepaid contract.

261 For purposes of this subsection, the response of a customer
262 recorded by the customer on a customer satisfaction
263 questionnaire or survey form sent to the customer by the

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264 licensee, and returned by the customer to the licensee, shall
265 not be deemed to be a complaint.

266 (15) MISCELLANEOUS FINANCIAL MATTERS.—

267 (b) Failing to timely remit as required by this chapter the
268 required amounts to any trust fund required by this chapter. The
269 board ~~shall may~~ by rule provide criteria for identifying minor,
270 nonwillful trust remittance deficiencies; and remittance
271 deficiencies falling within such criteria, if fully corrected
272 within 30 days after notice to the licensee by the department,
273 ~~do shall~~ not constitute grounds for disciplinary action or a
274 fine.

275 Section 5. Paragraph (g) is added to subsection (1) of
276 section 497.161, Florida Statutes, to read:

277 497.161 Other rulemaking provisions.—

278 (1) In addition to such other rules as are authorized or
279 required under this chapter, the following additional rules, not
280 inconsistent with this chapter, shall be authorized by the
281 licensing authority.

282 (g) Rules, not inconsistent with part IV of this chapter
283 and the Florida Insurance Code, establishing conditions of use
284 for insurance as a funding mechanism for preneed contracts.

285 Section 6. Subsections (3) and (4) of section 497.266,
286 Florida Statutes, are amended to read:

287 497.266 Care and maintenance trust fund; remedy of
288 department for noncompliance.—

289 (3) A ~~No~~ person may not withdraw or transfer any portion of
290 assets within the corpus ~~of~~ the care and maintenance trust fund,
291 except as authorized by s. 497.2675, without first obtaining
292 written consent from the licensing authority.

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293 (4) The trustee of the trust established pursuant to this
 294 section may only invest in investments and loan trust funds, as
 295 prescribed in s. 497.458. The trustee shall take title to the
 296 property conveyed to the trust for the purposes of investing,
 297 protecting, and conserving it for the cemetery company;
 298 collecting income; and distributing withdrawals from the trust
 299 ~~the principal and income~~ as prescribed in this chapter. The
 300 cemetery company is prohibited from sharing in the discharge of
 301 the trustee's responsibilities under this subsection, except
 302 that the cemetery company may request the trustee to invest in
 303 tax-free investments.

304 Section 7. Section 497.267, Florida Statutes, is amended to
 305 read:

306 497.267 Disposition of withdrawals from the income of care
 307 and maintenance trust fund; notice to purchasers and
 308 depositors. Withdrawals from the net income of the care and
 309 maintenance trust fund shall be used solely for the care and
 310 maintenance of the cemetery, including maintenance of monuments,
 311 which maintenance may shall not be deemed to include the
 312 cleaning, refinishing, repairing, or replacement of monuments;
 313 for reasonable costs of administering the care and maintenance;
 314 and for reasonable costs of administering the trust fund. At the
 315 time of making a sale or receiving an initial deposit, the
 316 cemetery company shall deliver to the person to whom the sale is
 317 made, or who makes a deposit, a written instrument which shall
 318 specifically state the purposes for which withdrawals from the
 319 ~~income of the~~ trust fund shall be used.

320 Section 8. Section 497.2675, Florida Statutes, is created
 321 to read:

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322 497.2675 Withdrawal methods from the care and maintenance
 323 trust fund.

324 (1) The board shall adopt rules, with the approval of the
 325 department, to administer ss. 497.267 and 497.268, including,
 326 but not limited to:

327 (a) Reporting requirements for a cemetery licensed under
 328 this chapter, including the requirement that specific reports be
 329 made on forms designed and approved by the board by rule.

330 (b) Rules to address a cemetery licensed under this chapter
 331 whose pro rata share of the fair market value of the trust has
 332 not grown over a 3-year average, including limiting withdrawals
 333 from the care and maintenance trust fund, and any exceptions
 334 approved by the board.

335 (2) Each cemetery company licensed under this chapter shall
 336 elect one of two withdrawal methods, as specified in paragraphs
 337 (a) and (b), for withdrawals from the cemetery company's care
 338 and maintenance trust fund. The board shall adopt rules, with
 339 the approval of the department, to administer this subsection.

340 (a) Net income withdrawal method.—Net income may be
 341 withdrawn from the trust, as earned, on a monthly basis.

342 (b) Total return withdrawal method.—The licensee shall
 343 multiply the average fair market value of its pro rata share of
 344 the trust by the total return withdrawal percentage and may
 345 withdraw one-fourth of that amount at least quarterly beginning
 346 the first quarter of the new trust year. The initial total
 347 return withdrawal percentage elected by the licensee may not
 348 increase the total return withdrawal percentage for that
 349 quarter. For purposes of this paragraph, "average fair market
 350 value" means, in relation to a trust, the average of the fair

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351 market value of each asset held by the trust at the beginning of
 352 the current year and in each of the 2 previous years, or for the
 353 entire term of the trust if there are less than 2 previous
 354 years, and adjusted as follows:

355 1. If assets are added to the trust during the years used
 356 to determine the average, the amount of each addition is added
 357 to all years in which such addition is not included.

358 2. If assets are distributed from the trust during the
 359 years used to determine the average, other than in satisfaction
 360 of the unitrust amount, as defined in s. 738.1041, the amount of
 361 each distribution is subtracted from all other years in which
 362 such distribution is not included.

363 (3) Without regard to the withdrawal method selected, taxes
 364 on capital gains, if any, must be paid from the trust principal.

365 Section 9. Paragraphs (a) and (b) of subsection (1) and
 366 subsection (2) of section 497.268, Florida Statutes, are amended
 367 to read:

368 497.268 Care and maintenance trust fund, percentage of
 369 payments for burial rights to be deposited.—

370 (1) Each cemetery company shall set aside and deposit in
 371 its care and maintenance trust fund the following percentages or
 372 amounts for all sums received from sales of burial rights:

373 (a) For burial rights, 10 percent of all payments received;
 374 however, for sales made after September 30, 1993, no deposit
 375 shall be less than \$25 per burial right ~~grave~~. For each burial
 376 right which is provided without charge, the deposit to the fund
 377 shall be \$25.

378 ~~(b) For mausoleums or columbaria, 10 percent of payments~~
 379 ~~received.~~

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380 (2) Deposits to the care and maintenance trust fund shall
 381 be made by the cemetery company not later than 30 days following
 382 the close of the calendar month in which any payment was
 383 received; however, when such payments are received in
 384 installments, the percentage of the installment payment placed
 385 in trust must be identical to the percentage which the payment
 386 received bears to the total cost for the burial rights. Trust
 387 income may be used to pay for all usual and customary services
 388 for the operation of a trust account, including, but not limited
 389 to: reasonable trustee and custodian fees, investment adviser
 390 fees, allocation fees, and taxes. If the net income is not
 391 sufficient to pay the fees and other expenses, the fees and
 392 other expenses shall be paid by the cemetery company. ~~Capital~~
 393 ~~gains taxes shall be paid from the corpus.~~

394 Section 10. Section 497.269, Florida Statutes, is amended
 395 to read:

396 497.269 Care and maintenance trust fund; financial
 397 reports.—On or before April 1 of each year, the trustee shall
 398 furnish adequate financial reports that record the fair market
 399 value with respect to the care and maintenance trust fund
 400 utilizing forms and procedures specified by rule. However, the
 401 department may require the trustee to make such additional
 402 financial reports as it deems necessary. In order to ensure that
 403 the proper deposits to the trust fund have been made, the
 404 department shall examine the status of the trust fund of the
 405 company on a semiannual basis for the first 2 years of the trust
 406 fund's existence.

