

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Simpson, Chair
Senator Brandes, Vice Chair

MEETING DATE: Wednesday, March 4, 2015

TIME: 1:00 —3:00 p.m.

PLACE: 301 Senate Office Building

MEMBERS: Senator Simpson, Chair; Senator Brandes, Vice Chair; Senators Abruzzo, Bradley, Dean, Diaz de la Portilla, and Thompson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 668 Latvala (Similar CS/H 209)	Emergency Fire Rescue Services and Facilities Surtax; Deleting a provision requiring the county governing authority to develop and execute interlocal agreements with local government entities providing emergency fire and rescue services; requiring a local government entity requesting and receiving certain personnel or equipment from another service provider to pay for such personnel or equipment from its share of surtax proceeds; deleting a requirement that surtaxes collected in excess of projected collections be applied as a rebate to the final millage, etc. CA 03/04/2015 Fav/CS FT FP	Fav/CS Yeas 7 Nays 0
2	SB 140 Hukill (Compare H 101)	Tax On Sales, Use, and Other Transactions; Reducing the tax levied on rental or license fees charged for the use of real property, etc. CA 03/04/2015 Favorable FT AP	Favorable Yeas 7 Nays 0
3	CS/SB 136 Governmental Oversight and Accountability / Hays (Compare H 39)	Public Officers and Employees; Specifying eligibility of a monthly death benefit payment to the surviving spouse, child, or joint annuitant of a law enforcement officer, correctional officer, correctional probation officer, or firefighter employed by a state agency; authorizing political subdivisions to offer a monthly death benefit, etc. GO 02/03/2015 Fav/CS CA 03/04/2015 Fav/CS AP	Fav/CS Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Wednesday, March 4, 2015, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 778 Hays (Similar CS/H 113)	Local Government Construction Preferences; Prohibiting local ordinances and regulations from restricting a certified contractor's competition for award of a contract for construction services based upon certain conditions; requiring a state college, school district, or other political subdivision to make specified disclosures in competitive solicitation documents, etc. CA 03/04/2015 Fav/CS GO AP	Fav/CS Yeas 5 Nays 2
5	CS/SB 154 Education Pre-K - 12 / Hays (Identical CS/H 41)	Hazardous Walking Conditions; Revising criteria that determine a hazardous walking condition for public school students; requiring a district school board to correct hazardous walking conditions and provide transportation to students who would be subjected to hazardous walking conditions; requiring state or local governmental entities with jurisdiction over a road with a hazardous walking condition to correct the condition within a reasonable period of time, etc. ED 02/18/2015 Fav/CS CA 03/04/2015 Fav/CS AED AP	Fav/CS Yeas 7 Nays 0
6	SB 408 Simmons (Identical H 365)	Designated Areas for Skateboarding, Inline Skating, Paintball, or Freestyle or Mountain and Off-roading Bicycling; Deleting the requirement that a governmental entity that provides a designated area for skateboarding, inline skating, or freestyle bicycling obtain the written consent of the parent or legal guardian of a child under a certain age before allowing the child to participate in these activities in such area; requiring the governmental entity to post a rule indicating that consent forms are required for children under a certain age before participation in paintball or mountain and off-road bicycling, etc. JU 02/17/2015 Favorable CA 03/04/2015 Favorable FP	Favorable Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Wednesday, March 4, 2015, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 420 Grimsley (Identical H 627)	Animal Control; Providing a procedure for adopting or humanely disposing of impounded livestock as an alternative to sale or auction; requiring a designated impounder to establish fees and to be responsible for damages caused while impounding livestock; authorizing specified municipalities to appoint agents for the purpose of investigating violations of certain laws; clarifying that certain provisions relating to local animal control are not the exclusive means of enforcing animal control laws, etc. AG 02/16/2015 Favorable CA 03/04/2015 Temporarily Postponed FP	Temporarily Postponed
8	SB 594 Stargel (Identical H 569)	Agritourism; Prohibiting a local government from enforcing an ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land, etc. AG 02/16/2015 Favorable CA 03/04/2015 Fav/CS RC	Fav/CS Yeas 7 Nays 0
9	SJR 652 Flores (Identical HJR 375, Compare H 377, Link S 650)	Homestead Tax Exemption/Persons 65 or Older; Proposing an amendment to the State Constitution to revise the homestead tax exemption that may be granted by counties or municipalities, if authorized by general law, for the assessed value of property with a just value less than \$250,000 which is owned by persons age 65 or older who meet certain residence and income requirements, to specify that just value shall be determined at the time of the owner's initial application for the exemption, etc. CA 03/04/2015 Favorable FT RC	Favorable Yeas 7 Nays 0
10	SB 650 Flores (Identical H 377, Compare HJR 375, Link SJR 652)	County and Municipality Homestead Tax Exemption; Revising the homestead tax exemption that may be adopted by a county or municipality by ordinance for the assessed value of property with a just value less than \$250,000 which is owned by persons age 65 or older who meet certain residence and income requirements; specifying that just value shall be determined at the time of the owner's initial application for the exemption, etc. CA 03/04/2015 Favorable FT AP	Favorable Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Wednesday, March 4, 2015, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	CS/SB 290 Criminal Justice / Brandes (Similar H 493, Compare H 1273, S 822)	Carrying a Concealed Weapon or a Concealed Firearm; Providing an exemption from criminal penalties for carrying a concealed weapon or a concealed firearm when evacuating pursuant to a mandatory evacuation order during a declared state of emergency, etc. CJ 02/16/2015 Fav/CS CA 03/04/2015 Favorable RC	Favorable Yeas 5 Nays 1
12	CS/SB 60 Judiciary / Simpson (Similar H 3543)	Relief of Roy Wright and Ashley Wright by the North Brevard County Hospital District; Providing for an appropriation to compensate Roy Wright and Ashley Wright, individually and as guardians of Tucker Wright, for injuries and damages sustained by Tucker Wright as a result of the negligence of Parrish Medical Center; providing a limitation on the payment of fees and costs; providing that certain payments and the appropriation satisfy all present and future claims related to the negligent act, etc. SM 02/09/2015 Recommendation: Fav/1 Amendment JU 02/17/2015 Fav/CS CA 03/04/2015 Favorable AP	Favorable Yeas 6 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 668

INTRODUCER: Community Affairs Committee and Senator Latvala

SUBJECT: Emergency Fire Rescue Services and Facilities Surtax

DATE: March 4, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	Fav/CS
2.			FT	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 668 amends provisions related to a county's adoption and distribution of an Emergency Fire Rescue Services and Facilities Surtax. The bill removes the requirement for the county government to enter into an interlocal agreement as a prerequisite for holding a referendum on the surtax. If the surtax is approved by referendum, the proceeds would instead be distributed to all local government entities providing emergency fire rescue services in the county. The bill amends the procedure for distributing revenue generated by the surtax, creating a uniform system of proportional allocation, with a pro rata distribution based on average annual spending on fire rescue services in the preceding five fiscal years by all entities in the county providing fire services. The bill amends and removes other language related to interlocal agreements.

II. Present Situation:

Section 212.055, F.S., enumerates the purposes for which counties are authorized to levy discretionary sales surtaxes.¹ The section contains a list of requirements for the enactment of a discretionary sales surtax by a county, including the purpose of the levy, the rate imposed, the maximum duration for collection of the levy, and the process used for obtaining voter approval.²

¹ Section 212.054(1), F.S.

² Section 212.055, F.S.

If not already imposing two discretionary sales surtaxes of indefinite duration, a county may pass an ordinance to levy a sales surtax of up to 1 percent for Emergency Fire Rescue Services and Facilities.³ The surtax may be used to fund “emergency fire rescue services,” which includes:

- fire prevention and extinguishing,
- protection of life and property from natural or intentionally-created fires,
- enforcing municipal, county, or state fire protection codes and laws, and
- providing emergency medical treatment.⁴

Authorization for the Emergency Fire Rescue Services and Facilities Surtax was added in 2009.⁵ To levy the surtax, the county must pass an ordinance, which becomes effective upon approval by a majority of the qualified electors in a referendum.⁶ Since the passage of the statute, no county has levied the surtax.⁷

The proceeds of the surtax are to be distributed according to an interlocal agreement between the county and the local government entities⁸ providing fire services in the county.⁹ The formula to be used for distribution states that the interlocal agreement shall only specify:¹⁰

- The amount of surtax to be distributed to each participating government entity based on the actual amounts collected within the jurisdiction of that entity, as determined by Department of Revenue population allocations; or
- If the county has one or more special fire control districts, the amount of surtax to be distributed to each participating municipality and fire control district, as based on those entities’ proportional spending on fire control and emergency rescue services from both ad valorem taxes and non-ad valorem assessments in the preceding five years.¹¹

The Department of Revenue may retain an administrative fee. Also, the county may charge an administrative fee equal to the lesser of actual costs or two percent of the sales surtax collected.¹² If a multicounty independent special district provides emergency fire rescue services inside a portion of the county, the county may not levy the Emergency Fire Rescue Services and Facilities Surtax inside the boundaries of that district.¹³ The existence of the interlocal agreement is a prerequisite for holding a referendum to approve the ordinance.¹⁴

³ Section 212.055(8)(a), F.S.

⁴ *Id.*

⁵ Initially authorized by Chapter 2009-182, Laws of Fla.

⁶ Section 212.055(8)(b), F.S.

⁷ Office of Economic and Demographic Research, *2014 Local Government Financial Information Handbook*, at 193.

⁸ Municipalities, dependent special districts, independent special districts, and/or municipal service taxing units.

⁹ Section 212.055(8)(c), F.S.

¹⁰ Section 212.055(8)(d), F.S.

¹¹ Section 212.055(8)(d), F.S. This provision does not apply, however, if the county and one or more participating local governments have an interlocal agreement prohibiting one or more other jurisdictions from providing pre-hospital medical treatment inside the prohibited jurisdiction’s boundaries, or if the county has issued a certificate of public convenience and necessity or its equivalent to a county department or dependent special district of the county. See s. 212.055(8)(h), F.S.

¹² *Id.*

¹³ Section 212.055(8)(j), F.S.

¹⁴ Section 212.055(8)(b), F.S.

The interlocal agreement must include a majority of service providers within the county.¹⁵ If a local government entity providing fire control services is not part of the interlocal agreement, it is not entitled to any proceeds from the surtax.¹⁶

If one local government entity provides personnel or equipment to another on a long-term basis, the entity receiving personnel or equipment must agree to the distribution of its share of the surtax to the providing entity. The amount of this distribution cannot exceed the providing entity's costs for furnishing the services to the receiving entity.¹⁷

When collections of the surtax begin, the county and participating local governments must reduce ad valorem taxes and non-ad valorem assessments used to pay for fire control and emergency rescue services by the estimated amount of revenue provided by the surtax.¹⁸ If the revenue collected from the surtax is higher than the estimated amount, the surplus must be used to reduce ad valorem taxes the following year.¹⁹

The statute requires such excess collections to be applied as a "rebate to the final millage."²⁰ From the context of the statute, this provision appears to state a procedure for the taxing authority to provide taxpayers with the required reduction of ad valorem taxes, rather than create an additional type of reimbursement amount.

The use of surtax proceeds does not relieve counties and participating local governments from the provisions of ch. 200, F.S., or any other provision of law establishing millage caps or limiting undesignated budget reserves.²¹

III. Effect of Proposed Changes:

Section 1 amends s. 212.055(8), F.S., to remove a requirement for an interlocal agreement between counties and participating local government entities providing fire rescue service as a prerequisite to a referendum for imposition of an Emergency Fire Rescue Services and Facilities Surtax. If the county passed an ordinance to levy the surtax, subsequently approved by the electors in a referendum, all local government entities providing fire control and emergency rescue services within the county would share in the proceeds of the surtax.

In addition, the bill adjusts the distribution formula for revenues collected by the surtax. The bill provides for distributing the revenue generated from the surtax to local government entities in proportion to their average annual expenditures from ad valorem taxes and non-ad valorem assessments on fire control and emergency fire rescue services over the preceding five fiscal years. This formula would apply to all counties levying the surtax regardless of whether the county contained a special fire control district.

¹⁵ Section 212.055(8)(d), F.S.

¹⁶ Section 212.055(8)(g), F.S.

¹⁷ Section 212.055(8)(d), F.S.

¹⁸ Section 212.055(8)(e), F.S.

¹⁹ Section 212.055(8)(f), F.S.

²⁰ *Id.*

²¹ *Id.*

Since an interlocal agreement would no longer be required for distribution of surtax revenues, the bill removes other references to such agreements. Local government entities still would be entitled to a share of the surtax proceeds when providing personnel and equipment on a long-term basis to another entity in the county. Local government entities also still would be required to reduce ad valorem taxes and non-ad valorem assessments for fire control and emergency rescue by the estimated amount of surtax revenue. These provisions, however, would apply to each local government entity (including the county) providing fire services in the county.²²

At its meeting of February 6, 2015, the Revenue Estimating Conference determined the bill would have a “positive indeterminate” fiscal impact on local governments.²³

Section 2 provides an effective date of July 1, 2015.

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:

Counties implementing the surtax would incur the cost of holding a referendum and other implementation expenses, offset in part by an administrative fee not to exceed 2 percent of the surtax collected.

B. Private Sector Impact:

Individuals and businesses in counties implementing the surtax would face higher sales taxes, but would receive a reduction in ad valorem taxes and non-ad valorem assessments. The Revenue Estimating Impact Conference projects these changes will result in an indeterminate positive fiscal impact on county and municipal government revenue.

²² The removal of the interlocal agreement requirement erases the distinction between participating and non-participating service providers.

²³ Revenue Estimating Conference, *2/06/2015 Revenue Impact Results*, pp. 58-60 available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2015/_pdf/impact0206.pdf (last visited Feb. 23, 2015).

C. Government Sector Impact:

The Revenue Estimating Impact Conference estimated that the provisions of this bill would have an indeterminate positive fiscal impact on county and municipal government revenue.²⁴ The Department of Financial Services and Department of Revenue have reviewed the bill and reported no fiscal impact to their agencies.

According to Florida Legislature's Office of Economic and Demographic research, if the eligible counties (excluding Madison and Miami-Dade) levied the surtax at the maximum rate during the 2014-2015 fiscal year, it would have generated \$2.7 billion in revenue.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.055 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Community Affairs on March 4, 2015:**

Reinstates a provision accidentally deleted that requires surtaxes collected in excess of projected collections to be applied as a rebate to the final millage after completion of the TRIM notice.

B. Amendments:

None.

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

²⁴ *Id.*

²⁵ Office of Economic and Demographic Research, *2014 Local Government Financial Information Handbook*, at 193.



244864

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2015	.	
	.	
	.	
	.	

The Committee on Community Affairs (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Delete lines 112 - 114
and insert:
the next fiscal year. These proceeds shall be applied as a
rebate to the final millage, after the TRIM notice is completed
in accordance with this provision.

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

And the title is amended as follows:



244864

11 Delete lines 12 - 14
12 and insert:
13 proceeds; deleting a

By Senator Latvala

20-00566-15

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1 A bill to be entitled
2 An act relating to the emergency fire rescue services
3 and facilities surtax; amending s. 212.055, F.S.;
4 revising the distribution of surtax proceeds; deleting
5 a provision requiring the county governing authority
6 to develop and execute interlocal agreements with
7 local government entities providing emergency fire and
8 rescue services; requiring a local government entity
9 requesting and receiving certain personnel or
10 equipment from another service provider to pay for
11 such personnel or equipment from its share of surtax
12 proceeds; deleting a requirement that surtaxes
13 collected in excess of projected collections be
14 applied as a rebate to the final millage; deleting a
15 provision requiring local government entities to enter
16 into an interlocal agreement in order to receive
17 surtax proceeds; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Paragraphs (b) through (j) of subsection (8) of
22 section 212.055, Florida Statutes, are amended to read:

23 212.055 Discretionary sales surtaxes; legislative intent;
24 authorization and use of proceeds.—It is the legislative intent
25 that any authorization for imposition of a discretionary sales
26 surtax shall be published in the Florida Statutes as a
27 subsection of this section, irrespective of the duration of the
28 levy. Each enactment shall specify the types of counties
29 authorized to levy; the rate or rates which may be imposed; the

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30 maximum length of time the surtax may be imposed, if any; the
31 procedure which must be followed to secure voter approval, if
32 required; the purpose for which the proceeds may be expended;
33 and such other requirements as the Legislature may provide.
34 Taxable transactions and administrative procedures shall be as
35 provided in s. 212.054.

36 (8) EMERGENCY FIRE RESCUE SERVICES AND FACILITIES SURTAX.-

37 (b) Upon the adoption of the ordinance, the levy of the
38 surtax must be placed on the ballot by the governing authority
39 of the county enacting the ordinance. The ordinance will take
40 effect if approved by a majority of the electors of the county
41 voting in a referendum held for such purpose. The referendum
42 shall be placed on the ballot of a regularly scheduled election.
43 The ballot for the referendum must conform to the requirements
44 of s. 101.161. ~~The interlocal agreement required under paragraph~~
45 ~~(d) is a condition precedent to holding the referendum.~~

46 (c) Pursuant to s. 212.054(4), the proceeds of the
47 discretionary sales surtax collected under this subsection, less
48 an administrative fee that may be retained by the Department of
49 Revenue, shall be distributed by the department to the county.
50 The county shall distribute the proceeds it receives from the
51 department to each local government entity providing emergency
52 fire rescue services in the county. The surtax proceeds, less an
53 administrative fee not to exceed 2 percent of the surtax
54 collected, shall be distributed by the county based on the
55 proportion of each entity's average annual expenditures of ad
56 valorem taxes and non-ad valorem assessments for fire control
57 and emergency fire rescue services in the preceding 5 fiscal
58 years to the average annual total of the expenditures for all

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59 ~~entities receiving such proceeds in the preceding 5 fiscal years~~
60 ~~the participating jurisdictions that have entered into an~~
61 ~~interlocal agreement with the county under this subsection. The~~
62 ~~county may also charge an administrative fee for receiving and~~
63 ~~distributing the surtax in the amount of the actual costs~~
64 ~~incurred, not to exceed 2 percent of the surtax collected.~~

65 ~~(d) If a local government entity requests The county~~
66 ~~governing authority must develop and execute an interlocal~~
67 ~~agreement with participating jurisdictions, which are the~~
68 ~~governing bodies of municipalities, dependent special districts,~~
69 ~~independent special districts, or municipal service taxing units~~
70 ~~that provide emergency fire and rescue services within the~~
71 ~~county. The interlocal agreement must include a majority of the~~
72 ~~service providers in the county.~~

73 ~~1. The interlocal agreement shall only specify that:~~

74 ~~a. The amount of the surtax proceeds to be distributed by~~
75 ~~the county to each participating jurisdiction is based on the~~
76 ~~actual amounts collected within each participating jurisdiction~~
77 ~~as determined by the Department of Revenue's population~~
78 ~~allocations in accordance with s. 218.62; or~~

79 ~~b. If a county has special fire control districts and~~
80 ~~rescue districts within its boundary, the county shall~~
81 ~~distribute the surtax proceeds among the county and the~~
82 ~~participating municipalities or special fire control and rescue~~
83 ~~districts based on the proportion of each entity's expenditures~~
84 ~~of ad valorem taxes and non-ad valorem assessments for fire~~
85 ~~control and emergency rescue services in each of the immediately~~
86 ~~preceding 5 fiscal years to the total of the expenditures for~~
87 ~~all participating entities.~~

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88 ~~2. Each participating jurisdiction shall agree that if a~~
89 ~~participating jurisdiction is requested to provide~~ personnel or
90 equipment ~~from~~ to any other service provider, on a long-term
91 basis and the personnel or equipment is provided pursuant to an
92 ~~interlocal agreement,~~ the local government entity jurisdiction
93 providing the service is entitled to payment from the requesting
94 service provider from that provider's share of the surtax
95 proceeds for all costs of the equipment or personnel.

96 (e) Upon the surtax taking effect and initiation of
97 collections, each local government entity receiving a share of
98 surtax proceeds ~~a county and any participating jurisdiction~~
99 ~~entering into the interlocal agreement~~ shall reduce the ad
100 valorem tax levy or any non-ad valorem assessment for fire
101 control and emergency rescue services in its next and subsequent
102 budgets by the estimated amount of revenue provided by the
103 surtax.

104 (f) Use of surtax proceeds authorized under this subsection
105 does not relieve a local government from complying with ~~the~~
106 ~~provisions of~~ chapter 200 and any related provision of law that
107 establishes millage caps or limits undesignated budget reserves
108 and procedures for establishing rollback rates for ad valorem
109 taxes and budget adoption. If surtax collections exceed
110 projected collections in any fiscal year, any surplus
111 distribution shall be used to further reduce ad valorem taxes in
112 the next fiscal year. ~~These proceeds shall be applied as a~~
113 ~~rebate to the final millage, after the TRIM notice is completed~~
114 ~~in accordance with this provision.~~

115 ~~(g) Municipalities, special fire control and rescue~~
116 ~~districts, and contract service providers that do not enter into~~

20-00566-15

2015668__

117 ~~an interlocal agreement are not entitled to receive a portion of~~
118 ~~the proceeds of the surtax collected under this subsection and~~
119 ~~are not required to reduce ad valorem taxes or non-ad valorem~~
120 ~~assessments pursuant to paragraph (e).~~

121 ~~(h) The provisions of sub-subparagraph (d)1.a. and~~
122 ~~subparagraph (d)2. do not apply if:~~

123 ~~1. There is an interlocal agreement with the county and one~~
124 ~~or more participating jurisdictions which prohibits one or more~~
125 ~~jurisdictions from providing the same level of service for~~
126 ~~prehospital emergency medical treatment within the prohibited~~
127 ~~participating jurisdictions' boundaries; or~~

128 ~~2. The county has issued a certificate of public~~
129 ~~convenience and necessity or its equivalent to a county~~
130 ~~department or a dependent special district of the county.~~

131 ~~(g)(i)~~ Surtax collections shall be initiated on January 1
132 of the year following a successful referendum in order to
133 coincide with s. 212.054(5).

134 ~~(h)(j)~~ Notwithstanding s. 212.054, if a multicounty
135 independent special district created pursuant to chapter 67-764,
136 Laws of Florida, levies ad valorem taxes on district property to
137 fund emergency fire rescue services within the district and is
138 required by s. 2, Art. VII of the State Constitution to maintain
139 a uniform ad valorem tax rate throughout the district, the
140 county may not levy the discretionary sales surtax authorized by
141 this subsection within the boundaries of the district.