407 Section 11. Subsection (4) of section 497.273, Florida
 408 Statutes, is amended to read:

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409 497.273 Cemetery companies; authorized functions.-

410 (4) This chapter does not prohibit the interment or
411 entombment of the inurned cremated animal remains of the
412 decedent's pet or pets with the decedent's human remains or
413 cremated human remains if:

414 (a) The human remains or cremated human remains are not
415 commingled with the inurned cremated animal remains; and

416 (b) The interment or entombment with the inurned cremated
417 animal remains is with the authorization of a ~~the decedent or~~
418 ~~either~~ legally authorized person.

419 Section 12. Subsection (1) of section 497.274, Florida
420 Statutes, is amended to read:

421 497.274 Standards for grave spaces.-

422 (1) A standard adult grave space shall measure at least 42
423 inches in width and 96 inches in length, except for preinstalled
424 vaults in designated areas. For interments, except cremated
425 remains, the covering soil shall measure no less than 12 inches
426 from the top of the outer burial container at time of interment,
427 unless such level of soil is not physically possible. In any
428 interment, a legally authorized person ~~the family or next of kin~~
429 may waive the 12-inch coverage minimum.

430 Section 13. Paragraph (c) of subsection (2) of section
431 497.283, Florida Statutes, is amended to read:

432 497.283 Prohibition on sale of personal property or
433 services.-

434 (2)

435 (c) In lieu of delivery as required by paragraph (b), for
436 sales to cemetery companies and funeral establishments, and only
437 for such sales, the manufacturer of a permanent outer burial

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438 receptacle which meets standards adopted by rule may elect, at
439 its discretion, to comply with the delivery requirements of this
440 section by annually submitting for approval pursuant to
441 procedures and forms as specified by rule, in writing, evidence
442 of the manufacturer's financial responsibility with the
443 licensing authority for its review and approval. ~~The standards
444 and procedures to establish evidence of financial responsibility
445 shall be those in s. 497.461, with the manufacturer of permanent
446 outer burial receptacles which meet national industry standards
447 assuming the same rights and responsibilities as those of a
448 preneed licensee under s. 497.461.~~

449 Section 14. Subsection (3) of section 497.286, Florida
450 Statutes, is amended to read:

451 497.286 Owners to provide addresses; presumption of
452 abandonment; abandonment procedures; sale of abandoned unused
453 burial rights.-

454 (3) Upon the occurrence of a presumption of abandonment as
455 set forth in subsection (2), a cemetery may file with the
456 department a certified notice attesting to the abandonment of
457 the burial rights. The notice shall do the following:

458 (a) Describe the burial rights certified to have been
459 abandoned;

460 (b) Set forth the name of the owner or owners of the burial
461 rights, or if the owner is known to the cemetery to be deceased,
462 then the names, if known to the cemetery, of such claimants as
463 are heirs at law, next of kin, or specific devisees under the
464 will of the owner or the legally authorized person;

465 (c) Detail the facts with respect to the failure of the
466 owner or survivors as outlined in this section to keep the

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467 cemetery informed of the owner's address for a period of 50
468 consecutive years or more; and

469 (d) Certify that no burial right has been exercised which
470 is held in common ownership with any abandoned burial rights as
471 set forth in subsection (2).

472 Section 15. Section 497.371, Florida Statutes, is amended
473 to read:

474 497.371 Embalmers; establishment of embalmer apprentice
475 program.—The licensing authority adopts rules establishing an
476 embalmer apprentice program. An embalmer apprentice may perform
477 only those tasks, functions, and duties relating to embalming
478 which are performed under the direct supervision of an embalmer
479 who has an active, valid license under s. 497.368 or s. 497.369.
480 An embalmer apprentice is ~~shall be~~ eligible to serve in an
481 apprentice capacity for a period not to exceed 3 years as may be
482 determined by licensing authority rule or for a period not to
483 exceed 5 years if the apprentice is enrolled in and attending a
484 course in mortuary science or funeral service education at any
485 mortuary college or funeral service education college or school.
486 An embalmer apprentice shall be issued a license ~~licensed~~ upon
487 payment of a licensure fee as determined by licensing authority
488 rule but not to exceed \$200. An applicant for the embalmer
489 apprentice program may not be issued a license unless the
490 licensing authority determines that the applicant is of good
491 character and has not demonstrated a history of lack of
492 trustworthiness or integrity in business or professional
493 matters.

494 Section 16. Paragraph (b) of subsection (1) of section
495 497.372, Florida Statutes, is amended to read:

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496 497.372 Funeral directing; conduct constituting practice of
497 funeral directing.—

498 (1) The practice of funeral directing shall be construed to
499 consist of the following functions, which may be performed only
500 by a licensed funeral director:

501 (b) Planning or arranging, on an at-need basis, the details
502 of funeral services, embalming, cremation, or other services
503 relating to the final disposition of human remains, including
504 the removal of such remains from the state, ~~with the family or~~
505 ~~friends of the decedent or any other person responsible for such~~
506 ~~services~~; setting the time of the services; establishing the
507 type of services to be rendered; acquiring the services of the
508 clergy; and obtaining vital information for the filing of death
509 certificates and obtaining of burial transit permits.

510 Section 17. Subsection (4) of section 497.381, Florida
511 Statutes, is amended to read:

512 497.381 Solicitation of goods or services.—

513 (4) At-need solicitation of funeral merchandise or services
514 is prohibited. A ~~No~~ funeral director or direct disposer or her
515 or his agent or representative may not contact the legally
516 authorized person or family ~~or next of kin of a deceased person~~
517 to sell services or merchandise unless the funeral director or
518 direct disposer or her or his agent or representative has been
519 initially called or contacted by the legally authorized person
520 or family ~~or next of kin of such person~~ and requested to provide
521 her or his services or merchandise.

522 Section 18. Paragraph (c) of subsection (2) of section
523 497.452, Florida Statutes, is amended to read:

524 497.452 Preneed license required.—

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525 (2)

526 ~~(c) The provisions of paragraph (a) do not apply to any~~

527 ~~Florida corporation existing under chapter 607 acting as a~~

528 ~~servicing agent hereunder in which the stock of such corporation~~

529 ~~is held by 100 or more persons licensed pursuant to part III of~~

530 ~~this chapter, provided no one stockholder holds, owns, votes, or~~

531 ~~has proxies for more than 5 percent of the issued stock of such~~

532 ~~corporation; provided the corporation has a blanket fidelity~~

533 ~~bond, covering all employees handling the funds, in the amount~~

534 ~~of \$50,000 or more issued by a licensed insurance carrier in~~

535 ~~this state; and provided the corporation processes the funds~~

536 ~~directly to and from the trustee within the applicable time~~

537 ~~limits set forth in this chapter. The department may require any~~

538 ~~person claiming that the provisions of this paragraph exempt it~~

539 ~~from the provisions of paragraph (a) to demonstrate to the~~

540 ~~satisfaction of the department that it meets the requirements of~~

541 ~~this paragraph.~~

542 Section 19. Subsections (1) and (3) of section 497.454,

543 Florida Statutes, are amended to read:

544 497.454 Approval of preneed contract and related forms.—

545 (1) Preneed contract forms and related forms shall be filed

546 with and approved by the licensing authority before ~~prior to~~

547 use, pursuant to procedures specified by rule. The licensing

548 authority may not approve any electronic or paper preneed

549 contract ~~form~~ that does not provide for sequential prenumbering

550 thereon.

551 ~~(3) Specific disclosure regarding the preneed licensee's~~

552 ~~ability to select either trust funding or the financial~~

553 ~~responsibility alternative as set forth in s. 497.461 in~~

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554 ~~connection with the receipt of preneed contract proceeds is~~

555 ~~required in the preneed contract.~~

556 Section 20. Subsections (2), (7), and (8) of section

557 497.456, Florida Statutes, are amended to read:

558 497.456 Preneed Funeral Contract Consumer Protection Trust

559 Fund.—

560 (2) Within 60 days after the end of each calendar quarter,

561 for each preneed contract written during the quarter and not

562 canceled within 30 days after the date of the execution of the

563 contract, each preneed licensee, whether funding preneed

564 contracts by the sale of insurance or by establishing a trust

565 pursuant to s. 497.458 or s. 497.464, shall remit the sum of

566 \$2.50 for each preneed contract having a purchase price of

567 \$1,500 or less, and the sum of \$5 for each preneed contract

568 having a purchase price in excess of \$1,500; and each preneed

569 licensee utilizing ~~s. 497.461~~ or s. 497.462 shall remit the sum

570 of \$5 for each preneed contract having a purchase price of

571 \$1,500 or less, and the sum of \$10 for each preneed contract

572 having a purchase price in excess of \$1,500.

573 (7) In any situation in which a delinquency proceeding has

574 not commenced, the licensing authority may, in its discretion,

575 use the trust fund for the purpose of providing restitution to

576 any consumer, owner, or beneficiary of a preneed contract or

577 similar regulated arrangement under this chapter entered into

578 after June 30, 1977. If, after investigation, the licensing

579 authority determines that a preneed licensee has breached a

580 preneed contract by failing to provide benefits or an

581 appropriate refund, or that a provider, who is a former preneed

582 licensee or an establishment which has been regulated under this

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583 chapter, has sold a preneed contract and has failed to fulfill
 584 the arrangement or provide the appropriate refund, and such
 585 preneed licensee or provider does not provide or does not
 586 possess adequate funds to provide appropriate refunds, payments
 587 from the trust fund may be authorized by the licensing
 588 authority. In considering whether payments shall be made or when
 589 considering who will be responsible for such payments, the
 590 licensing authority shall consider whether the preneed licensee
 591 or previous provider has been acquired by a successor who is or
 592 should be responsible for the liabilities of the defaulting
 593 entity. With respect to preneed contracts funded by life
 594 insurance, payments from the fund shall be made: if the insurer
 595 is insolvent, but only to the extent that funds are not
 596 available through the liquidation proceeding of the insurer; or
 597 if the preneed licensee is unable to perform under the contract
 598 and the insurance proceeds are not sufficient to cover the cost
 599 of the merchandise and services contracted for. In no event
 600 shall the licensing authority approve payments in excess of the
 601 insurance policy limits unless it determines that at the time of
 602 sale of the preneed contract, the insurance policy would have
 603 paid for the services and merchandise contracted for. Such
 604 monetary relief shall be in an amount as the licensing authority
 605 may determine and shall be payable in such manner and upon such
 606 conditions and terms as the licensing authority may prescribe.
 607 However, with respect to preneed contracts to be funded pursuant
 608 to s. 497.458, s. 497.459, ~~s. 497.461~~, or s. 497.462, any
 609 restitution made pursuant to this subsection may ~~shall~~ not
 610 exceed, as to any single contract or arrangement, the lesser of
 611 the gross amount paid under the contract or 4 percent of the

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612 uncommitted assets of the trust fund. With respect to preneed
 613 contracts funded by life insurance policies, any restitution may
 614 ~~shall~~ not exceed, as to any single contract or arrangement, the
 615 lesser of the face amount of the policy, the actual cost of the
 616 arrangement contracted for, or 4 percent of the uncommitted
 617 assets of the trust fund. The total of all restitutions made to
 618 all applicants under this subsection in a single fiscal year may
 619 ~~shall~~ not exceed the greater of 30 percent of the uncommitted
 620 assets of the trust fund as of the end of the most recent fiscal
 621 year or \$120,000. The department may use moneys in the trust
 622 fund to contract with independent vendors pursuant to chapter
 623 287 to administer the requirements of this subsection.

624 (8) All moneys deposited in the Preneed Funeral Contract
 625 Consumer Protection Trust Fund together with all accumulated
 626 appreciation income shall be used only for the purposes
 627 expressly authorized by this chapter and may ~~shall~~ not be
 628 subject to any liens, charges, judgments, garnishments, or other
 629 creditor's claims against the preneed licensee, any trustee
 630 utilized by the preneed licensee, any company providing a surety
 631 bond as specified in this chapter, or any purchaser of a preneed
 632 contract. No preneed contract purchaser shall have any vested
 633 rights in the trust fund.

634 Section 21. Paragraphs (a), (d), and (f) of subsection (1)
 635 of section 497.458, Florida Statutes, are amended, a new
 636 paragraph (k) is added to that subsection, and paragraph (a) of
 637 subsection (3), subsection (4), paragraphs (a) and (c) of
 638 subsection (5), and subsections (6) through (9) of that section
 639 are amended, to read:

640 497.458 Disposition of proceeds received on contracts.-

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641 (1) (a) Any person who is paid, collects, or receives funds
 642 under a preneed contract for funeral services or merchandise or
 643 burial services or merchandise shall deposit an amount at least
 644 equal to the sum of 70 percent of the purchase price collected
 645 for all services sold and facilities rented; 100 percent of the
 646 purchase price collected for all cash advance items sold; and 30
 647 percent of the purchase price collected or 110 percent of the
 648 wholesale cost, whichever is greater, for each item of
 649 merchandise sold. The board may, by rule, specify criteria for
 650 the classification of items sold in a preneed contract as
 651 services, cash advances, or merchandise.

652 (d) The trustee shall take title to the property conveyed
 653 to the trust for the purpose of investing, protecting, and
 654 conserving it for the preneed licensee; collecting income; and
 655 distributing the fair market value ~~principal and income~~ as
 656 prescribed in this chapter. The preneed licensee is prohibited
 657 from sharing in the discharge of these responsibilities, except
 658 that the preneed licensee may request the trustee to invest in
 659 tax-free investments and may appoint an adviser to the trustee.
 660 The licensing authority may adopt rules limiting or otherwise
 661 specifying the degree to which the trustee may rely on the
 662 investment advice of an investment adviser appointed by the
 663 preneed licensee. The licensing authority may adopt rules
 664 limiting or prohibiting payment of fees by the trust to
 665 investment advisors that are employees or principals of the
 666 licensee to whom the trust fund relates.

667 (f) The deposited funds shall be held in trust, both as to
 668 principal and any change in fair market value ~~income earned~~
 669 thereon, and shall remain intact, except that the cost of the

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670 operation of the trust or trust account authorized by this
 671 section may be deducted from the income earned thereon.

672 (k) Beginning April 1, 2018, and on or before each April 1
 673 thereafter, the trustee shall furnish the department with an
 674 annual report regarding each preneed licensee trust account held
 675 by the trustee at any time during the previous calendar year.
 676 The report shall state the name and address of the trustee; the
 677 name, address, and license number of the licensee to whom the
 678 report relates; the trust account number; the beginning and
 679 ending trust balance; and, as may be specified by department
 680 rule, a list of receipts showing the date and amount of any
 681 disbursement. The report must be signed by the trustee's account
 682 manager for the trust account. The trustee shall submit the
 683 report in a format and pursuant to procedures specified by
 684 department rule.

685 (3) (a) The trustee shall make regular valuations of assets
 686 it holds in trust and provide a fair market value report of such
 687 valuations to the preneed licensee at least quarterly.

688 (4) The licensing authority may adopt rules exempting from
 689 the prohibition of paragraph (1) (g) ~~(1) (h)~~, pursuant to criteria
 690 established in such rule, the investment of trust funds in
 691 investments, such as widely and publicly traded stocks and
 692 bonds, notwithstanding that the licensee, its principals, or
 693 persons related by blood or marriage to the licensee or its
 694 principals have an interest by investment in the same entity,
 695 where neither the licensee, its principals, or persons related
 696 by blood or marriage to the licensee or its principals have the
 697 ability to control the entity invested in, and it would be in
 698 the interest of the preneed contract holders whose contracts are

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699 secured by the trust funds to allow the investment.