142 Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15

Meeting Date

1068

Bill Number (if applicable)

Topic FIRE/EMS Surtax

Amendment Barcode (if applicable)

Name DAVIN Suggs

Job Title FISCAL Policy Dir

Address 100 S MONROE ST

Phone 850.320.2635

Street

TALLAHASSEE

City

State

Zip

Email

Speaking: For Against Information

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

Representing FLORIDA Assoc. 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-13-15

668

Meeting Date

Bill Number (if applicable)

Topic Emergency Fire & Rescue

Amendment Barcode (if applicable)

Name Amy Datz

Job Title

Address 1130 Crestview Ave

Phone 850 322-7599

Street

Tallahassee FL 32303

Email amalie.datz@mac.com

City

State

Zip

Speaking: For Against Information

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

Representing Environmental Caucus of FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-4-15

Meeting Date

668

Bill Number (if applicable)

Topic Emergency Fire Rescue Surtax

Amendment Barcode (if applicable)

Name Lori Killinger

Job Title Attorney/lobbyist

Address 315 S. Calhoun St. Ste B30

Phone 850-222-5702

Street

Tallahassee

City

FL

State

32308

Zip

Email lkillinger@lw-law.com

Speaking: For Against Information

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

Representing Palm Beach Firefighters

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

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA

20th District

February 6, 2015

The Honorable Senator Wilton Simpson, Chair
Senate Committee on Community Affairs
315 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simpson:

I respectfully request consideration of Senate Bill 668 regarding Emergency Fire Rescue Services and Facilities Tax. I would greatly appreciate the opportunity to present this legislation to the Committee on Community Affairs as soon as possible.

This bill deletes a provision requiring the county governing authority to develop and execute interlocal agreements with local government entities providing emergency fire and rescue services and requires a local government entity requesting and receiving certain personnel or equipment from another service provider to pay for such personnel or equipment from its share of surtax proceeds.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jack Latvala".

Jack Latvala
State Senator
District 20

Cc: Tom Yeatman, Staff Director; Ann Whitaker, Administrative Assistant

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

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 Community Affairs

BILL: SB 140

INTRODUCER: Senators Hukill and Richter

SUBJECT: Tax On Sales, Use, and Other Transactions

DATE: March 3, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	Favorable
2.			FT	
3.			AP	

I. Summary:

SB 140 reduces the tax imposed on rental or license fees charged for the use of commercial property from 6 percent to 5 percent.

The bill provides for an effective date of January 1, 2016.

II. Present Situation:

The Florida Sales and Use Tax is a 6 percent levy on retail sales of most tangible personal property, admissions, transient lodgings, commercial rentals, and motor vehicles.¹ Since enactment in 1949, Florida's sales tax rate has been modified several times. In 1968, the Legislature increased rates on most items from 3 percent to 4 percent. In 1982, rates were increased from 4 percent to 5 percent. Legislation passed during the 1987 Regular Session integrated the tax on services with the tax on tangible personal property, and provided several exemptions from the tax on services.² During Special Session D in December 1987, the Legislature increased the general sales tax rate from 5 percent to 6 percent.³

The Legislature has declared that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property unless specifically exempted.⁴ Section 212.031, F.S., provides for a tax levied in an amount equal to 6% on the total rent or license fee charged for the exercise of the taxable privilege of engaging in the business of renting, leasing, letting, or granting a license for the use of any real

¹ Fifteen states have higher state sales tax rates than Florida. Federation of Tax Administrators, Tax Rate Data, available at http://taxadmin.org/fta/rate/tax_stru.html (last visited Dec. 17, 2014).

² Chapter 87-6, 101, Laws of Fla.

³ Chapter 87-548, Laws of Fla.

⁴ Section 212.031(1)(a), F.S. Additionally, discretionary sales surtax may apply, and the \$5000 discretionary sales surtax cap does not apply to payments made for the lease or license to use real property. Section 212.054, F.S.

property unless the type of property is specifically exempted. Exemptions to the sales and use tax exist for the following types of property:

- agricultural assessed property,⁵
- dwelling units,⁶
- parking, docking, or storage spaces,⁷
- recreational property or common elements of a condominium that meet certain conditions,⁸
- streets or right-of-ways with improvements used by a utility or provider of communications services,⁹
- public street or road used for transportation services,¹⁰
- airport property used exclusively for landing, taxiing, passenger movement or fueling,¹¹
- port authority property used exclusively for docking, mooring, passenger movement, or fueling,¹²
- property used as an integral part of the performance of qualified production services,¹³
- property used by concessionaires at certain venues,¹⁴
- property declared to be nontaxable pursuant to a Technical Assistance Advisement issued before March 15, 1993,¹⁵ and
- property used or occupied predominately for space-flight business.¹⁶

In addition to the exemptions specified above, other statutory provisions exempt specific uses of property from sales and use taxes.

- A special provision for air carriers provides for apportionment of the tax on real property rentals used by the carrier for aircraft maintenance.¹⁷
- A limited exemption exists for lease of real property used to provide education services described in s. 212.031 (1)(a)(9), F.S.¹⁸
- Business properties within an enterprise zone are authorized to receive a refund for certain previously paid taxes.¹⁹
- Exemptions exist for religious institutions, Section 501(c)(3) organizations, and fair associations.²⁰
- Exemptions exist for property used by an entertainment industry, qualified production company.²¹

⁵ Section 212.031 (1)(a) 1, F.S.

⁶ Section 212.031 (1)(a) 2, F.S.

⁷ Section 212.031 (1)(a) 3, F.S.

⁸ Section 212.031 (1)(a) 4, F.S.

⁹ Section 212.031 (1)(a) 5, F.S.

¹⁰ Section 212.031 (1)(a) 6, F.S.

¹¹ Section 212.031 (1)(a) 7, F.S.

¹² Section 212.031 (1)(a) 8, F.S.

¹³ Section 212.031 (1)(a) 9, F.S.

¹⁴ Section 212.031 (1)(a) 10, F.S.

¹⁵ Section 212.031 (1)(a) 11, F.S.

¹⁶ Section 212.031 (1)(a) 12, F.S.

¹⁷ Section 212.0598, F.S.

¹⁸ Section 212.0602, F.S.

¹⁹ Section 212.08(5)(h), F.S.

²⁰ Sections 212.08(7)(m), (p), and (gg), F.S.

²¹ Section 288.1258, F.S.

Total Sales and Use Tax collections exceeded \$20 billion for FY 2012-13, with roughly 12 percent of distributions going to local governments.²² Local government distributions include the half-cent, county and municipal revenue sharing, and the shift of nearly \$30 million to counties that used to be funded from pari-mutual tax revenues.²³

III. Effect of Proposed Changes:

Section 1 amends s. 212.031(1)(c), F.S., providing a reduction from 6 percent to 5 percent for the tax imposed on the rental or license fees charged for the use of commercial property. Similarly, the bill amends s. 212.031(1)(d), F.S., to extend the tax reduction for use of commercial property to include transactions paid by way of property, goods, wares, merchandise, services, or other things of value.

Section 2 provides for an effective date of January 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:

Sales and Use Tax collections have exceeded recent estimates,²⁴ leading the Revenue Estimating Conference for the General Revenue Fund to revise the FY 2014-15 forecast upwards by \$207.9 million, and the FY 2015-16 forecast by 176.3 million.²⁵

The Revenue Estimating Conference analyzed the fiscal impact of the bill,²⁶ finding that sales and use tax revenue decreases arising from a 1 percent decrease to the tax imposed

²² Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 154 (2014).

²³*Id.*

²⁴ *E.g.* The sales tax collections for June 2014 of \$1.9 billion were \$47.6 million (2.5%) above the estimates conducted at the March 9, 2014 REC conference. Florida Dep't of Revenue, Office of Tax Research, *Revenue Collection Report June 2014*, available at <http://dor.myflorida.com/dor/pdf/MCR0614.pdf> (last visited Dec. 17, 2014).

²⁵ Office of Economic and Demographic Research, Revenue Estimating Conference, *General Revenue Fund* (Dec. 15, 2014), available at <http://edr.state.fl.us/content/conferences/generalrevenue/index.cfm> (last visited Dec. 17, 2014).

²⁶ Office of Economic and Demographic Research, Revenue Estimating Conference, *Reduce state tax rate from 6% to 5% for commercial rentals: SB140*, (Jan. 2015).

on the rental of commercial real property would amount to \$275 million in Fiscal Year 2016-2017. This negative impact would be recurring.

B. Private Sector Impact:

Individuals and entities that offer real property for rent subject to tax under s. 212.031, F.S., will benefit from a 1 percent decrease in their payment of that tax.

C. Government Sector Impact:

The Revenue Estimating Conference reviewed the legislation, finding that sales and use tax revenue decreases arising from a 1 percent decrease to the tax imposed on the rental of commercial real property would amount to \$275 million, recurring. Of that amount, the estimated impact to General Revenue would be \$243.5 million, while the impact to local funds, due to revenue sharing, would be \$31.5 million, annually.²⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.031 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.

²⁷ *Id.*

By Senator Hukill

8-00120-15

2015140__

1 A bill to be entitled
2 An act relating to the tax on sales, use, and other
3 transactions; amending s. 212.031, F.S.; reducing the
4 tax levied on rental or license fees charged for the
5 use of real property; making technical changes;
6 providing an effective date.

7

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

9

10 Section 1. Paragraphs (c) and (d) of subsection (1) of
11 section 212.031, Florida Statutes, are amended to read:

12 212.031 Tax on rental or license fee for use of real
13 property.—

14 (1)

15 (c) For the exercise of such privilege, a tax is levied in
16 an amount equal to 5 ~~6~~ percent of and on the total rent or
17 license fee charged for such real property by the person
18 charging or collecting the rental or license fee. The total rent
19 or license fee charged for such real property must ~~shall~~ include
20 payments for the granting of a privilege to use or occupy real
21 property for any purpose and must ~~shall~~ include base rent,
22 percentage rents, or similar charges. Such charges must ~~shall~~ be
23 included in the total rent or license fee subject to tax under
24 this section whether or not they can be attributed to the
25 ability of the lessor's or licensor's property as used or
26 operated to attract customers. Payments for intrinsically
27 valuable personal property such as franchises, trademarks,
28 service marks, logos, or patents are not subject to tax under
29 this section. If ~~In the case of~~ a contractual arrangement ~~that~~

8-00120-15

2015140__

30 provides for ~~both~~ payments that are taxable as total rent or
31 license fee and payments that are not taxable ~~subject to tax~~,
32 the tax shall be based on a reasonable allocation of such
33 payments and does ~~shall~~ not apply to the ~~that~~ portion ~~which is~~
34 for ~~the~~ nontaxable payments.

35 (d) If ~~When~~ the rental or license fee of any such real
36 property is paid by way of property, goods, wares, merchandise,
37 services, or other thing of value, the tax shall be at the rate
38 of 5 ~~6~~ percent of the value of the property, goods, wares,
39 merchandise, services, or other thing of value.

40 Section 2. This act shall take effect January 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-4-15

Meeting Date

140

Bill Number (if applicable)

Topic Commercial Leases

Amendment Barcode (if applicable)

Name Bill Herrle

Job Title Exec. Director

Address 110 E Jefferson St.
Street

Phone 888 681 0416

Tallahassee FL 32301
City State Zip

Email G.herrle@wfb.org

Speaking: For Against Information

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

Representing National Federation of Independent Business

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15

Meeting Date

SR 140

Bill Number (if applicable)

Topic Commercial Lease tax

Amendment Barcode (if applicable)

Name Rebecca DeLorenzo

Job Title President

Address 20 AIRPORT Rd Ste C
Street

Phone 386 437 0104

Palm Coast FL 32164
City State Zip

Email rebecca@flagler
chamber.org

Speaking: For Against Information

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

Representing Flagler County Chamber

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

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

3/4/15

Meeting Date

SB 140

Bill Number (if applicable)

Topic Reduction of Commercial Sales Tax
on Commercial Leases

Amendment Barcode (if applicable)

Name Gretchen Smith

Job Title Govt Affairs Director

Address 25 Ripplewood Ln

Phone 386-793-6717

Street

Palm Coast FL 32164

Email gsmith@flaglerchamber.org

City

State

Zip

Speaking: For Against Information

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

Representing Flagler County Chamber

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

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

3-7-15

Meeting Date

SB 140

Bill Number (if applicable)

Topic COMMERCIAL REAL PROPERTY SALES TAX

Amendment Barcode (if applicable)

Name KEYNA CORY

Job Title LOBBYIST

Address 110 E. COLLEGE AVE

Phone 858 681-1065

Street

TANAHASSEE FL 32301

Email kynacory@paconsultants.com

City

State

Zip

Speaking: For Against Information

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

Representing NATIONAL WASTE + RECYCLING ASSOCIATION - FL CHAPTER

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15

Meeting Date

140

Bill Number (if applicable)

Topic Ending Sales Tax on Commercial Leases

Amendment Barcode (if applicable)

Name HAROLD BRILEY

Job Title REALTOR

Address 902 VILLAGE DR
Street

Phone 386-566-2961

Ormond Beach FL 32174
City State Zip

Email HDBR43@AOL.COM

Speaking: For Against Information

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

Representing Daytona Beach Assn of Realtors

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)

APPEARANCE RECORD

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3/4/15

Meeting Date

140

Bill Number (if applicable)

Topic REDUCE COMMERCIAL GROSS TAX

Amendment Barcode (if applicable)

Name LAN ANDERSON

Job Title _____

Address 913 PENINSULA DR
Street

Phone 386-214-5290

ORLANDO BEACH, FL 32176
City State Zip

Email LANANDERSON@MRE.COM

Speaking: For Against Information

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

Representing DAYTONA BEACH ASSOCIATION OF RETIREES

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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3/4/15

Meeting Date

140

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Lori Schultz

Job Title Realtor

Address 5304 Peach Blossom Blvd

Street

Phone 386-275-6571

Port Orange, FL 32128

City

State

Zip

Email loribschultz@gmail.com

Speaking: For Against Information

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

Representing Daytona Beach Area Ass. of Realtors

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)

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APPEARANCE RECORD

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3/4/2015

Meeting Date

SB140

Bill Number (if applicable)

Topic PHASE OUT SALES TAX ON COMMERCIAL LEASING

Amendment Barcode (if applicable)

Name DAVID DANIEL

Job Title _____

Address 311 EAST PARK AVENUE

Street

Phone 224-5081

TALLAHASSEE

City

FLORIDA 32301

State

Zip

Email _____

Speaking: For Against Information

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

Representing INTERNATIONAL COUNCIL OF SHOPPING CENTERS

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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3/4/15

Meeting Date

SB 140

Bill Number (if applicable)

Topic Sales Tax on Commercial Lease

Amendment Barcode (if applicable)

Name Nancy - Ellen Otte

Job Title REALTOR / Broker - Manager

Address 3741 Belfast Circle

Street

Phone 386-615-1024

Ormond Beach

City

FL

State

32174

Zip

Email c2lotte@yahoo.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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APPEARANCE RECORD

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3/4/15

Meeting Date

SB140

Bill Number (if applicable)

Topic Sales tax on Commercial Lease

Amendment Barcode (if applicable)

Name Diane Tharp

Job Title Realtor

Address 152 Brandy Hills

Phone 386 843 0067

Street

Port Orange FL

City

State

Zip

Email kiwi@coldwellbanker.com

Speaking: [] For [] Against [] Information

Waive Speaking: [x] 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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3.4.15

Meeting Date

SB 140

Bill Number (if applicable)

Topic Sales Tax on Comm. Lease

Amendment Barcode (if applicable)

Name Kelly Jenkins-Dunphy

Job Title Reactor

Address 116 Muscovy Ct.

Phone 386.898.5695

Street
Daytona Beach FL 32119
City State Zip

Email kell@kelljenkins.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

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3-4-15

Meeting Date

SB140

Bill Number (if applicable)

Topic Sales tax on Commercial Lease

Amendment Barcode (if applicable)

Name Robyn Stahl

Job Title Beator

Address 1
Street

Phone _____

City

State

Zip

Email robystahl@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

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SB 140
Bill Number (if applicable)

Meeting Date

Topic _____

Amendment Barcode (if applicable)

Name Alisa Rogers

Job Title Realtor

Address 47 Rivocean DR.
Street

Phone _____

Ormond Beach, FL 32176
City State Zip

Email AlisaRogersRealtor@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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3/4/15
Meeting Date

SB140
Bill Number (if applicable)

Topic Sales Tax on Commercial Lease

Amendment Barcode (if applicable)

Name Paige Brewer

Job Title Realtor

Address 52 Brandy Hills Dr
Street

Phone 386-506-7821

Port Orange, FL 32129
City State Zip

Email Paige@RealEstatePaige.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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3-4-15

Meeting Date

140

Bill Number (if applicable)

Topic SALES TAX - LEASES

Amendment Barcode (if applicable)

Name ERIC ALEXANDER

Job Title COMMERCIAL RE. BROKER/ASSOC,

Address 418 TREEMONTE DR.
Street

Phone 386-956-9366

ORANGE CITY FL 32613
City State Zip

Email EricAlexanderRealtor@gmail.com

Speaking: For Against Information

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

Representing ORLANDO REG. REALTORS ASSOC.

Appearing at request of Chair: Yes No

STAFF

Lobbyist registered with Legislature: Yes No

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3-4-15

Meeting Date

Topic TAX ON SALES, USE, AND OTHER TRANSACTIONS

Bill Number 140
(if applicable)

Name RICHARD TURNER

Amendment Barcode _____
(if applicable)

Job Title GEN COUNSEL & V.P GOVERNMENT RELATIONS

Address 230 S. ADAMS ST
Street

Phone 850.224.2250

TALLAHASSEE FL 32301
City State Zip

E-mail rturner@folg.org

Speaking: For Against Information

Representing FLORIDA RESTAURANT & LODGING 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

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3-4-15

Meeting Date

5B140

Bill Number (if applicable)

Topic Commercial Sales Tax

Amendment Barcode (if applicable)

Name Danny Smith

Job Title Real E. Broker (Commercial/Land)

Address 1102N Main St Suite F

Phone 352 461-1186

Street

Wildwood FL 34785

Email dannysmith@ccim.net

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

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3/4/2015

Meeting Date

SB 140

Bill Number (if applicable)

Topic Tax on Sales, Use, & Other Transactions

Amendment Barcode (if applicable)

Name Melissa Fause

Job Title Policy Analyst

Address 208 W College Ave, Ste. 113

Phone 850-408-1218

Street

Tallahassee

FL

32301

City

State

Zip

Email mfause@aefphq.org

Speaking: For Against Information

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

Representing Americans for Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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3/4/15

Meeting Date

140

Bill Number (if applicable)

Topic Sales tax on Commercial Rentals

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 134 S Bronaugh St

Phone 850-521-1235

Street

Tallahassee FL 32301

City

State

Zip

Email cjohnson@
flchamber.com

Speaking: For Against Information

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

Representing Florida Chamber of Commerce

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

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

3/4/15
Meeting Date

Topic Commercial lease sales tax

Bill Number SB 140
(if applicable)

Name Tray Price

Amendment Barcode _____
(if applicable)

Job Title Public Policy Representative

Address 200 S. Monroe St

Phone (850) 224-1400

Tallahassee FL 32301
City State Zip

E-mail TrayP@florida Realtors.org

Speaking: For Against Information

Representing Florida Realtors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/15
Meeting Date

SB 140
Bill Number (if applicable)

Topic SALES TAX ON COMMERCIAL LOANS
Amendment Barcode (if applicable)

Name G. G. GALLOWAY

Job Title CBC BENCHMARK PARTNER

Address 1305 OAK FOREST DRIVE Phone 386-295-0839
Street

ORMOND BEACH, FL 32174 Email
City State Zip

Speaking: For Against Information

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

Representing COMMERCIAL BROKER

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15
Meeting Date

SB 140
Bill Number (if applicable)

Topic SALES TAX ON COMMERCIAL LEASES

Amendment Barcode (if applicable)

Name ELLEN DARDEN

Job Title Realtor

Address 1504 S. ATLANTIC AVE.
Street

Phone 356-689-9787

New Smyrna Beach, FL 32169
City State Zip

Email _____

Speaking: For Against Information

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

Representing Realtor - personal / NSB Board of Realtors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/15
Meeting Date

140
Bill Number (if applicable)

Topic Tax on Sales, Use, etc.

Amendment Barcode (if applicable)

Name Corinne Mixon

Job Title Lobbyist

Address 119 E. Park Ave

Phone (850) 766-5795

Tallahassee FL 32301
City State Zip

Email corinnemixon@gmail.com

Speaking: For Against Information

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

Representing Florida Rental Dealers 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.



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

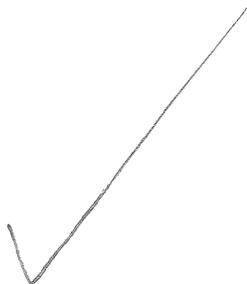
JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
8th District

December 12, 2014

The Honorable Wilton Simpson
315 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399



Re: Senate Bill 140 – Commercial Lease Sales Tax

Dear Chairman Simpson:

Senate Bill 140, relating Commercial Lease Sales Tax has been referred to the Community Affairs Committee. I am requesting your consideration on placing SB 140 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: Tom Yeatman, Staff Director of the Community Affairs Committee
Ann Whittaker, Administrative Assistant of the Community Affairs Committee

REPLY TO:

209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
 Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

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 Community Affairs

BILL: CS/CS/SB 136

INTRODUCER: Community Affairs Committee; Governmental Oversight and Accountability Committee; and Senators Hays and others

SUBJECT: Public Officers and Employees

DATE: March 4, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 136 amends ss. 112.19 and 112.191, F.S., to provide additional death benefits for state law enforcement officers, correctional officers, correctional probation officers and firefighters who are killed while engaged in the performance of their duties, or as a result of receiving intentional or accidental bodily injury. The monthly benefit equals 50 percent of the monthly salary being received by the member at the time of death, and is payable as follows:

- To the surviving spouse for the lesser of the lifetime of the spouse or 300 months (25 years);
- If no surviving spouse, payable to the youngest child until age 21, or until any child who is a full-time student reaches age 25; or
- If no surviving spouse or children, payable to a joint annuitant under the Florida Retirement System (FRS) for the lesser of the period the joint annuitant receives benefits under the FRS or 300 months.

The bill appropriates the funds necessary to cover the annual costs associated with these new benefits from the General Revenue Fund to the State Risk Management Trust Fund of the Department of Financial Services. The benefits would be paid out monthly, within 60 days of notification, and in coordination with relevant state agencies.