700 (5) The trustee of the trust established pursuant to this
701 section shall only have the power to:

702 (a) Invest in investments as prescribed in s. 518.11 ~~215.47~~
703 and exercise the powers set forth in part VIII of chapter 736.
704 However, the trustee may not invest in, or count as assets, life
705 insurance policies or annuity contracts; real estate may not
706 compose more than 25 percent of the trust's assets; and,
707 ~~provided that~~ the licensing authority may by order require the
708 trustee to liquidate or dispose of any investment within 30 days
709 after such order, or within such other times as the order may
710 direct. The licensing authority may issue such order if it
711 determines that the investment violates any provision of this
712 chapter or is not in the best interests of the preneed contract
713 holders whose contracts are secured by the trust funds.

714 (c) Commingle the property of the trust with the property
715 of any other trust established pursuant to this chapter and make
716 corresponding allocations and divisions of assets, liabilities,
717 income, ~~and expenses,~~ and capital gains and losses.

718 ~~(6) The preneed licensee, at her or his election, shall~~
719 ~~have the right and power, at any time, to revest in it title to~~
720 ~~the trust assets, or its pro rata share thereof, provided it has~~
721 ~~complied with s. 497.461.~~

722 ~~(7) Notwithstanding anything contained in this chapter to~~
723 ~~the contrary, the preneed licensee, via its election to sell or~~
724 ~~offer for sale preneed contracts subject to this section, shall~~
725 ~~represent and warrant, and is hereby deemed to have done such,~~
726 ~~to all federal and Florida taxing authorities, as well as to all~~
727 ~~potential and actual preneed contract purchasers, that:~~

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728 ~~(a) Section 497.461 is a viable option available to it at~~
729 ~~any and all relevant times;~~

730 ~~(b) Section 497.462 is a viable option available to it at~~
731 ~~any and all relevant times for contracts written prior to July~~
732 ~~1, 2001, for funds not held in trust as of July 1, 2001, or~~

733 ~~(c) For any preneed licensee authorized to do business in~~
734 ~~this state that has total bonded liability exceeding \$100~~
735 ~~million as of July 1, 2001, s. 497.462 is a viable option to it~~
736 ~~at any and all relevant times for contracts written prior to~~
737 ~~December 31, 2004, for funds not held in trust as of July 1,~~
738 ~~2001.~~

739 ~~(8) If in the preneed licensee's opinion it does not have~~
740 ~~the ability to select the financial responsibility alternative~~
741 ~~of s. 497.461 or s. 497.462, then the preneed licensee shall not~~
742 ~~have the right to sell or solicit preneed contracts.~~

743 (6)(9) The amounts required to be placed in a trust by this
744 section for contracts previously entered into shall be as
745 follows:

746 (a) For contracts entered into before October 1, 1993, the
747 trust amounts as amended by s. 6, chapter 83-316, Laws of
748 Florida, shall apply.

749 (b) For contracts entered into on or after October 1, 1993,
750 the trust amounts as amended by s. 98, chapter 93-399, Laws of
751 Florida, shall apply.

752 Section 22. Paragraph (a) of subsection (6) of section
753 497.459, Florida Statutes, is amended to read:

754 497.459 Cancellation of, or default on, preneed contracts.-

755 (6) OTHER PROVISIONS.-

756 (a) All preneed contracts are cancelable and revocable as

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757 provided in this section, provided that a preneed contract does
 758 not restrict any contract purchaser who is the beneficiary of
 759 the preneed contract and who is a qualified applicant for, or a
 760 recipient of, supplemental security income, temporary cash
 761 assistance, or Medicaid from making her or his contract
 762 irrevocable. A preneed contract that is made irrevocable
 763 pursuant to this section may not be canceled during the life or
 764 after the death of the contract purchaser or beneficiary as
 765 described in this section. Any unexpended moneys paid on an
 766 irrevocable contract shall be remitted to the Agency for Health
 767 Care Administration for deposit into the Medical Care Trust Fund
 768 after final disposition of the beneficiary.

769 Section 23. Section 497.460, Florida Statutes, is amended
 770 to read:

771 497.460 Payment of funds upon death of named beneficiary.—
 772 Disbursements of funds discharging any preneed contract
 773 fulfilled after September 30, 1993, shall be made by the trustee
 774 to the preneed licensee upon receipt of a certified copy of the
 775 death certificate of the contract beneficiary or satisfactory
 776 evidence as established by rule of the licensing authority that
 777 the preneed contract has been performed in whole or in part.
 778 However, if the contract is only partially performed, the
 779 disbursement shall only cover the fair market value of that
 780 portion of the contract performed. In the event of any contract
 781 default by the contract purchaser, or in the event that the
 782 funeral merchandise or service or burial merchandise or service
 783 contracted for is not provided or is not desired by the legally
 784 authorized person heirs or personal representative of the
 785 contract beneficiary, the trustee shall return, within 30 days

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786 after its receipt of a written request therefor, funds paid on
 787 the contract to the preneed licensee or to its assigns, subject
 788 to ~~the provisions of s. 497.459.~~

789 Section 24. Section 497.461, Florida Statutes, is repealed.

790 Section 25. The repeal of s. 497.461, Florida Statutes, by
 791 this act does not apply to a preneed licensee who has elected to
 792 maintain a surety bond in lieu of depositing funds into a trust
 793 as of July 1, 2016.

794 Section 26. Subsection (2), paragraph (a) of subsection
 795 (3), and subsections (7) and (10) of section 497.462, Florida
 796 Statutes, are amended to read:

797 497.462 Other alternatives to deposits under s. 497.458.—

798 ~~(2) Upon prior approval by the licensing authority, the~~
 799 ~~preneed licensee may file a letter of credit with the licensing~~
 800 ~~authority in lieu of a surety bond. Such letter of credit must~~
 801 ~~be in a form, and is subject to terms and conditions, prescribed~~
 802 ~~by the board. It may be revoked only with the express approval~~
 803 ~~of the licensing authority.~~

804 (2)(3)(a) A buyer of preneed merchandise or services who
 805 does not receive such services or merchandise due to the
 806 economic failure, closing, or bankruptcy of the preneed licensee
 807 must file a claim with the surety as a prerequisite to payment
 808 of the claim and, if the claim is not paid, may bring an action
 809 based on the bond and recover against the surety. ~~In the case of~~
 810 ~~a letter of credit or cash deposit that has been filed with the~~
 811 ~~licensing authority, the buyer may file a claim with the~~
 812 ~~licensing authority.~~

813 (6)(7) Any preneed contract which promises future delivery
 814 of merchandise at no cost constitutes a paid-up contract.

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815 Merchandise which has been delivered is not covered by the
 816 required performance bond ~~or letter of credit~~ even though the
 817 contract is not completely paid. The preneed licensee may not
 818 cancel a contract unless the purchaser is in default according
 819 to the terms of the contract and subject to the requirements of
 820 s. 497.459. A contract sold, discounted, and transferred to a
 821 third party constitutes a paid-up contract for the purposes of
 822 the performance bond ~~or letter of credit~~.

823 ~~(9)(10)~~ The licensing authority may adopt forms and rules
 824 necessary to implement this section, including, but not limited
 825 to, rules which ensure that the surety bond provides ~~and line of~~
 826 ~~credit provide~~ liability coverage for preneed merchandise and
 827 services.