The bill authorizes local governments to offer similar benefits to law enforcement officers, correctional officers, correctional probation officers or firefighters employed by the local

governments, and also clarifies that no limitation is placed on the ability of a municipality or charter county to provide death benefits to its employees or their beneficiaries.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

In the Line of Duty Death Benefits Available under Chapter 121, F.S.

The Florida Retirement System (FRS) currently provides death benefits for surviving spouses and/or eligible dependents of active members of the pension plan.¹ Death benefits may be paid for an active member of the FRS pension plan who dies before retirement due to an injury or illness.² Certain health conditions for firefighters, law enforcement, correctional and correctional probation officers are deemed accidental and suffered in the line of duty (ILOD).³ If the injury or illness arises out of and in the actual performance of duty required by his or her job, the member’s surviving spouse and/or eligible dependent(s) are entitled to ILOD death benefits.

If an active FRS member (regardless of vested status) dies in the line of duty, the surviving spouse receives a monthly benefit for her lifetime equal to half the member's monthly salary at death.⁴ If the spouse dies, the benefit continues until the member’s youngest child reaches 18 or is married, if earlier.⁵ If the deceased member is entitled to a higher retirement benefit based on service credit, the higher benefit is payable to the spouse or eligible dependent(s).⁶

For ILOD deaths, the surviving spouse or eligible dependent may purchase credit for any service, which could have been claimed by the member at the time of his/her death.⁷ If a member dies within one year of vesting, the surviving spouse or other eligible dependent may use the member’s annual, sick, or compensatory leave, or purchasable service, to purchase enough service credit to vest the member posthumously.⁸

The following chart notes the Special Risk Class ILOD death benefits for the last five years for the State of Florida and the local governmental entities participating in the FRS:⁹

	2009-10	2010-11	2011-12	2012-13	2013-14	Total
State Count	0	2	2	1	0	5

¹ Under the investment plan, no minimum death benefit is payable to a surviving spouse or children. Accumulations in the member’s account are payable to the designated beneficiary. Section 121.591, F.S.

² Section 121.091(7), F.S.

³ Section 112.18(1)(a), F.S., provides any condition of health caused by tuberculosis, heart disease or hypertension resulting in the total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty.

⁴ Section 121.091(7)(d), F.S. If vested posthumously, the surviving spouse or dependent would be entitled to a death benefit.

⁵ *Id.*

⁶ Section 121.091(7)(b) and (d), F.S.

⁷ Section 121.091(7)(e), F.S.

⁸ Section 121.091(7)(f), F.S.

⁹ E-mail from Department of Management Services dated Jan. 12, 2015.

State Benefits	0	\$49,928	\$37,424	\$25,862	0	\$113,214
Local Count	5	5	4	2	1	17
Local Benefits	\$146,836	\$129,389	\$97,061	\$56,932	\$30,052	\$460,270

Death Benefits Available under Chapter 112, F.S.

Chapter 112, F.S., provides death benefits that are supplemental to the benefits afforded under ch. 121, F.S., for law enforcement officers, correctional officers, correctional probation officers, firefighters, instructional staff and school administrators under specified circumstances.¹⁰ The Bureau of Crime Prevention and Training within the Department of Legal Affairs annually adjusts the statutory amounts¹¹ for price level changes in the Consumer Price Index since 2002.¹² The table below shows the benefit amounts currently provided.¹³

	Law Enforcement	Firefighters	Instructional Personnel
Accidental Death in performance of duties	\$65,773	\$65,773	None
Accidental Death in response to emergency	Additional \$65,773	Additional \$65,773	None
Death by intentional act of another	\$198,272	\$198,272	\$198,272

The payments outlined above for accidental death in performance of duties, accidental death in response to emergency and death by intentional act of another, for firefighters, law enforcement, correctional, and correctional probation officers, are made to the beneficiary designated by the firefighter or officer in writing.¹⁴ If no designation is made, payments are made to the firefighter or officer’s surviving spouse and children in equal amounts.¹⁵ If there is no surviving spouse or children, payment is made to the firefighter’s or officer’s parents.¹⁶ If there is no surviving spouse, child or parent, payment will be made to the firefighter’s or officer’s estate.¹⁷

In regards to the payment concerning the death by intentional act of another for instructional personnel, if a beneficiary is not designated, the instructional staff’s or school administrator’s estate would receive the money.¹⁸

¹⁰ For definitions of these terms, see ss. 112.19(1) and 112.1915(1)(b), F.S.

¹¹ Sections 112.19(2)(a), 112.191(2)(a), 112.19(2)(b), 112.19(2)(c), and 112.1915(3)(a), F.S.

¹² Sections 112.19(2)(j) and 112.191(2)(i), F.S.

¹³ Conversation with Rick Nuss, Office of the Attorney General, Bureau of Criminal Justice Programs (Feb. 13, 2015).

¹⁴ Sections 112.191(2)(d) and 112.19(2)(d), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Section 112.1915(1)(f), F.S.

Other death benefits under ch. 112, F.S., which are available to law enforcement, correctional officers, correctional probation officers, firefighters and instructional staff and school administrators who are killed in the line of duty include the following:

- Funeral and burial expenses (full-time law enforcement, correctional, or correctional probation officer employed by a state agency under specified circumstances;¹⁹ and instructional staff and school administrator employed by school district);²⁰
- Surviving family health insurance premiums payment by political subdivision of the state and local school district (full-time law enforcement officer or correctional officer);²¹ full-time firefighter;²² and instructional staff and school administrator);²³
- Family health insurance premium payments for catastrophic injury (full-time law enforcement, correctional, correctional probation officer,²⁴ or firefighter²⁵ employed by state or a political subdivision of state); and
- Educational expenses of surviving spouse and children (law enforcement, correctional, or correctional probation officer;²⁶ firefighter;²⁷ and instructional staff or school administrator).²⁸

Death benefits available under Chapter 185, F.S.

Chapter 185, F.S., governs municipal police pensions. If a municipal police officer dies before being eligible to retire, the officer's beneficiaries will receive:

- A refund of all contributions made by the officer to the retirement trust fund;²⁹
- Death benefits from life insurance or annuity contract if purchased for officer, subject to limitations;³⁰ and
- Benefits payable to officer at early or normal retirement age (if officer had at least 10 years of service).³¹

Death benefits provided in accordance with s. 112.19, F.S., are not included in the calculation of death or retirement benefits under this chapter.³²

¹⁹ Section 112.19(2)(f), F.S.

²⁰ Section 112.1915(3)(b), F.S.

²¹ Section 112.19(2)(g), F.S.

²² Section 112.191(2)(f), F.S.

²³ Section 112.1915(3)(c), F.S.

²⁴ Section 112.19(2)(h), F.S.

²⁵ Section 112.191(2)(g), F.S.

²⁶ Section 112.19(3), F.S.

²⁷ Section 112.191(3), F.S.

²⁸ Section 112.1915(3)(d), F.S. (surviving children only, not spouse).

²⁹ Section 185.21(1), F.S.

³⁰ *Id.*

³¹ Section 185.21(2), F.S.

³² *Id.*

Death benefits available under Chapter 175, F.S.

Chapter 175, F.S., governs firefighter pensions. If a firefighter dies before being eligible to retire, the officer's beneficiaries will receive:³³

- A refund of all contributions made by the firefighter to the pension trust fund;³⁴
- Death benefits from life insurance or annuity contract if purchased for firefighter, subject to limitations;³⁵ and
- Benefits payable to firefighter at early or normal retirement age (if officer had at least 10 years of service).³⁶

Death benefits provided in accordance with s. 112.191, F.S., are not included in the calculation of death or retirement benefits under this chapter.

Compensation for death under Chapter 440, F.S.

The Workers' Compensation Law provides that the death of an employee of the state or one of its subdivisions, which results from an injury arising out of and in the course of employment, is a basis for a right to compensation.³⁷ When a death results within one year of an accident, or within five years following continuous disability, the employer pays:³⁸

- Actual funeral expenses up to \$7,500;
- Compensation to enumerated dependents in the form of a percentage of the deceased employee's weekly wages, not to exceed \$150,000; and
- Payment of postsecondary student fees for the surviving spouse.

Survivor Death Benefits from the Public Safety Officers' Benefits Program

The Public Safety Officers' Benefits Program (PSOB), administered by the U.S. Department of Justice, provides education benefits and a one-time death benefit to eligible survivors of federal, state or local public safety officers who die in the line of duty. The amount of the PSOB benefit is \$339,310 for eligible deaths occurring on or after October 1, 2014.³⁹

III. Effect of Proposed Changes:

Section 1 amends s. 112.19, F.S., to provide certain benefits to qualifying survivors of a law enforcement officer,⁴⁰ correctional officer or a correctional probation officer who is killed while engaged in the performance of their duties, whether the act leading to the loss of life was unlawful and intentional, or accidental, or the result of receiving accidental bodily injury.⁴¹

³³ Section 175.201, F.S., for firefighters employed by any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan.

³⁴ Section 175.201(1), F.S.

³⁵ *Id.*

³⁶ Section 175.201(2), F.S.

³⁷ Section 440.02, F.S.

³⁸ Section 440.16(1), F.S.

³⁹ U.S. Dep't of Justice Office of Justice Programs, *Public Safety Officers' Benefits Programs*, available at <https://www.psob.gov/index.html> (last visited Feb. 13, 2015).

⁴⁰ As this term is defined in s. 943.10(1), F.S.

⁴¹ See, Section 112.19, F.S.

The new monthly benefit granted is equal to 50 percent of monthly salary at time of the law enforcement officer, correctional officer, or correctional probation officer's death. The monthly benefit is payable:

- a. For the lesser of the surviving spouse's lifetime or 300 months (25 years).
- b. If the surviving spouse dies before receiving 300 monthly payments, for the use and benefit of member's child or children until the later of the 21st birthday of member's youngest child, or until the 25th birthday of any child of the officer if such child is enrolled as full-time student.
- c. If no surviving spouse but a surviving child or children under the age of 25, for the use and benefit of member's child or children under the same terms and conditions noted above in b.
- d. If no surviving spouse or children, but a surviving joint annuitant under the Florida Retirement System, for the use and benefit of such joint annuitants until those joint annuitants no longer receive benefits under the FRS but not to exceed 300 months.

Additionally, this section provides for an annual appropriation from the General Revenue Fund to the State Risk Management Trust Fund within the Department of Financial Services (DFS) to cover the annual costs associated with payment of the benefits authorized by this section. DFS is provided with rule-making authority in order for the benefits to be paid out of a separate account of the State Risk Management Trust Fund, monthly, within 60 days of notification, and in coordination with the Department of Management Services (DMS), and the state agency employing the decedent.

This section creates s. 112.19(7), F.S., which authorizes local governments to provide similar benefits to its law enforcement officers, correctional officers, and correctional probation officers, while prohibiting benefits exceeding those of the bill. No limitation is placed on the ability of a municipality or charter county to provide death benefits to its employees or their beneficiaries.

Section 2 amends s. 112.191, F.S., to provide the same new death benefits authorized in s. 112.19, F.S., to firefighters.

Section 3 reenacts s. 185.21, F.S., relating to municipal police pensions, to incorporate the amendment made to s. 112.19, F.S.

Section 4 reenacts s. 175.201, F.S., relating to firefighter pensions, to incorporate the amendment made to s. 112.191, F.S.

Section 5 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or 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 fiscal impact on the State of Florida is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.19 and 112.191.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS/CS by Community Affairs on March 4, 2015:

The eligibility of the death benefit payment is revised to maintain consistency with s. 112.19, F.S. Instead of referring to “in the line of duty,” or “official capacity,” the CS makes the survivor benefit available to specified relatives if the death occurs while the agency employee is engaged in the performance of their duties, whether the act was unlawful and intentional, or accidental, or the result of receiving accidental bodily injury.

DFS is provided with rule-making authority in order for the benefits to be paid out of a separate account of the State Risk Management Trust Fund, monthly, within 60 days of notification, and in coordination with DMS, and the state agency employing the decedent.

Clarification is made that no limitation is placed on the ability of a municipality or charter county to provide death benefits to its employees or their beneficiaries.

CS/SB 136 by Governmental Oversight and Accountability:

- Creates the new death benefits in ch. 112, F.S., relating to public employees, rather than ch. 121, F.S., relating to the FRS. This means the benefits will not be funded through contributions to the FRS.
- Expands the employees eligible for the new benefits to include correctional officers and correctional probation officers employed by the state.
- Modifies the beneficiaries eligible to receive the death benefits to include only the surviving spouse, children up to age 21 or children up to age 25 if enrolled as full-time students, and certain joint annuitants that receive other benefits under the FRS.
- Limits the monthly benefits to 300 months (25 years).
- Authorizes local governments to provide similar benefits to their employees in the same occupations.
- Reenacts s. 185.21, F.S., relating to municipal police pensions, to incorporate the amendment made to s. 112.19, F.S.
- Reenacts s. 175.201, F.S., relating to firefighter pensions, to incorporate the amendment made to s. 112.191, F.S.

B. Amendments:

None.



979716

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2015	.	
	.	
	.	
	.	

The Committee on Community Affairs (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 44 - 185

and insert:

(6) (a) If payments relating to a law enforcement, correctional, or correctional probation officer employed by a state agency are made pursuant to subsection (2), the following additional benefits shall be paid:

1. The surviving spouse shall receive a payment equal to 50 percent of the monthly salary received by the law enforcement,



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11 correctional, or correctional probation officer at the time of
12 death for the lesser of the surviving spouse's lifetime or 300
13 months.

14 2. If the surviving spouse of the law enforcement,
15 correctional, or correctional probation officer dies before
16 receiving 300 monthly payments, the monthly payment that would
17 have been payable to the surviving spouse had the spouse lived
18 shall be paid for the use and benefit of the child or children
19 of the law enforcement, correctional, or correctional probation
20 officer until the later of:

21 a. The 21st birthday of the youngest child of the law
22 enforcement, correctional, or correctional probation officer.

23 b. The 25th birthday of any child of the law enforcement,
24 correctional, or correctional probation officer as long as the
25 child is enrolled for a minimum of 12 credit hours per semester
26 or academic term at an eligible educational institution, as
27 defined in s. 1009.97(3).

28 c. The day a law enforcement, correctional, or correctional
29 probation officer's surviving child who has been physically
30 disabled or mentally disabled and who has been incapable of
31 self-support is no longer disabled. The Department of Management
32 Services may require proof of disability or continued disability
33 in the same manner as is provided for a person seeking or
34 receiving a disability retirement benefit under s. 121.091(4).

35 3. If the law enforcement, correctional, or correctional
36 probation officer does not have a surviving spouse but is
37 survived by a child or children younger than 25 years of age,
38 the benefits payable to a surviving spouse under subparagraph 1.
39 shall be paid for the use and benefit of the child or children



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40 of the law enforcement, correctional, or correctional probation
41 officer under the same terms and conditions provided in
42 subparagraph 2.

43 4. If a law enforcement, correctional, or correctional
44 probation officer does not have a surviving spouse or surviving
45 child but is survived by a joint annuitant receiving benefits
46 under chapter 121, the benefits payable to a surviving spouse
47 under subparagraph 1. shall be paid for the use and benefit of
48 the joint annuitant, as defined in s. 121.021, of the law
49 enforcement, correctional, or correctional probation officer for
50 the same time period as the joint annuitant receives benefits
51 under chapter 121, not to exceed 300 months.

52 (b) The benefits under this subsection shall be paid by the
53 State Risk Management Trust Fund through a separate account
54 maintained by the trust fund within the Department of Financial
55 Services. Benefits paid pursuant to this subsection are not
56 insurance benefits but are considered insurance benefit payments
57 on behalf of state agencies and state universities covered by
58 the trust fund for the purpose of calculating the annual funding
59 needed for all benefit costs. After the first year that benefits
60 are paid from the trust fund, the costs of the benefit payments,
61 including any legal or other costs related to the administration
62 of benefits, are retroactively charged as premium assessments
63 against covered state agencies and state universities in the
64 same manner as such state agencies and state universities are
65 charged for workers' compensation insurance coverage under
66 chapter 284. Benefit payments are payable in monthly
67 installments and must commence 60 days after the Department of
68 Management Services has notified the Division of Risk Management



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69 of the death of a law enforcement, correctional, or correctional
70 probation officer and the names and addresses of surviving
71 beneficiaries and their relationship to the decedent. The
72 Department of Management Services and the state agency or state
73 university employing the decedent shall coordinate with the
74 Division of Risk Management in determining the entitlement of
75 surviving family members to benefits and may provide any
76 information necessary to the division to assist in ensuring that
77 qualified surviving family members receive benefits under this
78 subsection in a timely manner. The Department of Financial
79 Services may adopt rules as authorized under s. 284.39 for the
80 proper management and maintenance of the trust fund, including
81 rules regarding the administration of benefits authorized by
82 this subsection.

83 (c) The benefits under this subsection are in addition to
84 all other benefits authorized under this section, chapter 121,
85 or chapter 440.

86 (d) The benefits apply only to the surviving beneficiaries
87 of law enforcement, correctional, and correctional probation
88 officers killed on or after July 1, 2015.

89 (7) This section does not limit the authority of a
90 municipality or a charter county to provide death benefits to
91 its employees or their beneficiaries pursuant to its
92 constitutional home rule powers. Any other political subdivision
93 of the state may offer, at its expense, death benefits to law
94 enforcement, correctional, or correctional probation officers
95 employed by the political subdivision which do not exceed
96 benefits payable pursuant to subsection (6).

97 Section 2. Subsection (4) of section 112.191, Florida



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98 Statutes, is amended, present subsection (5) of that section is
99 redesignated as subsection (7), and a new subsection (5) and
100 subsection (6) are added to that section, to read:

101 112.191 Firefighters; death benefits.-

102 (4) (a) The employer of such firefighter shall be liable for
103 the payment of said sums specified in subsection (2) ~~this~~
104 ~~section~~ and shall be deemed self-insured, unless it procures and
105 maintains, or has already procured and maintained, insurance to
106 secure such payments. Any such insurance may cover only the
107 risks indicated in subsection (2) ~~this section~~, in the amounts
108 indicated in subsection (2) ~~this section~~, or it may cover those
109 risks and additional risks and may be in larger amounts. Any
110 such insurance shall be placed by such employer only after
111 public bid of such insurance coverage which coverage shall be
112 awarded to the carrier making the lowest best bid.

113 (b) Payment of benefits to beneficiaries of state
114 employees, or of the premiums to cover the risk, under
115 subsection (2) ~~the provisions of this section~~, shall be paid
116 from existing funds otherwise appropriated for the department.

117 (5) (a) If payments relating to a firefighter employed by a
118 state agency are made pursuant to subsection (2), the following
119 additional benefits shall be paid:

120 1. The surviving spouse shall receive a payment equal to 50
121 percent of the monthly salary received by the firefighter at the
122 time of death for the lesser of the surviving spouse's lifetime
123 or 300 months.

124 2. If the surviving spouse of the firefighter dies before
125 receiving 300 monthly payments, the payment that would have been
126 payable to the surviving spouse had the spouse lived shall be



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127 paid for the use and benefit of the child or children of the
128 firefighter until the later of:

129 a. The 21st birthday of the youngest child of the
130 firefighter.

131 b. The 25th birthday of any child of the firefighter as
132 long as such child is enrolled for a minimum of 12 credit hours
133 per semester or academic term at an eligible educational
134 institution, as defined in s. 1009.97(3).

135 c. The day a firefighter's surviving child who has been
136 physically disabled or mentally disabled child and who has been
137 incapable of self-support is no longer disabled. The Department
138 of Management Services may require proof of disability or
139 continued disability in the same manner as is provided for a
140 person seeking or receiving a disability retirement benefit
141 under s. 121.091(4).

142 3. If the firefighter does not have a surviving spouse but
143 is survived by a child or children younger than 25 years of age,
144 the benefits payable to a surviving spouse under subparagraph 1.
145 shall be paid for the use and benefit of the child or children
146 of the firefighter under the same terms and conditions provided
147 in subparagraph 2.

148 4. If a firefighter does not have a surviving spouse or
149 surviving child but is survived by a joint annuitant receiving
150 benefits under chapter 121, the benefits payable to a surviving
151 spouse under subparagraph 1. shall be paid for the use and
152 benefit of the joint annuitant, as defined in s. 121.021, of the
153 firefighter for the same time period as the joint annuitant
154 receives benefits under chapter 121, not to exceed 300 months.

155 (b) The benefits under this subsection shall be paid by the



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156 State Risk Management Trust Fund through a separate account
157 maintained by the trust fund within the Department of Financial
158 Services. Benefits paid pursuant to this subsection are not
159 insurance benefits but are considered insurance benefit payments
160 on behalf of state agencies and state universities covered by
161 the trust fund for the purpose of calculating the annual funding
162 needed for all benefit costs. After the first year that benefits
163 are paid from the trust fund, the costs of the benefit payments,
164 including any legal or other costs related to the administration
165 of benefits, are retroactively charged as premium assessments
166 against covered state agencies and state universities in the
167 same manner as such state agencies and state universities are
168 charged for workers' compensation insurance coverage under
169 chapter 284. Benefit payments are payable in monthly
170 installments and must commence 60 days after the Department of
171 Management Services has notified the Division of Risk Management
172 of the death of a firefighter and the names and addresses of
173 surviving beneficiaries and their relationship to the decedent.
174 The Department of Management Services and the state agency or
175 state university employing the decedent shall coordinate with
176 the Division of Risk Management in determining the entitlement
177 of surviving family members to benefits and may provide any
178 information necessary to the division to assist in ensuring that
179 qualified surviving family members receive benefits under this
180 subsection in a timely manner. The Department of Financial
181 Services may adopt rules as authorized under s. 284.39 for the
182 proper management and maintenance of the trust fund, including
183 rules regarding the administration of benefits authorized by
184 this subsection.



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185 (c) The benefits under this subsection are in addition to
186 all other benefits authorized under this section, chapter 121,
187 or chapter 440.

188 (d) The benefits apply only to the surviving beneficiaries
189 of firefighters killed on or after July 1, 2015.

190 (6) This section does not limit the authority of a
191 municipality or a charter county to provide death benefits to
192 its employees or their beneficiaries pursuant to its
193 constitutional home rule powers. Any other political subdivision
194 of the state may offer, at its expense, death benefits to
195 firefighters employed by the political subdivision which do not
196 exceed benefits payable pursuant to subsection (5).