828 Section 27. Paragraphs (c) and (f) of subsection (1) of
 829 section 497.464, Florida Statutes, are amended to read:

830 497.464 Alternative preneed contracts.—

831 (1) Nothing in this chapter shall prevent the purchaser and
 832 the preneed licensee from executing a preneed contract upon the
 833 terms stated in this section. Such contracts shall be subject to
 834 ~~all provisions of this chapter except:~~

835 ~~(e) Section 497.458(1), (3), and (6).~~

836 ~~(f) Section 497.461.~~

837 Section 28. Subsection (2) and paragraph (c) of subsection
 838 (9) of section 497.465, Florida Statutes, are amended to read:

839 497.465 Inactive, surrendered, and revoked preneed
 840 licensees.—

841 (2) Upon becoming inactive, a preneed licensee shall cease
 842 all preneed sales to the public and upon becoming inactive. ~~the~~
 843 ~~preneed licensee shall collect and deposit into the trust all~~

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844 funds it receives on or after the date on which it becomes
 845 inactive from sales of into trust all of the funds paid toward
 846 preneed contracts sold ~~before~~ prior to becoming inactive.

847 (9) The licensing authority may adopt rules for the
 848 implementation of this section, for the purpose of ensuring a
 849 thorough review and investigation of the status and condition of
 850 the preneed licensee's business affairs for the protection of
 851 the licensee's preneed customers. Such rules may include:

852 (c) Requirements for submission of ~~unaudited or audited~~
 853 financial statements, as the licensing authority deems
 854 advisable.

855 Section 29. Paragraph (b) of subsection (1) of section
 856 497.601, Florida Statutes, is amended to read:

857 497.601 Direct disposition; duties.—

858 (1) Those individuals licensed as direct disposers may
 859 perform only those functions set forth below:

860 (b) Secure pertinent information from a legally authorized
 861 person the decedent's next of kin in order to complete the death
 862 certificate and to file for the necessary permits for ~~direct~~
 863 disposition.

864 Section 30. Subsection (1) of section 497.607, Florida
 865 Statutes, is amended, present subsections (2), (3), and (4) of
 866 that section are redesignated as subsections (3), (4), and (5),
 867 respectively, and a new subsection (2) is added to that section,
 868 to read:

869 497.607 Cremation; procedure required.—

870 (1) At the time of the arrangement for a cremation
 871 performed by any person licensed pursuant to this chapter, the
 872 legally authorized person contracting for cremation services

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873 shall be required to designate her or his intentions with
874 respect to ~~the~~ disposition of the cremated remains of the
875 deceased in a signed declaration of intent which shall be
876 provided by and retained by the funeral or direct disposal
877 establishment. A cremation may not be performed until a legally
878 authorized person gives written authorization, which may include
879 the declaration of intent to dispose of the cremated remains,
880 for such cremation. The cremation must be performed within 48
881 hours after a specified time which has been agreed to in writing
882 by the person authorizing the cremation.

883 (2) Cremated remains are not property, as defined in s.
884 731.201(32), and are not subject to partition for purposes of
885 distribution under s. 733.814. A division of cremated remains
886 requires the consent of the legally authorized person who
887 approved the cremation or, if the legally authorized person is
888 the decedent, the next legally authorized person pursuant to s.
889 497.005(43). A dispute regarding the division of cremated
890 remains shall be resolved by a court of competent jurisdiction.

891 Section 31. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Chair*
Communications, Energy, and Public Utilities,
Vice Chair
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL

8th District

January 20, 2016

The Honorable Anitere Flores
225 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 854 – Funeral, Cemetery, and Consumer Services

Dear Chairwoman Flores:

Senate Bill 854, relating Funeral, Cemetery, and Consumer Services has been referred to the Fiscal Policy Committee. I am requesting your consideration on placing SB 854 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Dorothy L. Hukill, District 8

cc: Jennifer Hrdlicka, Staff Director of the Fiscal Policy Committee
Tama Lyon, Administrative Assistant of the Fiscal Policy Committee

REPLY TO:

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Senate's Website: www.flsenate.gov

ANDY GARDINER
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)

1:00 pm

1/27/2016

Meeting Date

SB 854

Bill Number (if applicable)

Topic FUNERAL SERVICES

Amendment Barcode (if applicable)

Name KEN FRANKLIN

Job Title Director of Member Services - IFDF

Address 119 E. PARK Ave

Phone 850/222-0198

Tallahassee FL 32302

Email KEN@IFDF.org

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

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

Representing Independent Funeral Directors of Florida

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

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

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

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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)

27 JANUARY, 2016
Meeting Date

SB 854
Bill Number (if applicable)

#854

Topic FUNERAL BILL RELATING TO #497

Amendment Barcode (if applicable)

Name HOWARD BECKHAM

Job Title PAST. PRES. IFDF & LICENSED FUNERAL DIRECTOR & EMBALMER

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Street

ST. AUGUSTINE, FLA. 32084

Email HRBECKHAM@GMAIL.COM

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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1-27-16

Meeting Date

^{SB}
05/05/88 854

Bill Number (if applicable)

Topic FUNERAL, CEMETERY, AND CONSUMER SERVICES

Amendment Barcode (if applicable)

Name JIM WYLIE

Job Title _____

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Tallahassee

FL

32309

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City

State

Zip

gmail.com

Speaking: For Against Information

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

Representing Florida Funeral Cemetery & Consumer Advocacy

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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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1/27/16

Meeting Date

SB 854

Bill Number (if applicable)

Topic Funeral Bill

Amendment Barcode (if applicable)

Name Michele Hood

Job Title VP Trust Services

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Street

Tallahassee FL 32301

City

State

Zip

Email mhood@ifdf.org

Speaking: For Against Information

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

Representing Independent Funeral Directors of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

01/27/2016

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

SB 854
Bill Number (if applicable)

Meeting Date

Amendment Barcode (if applicable)

Topic Funeral & Cemetery Services

Name GEORGIA MCKEOWN

Job Title President, GA MCKEOWN & ASSOC

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^{Street}
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Email georgia@gamckeown.com

City

State

Zip

Speaking: For Against Information

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

Representing FLORIDA cemetery, cremation & funeral ASSOC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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APPEARANCE RECORD

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

1-27-16

Meeting Date

SB 854

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Legislative Affairs Directors

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Street

Phone 850-413-2829

Tallahassee FL 32399
City State Zip

Email elizabeth.boyd@myfloridaleg.com

Speaking: For Against Information

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

Representing Dept. of Financial Services

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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1/27
Meeting Date

254
Bill Number (if applicable)

Topic Funeral

Amendment Barcode (if applicable)

Name Clark Smith

Job Title _____

Address 123 Adams

Phone 681-4461

Street TLH City FL. State FL. Zip _____

Email _____

Speaking: For Against Information

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

Representing Dignity Memorial

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
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 Fiscal Policy

BILL: SB 962

INTRODUCER: Senator Gaetz

SUBJECT: Vocational Rehabilitation

DATE: January 26, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Graf</u>	<u>Klebacha</u>	<u>HE</u>	Favorable
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	Recommend: Favorable
3.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

I. Summary:

SB 962 requires the Division of Vocational Rehabilitation to develop and implement a performance improvement plan to achieve specified goals and to annually submit a performance report with specified data to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The 2015-2016 General Appropriations Act (GAA) included proviso language requiring the division to report significant measurable quarterly progress on specific performance indicators related to the VR program. These performance provisions will expire on July 1, 2016, unless the Legislature acts to codify the policy beyond the 2015-2016 Fiscal Year. SB 962 modifies and codifies the VR program performance policy enacted in the 2015-2016 GAA.

The bill has no impact on state funds. The performance measures specified in the bill are expected to make the division more effective in spending its appropriated funds.

The bill is effective July 1, 2016.