197
198 ===== T I T L E A M E N D M E N T =====

199 And the title is amended as follows:

200 Delete lines 4 - 10

201 and insert:

202 eligibility of a death benefit payment to the
203 surviving spouse, child, or joint annuitant of a law
204 enforcement officer, correctional officer,
205 correctional probation officer, or firefighter
206 employed by a state agency; providing that benefits
207 are paid by the State Risk Management Trust Fund;
208 specifying the method of charging the costs of benefit
209 payments against the state agency or state university;
210 specifying the timeframe and frequency of benefit
211 payments; requiring the Department of Management
212 Services and the employing state agency or state
213 university to coordinate with and provide necessary



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214 information to the Division of Risk Management of the
215 Department of Financial Services; authorizing the
216 Department of Financial Services to adopt certain
217 rules; specifying applicability; providing for
218 construction; authorizing specified political
219 subdivisions to offer a death

By the Committee on Governmental Oversight and Accountability;
and Senators Hays and Latvala

585-01472-15

2015136c1

1 A bill to be entitled
2 An act relating to public officers and employees;
3 amending ss. 112.19 and 112.191, F.S.; specifying
4 eligibility of a monthly death benefit payment to the
5 surviving spouse, child, or joint annuitant of a law
6 enforcement officer, correctional officer,
7 correctional probation officer, or firefighter
8 employed by a state agency; providing an annual
9 appropriation; specifying applicability; authorizing
10 political subdivisions to offer a monthly death
11 benefit; reenacting s. 185.21, F.S., relating to
12 municipal police pensions, to incorporate the
13 amendment made to s. 112.19, F.S.; reenacting s.
14 175.201, F.S., relating to firefighter pensions, to
15 incorporate the amendment made to s. 112.191, F.S.;
16 providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Subsection (4) of section 112.19, Florida
21 Statutes, is amended, present subsection (6) of that section is
22 redesignated as subsection (8), and a new subsection (6) and
23 subsection (7) are added to that section, to read:

24 112.19 Law enforcement, correctional, and correctional
25 probation officers; death benefits.—

26 (4) (a) The employer of such law enforcement, correctional,
27 or correctional probation officer is liable for the payment of
28 the sums specified in subsection (2) ~~this section~~ and is deemed
29 self-insured, unless it procures and maintains, or has already

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30 procured and maintained, insurance to secure such payments. Any
31 such insurance may cover only the risks indicated in subsection
32 (2) ~~this section~~, in the amounts indicated in subsection (2)
33 ~~this section~~, or it may cover those risks and additional risks
34 and may be in larger amounts. Any such insurance shall be placed
35 by such employer only after public bid of such insurance
36 coverage which coverage shall be awarded to the carrier making
37 the lowest best bid.

38 (b) Payment of benefits to beneficiaries of state
39 employees, or of the premiums to cover the risk, under
40 subsection (2) ~~the provisions of this section~~ shall be paid from
41 existing funds otherwise appropriated to the department
42 employing the law enforcement, correctional, or correctional
43 probation officers.

44 (6) (a) If a law enforcement, correctional, or correctional
45 probation officer who is employed by a state agency is killed in
46 the line of duty; is killed when off-duty while acting in an
47 official capacity to prevent injury, death, or loss of property;
48 or is otherwise killed by reason of his or her employment as a
49 law enforcement, correctional, or correctional probation
50 officer, the following benefits shall be paid:

51 1. The surviving spouse shall receive a monthly payment
52 equal to 50 percent of the monthly salary received by the law
53 enforcement, correctional, or correctional probation officer at
54 the time of death for the lesser of the surviving spouse's
55 lifetime or 300 months.

56 2. If the surviving spouse of the law enforcement,
57 correctional, or correctional probation officer dies before
58 receiving 300 monthly payments, the monthly payment that would

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59 have been payable to the surviving spouse had the spouse lived
60 shall be paid for the use and benefit of the child or children
61 of such law enforcement, correctional, or correctional probation
62 officer until the later of:

63 a. The 21st birthday of the youngest child of the law
64 enforcement, correctional, or correctional probation officer.

65 b. The 25th birthday of any child of the law enforcement,
66 correctional, or correctional probation officer as long as the
67 child is enrolled for a minimum of 12 credit hours per semester
68 or academic term at an eligible educational institution, as
69 defined in s. 1009.97(3).

70 c. The day a child of the law enforcement, correctional, or
71 correctional probation officer who is physically disabled or
72 mentally disabled and incapable of self-support is no longer
73 disabled. The Department of Management Services may require
74 proof of disability or continued disability in the same manner
75 as is provided for a person seeking or receiving a disability
76 retirement benefit under s. 121.091(4).

77 3. If the law enforcement, correctional, or correctional
78 probation officer does not have a surviving spouse but is
79 survived by a child or children younger than 25 years of age,
80 the benefits provided under subparagraph 1., normally payable to
81 a surviving spouse, shall be paid for the use and benefit of the
82 child or children of such law enforcement, correctional, or
83 correctional probation officer under the same terms and
84 conditions provided in subparagraph 2.

85 4. If a law enforcement, correctional, or correctional
86 probation officer does not have a surviving spouse or surviving
87 child but is survived by a joint annuitant receiving benefits

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88 under chapter 121, the benefits provided under subparagraph 1.,
89 normally payable to a surviving spouse, shall be paid for the
90 use and benefit of the joint annuitant, as defined in s.
91 121.021, of such law enforcement, correctional, or correctional
92 probation officer for the same time period as the joint
93 annuitant receives benefits under chapter 121, not to exceed 300
94 months.

95 (b) There is annually appropriated from the General Revenue
96 Fund, to be paid into the State Risk Management Trust Fund
97 within the Department of Financial Services, an amount necessary
98 to cover the annual costs associated with payment of the
99 benefits authorized by this subsection.

100 (c) The benefits authorized by this subsection are in
101 addition to all other benefits authorized by this section or
102 chapter 121.

103 (d) The benefits shall be paid only for law enforcement,
104 correctional, and correctional probation officers killed on or
105 after July 1, 2015.

106 (7) A county, municipality, or other political subdivision
107 of the state may offer, at its expense, benefits not to exceed
108 the benefits specified in subsection (6) to law enforcement,
109 correctional, or correctional probation officers employed by
110 such entity.

111 Section 2. Subsection (4) of section 112.191, Florida
112 Statutes, is amended, present subsection (5) of that section is
113 redesignated as subsection (7), and a new subsection (5) and
114 subsection (6) are added to that section, to read:

115 112.191 Firefighters; death benefits.—

116 (4) (a) The employer of such firefighter shall be liable for

585-01472-15

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117 the payment of said sums specified in subsection (2) ~~this~~
118 ~~section~~ and shall be deemed self-insured, unless it procures and
119 maintains, or has already procured and maintained, insurance to
120 secure such payments. Any such insurance may cover only the
121 risks indicated in subsection (2) ~~this section~~, in the amounts
122 indicated in subsection (2) ~~this section~~, or it may cover those
123 risks and additional risks and may be in larger amounts. Any
124 such insurance shall be placed by such employer only after
125 public bid of such insurance coverage which coverage shall be
126 awarded to the carrier making the lowest best bid.

127 (b) Payment of benefits to beneficiaries of state
128 employees, or of the premiums to cover the risk, under
129 subsection (2) ~~the provisions of this section~~, shall be paid
130 from existing funds otherwise appropriated for the department.

131 (5) (a) If a firefighter who is employed by a state agency
132 is killed in the line of duty; is killed when off-duty while
133 acting in an official capacity to prevent injury, death, or loss
134 of property; or is otherwise killed by reason of his or her
135 employment as a firefighter, the following benefits shall be
136 paid:

137 1. The surviving spouse shall receive a monthly payment
138 equal to 50 percent of the monthly salary received by the
139 firefighter at the time of death for the lesser of the surviving
140 spouse's lifetime or 300 months.

141 2. If the surviving spouse of the firefighter dies before
142 receiving 300 monthly payments, the monthly payment that would
143 have been payable to the surviving spouse had the spouse lived
144 shall be paid for the use and benefit of the child or children
145 of such firefighter until the later of:

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146 a. The 21st birthday of the youngest child of the
147 firefighter.

148 b. The 25th birthday of any child of the firefighter as
149 long as such child is enrolled for a minimum of 12 credit hours
150 per semester or academic term at an eligible educational
151 institution, as defined in s. 1009.97(3).

152 c. The day a child of the firefighter who is physically
153 disabled or mentally disabled child and incapable of self-
154 support is no longer disabled. The Department of Management
155 Services may require proof of disability or continued disability
156 in the same manner as is provided for a person seeking or
157 receiving a disability retirement benefit under s. 121.091(4).

158 3. If the firefighter does not have a surviving spouse but
159 is survived by a child or children younger than 25 years of age,
160 the benefits provided under subparagraph 1., normally payable to
161 a surviving spouse, shall be paid for the use and benefit of the
162 child or children of the firefighter under the same terms and
163 conditions provided in subparagraph 2.

164 4. If a firefighter does not have a surviving spouse or
165 surviving child but is survived by a joint annuitant receiving
166 benefits under chapter 121, the benefits provided under
167 subparagraph 1., normally payable to a surviving spouse, shall
168 be paid for the use and benefit of the joint annuitant, as
169 defined in s. 121.021, of such firefighter for the same time
170 period as the joint annuitant receives benefits under chapter
171 121, not to exceed 300 months.

172 (b) There is annually appropriated from the General Revenue
173 Fund, to be paid into the State Risk Management Trust Fund
174 within the Department of Financial Services, an amount necessary

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175 to cover the annual costs associated with payment of the
176 benefits authorized by this subsection.

177 (c) The benefits authorized by this subsection are in
178 addition to all other benefits authorized by this section or
179 chapter 121.

180 (d) The benefits shall be paid only for firefighters killed
181 on or after July 1, 2015.

182 (6) A county, municipality, or other political subdivision
183 of the state may offer, at its expense, benefits not to exceed
184 the benefits specified in subsection (5) to firefighters
185 employed by such entity.

186 Section 3. For the purpose of incorporating the amendment
187 made by this act to section 112.19, Florida Statutes, in a
188 reference thereto, Section 185.21, Florida Statutes, is
189 reenacted to read:

190 185.21 Death prior to retirement; refunds of contributions
191 or payment of death benefits.—For any municipality, chapter
192 plan, local law municipality, or local law plan under this
193 chapter:

194 (1) If a police officer dies before being eligible to
195 retire, the heirs, legatees, beneficiaries, or personal
196 representatives of such deceased police officer shall be
197 entitled to a refund of 100 percent, without interest, of the
198 contributions made to the municipal police officers' retirement
199 trust fund by such deceased police officer or, in the event an
200 annuity or life insurance contract has been purchased by the
201 board on such police officer, then to the death benefits
202 available under such life insurance or annuity contract, subject
203 to the limitations on such death benefits set forth in s.

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204 185.061 whichever amount is greater.

205 (2) If a police officer having at least 10 years of
206 credited service dies prior to retirement, his or her
207 beneficiary is entitled to the benefits otherwise payable to the
208 police officer at early or normal retirement age.

209
210 In the event that a death benefit paid by a life insurance
211 company exceeds the limit set forth in s. 185.061(6), the excess
212 of the death benefit over the limit shall be paid to the
213 municipal police officers' retirement trust fund. However, death
214 benefits as provided pursuant to s. 112.19 or any other state or
215 federal law shall not be included in the calculation of death or
216 retirement benefits provided under this chapter.

217 Section 4. For the purpose of incorporating the amendment
218 made by this act to section 112.191, Florida Statutes, in a
219 reference thereto, Section 175.201, Florida Statutes, is
220 reenacted to read:

221 175.201 Death prior to retirement; refunds of
222 contributions; death benefits.—For any municipality, special
223 fire control district, chapter plan, local law municipality,
224 local law special fire control district, or local law plan under
225 this chapter:

226 (1) If a firefighter dies before being eligible to retire,
227 the heirs, legatees, beneficiaries, or personal representatives
228 of such deceased firefighter shall be entitled to a refund of
229 100 percent, without interest, of the contributions made to the
230 firefighters' pension trust fund by such deceased firefighter
231 or, in the event an annuity or life insurance contract has been
232 purchased by the board of trustees on such firefighter, then to

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2015136c1

233 the death benefits available under such life insurance or
234 annuity contract subject to the limitations on such death
235 benefits set forth in s. 175.081, whichever amount is greater.

236 (2) If a firefighter having at least 10 years of credited
237 service dies prior to retirement, his or her beneficiary is
238 entitled to the benefits otherwise payable to the firefighter at
239 early or normal retirement age.

240

241 In the event that the death benefit paid by a life insurance
242 company exceeds the limit set forth in s. 175.081, the excess of
243 the death benefit over the limit shall be paid to the
244 firefighters' pension trust fund. However, death benefits
245 provided pursuant to s. 112.191 or any other state or federal
246 law shall not be included in the calculation of death or
247 retirement benefits provided under this chapter.

248 Section 5. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-4-15

Meeting Date

136

Bill Number (if applicable)

Topic PUBLIC OFFICERS & EMPLOYEES

Amendment Barcode (if applicable)

Name MIKE FEWLESS

Job Title CAPTAIN

Address 2500 W. COLONIAL
Street

Phone

ORANGE FL 32804
City State Zip

Email

Speaking: For Against Information

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

Representing ORANGE COUNTY SHERIFF'S OFFICE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15
Meeting Date

136
Bill Number (if applicable)

Topic Public officers

Amendment Barcode (if applicable)

Name Jim Tolley

Job Title President FPF

Address 345 West Madison St.
Street

Phone 850 224 7333

Tallahassee FL 32301
City State Zip

Email JimT@FPF.org

Speaking: For Against Information

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

Representing Florida Prof Firefighters

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.4.15 Meeting Date

136 Bill Number (if applicable)

as amended Amendment Barcode (if applicable)

Topic Public Officers of Employees

Name Ken Koczynski "cop-CHEN-ski"

Job Title Lobbyist

Address 300 East Brevard St Street

Phone 222-3329

Tallahassee FL 32301 City State Zip

Email ken@flpba.org

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

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

Representing Fla PBA Inc

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

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

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining, *Alternating Chair*

SENATOR ALAN HAYS

11th District

MEMORANDUM

To: Senator Wilton Simpson, Chair
Community Affairs Committee
CC: Tom Yeatman, Staff Director
Ann Whittaker, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 136 – Florida Retirement System

Date: February 3, 2015

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

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 Community Affairs

BILL: CS/SB 778

INTRODUCER: Community Affairs Committee and Senator Hays

SUBJECT: Local Government Construction Preferences

DATE: March 4, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	Fav/CS
2.			GO	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 778 prohibits any local laws that give preference to a local contractor in circumstances involving a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds. The bill requires a state agency or subdivision subject to this law to disclose whether payment will be made from state-appropriated funds and the percentage of such funds compared to the total cost, if known. The bill does not prohibit the application of a local preference in a competitive solicitation for construction services in which less than 50 percent of the cost will be paid from state-appropriated funds. The bill provides that state-appropriated funds do not include any federal aid funds.

II. Present Situation:

Procurement of Construction Services

Chapter 255, F.S., specifies procedures to be followed in the procurement of construction services for public property and publicly owned buildings. The department is responsible for establishing in rule:¹

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertising for and receiving bids on building construction contracts;

¹ Section 255.29, F.S.

- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications if negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities if the contracts are determined to be in the best interest of the state.

State contracts for construction projects estimated to cost in excess of \$200,000 must be competitively bid.² Counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building must competitively award the project if the projected cost exceeds \$300,000.³ To “competitively award” a project means to award the contract based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation.⁴ Counties, municipalities, special districts, and other political subdivisions may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.⁵

Section 255.0525, F.S., requires the solicitation of competitive bids or proposals for any state construction project projected to cost more than \$200,000 to be publicly advertised in the Florida Administrative Register (FAR) at least 21 days before the established bid opening. If the construction project is projected to exceed \$500,000, the advertisement must be published in the FAR at least 30 days before the bid opening and also in a newspaper of general circulation in the county where the project is located at least 30 days before the bid opening.⁶

Florida Preference to State Residents

Florida law provides a preference for the employment of state residents in construction contracts funded by money appropriated with state funds. Such contracts must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if state residents have substantially equal qualifications⁷ to those of non-residents.⁸ If a construction contract is funded by local funds, the contract may contain such a provision.⁹ In addition, a contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor’s employment needs in the state’s job bank system.¹⁰

² See ch. 60D-5.002(2)(d) and 60D-5.0073(4), F.A.C.; see also s. 255.0525(1), F.S.

³ See s. 255.20(1), F.S.

⁴ *Id.*

⁵ *Id.*

⁶ For counties, municipalities, and political subdivisions, similar publishing provisions apply. Section 255.0525(2), F.S.

⁷ Section 255.099(1)(a), F.S., defines substantially equal qualifications as the “qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons.”

⁸ Section 255.099(1), F.S.

⁹ *Id.*

¹⁰ Section 255.099(1)(b), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 287.084, F.S., to prohibit local ordinances or regulations that give preference to a local contractor in circumstances involving a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds. Specifically, the bill prohibits local ordinances or regulations from restricting a certified contractor (as defined in s. 489.105(8), F.S.) from competing for an award based upon the contractor's:

- Maintaining an office or place of business within a particular local jurisdiction;
- Hiring employees or subcontractors from within a particular local jurisdiction; or
- Making prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

The bill provides that state-appropriated funds do not include any federal aid funds.

When 50 percent or more of the costs will be paid from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision must disclose in the solicitation document the amount of such funds or the percentage of such funds as compared to the anticipated total cost of the construction services.

The bill also provides that except for when 50 percent or more of the costs for construction services will be funded from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision is not prevented from awarding a contract to a contractor in accordance with applicable state laws or local ordinances or regulations.

Section 2 provides an effective date of July 1, 2015.

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:

This bill may result in more business being awarded to state certified contractors as a result of prohibiting certain local ordinances and regulations that may otherwise restrict a non-local contractor from competing.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.084 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Community Affairs on March 4, 2015:**

Provides that state-appropriated funds do not include any federal aid funds for purposes of this section.

Raises the percentage of funding that must be derived from state-appropriated funds in order to prohibit application of a local preference from 20 percent to 50 percent.

Changes the word “vendor” to “contractor” throughout the bill.

B. Amendments:

None.



569074

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2015	.	
	.	
	.	
	.	

The Committee on Community Affairs (Dean) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 18 and 19

insert:

(b) For purposes of this section:

1. Paragraph (a) does not apply to transportation projects for which federal aid funds are available.

2. State-appropriated funds used for a project competitively solicited under paragraph (c) does not include any federal aid funds.



569074

11
12 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

13 And the directory clause is amended as follows:

14 Delete lines 15 - 16

15 and insert:

16 Section 1. Paragraphs (b) and (c) of subsection (1) of
17 section 287.084, Florida Statutes, are amended to read:

18
19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 Delete line 3

22 and insert:

23 preferences; amending s. 287.084, F.S.; specifying
24 that funds appropriated by the state for certain
25 competitively solicited projects do not include
26 federal aid funds; prohibiting



904154

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2015	.	
	.	
	.	
	.	

The Committee on Community Affairs (Dean) recommended the following:

Senate Amendment

Delete lines 20 - 40
and insert:
services in which 50 percent or more of the cost will be paid
from state-appropriated funds, a local ordinance or regulation
may not restrict a certified contractor as defined in s.
489.105(8) from competing for an award based upon:
a. The contractor's maintaining an office or place of
business within a particular local jurisdiction;



904154

11 b. The contractor's hiring employees or subcontractors from
12 within a particular local jurisdiction; or

13 c. The contractor's prior payment of local taxes,
14 assessments, or duties within a particular local jurisdiction.

15 2. For any competitive solicitation subject to this
16 section, a state college, county, municipality, school district,
17 or other political subdivision shall disclose in the
18 solicitation document whether payment will be made from funds
19 appropriated by the state and, if known, the amount of such
20 funds or the percentage of such funds as compared to the
21 anticipated total cost of the construction services.

22 3. Except as provided in subparagraph 1., this section does
23 not prevent a state college, county, municipality, school
24 district, or other political subdivision from awarding a
25 contract to a contractor in accordance with applicable state
26 laws



534942

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/04/2015	.	
	.	
	.	
	.	

The Committee on Community Affairs (Brandes) recommended the following:

- 1 **Senate Amendment to Amendment (904154)**
- 2
- 3 Delete line 5
- 4 and insert:
- 5 services in which any portion of the cost will be paid

By Senator Hays

11-00448-15

2015778__

1 A bill to be entitled
2 An act relating to local government construction
3 preferences; amending s. 287.084, F.S.; prohibiting
4 local ordinances and regulations from restricting a
5 certified contractor's competition for award of a
6 contract for construction services based upon certain
7 conditions; requiring a state college, school
8 district, or other political subdivision to make
9 specified disclosures in competitive solicitation
10 documents; providing construction; providing an
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Paragraph (c) of subsection (1) of section
16 287.084, Florida Statutes, is amended to read:

17 287.084 Preference to Florida businesses.—

18 (1)

19 (c)1. For a competitive solicitation for construction
20 services in which 20 percent or more of the cost will be paid
21 from state-appropriated funds, a local ordinance or regulation
22 may not restrict a certified contractor as defined in s.
23 489.105(8) from competing for an award based upon:

24 a. The vendor's maintaining an office or place of business
25 within a particular local jurisdiction;

26 b. The vendor's hiring employees or subcontractors from
27 within a particular local jurisdiction; or

28 c. The vendor's prior payment of local taxes, assessments,
29 or duties within a particular local jurisdiction.

11-00448-15

2015778__

30 2. For any competitive solicitation subject to this
31 section, a state college, county, municipality, school district,
32 or other political subdivision shall disclose in the
33 solicitation document whether payment will be made from funds
34 appropriated by the state and, if known, the amount of such
35 funds or the percentage of such funds as compared to the
36 anticipated total cost of the construction services.

37 3. Except as provided in subparagraph 1., this section does
38 not prevent a state college, county, municipality, school
39 district, or other political subdivision from awarding a
40 contract to any vendor in accordance with applicable state laws
41 or local ordinances or regulations. ~~As used in this section, the~~
42 ~~term "other political subdivision of this state" does not~~
43 ~~include counties or municipalities.~~

44 Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-4-15

Meeting Date

SB 778

Bill Number (if applicable)

Topic Construction Preference

Amendment Barcode (if applicable)

Name HARI HEBRANK

Job Title _____

Address 113 EAST COLLEGE AVE. #200

Phone 566-9824

Street

City

Tallahassee

State

FL 32301

Zip

Email _____

Speaking: For Against Information

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

Representing FLORIDA HOME BUILDERS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4

Meeting Date

778

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name RICHARD JONES

Job Title _____

Address 125 ROSELLE CT

Phone 941 628 0813

Street

PORT CHARLOTTE FL

33952

Email MRMURSN2@COMCAST.NET

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

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

SB 778

Bill Number (if applicable)

Meeting Date

Topic _____

Amendment Barcode (if applicable)

Name Carlos Ramos

Job Title _____

Address 2825 SW 3rd Ave

Phone _____

Street

City

Miami FL

State

33129

Zip

Email _____

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.

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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)

3-3-15
Meeting Date

SB 0778
Bill Number (if applicable)

Topic LOCAL GOV CONSTRUCTION

Amendment Barcode (if applicable)

Name LARRY DUPRE

Job Title _____

Address 6301 N. RIVER HIGH LAND PL Phone 813-9848828
Street

TAMPA FL 33617
City State Zip

Email _____

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.

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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)

3/4/15

Meeting Date

SB 0778

Bill Number (if applicable)

Topic Local Government Construction Preferences

Amendment Barcode (if applicable)

Name Jeff Cook

Job Title _____

Address 4875 Pimlico Dr.
Street

Phone 850-545-8189

Tallahassee FL 32309
City State Zip

Email _____

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15

Meeting Date

778

Bill Number (if applicable)

Topic Local Govt Constr. Preferences

Amendment Barcode (if applicable)

Name Warren Husband

Job Title _____

Address PO Box 10909
Street

Phone (850) 205-9000

Tallahassee FL 32302
City State Zip

Email _____

Speaking: For Against Information

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

Representing Fla. Associated General Contractors 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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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15
Meeting Date

SB 778
Bill Number (if applicable)

Topic Local Govt Construction Preferences

Amendment Barcode (if applicable)

Name Bruce Kershner

Job Title _____

Address 231 West Bay Avenue
Street

Phone 407 830 1882

Langwood FL 32750
City State Zip

Email rbkershner@att.net

Speaking: For Against Information

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

Representing National Utility Contractors Assn. of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

8-4-15

Meeting Date

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

SB 778

Bill Number (if applicable)

Topic LOCAL Preference - Construction

Amendment Barcode (if applicable)

Name MARI WEBER

Job Title

Address 113 EAST COLLEGE AVE. #200

Phone 566-7824

Street

TALLAHASSEE, FL 32317

City

State

Zip

Email

Speaking: For Against Information

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

Representing FLORIDA HOME BUILDERS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-3-15

Meeting Date

Topic LOCAL GOVERNMENT CONSTRUCTION PREFERENCES Bill Number SB 0778
(if applicable)

Name William Gray Amendment Barcode _____
(if applicable)

Job Title UPS DRIVER (TEMPSTONS)

Address 2629 BYRON CIR. Phone 850-519-2361

Street

Tallahassee

City

FL.

State

32308

Zip

E-mail bk546@aol.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15

Meeting Date

778

Bill Number (if applicable)

Topic Local Gov. Construction

Amendment Barcode (if applicable)

Name Richard Watson

Job Title Legislative Counsel

Address P.O. Box 18038

Phone 850 222-0000

Street
Tallahassee, FL 32302

Email rick@rwatsonand

City State Zip
Tallahassee, FL 32302

otw@rwatsonand.com

Speaking: For Against Information

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

Representing Associated Builders & Contractors of FL

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

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

3/09/15
Meeting Date

778
Bill Number (if applicable)

Topic Contractors

Amendment Barcode (if applicable)

Name Rick Templin

Job Title _____

Address 135 S. Monroe
Street

Phone 850-566-4348

Tallahassee FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida AFL-CIO & Florida Building & Construction Trades 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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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4

Meeting Date

778

Bill Number (if applicable)

Topic Pre-emption

Amendment Barcode (if applicable)

Name Steve Hall

Job Title _____

Address 2619 CORRIE DR.

Phone 407.896.994

Street

Orl. Fl. 32803

Email _____

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.

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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)

3/4/15
Meeting Date

778
Bill Number (if applicable)

Topic Local ~~Preference~~ Preferences

~~Amendment~~
Amendment Barcode (if applicable)

Name CASEY COOK

Job Title Legislative Advocate

Address PO Box 1257
Street

Phone 850 701 3701

Tallahassee FL 32302
City State Zip

Email ccook@flcities.com

Speaking: For Against Information

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

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

Bill Number (if applicable)

Topic Local Preferences

Amendment Barcode (if applicable)

Name Eric Poole

Job Title Asst Leg Director

Address 100 Myrtle

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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15
Meeting Date

778
Bill Number (if applicable)

531 942
Amendment Barcode (if applicable)

Topic Local Preferences

Name Casey Cook

Job Title Legislative Advocate

Address PO Box 1777
Street

Phone 858 701 3701

Tallahassee FL 32302
City State Zip

Email ccook@flcities.com

Speaking: For Against Information

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

Representing Florida League of Cities

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:

Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining, *Alternating Chair*

SENATOR ALAN HAYS

11th District

MEMORANDUM

To: Senator Wilton Simpson, Chair
Community Affairs Committee
CC: Tom Yeatman, Staff Director
Ann Whittaker, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 778 – Local Government Construction Preferences

Date: February 13, 2015

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

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 Community Affairs

BILL: CS/CS/SB 154

INTRODUCER: Community Affairs Committee; Education Pre-K - 12 Committee; and Senator Hays

SUBJECT: Hazardous Walking Conditions

DATE: March 4, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Scott</u>	<u>Klebacha</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AED</u>	_____
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 154 requires that district school boards, in cooperation with the relevant governmental entities, inspect and identify hazardous conditions along routes that students must take while walking to or from school. The bill also requires that the relevant governmental entities correct any hazardous walking conditions within a reasonable period of time.

Furthermore, the bill:

- Revises the conditions for identifying walkways parallel to a road as hazardous.
- Creates criteria for identifying conditions at uncontrolled crossing sites as hazardous.
- Revises the process for inspecting, identifying, and correcting hazardous walking conditions.
- Authorizes a district school board to initiate a proceeding to obtain a declaratory judgment if, after inspection, the governmental representatives are unable to reach a consensus on whether a hazardous walking condition exists.
- Provides that the designation of a road as a hazardous walking condition is inadmissible as evidence in a civil action for damages against a governmental entity.

II. Present Situation:

Transportation of Public K-12 Students

Each district school superintendent is responsible for determining which students to transport and for making recommendations to the district school board regarding transportation plans and procedures, including the routing and scheduling of school buses.¹ Based on the district school superintendent's recommendations, the district school board is required to provide transportation for students in grades 6 and below, and may provide transportation to students in grades 7 through 12, if the students are subjected to hazardous walking conditions while en route to or from school.²

Hazardous Walking Conditions

Section 1006.23, F.S., provides legislative intent for a district school board to provide transportation to students³ who live within 2 miles of a school in that district and who would be subjected to hazardous walking conditions.⁴ Furthermore, the law intends for district school boards and state or local governmental entities having jurisdiction to cooperate in identifying hazardous walking conditions and, if a hazardous condition exists, for the applicable governmental entities to correct it within a reasonable time.⁵

Criteria for Identifying Hazardous Conditions

State law delineates the criteria for identifying hazardous walking conditions associated with walking parallel to a road or perpendicular to road for the purpose of crossing.⁶

A hazardous condition exists if a walkway parallel to a road is:

- Less than a four-foot wide area adjacent to the road that requires the student to walk on the road surface; or
- Uncurbed with a posted speed limit of 55 miles per hour and a walking surface less than three feet from the road.⁷

However, a road along which a student must walk may not be identified as a hazardous walking condition if:

- It is located in a residential area that has little to no transient traffic;

¹ Sections 1006.21 and 1006.22, F.S.

² Section 1006.21(3)(b), F.S.

³ A "student" is defined as "any public elementary school student whose grade level does not exceed grade 6." Section 1006.23(1), F.S.

⁴ Section 1006.23(2) and (3), F.S. *See generally* Florida Department of Education, School Transportation Management Section, available at <http://www.fldoe.org/core/fileparse.php/7585/urlt/0085491-profiles1213.pdf> (*The Quality Link—Florida School District Transportation Profiles*), 2012-2013 (contains statewide and school district data on the total number of students subjected to hazardous walking conditions) (last visited February 24, 2015). Additional school transportation information is available at <http://www.fldoe.org/schools/safe-healthy-schools/transportation/index.shtml> (last visited February 24, 2015).

⁵ Section 1006.23(2)(a), F.S.

⁶ Section 1006.23(4), F.S.

⁷ Section 1006.23(4)(a)1., F.S.

- The total traffic volume⁸ is less than 180 vehicles per hour, per direction, during a time that a student walks to or from school; or
- It is located in a residential area that has a posted speed limit of 30 miles per hour or less.⁹

A hazardous walking condition exists on a walkway perpendicular to a road if:

- The total traffic volume exceeds 360 vehicles per hour, per direction, during a time that a student walks to or from school, and the crossing area is an “uncontrolled crossing site”;¹⁰ or
- The total traffic volume of a road exceeds 4,000 vehicles per hour, during which time a student would be walking to or from school, through an intersection or crossing area controlled by a stop sign or other traffic signal, unless a crossing guard or traffic enforcement officer is present during a time that a student walks to or from school.¹¹

Inspection, Determination, and Correction

After a request for review of a perceived hazardous walking condition is made to a district school superintendent, or his or her designee, a school district representative and a representative of the state or local governmental entity having jurisdiction must inspect the perceived hazardous condition.¹² The superintendent or designee and the applicable governmental entity or its representative must reach a mutually agreed-upon final determination as to whether the hazardous condition meets the state criteria in s. 1006.23(4), F.S.¹³ Subsequently, the superintendent or designee reports the final determination to the Department of Education.¹⁴

If a hazardous condition is determined to exist, the district school board must request that the governmental entity determine whether it will correct the hazardous condition and the projected completion date.¹⁵ The state is required to allocate funds to the school district for transporting students affected by the hazardous walking condition; however, funding ceases upon correction of the condition or upon the projected completion date, whichever occurs first.¹⁶

III. Effect of Proposed Changes:

The bill removes the intent language in existing s. 1006.23(2)(a), F.S., and requires that district school boards and state or local governmental entities jointly inspect and identify hazardous conditions along routes that students must take while walking to or from school; that district school boards provide transportation to such students; and that the applicable governmental entity either correct the designated hazardous conditions or justify in writing to the district school

⁸ Traffic volume is determined by the most recent state or local government agency traffic engineering study. Section 1006.23(4)(b), F.S.

⁹ Section 1006.23(4)(a)2., F.S.

¹⁰ An “uncontrolled crossing site” is defined as “an intersection or other designated crossing site where no crossing guard, traffic enforcement officer, or stop sign, or other traffic control signal is present during the times students walk to and from school.” Section 1006.23(b)1., F.S.

¹¹ Section 1006.23(4)(b), F.S.

¹² Section 1006.23(3), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 1006.23(2)(b), F.S.

¹⁶ *Id.* See Florida Department of Education, *Student Transportation General Instructions 2014-2015*, available at <http://www.fldoe.org/core/fileparse.php/7507/urlt/0077152-1415studenttransgeneralinstructions.pdf> (last visited February 24, 2015).

superintendent and the Department of Education (DOE) why it will not correct the hazardous condition. Current law may imply an expectation that district school boards and state or local governmental entities will exercise their discretion in inspecting, identifying, and correcting such conditions. By removing the intent language in paragraph (2)(a), the bill would resolve any uncertainty that the collaborative process relating to hazardous walking conditions is discretionary and would make that paragraph consistent with the other provisions in ss. 1006.23 and 1006.21(3)(b), F.S.

Criteria for Identifying Hazardous Conditions

Walkways Parallel to the Road

The bill revises the criteria for identifying walkways parallel to the road as hazardous by:

- Excluding drainage ditches, sluiceways, swales, or channels from inclusion in the required minimum four-foot wide area for safely walking parallel to the road;
- Reducing the posted speed limit from 55 miles per hour to 50 miles per hour or greater; and
- Removing an exception that hazardous walking conditions do not apply to residential areas with little or no transient traffic.

In effect, the bill will likely increase the number of roads designated as hazardous and needing correction.

Crossings Over the Road

The bill creates criteria for identifying hazardous walking conditions on roads over which a student must cross while walking to or from school. The bill requires that any road with an uncontrolled crossing site is hazardous if it has:

- A posted speed limit of 50 miles per hour or greater; or
- Six lanes or more, not including turn lanes, regardless of the speed limit.

Current law does not provide criteria for identifying roads with uncontrolled crossing sites as hazardous. Any existing uncontrolled crossing site that meets the criteria under the bill will be deemed hazardous and require the applicable governmental entity to correct the hazardous condition.

Inspecting, Identifying, and Correcting Hazardous Conditions

Request for Review

The bill requires, upon the district school superintendent's request for review, that a joint inspection of a perceived hazardous condition be conducted on a road within a state or local government's jurisdiction.

Current law is unclear as to who is required to make the request and states that when a request for review is made to the district school superintendent, or his or her designee, the perceived hazardous condition must be inspected. The bill clarifies this ambiguity by replacing the word "to" with "by" and requiring that the request for review be made by the superintendent to the applicable governmental entity.

The bill removes the superintendent's designee as a party authorized to request review of a hazardous condition and places the authority to initiate an inspection solely with the superintendent.

Inspection

The bill specifically identifies the following governmental representatives who must participate in inspecting the affected road if the road is located within the applicable governmental jurisdiction:

- For a municipal road, a representative from the municipal police department;
- For a county road, a representative from the sheriff's department; and
- For a state road, a representative from the Department of Transportation.

Furthermore, the bill provides for the inclusion of a representative of a metropolitan planning organization (MPO) if the jurisdiction is within an area where there is an MPO.

The bill requires that the appropriate governmental entity most familiar with the affected road and its surrounding location participate in the entire process, *e.g.*, inspecting, identifying, and correcting the hazardous condition.

Final Determination of a Hazardous Condition

The bill revises the process for making a final determination on whether a hazardous walking condition exists. Current law requires that the applicable state or local governmental entity, or its representative, and the district school superintendent, or his or her designee, reach a mutually agreed-upon final determination that must be reported to the DOE. The bill removes the requirements that a district school superintendent, or his or her designee, participate in and report the final determination to the DOE. The bill requires that the governing entity with jurisdiction over the area report their determination in writing to the district school superintendent.

Declaratory Judgment

If unable to reach consensus, the bill requires the governmental representatives to report the reasons for the impasse to the district school superintendent. Subsequently, the superintendent must provide a report and recommendation to the district school board regarding the lack of consensus. Under these circumstances, the bill authorizes a district school board to initiate a proceeding under ch. 86, F.S., to obtain a declaratory judgment as to whether the condition at issue is hazardous. If it is found that a hazardous walking condition exists, the superintendent must report the finding to DOE and formally request correction of the hazardous condition.

Existing law does not provide for a formal process or remedy if the governmental representatives are unable to agree on the existence of a hazardous walking condition.

Request for Correction

The bill revises the process by which a correction is requested and, unlike current law, requires that the applicable governmental entity submit a position statement informing the superintendent whether the correction will be included in its next annual 5-year transportation work program and when the correction will be completed.

Current law does not contemplate circumstances under which a governmental entity declines to correct a hazardous condition. Under the bill, if a governmental entity will not include correction of the hazardous condition in its next 5-year plan, it must justify its decision in a written statement to the district school superintendent and the DOE.

Admissibility of Evidence in Civil Action

The bill adds a provision that designation of a hazardous walking condition is not admissible in evidence in a civil action for damages brought against a governmental entity under s. 768.28, F.S., relating to waiver of sovereign immunity.

Effective Date

Section 2 provides an effective date of July 1, 2015.

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:

Private businesses that provide student transportation services and contractors hired to correct hazardous walking conditions may experience an increase in revenues until such conditions are corrected; any incurred costs would be commensurate with revenues.¹⁷

¹⁷ Florida Department of Education, 2015 Agency Legislative Bill Analysis, p. 6, received January 27, 2015 (on file with the Committee on Education Pre-K – 12).

C. Government Sector Impact:

At this time, the increase in the number of students who would qualify for transportation and the revenues or expenditures that state or local governmental entities would accrue or incur are indeterminate.¹⁸

Under the provisions of the bill, school districts would accrue revenue on a per-student basis and incur costs as a result of the increase in the number of students who would qualify for transportation.¹⁹

The increase in costs that would be incurred by local governmental entities having jurisdiction over the roads designated as hazardous, which would require correcting, cannot be estimated until such conditions are identified.²⁰ Furthermore, the increase in the number of students qualifying for transportation statewide would require additional funding under the Florida Education Finance Program (FEFP).²¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1006.23 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 by Community Affairs on March 4, 2015:**

Changes the words “capital improvement” to “transportation work.” Changes the entity responsible for reporting the determination of a hazardous walking condition to the district school superintendent from all of the government entities examining the area (“they” in text) to the singular government entity with jurisdiction over the area.

¹⁸ *Id.* at 5.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* See also, s. 1011.68, F.S., relating to the annual allocation of student transportation funds for each school district.

CS by Education Pre-K – 12 on February 18, 2015:

The committee substitute maintains the original substance of SB 154 with the following modifications:

- Removes a provision requiring that a district school board correct hazardous walking conditions.
- Authorizes a district school board to obtain a declaratory judgment under ch. 86, F.S., if a consensus cannot be reached on the existence of a hazardous walking condition.

B. Amendments:

None.



389656

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2015	.	
	.	
	.	
	.	

The Committee on Community Affairs (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 57 - 91
and insert:
walking condition in its next annual 5-year transportation work
program ~~hazard will be corrected~~ and, if so, when correction of
the condition will be completed. If the hazardous walking
condition will not be included in the state or local
governmental entity's next annual 5-year transportation work
program, the factors justifying such conclusion must be stated



389656

11 in writing to the district school superintendent and the
12 Department of Education regarding a projected completion date.

13 (c) State funds shall be allocated for the transportation
14 of students subjected to a hazardous walking condition. However,
15 such hazards, provided that such funding shall cease upon
16 correction of the hazardous walking condition hazard or upon the
17 projected completion date, whichever occurs first.

18 (3) IDENTIFICATION OF HAZARDOUS CONDITIONS.-

19 (a) When a request for review is made by to the district
20 school superintendent with respect to a road over which a state
21 or local governmental entity has jurisdiction or the district
22 school superintendent's designee concerning a condition
23 perceived to be hazardous to students in that district who live
24 within the 2-mile limit and who walk to school, such condition
25 shall be inspected jointly by a representative of the school
26 district, and a representative of the state or local
27 governmental entity with that has jurisdiction over the
28 perceived hazardous location, and a representative of the
29 municipal police department for a municipal road, a
30 representative of the sheriff's office for a county road, or a
31 representative of the Department of Transportation for a state
32 road. If the jurisdiction is within an area for which there is a
33 metropolitan planning organization, a representative of that
34 organization shall also be included. The governmental
35 representatives shall determine whether the condition
36 constitutes a hazardous walking condition as provided in
37 subsection (2). If the governmental representatives concur that
38 a condition constitutes a hazardous walking condition as
39 provided in subsection (2), the governing entity with



389656

40 jurisdiction shall report that determination

41

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

43 And the title is amended as follows:

44 Delete line 24

45 and insert:

46 relating to its transportation work program;

By the Committee on Education Pre-K - 12; and Senator Hays

581-01702-15

2015154c1

1 A bill to be entitled
2 An act relating to hazardous walking conditions;
3 amending s. 1006.23, F.S.; revising criteria that
4 determine a hazardous walking condition for public
5 school students; revising procedures for inspection
6 and identification of hazardous walking conditions;
7 requiring a district school superintendent to initiate
8 a formal request for correction of a hazardous walking
9 condition under certain circumstances; authorizing a
10 district school board to initiate a declaratory
11 judgment proceeding under certain circumstances and
12 providing requirements therefor; deleting the
13 requirement that the district school superintendent
14 and specified governmental entities make a final
15 determination that is mutually agreed upon regarding
16 hazardous walking conditions; requiring a district
17 school board to correct hazardous walking conditions
18 and provide transportation to students who would be
19 subjected to hazardous walking conditions; requiring
20 state or local governmental entities with jurisdiction
21 over a road with a hazardous walking condition to
22 correct the condition within a reasonable period of
23 time; providing requirements for a governmental entity
24 relating to its capital improvements program;
25 providing requirements relating to a civil action for
26 damages; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
29

581-01702-15

2015154c1

30 Section 1. Section 1006.23, Florida Statutes, is reordered
31 and amended to read:

32 1006.23 Hazardous walking conditions.—

33 (1) DEFINITION.—As used in this section, the term “student”
34 means any public elementary school student whose grade level
35 does not exceed grade 6.

36 (4)(2) TRANSPORTATION; CORRECTION OF HAZARDS.—

37 (a) A district school board ~~It is intended that district~~
38 ~~school boards~~ and other governmental entities shall work
39 cooperatively to identify conditions that are hazardous along
40 student walking routes to school, and a district school board
41 shall ~~that district school boards~~ provide transportation to
42 students who would be subjected to such conditions.

43 Additionally, It is further intended that state or local
44 governmental entities with having jurisdiction over a road along
45 which a hazardous walking condition is determined to exist shall
46 correct the condition ~~such hazardous conditions~~ within a
47 reasonable period of time.

48 (b) Upon a determination pursuant to subsection (3) ~~this~~
49 ~~section~~ that a hazardous walking condition exists ~~is hazardous~~
50 ~~to students~~, the district school superintendent ~~board~~ shall
51 request a position statement with respect to correction of such
52 condition ~~determination~~ from the state or local governmental
53 entity with having jurisdiction over the road. Within 90 days
54 after receiving such request, the state or local governmental
55 entity shall inform the district school superintendent ~~regarding~~
56 whether the entity will include correction of the hazardous
57 walking condition in its next annual 5-year capital improvements
58 program ~~hazard will be corrected~~ and, if so, when correction of

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2015154c1

59 the condition will be completed. If the hazardous walking
60 condition will not be included in the state or local
61 governmental entity's next annual 5-year capital improvements
62 program, the factors justifying such conclusion must be stated
63 in writing to the district school superintendent and the
64 Department of Education regarding a projected completion date.