II. Present Situation:

Approximately 2.4 million individuals with a disability live in Florida, representing over 13 percent of the state's population. Ten percent of the state's working-age (i.e., ages 18-64) population is composed of individuals with a disability.¹ Such individuals may qualify for vocational rehabilitation (VR) services. VR is a federal-state program that helps individuals with a disability obtain and maintain employment.²

¹ U.S. Census Bureau, *2010-2014 American Community Survey 5-Year Estimates*, available at http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_5YR/DP02/0400000US12 (last visited January 25, 2016).

² Florida Department of Education, Division of Vocational Rehabilitation, *Frequently Asked Questions*, available at <http://www.rehabworks.org/faq.shtml> (last visited January 25, 2016).

Federal Law

Rehabilitation Act of 1973

The Rehabilitation Act of 1973, as amended, establishes the purposes of VR services to include:³

- Empowering individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society; and
- Ensuring that the federal government plays a leadership role in promoting the employment of individuals with disabilities and in assisting states and providers of services to fulfill gainful employment and independent living aspirations of individuals with disabilities.

The federal Rehabilitation Services Administration (RSA) oversees grant programs that help individuals with a disability obtain employment and live more independently through support such as counseling, medical and psychological services, job training, and other individualized services. “RSA’s major Title I formula grant program provides funds to state vocational rehabilitation (VR) agencies to provide employment-related services for individuals with disabilities, giving priority to individuals who are significantly disabled.”⁴

Workforce Innovation and Opportunity Act

The Workforce Innovation and Opportunity Act (WIOA), enacted on July 22, 2014, replaces the Workforce Investment Act of 1998 and “represents a renewed commitment to workforce development with an eye to the future through innovation and support for individual and national economic growth.”⁵ WIOA aims to increase opportunities for individuals facing barriers to employment and invests in the “connection between education and career preparation.”⁶

State Law

The Division of Vocational Rehabilitation (division) within the Florida Department of Education is designated as the administrative unit for the purposes of complying with the Rehabilitation Act of 1973, as amended.⁷ The division is responsible for maintaining an internal system of quality assurance and monitoring compliance with state and federal laws, rules, and regulations.⁸ To administer VR services, the division must make eligibility determinations for VR services, provide VR services in collaboration with state and local entities, conduct research, and perform VR needs assessments.⁹

The Florida Rehabilitation Council (council) is responsible for assisting the division in the planning and development of statewide rehabilitation programs and services, recommends

³ 29 U.S.C. s. 701(b).

⁴ U.S. Department of Education, Office of Special Education and Rehabilitative Services, *Welcome to RSA*, available at <http://www2.ed.gov/about/offices/list/osers/rsa/index.html> (last visited January 25, 2016).

⁵ U.S. Department of Education, Office of Special Education and Rehabilitative Services, *RSA: Workforce Innovation and Opportunity Act*, available at <http://www2.ed.gov/about/offices/list/osers/rsa/wioa-reauthorization.html> (last visited January 25, 2016). WIOA is codified at 29 U.S.C. ch. 32. See Pub. L. No. 113-128, 128 Stat. 1425 (July 22, 2014).

⁶ *Id.*

⁷ Section 413.202, F.S.

⁸ Section 413.207, F.S.

⁹ Section 413.23, F.S.

improvements to such programs and services, and performs specified functions.¹⁰ The council is responsible for performing functions such as developing and reviewing state goals and priorities in accordance with federal law and evaluating VR program effectiveness.¹¹

There are six VR regions, with 89 field locations throughout the state.¹² During the 2015-2016 Fiscal Year, the division had 931 full-time equivalent (FTE) positions including administrative staff, counselors, and other staff.¹³

Eligibility Requirements for Vocational Rehabilitation Services

Under Florida law, an individual with a disability¹⁴ is eligible for VR services if the person requires VR services to prepare for, engage in, or retain gainful employment.¹⁵ The division is responsible for determining eligibility of an individual for VR services.¹⁶ If the division determines that an individual is eligible for VR services, the division must:¹⁷

- Complete an assessment for determining the eligibility and vocational rehabilitation needs; and
- Ensure that an individualized plan for employment (IPE)¹⁸ is prepared, which must be jointly developed and signed by the VR counselor or coordinator and the eligible individual, or as appropriate, a parent, family member, guardian, advocate, or authorized representative of the individual.¹⁹ Each IPE must be reviewed annually and revised, as needed.²⁰

Vocational Rehabilitation Service Delivery

Based on an individual's VR needs, VR services may include a variety of services such as vocational evaluation and planning, career counseling and guidance, job-site assessment and accommodations, job placement, job coaching, and on-the-job training.²¹

The division operates under a prioritization methodology called the Order of Selection (OOS).²² The Rehabilitation Act of 1973, as amended, requires the VR program to serve individuals with

¹⁰ Section 413.405, F.S. Members of the council are appointed by the Governor. The council membership must include at least 15 members but no more than 25 at a time.

¹¹ Section 413.405(9), F.S.

¹² Office of Program Policy Analysis and Government Accountability, Presentation to the Florida Senate Appropriations Subcommittee on Education, at 9, (Oct. 7, 2015) available at http://www.flsenate.gov/PublishedContent/Committees/2014-2016/AED/MeetingRecords/MeetingPacket_3162.pdf (last visited January 25, 2016).

¹³ *Id.* The 931 FTE staff positions include vacancies.

¹⁴ Disability means "a physical or mental impairment that constitutes or results in a substantial impediment to employment." Section 413.20(7), F.S.

¹⁵ Section 413.30(1), F.S.

¹⁶ Section 413.30(4), F.S.

¹⁷ Section 413.30(5), F.S.

¹⁸ An individualized plan for employment (IPE) includes a "comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of an eligible individual to make a determination of the goals, objectives, nature, and scope of vocational rehabilitation services." Section 413.20(3), F.S.

¹⁹ Section 413.30(5)(a), F.S.; Rule 6A-25.007, F.A.C.

²⁰ Section 413.30(5)(c), F.S.

²¹ *Supra* note 2.

²² *Supra* note 11 at 12.

the most significant disabilities first when there are not enough resources to serve everyone who is eligible for VR services.²³ The OOS categories include:²⁴

- Category 1, comprised of individuals with the most significant disabilities;
- Category 2, comprised of individuals with significant disabilities; and
- Category 3, comprised of individuals with disabilities.

The division has reduced the waiting list by 12,527 individuals since the first quarter of the 2014-2015 fiscal year.²⁵ As of December 23, 2015, there were no wait lists for individuals under Category 1 or Category 2. However, the trends are different for individuals under Category 3: the number of individuals on a wait list and the average wait time for Category 3 have increased since September 2014. As of December 23, 2015, there were 1,674 individuals on the wait list for Category 3, with an average wait time of 654 days.²⁶

Vocational Rehabilitation Accountability

Requirements

Accountability requirements for the VR program are directed by both federal and state law.²⁷ The Rehabilitation Act of 1973, as amended, requires the RSA to establish evaluation standards and performance indicators for the VR program, including outcome and related measures of program performance. The RSA has established the minimum levels of performance for each performance indicator and each year state VR agencies are required to report program performance data to the RSA. State agencies that fail to meet the established performance levels must develop a program improvement plan outlining specific actions to improve program performance.²⁸

In addition, Florida law, applicable for the 2015-2016 fiscal year only, requires the division to report significant measurable quarterly progress in the following measures:²⁹

- Average wait list time;
- Number of persons receiving services (active cases);
- Number and percentage of customers receiving postsecondary education;
- Number and percentage of customers receiving CAPE industry certifications;
- Number and percentage of customers gainfully employed;

²³ U.S. Department of Education, Office of Special Education and Rehabilitative Services, *RSA – Frequently Asked Questions About RSA: If I am eligible for the vocational rehabilitation program, do I automatically receive services?*, available at <https://rsa.ed.gov/faqs.cfm> (last visited January 25, 2016).