65 (c) State funds shall be allocated for the transportation
66 of students subjected to a hazardous walking condition. However,
67 ~~such hazards, provided that~~ such funding shall cease upon
68 correction of the hazardous walking condition ~~hazard~~ or upon the
69 projected completion date, whichever occurs first.

70 (3) IDENTIFICATION OF HAZARDOUS CONDITIONS.—

71 (a) When a request for review is made by ~~to~~ the district
72 school superintendent with respect to a road over which a state
73 or local governmental entity has jurisdiction ~~or the district~~
74 ~~school superintendent's designee~~ concerning a condition
75 perceived to be hazardous to students in that district who live
76 within the 2-mile limit and who walk to school, such condition
77 shall be inspected jointly by a representative of the school
78 district, and a representative of the state or local
79 governmental entity with ~~that has~~ jurisdiction over the
80 perceived hazardous location, and a representative of the
81 municipal police department for a municipal road, a
82 representative of the sheriff's office for a county road, or a
83 representative of the Department of Transportation for a state
84 road. If the jurisdiction is within an area for which there is a
85 metropolitan planning organization, a representative of that
86 organization shall also be included. The governmental
87 representatives shall determine whether the condition

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2015154c1

88 constitutes a hazardous walking condition as provided in
89 subsection (2). If the governmental representatives concur that
90 a condition constitutes a hazardous walking condition as
91 provided in subsection (2), they shall report that determination
92 in writing to the district school superintendent, who shall
93 initiate a formal request for correction as provided in
94 subsection (4).

95 (b) If the governmental representatives are unable to reach
96 a consensus, the reasons for lack of consensus shall be reported
97 to the district school superintendent, who shall provide a
98 report and recommendation to the district school board. The
99 district school board may initiate a proceeding under chapter 86
100 seeking a determination as to whether the condition constitutes
101 a hazardous walking condition as provided in subsection (2)
102 after providing at least 30 days' notice in writing to the local
103 governmental entities having jurisdiction over the road of its
104 intent to do so unless, within 30 days after such notice is
105 provided, the local governmental entities concur in writing that
106 the condition is a hazardous walking condition as provided in
107 subsection (2) and provide the position statement pursuant to
108 subsection (4). If a proceeding is initiated under this
109 paragraph, the district school board has the burden of proving
110 such condition by the greater weight of evidence. If the
111 district school board prevails, the district school
112 superintendent shall report the outcome to the Department of
113 Education and initiate a formal request for correction of the
114 hazardous walking condition as provided in subsection (4) ~~The~~
115 ~~district school superintendent or his or her designee and the~~
116 ~~state or local governmental entity or its representative shall~~

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2015154c1

117 ~~then make a final determination that is mutually agreed upon~~
118 ~~regarding whether the hazardous condition meets the state~~
119 ~~criteria pursuant to this section. The district school~~
120 ~~superintendent or his or her designee shall report this final~~
121 ~~determination to the Department.~~

122 ~~(2)(4) STATE CRITERIA FOR DETERMINING HAZARDOUS WALKING~~
123 ~~CONDITIONS.-~~

124 ~~(a) Walkways parallel to the road.-~~

125 1. It shall be considered a hazardous walking condition
126 with respect to any road along which students must walk in order
127 to walk to and from school if there is not an area at least 4
128 feet wide adjacent to the road, not including drainage ditches,
129 sluiceways, swales, or channels, having a surface upon which
130 students may walk without being required to walk on the road
131 surface. In addition, whenever the road along which students
132 must walk is uncurbed and has a posted speed limit of 50 ~~55~~
133 miles per hour or greater, the area as described above for
134 students to walk upon shall be set off the road by no less than
135 3 feet from the edge of the road.

136 2. ~~The provisions of Subparagraph 1. does~~ ~~de~~ not apply when
137 the road along which students must walk:

138 ~~a. Is in a residential area which has little or no~~
139 ~~transient traffic;~~

140 ~~a.b.~~ Is a road on which the volume of traffic is less than
141 180 vehicles per hour, per direction, during the time students
142 walk to and from school; or

143 ~~b.e.~~ Is located in a residential area and has a posted
144 speed limit of 30 miles per hour or less.

145 (b) *Walkways perpendicular to the road.*-It shall be

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2015154c1

146 considered a hazardous walking condition with respect to any
147 road across which students must walk in order to walk to and
148 from school if:

149 1. ~~If~~ The traffic volume on the road exceeds the rate of
150 360 vehicles per hour, per direction (including all lanes),
151 during the time students walk to and from school and if the
152 crossing site is uncontrolled. For purposes of this subsection,
153 an "uncontrolled crossing site" is an intersection or other
154 designated crossing site where no crossing guard, traffic
155 enforcement officer, or stop sign or other traffic control
156 signal is present during the times students walk to and from
157 school.

158 2. ~~If~~ The total traffic volume on the road exceeds 4,000
159 vehicles per hour through an intersection or other crossing site
160 controlled by a stop sign or other traffic control signal,
161 unless crossing guards or other traffic enforcement officers are
162 also present during the times students walk to and from school.

163
164 Traffic volume shall be determined by the most current traffic
165 engineering study conducted by a state or local governmental
166 agency.

167 (c) Crossings over the road.—It shall be considered a
168 hazardous walking condition with respect to any road at any
169 uncontrolled crossing site which students must walk in order to
170 walk to and from school if:

171 1. The road has a posted speed limit of 50 miles per hour
172 or greater; or

173 2. The road has six lanes or more, not including turn
174 lanes, regardless of the speed limit.

581-01702-15

2015154c1

175 (5) CIVIL ACTION.—In a civil action for damages brought
176 against a governmental entity under s. 768.28, the designation
177 of a hazardous walking condition under this section is not
178 admissible in evidence.

179 Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15
Meeting Date

154
Bill Number (if applicable)

Topic Hazardous Walking

Amendment Barcode (if applicable)

Name Eric Poole

Job Title Asst. Leg. Dir

Address 100 Murray
Street

Phone _____

Tell
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Assoc 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.4.15

Meeting Date

SB 154

Bill Number (if applicable)

389654

Amendment Barcode (if applicable)

Topic HAZARDOUS WALKING

Name MEGAN SIKJANE-SAMPLES

Job Title LEGISLATIVE ADVOCATE

Address PO BOX 1757

Street

TALLAHASSEE

City

FL

State

32301

Zip

Phone 850.701.3655

Email MSIKJANESAMPLES@FL

ON AMENDMENT CITIES
.COM

Speaking: For Against Information

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

Representing FLORIDA LEAGUE OF CITIES

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:

Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining, *Alternating Chair*

SENATOR ALAN HAYS

11th District

MEMORANDUM

To: Senator Wilton Simpson, Chair
Community Affairs Committee
CC: Tom Yeatman, Staff Director
Ann Whittaker, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 154 – Hazardous Walking Conditions

Date: February 18, 2015

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

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 Community Affairs

BILL: SB 408

INTRODUCER: Senator Simmons

SUBJECT: Designated Areas for Skateboarding, Inline Skating, Paintball, or Freestyle or Mountain and Off-roading Bicycling

DATE: March 3, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 408 eliminates the requirement that a governmental entity obtain a consent form from the parent of a child who utilizes a public skate park or area set aside for skateboarding, inline skating or freestyle bicycling as a condition of limiting the governmental entity's liability for damages or injuries. However, under the bill and current law, the governmental entity can be liable for gross negligence or for failing to guard against or warn of dangerous conditions that are not apparent, regardless of whether a parental consent form is obtained.

II. Present Situation:

Inherently Risky Activities on Public Property

As skateboarding and inline skating gained in popularity in Florida, citizens called for an increase in public skate parks and other facilities. Local government officials, however, declined to create these parks and set-aside areas out of concern for liability exposure. The 1999 Legislature addressed these concerns by providing immunity from liability for governmental entities that set aside areas for skateboarding, inline skating, and freestyle bicycling.¹

Today, s. 316.0085, F.S., addresses, and considers as inherently risky, the activities of skateboarding, inline skating, paintball, and freestyle, mountain, and off-road bicycling.² According to the statute, a governmental entity, which may include a federal, state, or local governmental entity, authorizes or permits a person to engage in these inherently risky activities

¹ Chapter 99-133, L.O.F., expressly recognizes "that governmental owners or lessees of property have failed to make property available for [skateboarding, inline skating, and freestyle bicycling] because of the exposure to liability from lawsuits and the prohibitive cost of insurance, if insurance can be obtained for such activities."

² Section 316.0085(2)(b), F.S.

by posting a sign designating an area for a specific activity.³ The governmental entity is generally immune from liability for damages or injuries to a person 17 years of age or older as a result of participating in an inherently risky activity. However, for a participant who is younger than 17 years of age, the governmental entity has the benefit of this limited liability only if it obtains the written consent of a parent of the child.⁴

Although existing law provides significant liability protections to governmental entities, a governmental entity can be held liable for damages or injuries if it:

- Fails to warn of a dangerous condition which a participant cannot reasonably be expected to notice; or
- Commits gross negligence that is the proximate cause of a participant's injury.⁵

Additionally, s. 316.0085, F.S., does not limit the liability of individuals who are negligent while participating in an inherently dangerous activity. A participant is negligent if he or she fails to:

- Act within the limits of his or her ability and the purpose and design of the equipment used;
- Remain in control of his or her equipment and himself or herself; or
- Refrain from acting in a way that may cause or contribute to death or injury of himself or herself or others.⁶

Skateboarding Injuries

In a study on admissions of children to emergency rooms from 2002-2011, researchers found an increase in children presenting with traumatic brain injuries, such as concussions from sports activities. Activities with the highest admission rates per patient seen in the emergency room for traumatic brain injury are skiing, sledding, inline skating, and skateboarding.⁷ Although researchers focused on a single children's hospital, the article also notes that nationally the number of children presenting with sport-related traumatic brain injuries increased 62 percent between 2001 and 2009.

Skate Parks

Florida has both public and private skate parks. According to the Florida League of Cities, currently 65 city or county skate parks operate around the state.⁸ Whether all governmental entities provide and require written consent forms is unknown. Although the Legislature left it to

³ Section 316.0085(2)(a) and (3), F.S.

⁴ Section 316.0085(3), F.S.

⁵ Section 316.0085(5), F.S.

⁶ Section 316.0085(7)(b), F.S.

⁷ Stephen Reinberg, *Many More Kids Visiting ER for Sports Concussions, Study Finds* (Sept. 30, 2013).

<http://www.medicinenet.com/script/main/art.asp?articlekey=174050>. Researchers collected 3,900 records of children seen in the emergency department of the Cincinnati Children's Hospital Medical Center for a sports-related brain injury. Of these, 372 cases required hospital admission.

⁸ Email correspondence with David Cruz, Florida League of Cities, on file with the Judiciary Committee (Feb. 6, 2015).

governmental entities to draft the actual consent forms, questions arose regarding the format and procedure of the forms.^{9, 10}

Sovereign Immunity

Sovereign immunity originally referred to the English common law concept that the government may not be sued because “the King can do no wrong.” Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents unless the public entity expressly waives immunity.

Article X, s. 13 of the Florida Constitution recognizes sovereign immunity and authorizes the Legislature to provide a waiver of immunity. Section 768.28(1), F.S., provides a limited waiver of sovereign immunity. By law, liability is limited to \$200,000 per plaintiff or \$300,000 per incident.¹¹ Therefore, if the liability protections in s. 316.0085, F.S., do not apply, a plaintiff’s recovery will still be limited by the caps in the state’s waiver of its sovereign immunity. To exceed the caps, the claimant must request legislative approval through the claim bill process.¹² Whether to approve a claim bill is entirely at the discretion of the Legislature.

III. Effect of Proposed Changes:

The bill preserves immunity for governmental entities by eliminating the requirement for governmental entities to collect written parental consent forms prior to allowing a child under 17 years of age to utilize a designated area for skateboarding, inline skating, and freestyle bicycling.

The bill does not change the existing requirement for immunity that governmental entities collect written parental consent forms prior to allowing a child under 17 to utilize an area designated for paintball and mountain or off-road bicycling.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁹ Joseph G. Jarret, *Skating on Thin Concrete: The Florida Legislature’s Response to Skateboarders and Skaters*, 76 FLA. B.J.74, 76 (Nov. 2002). Questions posed at a roundtable discussion in Polk County attended by public sector attorneys and risk managers include: “In terms of waivers, who will secure the consent from the parent and what procedure will be implemented to prove that the adult is a legal guardian of the state?” and “Who will draft the consent form and will the form include the acknowledgement that the child has been cleared medically to participate in such activity?” *Id.*

¹⁰ Nothing in s. 316.0085, F.S., prohibits a child from skateboarding at a skate park or engaging in inline skating without the consent of a parent. Similarly, nothing requires a governmental entity to collect a consent form from a child’s parent before the child may participate at a skate park. As such, the “written consent” described in s. 316.0085, F.S., appears more like a waiver or a document releasing the governmental entity from liability.

¹¹ Section 768.28(5), F.S.

¹² Section 768.28(5), F.S.

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 does not impact skate parks or facilities for inline skating on private property.

Whether removing the condition of written consent forms for immunity from liability will increase participation and perhaps sports-related injuries and medical costs for participants is unknown.

C. Government Sector Impact:

Governmental entities that provide designated areas for skateboarding and inline skating or freestyle bicycling will have no need to make available and collect written consent forms from parents of participants. Stationing a government employee at each site, providing a form, and storing the forms will no longer be necessary.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.0085 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 Simmons

10-00489-15

2015408__

1 A bill to be entitled
2 An act relating to designated areas for skateboarding,
3 inline skating, paintball, or freestyle or mountain
4 and off-roading bicycling; amending s. 316.0085, F.S.;
5 deleting the requirement that a governmental entity
6 that provides a designated area for skateboarding,
7 inline skating, or freestyle bicycling obtain the
8 written consent of the parent or legal guardian of a
9 child under a certain age before allowing the child to
10 participate in these activities in such area;
11 requiring the governmental entity to post a rule
12 indicating that consent forms are required for
13 children under a certain age before participation in
14 paintball or mountain and off-road bicycling;
15 providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Subsection (3) and paragraph (c) of subsection
20 (5) of section 316.0085, Florida Statutes, are amended to read:
21 316.0085 Skateboarding; inline skating; freestyle or
22 mountain and off-road bicycling; paintball; definitions;
23 liability.—

24 (3) (a) This section does not grant authority or permission
25 for a person to engage in skateboarding, inline skating,
26 paintball, or freestyle or mountain and off-road bicycling on
27 property owned or controlled by a governmental entity unless
28 such governmental entity has specifically designated such area
29 for skateboarding, inline skating, paintball, or freestyle or

10-00489-15

2015408__

30 mountain and off-road bicycling. Each governmental entity shall
31 post a rule in each specifically designated area that identifies
32 all authorized activities.

33 (b) Each governmental entity shall post a rule in each
34 specifically designated area for paintball or mountain and off-
35 road bicycling which ~~and~~ indicates that a child under 17 years
36 of age may not engage in such ~~any of these~~ activities until the
37 governmental entity has obtained written consent, in a form
38 acceptable to the governmental entity, from the child's parent
39 or legal guardian ~~parents or legal guardians~~.

40 (5) This section does not limit liability that would
41 otherwise exist for any of the following:

42 (c) The failure of a governmental entity that provides a
43 designated area for ~~skateboarding, inline skating, paintball, or~~
44 ~~freestyle~~ or mountain and off-road bicycling to obtain the
45 written consent, in a form acceptable to the governmental
46 entity, from the parents or legal guardians of any child under
47 17 years of age before allowing ~~authorizing~~ such child to
48 participate in ~~skateboarding, inline skating, paintball, or~~
49 ~~freestyle~~ or mountain and off-road bicycling in such designated
50 area, unless that child's participation is in violation of
51 posted rules governing the authorized use of the designated
52 area, except that a parent or legal guardian must demonstrate
53 that written consent to engage in mountain or off-road bicycling
54 in a designated area was provided to the governmental entity
55 before entering the designated area.

56

57 Nothing in this subsection creates a duty of care or basis of
58 liability for death, personal injury, or damage to personal

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59 property. Nothing in this section shall be deemed to be a waiver
60 of sovereign immunity under any circumstances.

61 Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15
Meeting Date

56408
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Kraig Conn

Job Title _____

Address 301 S. Benough

Phone 222 9684

Street

City

Tell

State

AZ

Zip

32301

Email _____

Speaking: For Against Information

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

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/15

Meeting Date

408

Bill Number (if applicable)

Topic Skate Parks

Amendment Barcode (if applicable)

Name Casey Cook

Job Title Legislative Advocate

Address Po Box 1757

Phone 850 701 3701

Tallahassee FL 32302

Email ccook@flcities.com

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

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

Representing Florida League of Cities

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/15

Meeting Date

SB 408

Bill Number (if applicable)

Topic SB 408

Amendment Barcode (if applicable)

Name Bill Barrett

Job Title

Address 4001 Hudson Terr

Phone 321-403-6410

Street

Tampa FL

33618

Email bbarrett_spg@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing City of St. Cloud

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

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: February 17, 2015

I respectfully request that **Senate Bill 408**, relating to Designated Areas for Skateboarding, Inline Skating, Paintball, or Freestyle or Mountain and Off-roading Bicycling, be placed on the:

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

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

Senator David Simmons
Florida Senate, District 10

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 Community Affairs

BILL: SB 420

INTRODUCER: Senator Grimsley

SUBJECT: Animal Control

DATE: March 3, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhvein</u>	<u>Becker</u>	<u>AG</u>	<u>Favorable</u>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 420 provides a procedure for adopting or humanely disposing of impounded livestock, as an alternative to sale or auction, which are not always the best options for the health and safety of the animals. Notice of the impounded livestock must be provided in specified methods by county sheriffs. The bill requires the designated impounder to establish fees and to be responsible for damages caused while impounding the livestock. It provides cities with lawfully sanctioned animal control officers the same powers as counties for the purpose of investigating animal cruelty cases and seizing animals or petitioning for custody. The bill provides additional, supplemental, and alternative laws for enforcing county or municipal codes or ordinances, but clarifies that it does not prohibit a county or municipality from enforcing its own codes or ordinances by any other means.

II. Present Situation:

Florida Fence Law

Before the enactment of fencing laws, Florida was an open-range state. In the 1949 Legislative Session, Governor Fuller Warren approved Senate Bill 34, which required owners of livestock to prevent their animals from “running at large or straying upon public roads.” The act encouraged ranchers to build fences and contain wandering livestock. Sometimes known as “the fence law,” historians consider Senate Bill 34 the final measure in closing the open range.¹

Under the provisions of ch. 588, F.S., every owner who intentionally, willfully, carelessly, or negligently suffers or permits their livestock to run at large or stray upon Florida public roads is liable for any resulting injuries or property damage and may be guilty of a second degree

¹ *Stray Livestock Liability Laws*, <http://www.floridamemory.com/blog/2012/06/07/stray-livestock-liability-laws/> (last visited on Feb. 20, 2015).

misdemeanor.² Criminal penalties may include a term of imprisonment not exceeding 60 days and/or a fine of as much as \$500.³

Auctions

Current law requires animal control agencies to auction impounded livestock regardless of the circumstances. Often, this is not financially feasible and it may prevent more timely solutions that would result in better conditions for the animals. The auction process does not allow the agency to control the quality of the animals' placement. Known animal abusers have purchased animals at auction because current law does not prevent this. If the animals are adopted, there are quality control mechanisms available.⁴

Municipal Issues

Some powers are reserved under current animal control statutes for counties and judicially appointed animal control officers because those officers are required to receive training. City animal control officers are not given the same powers because they are not required to be trained. These powers are related to the authority to seize or petition for custody of animals in criminal animal cruelty cases.

Restitution

Civil restitution for non-governmental organizations often comes into play in larger animal cruelty cases. If a case involves a large number of animals, an agency may not be able to handle the workload alone. Often, many local humane societies and other groups assist in the provision of care for the animals. Today, if criminal charges are not ultimately pursued, local humane societies do not have the ability to pursue civil restitution, even if the owner loses custody of the animals. Instead they would have to pursue their costs through the relevant governmental agency.⁵

Civil Citation Procedures

Section 828.27, F.S., outlines the procedures for processing and collecting on animal control citations. However, the statute may not provide the same flexibility that local governments have in other code enforcement situations. It is unclear whether the more flexible procedures authorized in ch. 162, F.S., apply to animal control.⁶

III. Effect of Proposed Changes:

Section 1 amends s. 588.17, F.S., to authorize adoption and humane disposal as options for dealing with impounded livestock, in addition to the currently authorized options of sale or auction. The bill also provides the "designated impounder" with notification requirements in an

² Sections 588.15 and 588.24, F.S.

³ Section 588.24, F.S., citing sections 775.082 and 775.083, F.S.

⁴ Florida Animal Control Association interview February 9, 2015 conducted by the Agriculture Committee.

⁵ *Id.*

⁶ *Id.*

effort to identify the owner of the impounded livestock. The bill provides that impounded livestock may not be auctioned or disposed of until at least 3 days after impounding.

Section 2 amends s. 588.18, F.S., to require a designated impounder to establish fees and to be responsible for damages caused while impounding the livestock.

Section 3 amends s. 588.20, F.S., to clarify that the requirements for reporting a sale or disposition apply only if the impounded livestock is offered for sale.

Section 4 conforms s. 588.23, F.S., to changes made in the previous sections of the bill.

Section 5 amends s. 828.03, F.S., to allow municipalities to employ trained animal control officers that are authorized to petition for custody of animals, pursue animal cruelty charges, and prosecute offenders without relying on the assistance of a county government.

Section 6 amends s. 828.073, F.S., to conform provisions to changes made by the act. The bill authorizes any municipality with certified animal control officers to take charge of animals found in distress. It authorizes the officers to take custody of an animal or to order an owner to provide certain care at the owner's expense. It authorizes courts to require the owner of an animal to pay for the care of the animal while in the care of an officer's designee. It also authorizes the allocation of auction proceeds to affected municipalities with animal control officers.

Section 7 amends s. 828.27, F.S., to delete obsolete provisions relating to the proceeds collected for civil penalties imposed for violation of an ordinance relating to animal control or cruelty. It clarifies that certain provisions relating to local animal control are not the exclusive means of enforcing animal control laws. It also provides that this section does not prohibit a county or municipality from enforcing its codes or ordinances, including, but not limited to, the procedures provided in ch. 162, F.S.

Section 8 provides that this act shall take effect July 1, 2015.

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:

This bill would make it easier for non-governmental organizations, such as local humane societies and other groups, to seek restitution for care of impounded animals in criminal cases.

C. Government Sector Impact:

This bill would reduce the time and funds necessary for governmental agencies to reimburse third party groups involved in the care and adoption of impounded animals.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 588.17, 588.18, 588.20, 588.23, 828.03, 828.073, and 828.27.

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 Grimsley

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1 A bill to be entitled
2 An act relating to animal control; amending s. 588.17,
3 F.S.; providing a procedure for adopting or humanely
4 disposing of impounded livestock as an alternative to
5 sale or auction; amending s. 588.18, F.S.; requiring a
6 designated impounder to establish fees and to be
7 responsible for damages caused while impounding
8 livestock; amending s. 588.20, F.S.; clarifying that
9 the requirements for reporting a sale or disposition
10 apply only if the impounded livestock is offered for
11 sale; amending s. 588.23, F.S.; conforming provisions
12 to changes made by this act; amending s. 828.03, F.S.;
13 authorizing specified municipalities to appoint agents
14 for the purpose of investigating violations of certain
15 laws; amending s. 828.073, F.S.; conforming provisions
16 to changes made by the act; authorizing agents
17 appointed by specified municipalities to take charge
18 of certain animals; authorizing certain municipalities
19 to take custody of an animal found neglected or
20 cruelly treated or to order the owner of such an
21 animal to provide certain care at the owner's expense;
22 authorizing county courts to remand animals to the
23 custody of certain municipalities; authorizing courts
24 to require the owner of an animal to pay for the care
25 of the animal while in the care of an officer's
26 designee; authorizing the allocation of auction
27 proceeds to certain municipalities; amending s.
28 828.27, F.S.; deleting obsolete provisions; clarifying
29 that certain provisions relating to local animal

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30 control are not the exclusive means of enforcing
31 animal control laws; providing an effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Section 588.17, Florida Statutes, is amended to
36 read:

37 588.17 Disposition of impounded livestock.-

38 ~~(1) Upon the impounding of any Livestock impounded pursuant~~
39 ~~to this chapter shall be disposed of by sale or auction,~~
40 ~~adoption, or humane disposition. by the sheriff or his or her~~
41 ~~deputies or designees, or any other law enforcement officers of~~
42 ~~the county, the county animal control center, or state highway~~
43 ~~patrol officers,~~

44 (1) If the livestock is to be offered for sale, the sheriff
45 shall ~~forthwith~~ serve written notice upon the owner, advising
46 the such owner of the location or place where the livestock is
47 being held and impounded, of the amount due by reason of the
48 ~~such~~ impounding, and that unless the such livestock is ~~be~~
49 redeemed within 3 days from date thereof ~~that~~ the livestock will
50 ~~same~~ shall be offered for sale.

51 ~~(a)(2) If in the event~~ the owner of the such livestock is
52 unknown or cannot be found, service upon the owner shall be
53 obtained by once publishing a notice in a newspaper of general
54 circulation where the livestock is impounded (Sundays and
55 holidays excluded). If there is ~~be~~ no such newspaper, ~~then by~~
56 ~~posting of~~ the notice shall be posted at the courthouse door and
57 at two other conspicuous places within the said county.

58 Such notice shall be in substantially the following form:

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"TO WHOM IT MAY CONCERN:

YOU ARE HEREBY NOTIFIED THAT THE FOLLOWING DESCRIBED LIVESTOCK ... (GIVING FULL AND ACCURATE DESCRIPTION OF SAME, INCLUDING MARKS AND BRANDS)... IS NOW IMPOUNDED AT ... (GIVING LOCATION WHERE LIVESTOCK IS IMPOUNDED)... AND THE AMOUNT DUE BY REASON OF SUCH IMPOUNDING IS DOLLARS. THE ABOVE DESCRIBED LIVESTOCK WILL, UNLESS REDEEMED WITHIN 3 DAYS FROM DATE HEREOF, BE OFFERED FOR SALE AT PUBLIC AUCTION TO THE HIGHEST AND BEST BIDDER FOR CASH.

... (DATE) ...

... (SHERIFF) ...

OF COUNTY, FLORIDA"

(b) (3) Unless the ~~impounded~~ livestock is redeemed within 3 days after from ~~date of~~ notice, the sheriff shall ~~forthwith~~ give notice of sale, thereof which shall be held at least ~~not less than~~ 5 days but not ~~nor~~ more than 10 days (excluding Sundays and holidays) after from the first publication of the notice of sale. The ~~Said~~ notice of sale shall be published in a newspaper of general circulation in the ~~said~~ county (excluding Sundays and holidays) and by posting a copy of the ~~such~~ notice at the courthouse door. If there is ~~be~~ no such newspaper, the ~~then by~~ posting such copy shall be posted at the courthouse door and at two other conspicuous places in the ~~said~~ county.

Such notice of sale shall be in substantially the following form:

"... (NAME OF OWNER, IF KNOWN, OTHERWISE 'TO WHOM IT MAY CONCERN')... YOU ARE HEREBY NOTIFIED THAT I WILL OFFER FOR SALE

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88 AND SELL AT PUBLIC SALE TO THE HIGHEST AND BEST BIDDER FOR CASH
 89 THE FOLLOWING DESCRIBED LIVESTOCK ... (GIVING FULL AND ACCURATE
 90 DESCRIPTION OF EACH HEAD OF LIVESTOCK) ... AT O'CLOCK,
 91 M. (THE HOUR OF SALE TO BE BETWEEN 11 A.M. AND 2 P.M. EASTERN
 92 STANDARD TIME) ON THE DAY OF AT THE FOLLOWING PLACE
 93 (WHICH PLACE SHALL BE WHERE THE LIVESTOCK IS IMPOUNDED OR
 94 AT THE PLACE PROVIDED BY THE COUNTY COMMISSIONERS FOR THE TAKING
 95 UP AND KEEPING OF SUCH LIVESTOCK) TO SATISFY A CLAIM IN THE SUM
 96 OF FOR FEES, EXPENSES FOR FEEDING AND CARE AND COSTS
 97 HEREOF.
 98 ... (DATE) ... (SHERIFF) ...
 99 OF COUNTY, FLORIDA"

101 (2) If the livestock is to be offered for adoption or
 102 humanely disposed of, the designated impounder shall:

103 (a) Provide written notice to the owner, if known, advising
 104 the owner of the location where the livestock is impounded, of
 105 the amount due by reason of the impounding, and that unless the
 106 livestock is redeemed within a timeframe to be established by
 107 the impounder, a period of at least 3 days, the livestock will
 108 be offered for adoption or disposed of humanely; or

109 (b) If the owner is unknown or cannot be located, obtain
 110 service upon the owner by publishing a notice on the impounder's
 111 website. If the livestock is not redeemed within a timeframe to
 112 be established by the impounder, a period of at least 3 days,
 113 the livestock will be offered for adoption or disposed of
 114 humanely.

115 Section 2. Section 588.18, Florida Statutes, is amended to
 116 read:

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117 588.18 Livestock at large; fees.—The fees allowed for
118 impounding, serving notice, care and feeding, advertising, and
119 disposing of impounded animals shall be determined by the
120 sheriff of each county or the designated impounder. Damages done
121 by the sheriff, sheriff's designees, or any other law
122 enforcement officer or designated impounder in pursuit, or in
123 the capture, handling, or care of the livestock are the sole
124 responsibility of the sheriff, ~~or other~~ law enforcement agency,
125 or designated impounder.

126 Section 3. Subsection (1) of section 588.20, Florida
127 Statutes, is amended to read:

128 588.20 Report of sale and disposition of proceeds.—

129 (1) The sheriff, upon making a sale or ~~other~~ disposal
130 pursuant to s. 588.19 as herein provided, shall forthwith make a
131 written return thereof to the clerk of the circuit court of such
132 county, with a full and accurate description of the livestock
133 sold or disposed of by her or him, to whom, and the sale price
134 thereof, which report shall be filed by said clerk.

135 Section 4. Section 588.23, Florida Statutes, is amended to
136 read:

137 588.23 Right of owner.—The owner of any impounded livestock
138 ~~has shall have~~ the right at any time before the disposition sale
139 thereof to redeem the livestock same by paying to the sheriff or
140 designated impounder all impounding expenses, including fees,
141 keeping charges, advertising, or other costs incurred therewith
142 which sum shall be deposited by the sheriff or designated
143 impounder with the clerk of the circuit court who shall pay all
144 fees and costs as allowed in s. 588.18. ~~If In the event~~ there is
145 a dispute as to the amount of such costs and expenses, the owner

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146 may give bond with sufficient sureties to be approved by the
147 sheriff or designated impounder, in an amount to be determined
148 by the sheriff or designated impounder, but not exceeding the
149 fair cash value of such livestock, conditioned to pay such costs
150 and damages; thereafter, within 10 days, the owner shall
151 institute suit in equity to have the damage adjudicated by a
152 court of equity or referred to a jury if requested by either
153 party to such suit.

154 Section 5. Section 828.03, Florida Statutes, is amended to
155 read:

156 828.03 Agents of counties, municipalities, societies, etc.,
157 may prosecute violators.—

158 (1) Any county, any municipality with animal control
159 officers certified pursuant to s. 828.27, or any society or
160 association for the prevention of cruelty to children or
161 animals, organized under the laws of this state, may appoint
162 agents for the purpose of investigating violations of ~~any of the~~
163 ~~provisions of~~ this chapter or any other law of the state for the
164 purpose of protecting children and animals or preventing any act
165 of cruelty thereto.

166 (2) All appointments of such agents by such society
167 ~~societies~~ or association ~~corporations~~ must have the approval of
168 the mayor of the municipality ~~city~~ in which the society or
169 association exists, and if the society or association exists or
170 works outside a municipality ~~of any city~~, the appointment must
171 be approved by the county court judge or the judge of the
172 circuit court for the county, and the mayor or judge shall keep
173 a record of such appointment. The approval of the appointment of
174 any agent by a county for either the incorporated or

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175 unincorporated areas of such county shall be by the county
176 commission.

177 Section 6. Section 828.073, Florida Statutes, is amended to
178 read:

179 828.073 Animals found in distress; when agent may take
180 charge; hearing; disposition; sale.—

181 (1) The purpose of this section is to provide a means by
182 which a neglected or mistreated animal can be:

183 (a) Removed from its present custody, or

184 (b) Made the subject of an order to provide care, issued to
185 its owner by the county court, any law enforcement officer, ~~or~~
186 any agent of the county, any agent of a municipality with animal
187 control officers certified pursuant to s. 828.27, or any agent
188 of a ~~any~~ society or association for the prevention of cruelty to
189 animals appointed under s. 828.03,

190
191 and given protection and an appropriate and humane disposition
192 can be made.

193 (2) A ~~Any~~ law enforcement officer, an ~~or any~~ agent of any
194 county, any agent of a municipality with animal control officers
195 certified pursuant to s. 828.27, or an agent of any society or
196 association for the prevention of cruelty to animals appointed
197 under the provisions of s. 828.03 may:

198 (a) Lawfully take custody of any animal found neglected or
199 cruelly treated by removing the animal from its present
200 location, or

201 (b) Order the owner of any animal found neglected or
202 cruelly treated to provide certain care to the animal at the
203 owner's expense without removal of the animal from its present

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204 location,

205
206 and shall file a petition seeking relief under this section in
207 the county court of the county in which the animal is found
208 within 10 days after the animal is seized or an order to provide
209 care is issued. The court shall schedule and commence a hearing
210 on the petition within 30 days after the petition is filed to
211 determine whether the owner, if known, is able to provide
212 adequately for the animal and is fit to have custody of the
213 animal. The hearing shall be concluded and the court order
214 entered thereon within 60 days after the date the hearing is
215 commenced. The timeframes set forth in this subsection are not
216 jurisdictional. However, if a failure to meet such timeframes is
217 attributable to the officer or agent, the owner is not required
218 to pay the officer or agent for care of the animal during any
219 period of delay caused by the officer or agent. A fee may not be
220 charged for filing the petition. This subsection does not
221 require court action for the taking into custody and making
222 proper disposition of stray or abandoned animals as lawfully
223 performed by animal control agents.

224 (3) The officer or agent of any county, any municipality
225 with animal control officers certified pursuant to s. 828.27, or
226 ~~of~~ any society or association for the prevention of cruelty to
227 animals taking charge of any animal pursuant to the provisions
228 of this section shall have written notice served, at least 3
229 days before the hearing scheduled under subsection (2), upon the
230 owner of the animal, if he or she is known and is residing in
231 the county where the animal was taken, in conformance with the
232 provisions of chapter 48 relating to service of process. The

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233 sheriff of the county may ~~shall~~ not charge a fee for service of
234 such notice.

235 (4) (a) The officer or agent of any county, any municipality
236 with animal control officers certified pursuant to s. 828.27, or
237 ~~of~~ any society or association for the prevention of cruelty to
238 animals taking charge of an animal as provided for in this
239 section shall provide for the animal until either:

240 1. The owner is adjudged by the court to be able to provide
241 adequately for, and have custody of, the animal, in which case
242 the animal shall be returned to the owner upon payment by the
243 owner for the care and provision for the animal while in the
244 agent's or officer's custody; or

245 2. The animal is turned over to the officer or agent as
246 provided in paragraph (c) and a humane disposition of the animal
247 is made.

248 (b) If the court determines that the owner is able to
249 provide adequately for, and have custody of, the animal, the
250 order shall provide that the animal in the possession of the
251 officer or agent be claimed and removed by the owner within 7
252 days after the date of the order.

253 (c) Upon the court's judgment that the owner of the animal
254 is unable or unfit to adequately provide for the animal:

255 1. The court may:

256 a. Order that the current owner have no further custody of
257 the animal and that the animal be sold by the sheriff at public
258 auction or, ~~that the current owner have no further custody of~~
259 ~~the animal, and that any animal not bid upon be~~ remanded to the
260 custody of the Society for the Prevention of Cruelty to Animals,
261 the Humane Society, the county, the municipality with animal

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262 control officers certified pursuant to s. 828.27, or any agency
263 or person the judge deems appropriate, to be disposed of as the
264 agency or person sees fit; or

265 b. Order that the animal be destroyed or remanded directly
266 to the custody of the Society for the Prevention of Cruelty to
267 Animals, the Humane Society, the county, the municipality with
268 animal control officers certified pursuant to s. 828.27, or any
269 agency or person the judge deems appropriate, to be disposed of
270 as the agency or person sees fit.

271 2. The court, upon proof of costs incurred by the officer,
272 the officer's designee, or the agent, may require that the owner
273 pay for the care of the animal while in the custody of the
274 officer, the officer's designee, or the agent. A separate
275 hearing may be held.

276 3. The court may order that other animals that are in the
277 custody of the owner and that were not seized by the officer or
278 agent be turned over to the officer or agent, if the court
279 determines that the owner is unable or unfit to adequately
280 provide for the animals. The court may enjoin the owner's
281 further possession or custody of other animals.

282 (5) In determining the person's fitness to have custody of
283 an animal ~~under the provisions of this act,~~ the court may
284 consider, among other matters:

285 (a) Testimony from the agent or officer who seized the
286 animal and other witnesses as to the condition of the animal
287 when seized and as to the conditions under which the animal was
288 kept.

289 (b) Testimony and evidence as to the veterinary care
290 provided to the animal.

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291 (c) Testimony and evidence as to the type and amount of
292 care provided to the animal.

293 (d) Expert testimony as to the community standards for
294 proper and reasonable care of the same type of animal.

295 (e) Testimony from any witnesses as to prior treatment or
296 condition of this or other animals in the same custody.

297 (f) The owner's past record of judgments pursuant to ~~under~~
298 ~~the provisions of~~ this chapter.

299 (g) Convictions pursuant to ~~under~~ the statutes prohibiting
300 cruelty to animals.

301 (h) ~~Any~~ Other evidence the court considers to be material
302 or relevant.

303 (6) If the evidence indicates a lack of proper and
304 reasonable care of the animal, the burden is on the owner to
305 demonstrate by clear and convincing evidence that he or she is
306 able and fit to have custody of and provide adequately for the
307 animal.

308 (7) In any case in which an animal is offered for auction
309 ~~under the provisions of~~ this section, the proceeds shall be:

310 (a) Applied, first, to the cost of the sale.

311 (b) Applied, secondly, to the care and provision for the
312 animal by the officer or agent of any county, any municipality
313 with animal control officers certified pursuant to s. 828.27, or
314 ~~of~~ any society or association for the prevention of cruelty to
315 animals taking charge.

316 (c) Applied, thirdly, to the payment of the owner for the
317 sale of the animal.

318 (d) Paid over to the court if the owner is not known.

319 Section 7. Subsection (4) of section 828.27, Florida

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320 Statutes, is amended, and subsection (8) is added to that
321 section, to read:

322 828.27 Local animal control or cruelty ordinances;
323 penalty.—

324 (4) (a) 1. County-employed animal control officers must
325 ~~shall~~, and municipally employed animal control officers may,
326 successfully complete a 40-hour minimum standards training
327 course. Such course must ~~shall~~ include, but is not limited to,
328 training for: animal cruelty investigations, search and seizure,
329 animal handling, courtroom demeanor, and civil citations. The
330 course curriculum must be approved by the Florida Animal Control
331 Association. An animal control officer who successfully
332 completes such course shall be issued a certificate indicating
333 that he or she has received a passing grade.

334 2. Any animal control officer who is authorized before
335 ~~prior to~~ January 1, 1990, by a county or municipality to issue
336 citations is not required to complete the minimum standards
337 training course.

338 3. In order to maintain valid certification, every 2 years
339 each certified ~~county-employed~~ animal control officer must ~~shall~~
340 complete 4 hours of postcertification continuing education
341 training. Such training may include, but is not limited to,
342 training for: animal cruelty investigations, search and seizure,
343 animal handling, courtroom demeanor, and civil citations.

344 (b) ~~1.~~ The governing body of a county or municipality may
345 impose and collect a surcharge of up to \$5 upon each civil
346 penalty imposed for violation of an ordinance relating to animal
347 control or cruelty. The proceeds from such surcharges shall be
348 used to pay the costs of training for animal control officers.

21-00276A-15

2015420__

349 ~~2. In addition to the uses set forth in subparagraph 1., a~~
350 ~~county, as defined in s. 125.011, may use the proceeds specified~~
351 ~~in that subparagraph and any carryover or fund balance from such~~
352 ~~proceeds for animal shelter operating expenses. This~~
353 ~~subparagraph expires July 1, 2014.~~

354 (8) This section is an additional, supplemental, and
355 alternative means of enforcing county or municipal codes or
356 ordinances. This section does not prohibit a county or
357 municipality from enforcing its codes or ordinances by any other
358 means, including, but not limited to, the procedures provided in
359 chapter 162.

360 Section 8. This act shall take effect July 1, 2015.



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: February 18, 2015

I respectfully request that **Senate Bill #420**, relating to Animal Control, be placed on the:

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

A handwritten signature in cursive script that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 21

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 Community Affairs

BILL: CS/SB 594

INTRODUCER: Community Affairs Committee and Senator Stargel

SUBJECT: Agritourism

DATE: March 4, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Becker</u>	<u>Becker</u>	<u>AG</u>	Favorable
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 594 prohibits a local government from enforcing any local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land.

II. Present Situation:

Agricultural Property Classification

Section 193.461, F.S., provides that each county's property appraiser shall, for assessment purposes on an annual basis, classify all lands within a county as agricultural or nonagricultural. For property to be classified as agricultural land, it must be used "primarily for bona fide agricultural purposes."¹ Agricultural purposes include, but are not limited to: horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture; sod farming; and all forms of farm products and farm production.²

Property appraisers are required to reclassify lands as nonagricultural when:

- The land is diverted from an agricultural to a nonagricultural use;
- The land is no longer being utilized for agricultural purposes;

¹ Section 193.461(3)(b), F.S.

² Section 193.461(5), F.S.

- The land has been zoned to a nonagricultural use at the request of the owner.³

A county commission may reclassify lands from agricultural to nonagricultural when there is contiguous urban or metropolitan development and the county commission finds that the continued use of the lands for agricultural purposes will act as a deterrent to the timely and orderly expansion of the community.⁴

Agritourism

When farmers open their lands to the general public for the purposes of agriculture-related education and entertainment, they put their lands to a new beneficial use that may increase their farms' economic viability.⁵ Responding to concerns over local regulation and burdensome liability, the Florida Legislature enacted legislation in 2013 to define and encourage agritourism.⁶ Section 570.86(1), F.S., defines "agritourism activity" as:

any agricultural related activity consistent with a bona fide farm or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, or harvest-your-own activities and attractions.

Local governments may not enact a regulation, rule, or policy that would limit an agritourism activity on land classified as agricultural land under s. 193.461, F.S.⁷

Protection from Liability

So long as an agritourism operator⁸ complies with the posting and notification requirements of s. 570.89, F.S., the owner of the land, the agritourism operator, and employer or employees are provided limited liability protection against injury, death, or damage to participants.⁹ Liability is not limited or prevented if the owner, operator, employer, or employees:¹⁰

- commit an act that constitutes gross negligence or willful or wanton disregard for the safety of the participant, or
- intentionally injure the participant.

Protection from Local Government Regulation

Section 570.85, F.S., provides that in accordance with the legislative intent to "eliminate duplication of regulatory authority over agritourism," a local government may not adopt an ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an

³ Section 193.461(4)(a), F.S.

⁴ Section 193.461(4)(b), F.S.

⁵ Florida Farm Bureau, *Agritourism*, available at <http://www.floridafarmbureau.org/files/resources/AgritourismBookletPrint.pdf> (last visited Feb. 23, 2015).

⁶ Chapter 2013-179, Laws of Fla.; SB 1106 (2013).

⁷ Section 570.85, F.S.

⁸ Section 570.86(2), F.S.

⁹ Section 570.88(1), F.S.

¹⁰ Section 570.88(2), F.S.

agritourism activity. This prohibition on local governments primarily pertains to ordinances to restrict hours of operation, number of participants, or parking for agritourism activities. The statutory prohibition addresses adoption of ordinances by local governments, but is silent as to enforcement of any such ordinances existing at the time of enactment.

The prohibition does not extend to enactment of new local government ordinances related to construction of new or additional structures intended primarily to accommodate members of the general public, which would still be subject to all building and zoning laws.¹¹ Furthermore, the prohibition does not limit the powers and duties of a local government to address an emergency as provided in ch. 252, F.S.¹²

III. Effect of Proposed Changes:

Section 1 prohibits a local government from enforcing any local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land.