²⁴ *Supra* note 11 at 12.

²⁵ Florida Department of Education, Presentation to the Florida House of Representatives Education Appropriations Subcommittee, at 151, (January 11, 2016) available at <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2830&Session=2016&DocumentType=Meeting%20Packets&FileName=edas%201-11-16.pdf> (last visited January 25, 2016).

²⁶ *Id.*

²⁷ *Supra* note 11 at 7.

²⁸ U.S. Department of Education, *Evaluation Standards and Performance Indicators for the Vocational Rehabilitation Services Program*, available at <http://www2.ed.gov/rschstat/eval/rehab/standards.html> (last visited January 25, 2016).

²⁹ Specific Appropriation 35, ch. 2015-232, L.O.F. Data available at 32-39, Florida Department of Education, Division of Vocational Rehabilitation, Presentation to the Florida Senate Appropriations Subcommittee on Education, (Oct. 7, 2015) available at http://www.flsenate.gov/PublishedContent/Committees/2014-2016/AED/MeetingRecords/MeetingPacket_3162.pdf (last visited January 25, 2016).

- Average earnings of customers at placement; and
- Number of students receiving preemployment transition services.

These performance provisions will expire on July 1, 2016, unless the Legislature acts to codify the policy beyond the 2015-2016 Fiscal Year. Performance data is discussed above under *Vocational Rehabilitation Service Delivery*.

Data

In addition to its other duties, the council must submit progress reports and annual reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the U.S. Secretary of Education.³⁰ The 2013-2014 annual report prepared by the council indicates that 7,214 persons with disabilities entered gainful employment during 2013-2014, resulting in nearly 11 percent improvement over the previous year.³¹ Average annual earnings for closed cases increased from \$17,242 during 2012-2013 to \$17,536 during 2013-2014. Additionally, during 2013-2014, approximately 80 percent of customers were self-supporting at time of case closure. However, notwithstanding the gains in employment and self-sufficiency outcomes, the average number of active customers, median monthly caseload per field staff carrying a caseload, number of IPEs created during a year, and rehabilitation rate decreased compared to the previous year.³²

The Office of Program Policy Analysis and Government Accountability reported that the percentage of cases closed successfully has decreased from 62 percent in 2007 to 37 percent in 2015.³³ Nationally, during 2013:³⁴

- Thirty one states exceeded the federal benchmark for employment rate (i.e., 55.8%).
- Nine states fell below, but were within 10 percent of, the federal benchmark.
- Florida, at 44 percent, was among 10 states that fell significantly below the federal benchmark (10 percent or more below).

Florida, during 2013, also ranked in the lower half on the percentage of VR cases closed with employment when compared to other states that use an OOS methodology and that serve a high percentage (i.e., at least 98%) of individuals with significant disabilities.³⁵

In comparison to most peer states (i.e., California, Georgia, Illinois, Michigan, North Carolina, New York, Ohio, Pennsylvania, and Texas), Florida has a higher percentage of administrative staff, ranking 7th highest in the nation. Regarding the percentage of staff who are counselors, Florida is similar to peer states but ranks in the bottom third of all states at 36th in the nation.³⁶

³⁰ Section 413.405(9), F.S.

³¹ Florida Rehabilitation Council, *Florida Rehabilitation Council 2013-2014 Annual Report*, at 10, available at <http://www.rehabworks.org/rehab/AnnualReport13.pdf> (last visited Jan. 25, 2016).

³² *Id.*

³³ “Cases closed successfully” means individuals who received VR services secured employment. *Supra* note 11 at 16.

³⁴ *Supra* note 11 at 25.

³⁵ *Supra* note 11 at 24.

³⁶ *Supra* note 11 at 27.

III. Effect of Proposed Changes:

The bill requires the Division of Vocational Rehabilitation (division) to develop and implement a performance improvement plan to achieve specified goals and annually submit a performance report with specified data to the Governor, the President of the Senate, and the Speaker of the House of Representatives. This bill modifies and codifies the VR program performance policy enacted in the 2015-2016 GAA, discussed above in the Present Situation.

Performance Improvement Plan

The bill establishes performance goals for the VR program, which are based on the measurable quarterly progress indicators that the division must report regarding VR service delivery, wait time, education, training, and employment outcomes. Specifically, the bill requires the division to develop and implement, by October 1, 2016, a performance improvement plan that must be designed to elevate Florida's VR program to one of the top 10 VR programs nationally and achieve the following goals:

- Decrease the average wait list time for reportable individuals.
- Increase the percentage of participants who:
 - Are in unsubsidized employment during the second quarter after they exit the program.
 - Are in unsubsidized employment during the fourth quarter after they exit the program.
 - Obtained a recognized postsecondary credential or a secondary school diploma or its recognized equivalent during participation in, or within 1 year after their exit from, the program.
 - During a program year, are in an education or training program that leads to a recognized postsecondary credential or to employment and who are achieving a measurable gain of skill, including documented academic, technical, occupational gains or other forms of progress toward a postsecondary credential or employment.
- Increase the number of:
 - Persons earning CAPE industry certifications and CAPE postsecondary industry certifications approved pursuant to s. 1008.44.
 - Students receiving pre-employment transition services.
- Increase the median earnings of participants who are in unsubsidized employment during the second quarter after they exit the program.
- Increase the percentage of youth who received preemployment transition services without applying for additional vocational rehabilitation services and who obtained a recognized postsecondary credential or a secondary school diploma or its recognized equivalent during participation in, or within 1 year after their exit from, the program.
- Increase the division's effectiveness in serving employers, based on indicators developed as required by section 116(b)(2)(A)(iv) of the federal WIOA.

Specifying the VR performance goals in law will guide the division in strategic planning to improve the performance of the state's VR program in service delivery and preparing individuals for employment. For individuals, the focus on workforce education and training will assist individuals in demonstrating to potential employers the mastery of specific skills, abilities, and competencies associated with the education or certifications and facilitate the individuals' efforts to live independently.

Performance Report

The bill specifies the data the division must report annually to the Governor and the Legislature. Compared to the annual report prepared by the Florida Rehabilitation Council (council), the VR program performance report to be prepared by the division, as required under the bill, will include additional VR data (e.g., financial data) as well as a breakdown of performance data by service type and service area.

Specifically, the bill requires the division to annually submit, by December 1, a performance report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The performance report must include the following information for the five most recent fiscal years, reported statewide and by service area:

- Caseload data, including the number of individuals who apply for services and who receive services, by service type.
- Service use data, including the number of units of service provided, by service type.
- Financial data, including expenditures for administration and the provision of services, by service type. Expenditures for education-related services must be identified in specific categories such as tuition and fees, program fees, and support services.
- Outcome data, including the number of cases closed without employment and the number of cases closed with employment. Employment data must be provided separately for supported employment.

The performance report will help the state assess the performance of the state's VR program in preparing individuals for employment and identifying mechanisms to improve the operations and management of the VR program. The performance report will also assist in identifying trends in VR program performance and outcomes.

The bill takes effect July 1, 2016.

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 performance measures specified in the bill are expected to improve division services, thereby leading to better employment outcomes for individuals receiving those services.

C. Government Sector Impact:

The bill has no impact on state funds. The performance measures specified in the bill are expected to make the division more effective in spending its appropriated funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 413.207 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Gaetz

1-00821D-16

2016962__

A bill to be entitled

An act relating to vocational rehabilitation; amending s. 413.207, F.S.; requiring the Division of Vocational Rehabilitation to initiate, by a specified date, a performance improvement plan designed to achieve specified goals; requiring the division to submit a performance report annually, by a specified date, to the Governor and the Legislature which includes specified information; providing an effective date.

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

Section 1. Section 413.207, Florida Statutes, is amended to read:

413.207 Division of Vocational Rehabilitation; quality assurance; performance improvement plan.—

(1) The Division of Vocational Rehabilitation shall maintain an internal system of quality assurance, have proven functional systems, perform due diligence, review provider systems of quality assurance, and be subject to monitoring for compliance with state and federal laws, rules, and regulations.

(2) No later than October 1, 2016, the division shall develop and implement a performance improvement plan designed to achieve the following goals:

(a) Decrease the average wait list time for reportable individuals.

(b) Increase the percentage of participants who are in unsubsidized employment during the second quarter after they exit from the program.

Page 1 of 3

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1-00821D-16

2016962__

(c) Increase the percentage of participants who are in unsubsidized employment during the fourth quarter after they exit from the program.

(d) Increase the number of persons earning CAPE industry certifications and CAPE postsecondary industry certifications approved pursuant to s. 1008.44.

(e) Increase the median earnings of participants who are in unsubsidized employment during the second quarter after they exit from the program.

(f) Increase the percentage of participants who obtained a recognized postsecondary credential or a secondary school diploma or its recognized equivalent during participation in, or within 1 year after their exit from, the program.

(g) Increase the percentage of youth who received preemployment transition services without applying for additional vocational rehabilitation services and who obtained a recognized postsecondary credential or a secondary school diploma or its recognized equivalent during participation in, or within 1 year after their exit from, the program.

(h) Increase the percentage of participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or to employment and who are achieving a measurable gain of skill, including documented academic, technical, occupational gains or other forms of progress toward a postsecondary credential or employment.

(i) Increase the number of students receiving pre-employment transition services.

(j) Increase the division's effectiveness in serving

Page 2 of 3

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

1-00821D-16

2016962__

59 employers, based on indicators developed as required by section
60 116(b)(2)(A)(iv) of the federal Workforce Innovation and
61 Opportunity Act.

62 (3) The goals established under subsection (2) must be
63 designed to elevate the state vocational rehabilitation program
64 to one of the top 10 in the nation.

65 (4) By December 1 of each year, the division shall submit a
66 performance report to the Governor, the President of the Senate,
67 and the Speaker of the House of Representatives which includes
68 the following information for each of the 5 most recent fiscal
69 years:

70 (a) Caseload data, including the number of individuals who
71 apply for services and who receive services, by service type,
72 reported statewide and by service area.

73 (b) Service use data, by service type, including the number
74 of units of service provided, statewide and by service area.

75 (c) Financial data, by service type, including expenditures
76 for administration and the provision of services. Expenditure
77 data shall be reported on a statewide basis and by service area,
78 and expenditures for education-related services must be
79 identified in specific categories such as tuition and fees,
80 program fees, and support services.

81 (d) Outcome data, statewide and by service area, including
82 the number of cases closed without employment and the number of
83 cases closed with employment. Employment data must be provided
84 separately for supported employment.

85 Section 2. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-27-16

Meeting Date

962

Bill Number (if applicable)

Topic VR

Amendment Barcode (if applicable)

Name Natalee King

Job Title VP

Address 235 W Brandon Blvd 640

Phone 813 924 8218

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Email Natalee@rehabcoalition.org

City State Zip

Speaking: For Against Information

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

Representing Florida Rehabilitation Advocacy Coalition

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

D. Gaetz
SB 962
Bill Number (if applicable)

1-27-16
Meeting Date

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

Topic Vocational Rehabilitation Amendment Barcode (if applicable)

Name Margaret S. Hooper

Job Title Public Policy Coordinator

Address 124 Marriet Drive # 203 Phone 850 921-7263

Tallahassee FL 32301 Email Margaret@DFDC.org
City State Zip

Speaking: For Against Information

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

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.

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CourtSmart Tag Report

Room: KN 412

Case No.:

Type:

Caption: Senate Fiscal Policy Committee

Judge:

Started: 1/27/2016 1:09:51 PM

Ends: 1/27/2016 1:37:26 PM

Length: 00:27:36

1:09:50 PM Meeting called to order
1:10:09 PM Roll call
1:10:10 PM Quorum present
1:10:29 PM Senator Sobel presents Tab 5 SB 716
1:11:26 PM Steve Uhlfelder recognized to speak
1:12:26 PM Senator Sobel waives close on SB 716
1:13:09 PM Roll call on SB 716
1:13:15 PM SB 716 reported favorably
1:13:30 PM Tab 7 SB 962 presented by Senator Gaetz
1:14:10 PM Margaret Hooper waives in support
1:14:24 PM Natalie King waives in support
1:14:34 PM Roll call on SB 962
1:14:47 PM SB 962 reported favorably
1:15:01 PM Tab 3 SB 618 presented by Senator Evers
1:15:24 PM Senator Flores with question
1:15:54 PM Senator Evers with response to Senator Flores
1:16:05 PM Amendment 750328 presented by Senator Evers
1:17:15 PM Amendment 271866 to the amendment 750328 presented by Senator Evers
1:18:22 PM Amendment 271866 to the amendment 750328 adopted
1:18:39 PM amendment 750328 adopted
1:18:42 PM Lou Marino waives in support
1:18:55 PM Jill Gran waives in support
1:19:02 PM Greg Frost recognized to speak
1:21:55 PM Nancy Daniels waives in support
1:22:55 PM Laura Youmans waives in support
1:23:02 PM Barney Bishop III with FL Smart Justice Alliance recognized to speak
1:23:37 PM Senator Flores with comments
1:24:36 PM Senator Evers recognized to close on the bill
1:24:51 PM Roll call on CS/CS/CS/SB 618
1:25:08 PM CS/CS/CS/SB 618 reported favorably
1:25:19 PM Tab 1 CS/SB 202 presented by Senator Bean
1:25:52 PM Late filed amendment 582260 taken up, then presented by Senator Bean
1:26:52 PM Amendment 720490 adopted
1:27:11 PM Stephen Wise waives in support
1:27:22 PM Linda Keen waives in support
1:27:26 PM Jim DeBeaugrine waives in support
1:27:37 PM Sarah Goldman recognized to speak
1:29:13 PM Senator Bean recognized to close on the PCS
1:30:12 PM PCS adopted
1:30:29 PM Roll call on CS/CS/SB 202
1:30:41 PM CS/CS/SB 202 reported favorably
1:30:48 PM Tab 2 SB 380 presented by Senator Abruzzo
1:31:11 PM PCS 662912 taken up
1:31:38 PM Jeanne Howard waives in support
1:31:53 PM Barrey Bishop waives in support
1:31:58 PM Charles Brown waives in support
1:32:04 PM Senator Abruzzo recognized to close on the PCS
1:32:20 PM PCS adopted
1:33:10 PM Roll call on CS/SB 380
1:33:14 PM CS/SB 380 reported favorably
1:33:28 PM Tab 6 CS/CS/SB 854 presented by Senator Hukill
1:33:47 PM Ken Franklin waives in support

1:34:23 PM Howard Beckham waives in support
1:34:28 PM Jim Wylie waives in support
1:34:36 PM Michele Hood waives in support
1:34:43 PM Georgia McKeown waives in support
1:34:49 PM Elizabeth Boyd waives in support
1:34:58 PM Elizabeth Boyd waives in suport
1:35:05 PM Clark Smith waives in support
1:35:09 PM Roll call on CS/CS/SB 854
1:35:20 PM CS/CS/SB 854 reported favorably
1:35:35 PM Senator Bradley moves to be reported voting favorably on 618
1:35:49 PM Tab 4 SB 628 presented by Senator Richter's aide
1:36:07 PM Margaret Hooper waives in support
1:36:32 PM Robert Brown waives in support
1:36:37 PM Roll call on SB 628
1:36:51 PM SB 628 reported favorably
1:37:06 PM Meeting adjourned