Section 2 provides that this act shall take effect July 1, 2015.

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:

To the extent that the bill prevents local governments from enforcing any ordinances which would limit agritourism activity, farms may be able to supplement their revenues with additional revenue from agritourism.

¹¹ Section 570.86(1), F.S.

¹² Section 570.85(1), F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 570.85 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Community Affairs on March 4, 2015:

Added a missing word.

B. Amendments:

None.



162498

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2015	.	
	.	
	.	
	.	

The Committee on Community Affairs (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete line 18
and insert:
local government may not adopt or enforce any local an
ordinance,

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

And the title is amended as follows:

Delete line 3



162498

11 and insert:
12 F.S.; prohibiting a local government from enforcing
13 any local

By Senator Stargel

15-00972-15

2015594__

1 A bill to be entitled
2 An act relating to agritourism; amending s. 570.85,
3 F.S.; prohibiting a local government from enforcing an
4 ordinance, regulation, rule, or policy that prohibits,
5 restricts, regulates, or otherwise limits an
6 agritourism activity on land classified as
7 agricultural land; providing an effective date.
8

9 Be It Enacted by the Legislature of the State of Florida:
10

11 Section 1. Subsection (1) of section 570.85, Florida
12 Statutes, is amended to read:

13 570.85 Agritourism.—

14 (1) It is the intent of the Legislature to eliminate
15 duplication of regulatory authority over agritourism as
16 expressed in this section. Except as otherwise provided for in
17 this section, and notwithstanding any other provision of law, a
18 local government may not adopt or enforce an ordinance,
19 regulation, rule, or policy that prohibits, restricts,
20 regulates, or otherwise limits an agritourism activity on land
21 classified as agricultural land under s. 193.461. This
22 subsection does not limit the powers and duties of a local
23 government to address an emergency as provided in chapter 252.

24 Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15

Meeting Date

594

Bill Number (if applicable)

Topic Agribusiness

Amendment Barcode (if applicable)

Name Adam Bastford

Job Title Director of State Legislative Affairs

Address 315 S. Calhoun St.

Phone _____

Street

Tallahassee

FL

32301

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing FLORIDA FARM BUREAU

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/14 15

Meeting Date

SB 594

Bill Number (if applicable)

Topic Agritourism

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 850-224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/2015
Meeting Date

SB 594
Bill Number (if applicable)

Topic Agritourism

Amendment Barcode (if applicable)

Name Ben Parks

Job Title Executive Director

Address 6279 Whiffondale Dr.

Phone 850-559-1155

Tallahassee FL 32312
City State Zip

Email boparks@hotmail.com

Speaking: For Against Information

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

Representing Florida Agritourism Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15

Meeting Date

SB594

Bill Number (if applicable)

Topic Agritourism

Amendment Barcode (if applicable)

Name Angela Higgenbotham

Job Title Ranch Owner

Address 2200 Ewell Rd

Phone (863) 581-1710

Street

Lakeland FL 33811

City

State

Zip

Email anglahiggyll@gmail.com

Speaking: For Against Information

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

Representing Rocking H Ranch

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/3/15
Meeting Date

58594
Bill Number (if applicable)

Topic Agritourism

Amendment Barcode (if applicable)

Name Michelle Welch

Job Title Owner - Wishing Well Barn

Address 4302 Pippin Road

Phone 813-478-6554

Street

Plant City FL 33567

City

State

Zip

Email wishingwellbarn@gmail.com

Speaking: For Against Information

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

Representing myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic
Security
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL

15th District

February 17, 2015

The Honorable Wilton Simpson
Senate Community Affairs Committee, Chair
322 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Simpson:

I am respectfully requesting that SB 594, related to *Agritourism*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: Tom Yeatman/ Staff Director
Ann Whittaker/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic
Security
Regulated Industries

SENATOR KELLI STARGEL
15th District

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

March 4, 2015

Chairman Simpson
315 Knott Building

Dear Chair Simpson:

I am requesting permission for my LA, Rachel Barnes, to present SB 594 which is dealing with Agritourism. During the Community Affairs committee timeframe, I will be in the Military and Veterans Affairs and Space Committee. If this committee ends early, I may be able to present, but I wanted the committee to be aware of this conflict and be prepared for my bill to be heard.

Thank you for this consideration,

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: John Phelps / Rules Staff Director
Tom Yeatman / Staff Director
Ann Whittaker / CAA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

Wishing Well Barn History

Mr. Robert Welch bought this farm in 1962 and moved his family of five children here with his wife, Polly. Mr. Welch farmed cattle on this land over the years alongside strawberries, oranges and many other fruits and vegetables. There was always a special place in his heart for cattle. Blake & Michelle Welch continue this family tradition with five of our own sons and a love for cattle ranching. Also on this ranch: James Welch farms vegetables, Rick & Shirley (Welch) Roberts raise horses for barrel racing, Ricky & Peggy (Welch) Peacock farm the blueberries.

History of Florida's Cattle Industry

Florida's cattle industry is one of the 15 largest in the United States. Centered around birthing and raising calves without much of the concerns that come with the beef processing part of the system, Florida's cattlemen are dedicated to the preservation of Florida's green ranch land.

As a large industry within the state, cattle ranchers significantly support Florida's interstate economy and provide jobs as well as beef. The cattle industry supports a vast network of associated businesses. These allies include (but are not limited to) feed companies, heavy machinery corporations and fertilizer manufacturers. This integrated web of economic organizations helps create jobs and business opportunities in Florida. Additionally, Florida's cattlemen have been strong supporters of Florida's youth and culture. From county fair displays to scholarship contests, Florida's cattlemen have worked diligently to give back to the communities they serve.

Beef is the #1 food source for Protein, Vitamin B12 and Zinc!

A three-ounce serving of lean beef contributes less than 10 percent of calories to a 2,000-calorie diet yet it supplies more than 10 percent of the Daily Value for nine essential nutrients. Based on a 2000-calorie diet, just 3 ounces of lean beef provides you with:

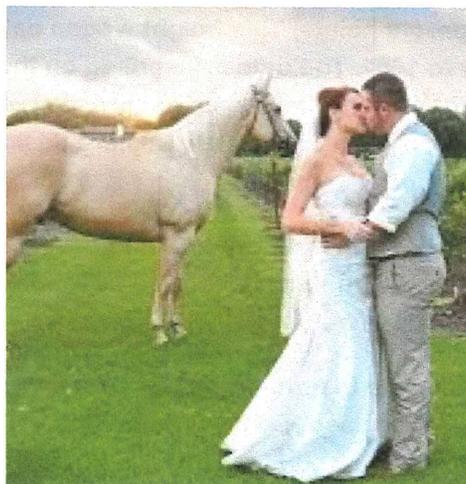
Protein—Helps build a strong and muscular body

Zinc—Helps create a healthy immune system & heal wounds

Phosphorus—Necessary for strong teeth and bones

Iron— Helps carry oxygen in the blood to all cells and muscles to prevent fatigue

B-Complex Vitamins (including Vitamin B12, Niacin, Vitamin B6 and Riboflavin)— Help release energy from food.



Wishing Well Barn Instagram Scavenger Hunt

Win a \$50 Gift Card by earning the most points in our Instagram Scavenger Hunt.



Step 1: Download Instagram

Step 2: Create your #name

Step 3: Join the game by taking the selfies on our list.

Step 4: Type

#wishingwellbarn and the couple's wedding hashtag when posting each picture.

Step 5: The person with the most points wins the prize.



Wishing Well Barn

Instagram Selfie Scavenger Hunt:

1. Open Instagram and take a picture with a cow in the background. Our Black Angus cattle can be found on the Northeast side of the farm. (10 points) Don't forget to #wishingwellbarn and the Bride/Groom's wedding #. Did you know that Florida has 9 out of the top 25 cow/calf producers in the nation. The Welch family has been raising cattle on this farm since 1962.
2. Take a selfie sitting on the hay bale couch. (10 points) Cattle eat an average of 24 pounds of hay or grass per day. Each of these square bales of hay weigh about 50 pounds.
3. Take a selfie with the Blueberry Field in the background. (10 points) This 10 acre blueberry field has 1200 blueberry plants per acre. Our harvesting season is mid-March through mid-May.
4. Take a selfie in front of the barn. (10 points) This barn dates back to 1962 and houses our farm equipment, feed for the cattle and an occasional barn dance!
5. Take a selfie in front of the green freight wagon. (10 points) This freight wagon dates back to 1861. The date is inscribed on the axle. Freight wagons were used to carry hay and seed from town to the farm and are designed to carry heavier loads.
6. Take a selfie in front of the Bunkhouse. (10 points) This bunkhouse is used by ranch hands brought in to help work on the farm.
7. Take a selfie in front of the hay rake. (10 pts.) This rake is used for hay production.



8. Take a picture of any other farm equipment you see. (10 points for each.)

9. Take a selfie in front of the pond. (10 points) This pond is the water source used for watering the Blueberry Field.

10. Take a selfie with the Bride and/or Groom. (10 points) They chose to bring you out to the farm today because you hold a special place in their lives and in their hearts.



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 Community Affairs

BILL: SJR 652

INTRODUCER: Senator Flores

SUBJECT: Homestead Tax Exemption/Persons 65 or Older

DATE: March 4, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	Favorable
2.			FT	
3.			RC	

I. Summary:

SJR 652 resolves to amend Article VII, section 6 of the Florida Constitution, to clarify the timeframe for determining the just value of real estate under one of the two “additional homestead tax exemptions” that exist for certain low-income senior citizens. If approved by the voters and implemented by the Legislature, the additional homestead exemption in s. 196.075(2)(b), F.S., may be granted to anyone 65 or older who owns real estate with a just value less than \$250,000, as determined at the time the property owner first applies for the exemption.¹

This joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

II. Present Situation:

Property Valuation in Florida

Florida law provides a number of options to reduce property tax liability. Article VII, section 2 of the Florida Constitution, provides for uniform ad valorem taxation, stating that “all ad valorem taxation shall be at a uniform rate within each taxing unit.”² The property tax burden for an owner of any particular piece of real estate will depend on the property’s just value, its assessed value, and whether the property benefits from any tax exemptions or assessment limitations.

Just Value

Article VII, section 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair

¹ Other requirements include permanent residence on the property for at least 25 years, and a household income threshold.

² FLA. CONST. art. VII, s. 2.

market value, or what a willing buyer would pay a willing seller for the property in an arms-length transaction.³

Assessed Value

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.⁴ Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.⁵ Land used for conservation purposes must be assessed solely on the basis of character or use.⁶ Counties and municipalities may authorize historic properties to be assessed solely on the basis of character or use.⁷ Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 or older.⁸ The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.⁹ Certain working waterfront property is assessed based upon the property's current use.¹⁰

Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to, homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.¹¹

Assessment Limitations

Save Our Homes

The Save Our Homes assessment limitation was amended into the Florida Constitution in 1992. Article VII, section 4(d) of the Florida Constitution, limits the amount that a homestead's assessed value can increase annually to the lesser of 3 percent or the percentage increase in the Consumer Price Index (CPI).¹² In addition, an assessment may not exceed just value.

In 2008, Florida voters approved an additional amendment to Article VII, section 4(d) of the Florida Constitution, to provide for the portability of the accrued benefit under the Save Our Homes assessment limitation. This amendment allows homestead property owners who relocate to a new homestead to transfer up to \$500,000 of the accrued benefit to the new homestead.

³ See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

⁴ The constitutional provisions in Art. VII, section 4 of the Florida Constitution, are implemented in Part II of ch. 193, F.S.

⁵ FLA. CONST. art. VII, s. 4(a).

⁶ FLA. CONST. art. VII, s. 4(b).

⁷ FLA. CONST. art. VII, s. 4(e).

⁸ FLA. CONST. art. VII, s. 4(f).

⁹ FLA. CONST. art. VII, s. 4(i).

¹⁰ FLA. CONST. art. VII, s. 4(j).

¹¹ FLA. CONST. art. VII, ss. 3 and 6.

¹² FLA. CONST. art. VII, s. 4(d).

Property Tax Exemptions for Homesteads

The Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.¹³

Homestead Exemption

Article VII, section 6 of the Florida Constitution provides that every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including levies by school districts. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding ad valorem taxes levied by school districts.

Additional Homestead Exemptions for Qualified Senior Citizens

Since 1999, cities and counties have been authorized to offer an additional homestead exemption of up to \$50,000 to persons who are 65 or older and who satisfy certain low-income requirements. Section 196.075(2)(a), F.S., is the general law enacted to allow counties and municipalities to grant this additional homestead exemption.¹⁴ This additional exemption applies to any person who has legal and equitable title to real estate, maintains a property as a permanent residence, has attained the age of 65, and has a household income, as defined by general law, which does not exceed \$20,000. In the implementing legislation for the exemption, the Legislature indexed the \$20,000 figure to inflation. Adjusted each year on January 1 according to changes in the consumer price index, the current household income threshold for the senior low income exemption is \$28,448.¹⁵

In November 2012, the voters approved a constitutional amendment that authorized the Legislature to allow cities and counties to grant an additional homestead exemption for persons 65 or older.¹⁶ Amendment 11 allowed for an exemption equal to the assessed value of homestead property when the just value is less than \$250,000. The owner is still required to be 65 or older and maintain a permanent residence on the property; however, the owner must have maintained a permanent residence thereon for a minimum of 25 years. The same income limitations apply to both exemptions.

The county or municipality can grant either or both of the additional exemptions, and must do so by ordinance, adopted by a supermajority vote of the county or municipal governing body pursuant to the procedures prescribed in chapters 125 or 166, F.S. The county or municipality must specify that the exemption applies only to taxes levied by the unit of government granting

¹³*Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

¹⁴ Article VII, section 6(d)(1) of the Florida Constitution, allows the Legislature to adopt a general law allowing counties and municipalities to grant an additional homestead exemption of up to \$50,000.

¹⁵ Florida Department of Revenue, *Florida Property Tax Valuation and Income Limitation Rates*, available at <http://dor.myflorida.com/dor/property/resources/limitations.html> (last visited Feb. 25, 2015).

¹⁶ Amendment 11, 2012 General Election. The amendment originated as CS/HJR 169 (2012). The text of the amendment can be found on the website of the Florida Department of State at <http://election.dos.state.fl.us/initiatives/fulltext/pdf/10-89.pdf>.

the exemption.¹⁷ For purposes of the exemption, “household income” means “the adjusted gross income, as defined in s. 62 of the United States Internal Revenue Code, of all members of a household.”¹⁸ The term “household” means “a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding in or renting a portion of the dwelling.”¹⁹ The Florida Revenue Estimating Conference estimates that the 2014-2015 revenue impact of the s. 196.075(2)(a), F.S., exemption to be \$56.3 million, and \$2.4 million for the s. 196.075(2)(b), F.S., exemption.²⁰

III. Effect of Proposed Changes:

The joint resolution proposes to amend Article VII, section 6 of the Florida Constitution, to further specify a condition of the additional homestead tax exemption for persons 65 and older, found in s. 196.075(2)(b), F.S. Upon consideration of a given application for the homestead exemption, the county or municipal tax authority would be required to consider the just value of the real estate at the time the property owner first applies for the exemption. If the just value of the real estate is less than \$250,000 at the time the property owner first applied for the exemption, and all other statutory conditions are met, then the homestead exemption would equal the assessed value of the property. Presumably, by specifying that the determination be made in this timeframe, the tax benefits of the exemption may confer to applicants who otherwise would have lost, or been denied the exemption due to a quickly appreciating or volatile real estate market.

If approved by 60 percent of voters, the proposed constitutional amendment will be effective “on the first Tuesday after the first Monday in January,”²¹ after the next general election, or at an earlier special election specifically authorized by law for this purpose.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate provisions in Article VII, section 18 of the Florida Constitution, do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁷ Because the exemption applies only to tax millage levied by the county or city that enacts the exemption, it does not apply to millage of school districts or other taxing authorities. *See* s. 196.075, F.S.

¹⁸ Section 196.075(1)(b), F.S.

¹⁹ Section 196.075(1)(a), F.S.

²⁰ These figures represent revenue lost, not the taxable value. Florida Revenue Estimating Conference, *2014 Florida Tax Handbook*, at 205 (2014).

²¹ FLA. CONST. art. XI, s. 5(e).

D. Other Constitutional Issues:

Article XI, section 1 of the Florida Constitution, authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose.

Article XI, section 5(a) of the Florida Constitution, and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking “first, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’”²²

Article XI, section 5(d) of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimates that the costs for advertising the proposed constitutional amendment will be approximately \$135 per word, for a total publishing cost of approximately \$132,707.²³

Article XI, section 5(e) of the Florida Constitution, requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose.

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

The proposed amendment, if approved by the voters, and implemented by the Legislature, would clarify the criteria of the homestead exemption for low-income seniors, found in s. 196.075(2)(b), F.S. By establishing the time for determining the real estate’s just value as “at the time of the owner’s initial application for exemption,” the tax benefits of the exemption may confer to applicants who would otherwise have been denied the exemption due to a quickly appreciating or volatile real estate market.

B. Private Sector Impact:

If the proposed amendment is approved by the electorate and implemented by the Legislature, and local governments grant the exemption, low-income seniors could receive property tax relief.

²² *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010), citing *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

²³ Phone conversation with Department of State staff (Feb. 24, 2015).

C. Government Sector Impact:

Article XI, section 5(d) of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimates that the costs for advertising the proposed constitutional amendment will be approximately \$135 per word, for a total publishing cost of approximately \$132,707.²⁴

VI.**VII. Technical Deficiencies:**

None.

VIII. Related Issues:

As noted by the Department of Revenue (DOR),²⁵ the joint resolution does not address any future changes, additions, improvements, or deletions made to the homestead property. It is unclear whether an increase in just value of the homestead, due to improvements made to the property by the owner, or someone acting on the owner's behalf, would affect the exemption.²⁶

Additionally, the DOR recommends that language on lines 68-69, be replaced with, "in the year the exemption is first granted," because county property appraisers determine just value as of January 1 each year, not any other day. Property appraisers would not have the information necessary to determine a just value on every possible specific date that the application is made. Relatedly, an owner may have filed and been denied the exemption for not meeting other criteria, prior to receiving the exemption for a subsequent application. In this case, it is unclear why the just value of the property should be taken at the time of first application.

IX. Statutes Affected:

No statutes are affected, however, the amendment proposed by this joint resolution, if approved by the electorate and implemented by the Legislature, would amend Article VII, section 6 of the Florida Constitution.

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

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

None.

²⁴ *Id.*

²⁵ Dep't of Revenue, Legislative Bill Analysis of SJR 652, at 5 (2015).

²⁶ For examples of how changes, additions, improvements, or deletions have been addressed, see ss. 193.155, 193.1554, and 193.1555, F.S.

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 Flores

37-00601-15

2015652__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII of the State Constitution to revise the homestead tax exemption that may be granted by counties or municipalities, if authorized by general law, for the assessed value of property with a just value less than \$250,000 which is owned by persons age 65 or older who meet certain residence and income requirements, to specify that just value shall be determined at the time of the owner's initial application for the exemption.

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

That the following amendment to Section 6 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five thousand dollars and, for all levies other than school district levies, on the assessed valuation greater than fifty thousand

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30 dollars and up to seventy-five thousand dollars, upon
31 establishment of right thereto in the manner prescribed by law.
32 The real estate may be held by legal or equitable title, by the
33 entireties, jointly, in common, as a condominium, or indirectly
34 by stock ownership or membership representing the owner's or
35 member's proprietary interest in a corporation owning a fee or a
36 leasehold initially in excess of ninety-eight years. The
37 exemption shall not apply with respect to any assessment roll
38 until such roll is first determined to be in compliance with the
39 provisions of section 4 by a state agency designated by general
40 law. This exemption is repealed on the effective date of any
41 amendment to this Article which provides for the assessment of
42 homestead property at less than just value.

43 (b) Not more than one exemption shall be allowed any
44 individual or family unit or with respect to any residential
45 unit. No exemption shall exceed the value of the real estate
46 assessable to the owner or, in case of ownership through stock
47 or membership in a corporation, the value of the proportion
48 which the interest in the corporation bears to the assessed
49 value of the property.

50 (c) By general law and subject to conditions specified
51 therein, the Legislature may provide to renters, who are
52 permanent residents, ad valorem tax relief on all ad valorem tax
53 levies. Such ad valorem tax relief shall be in the form and
54 amount established by general law.

55 (d) The legislature may, by general law, allow counties or
56 municipalities, for the purpose of their respective tax levies
57 and subject to the provisions of general law, to grant either or
58 both of the following additional homestead tax exemptions:

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59 (1) An exemption not exceeding fifty thousand dollars to a
60 ~~any~~ person who has the legal or equitable title to real estate
61 and maintains thereon the permanent residence of the owner, and
62 who has attained age sixty-five, and whose household income, as
63 defined by general law, does not exceed twenty thousand dollars;
64 or

65 (2) An exemption equal to the assessed value of the
66 property to a ~~any~~ person who has the legal or equitable title to
67 real estate with a just value less than two hundred and fifty
68 thousand dollars, as determined at the time of the owner's
69 initial application for the exemption, and who has maintained
70 thereon the permanent residence of the owner for not less than
71 twenty-five years, and who has attained age sixty-five, and
72 whose household income does not exceed the income limitation
73 prescribed in paragraph (1).

74
75 The general law must allow counties and municipalities to grant
76 these additional exemptions, within the limits prescribed in
77 this subsection, by ordinance adopted in the manner prescribed
78 by general law, and must provide for the periodic adjustment of
79 the income limitation prescribed in this subsection for changes
80 in the cost of living.

81 (e) Each veteran who is age 65 or older who is partially or
82 totally permanently disabled shall receive a discount from the
83 amount of the ad valorem tax otherwise owed on homestead
84 property the veteran owns and resides in if the disability was
85 combat related and the veteran was honorably discharged upon
86 separation from military service. The discount shall be in a
87 percentage equal to the percentage of the veteran's permanent,

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88 service-connected disability as determined by the United States
89 Department of Veterans Affairs. To qualify for the discount
90 granted by this subsection, an applicant must submit to the
91 county property appraiser, by March 1, an official letter from
92 the United States Department of Veterans Affairs stating the
93 percentage of the veteran's service-connected disability and
94 such evidence that reasonably identifies the disability as
95 combat related and a copy of the veteran's honorable discharge.
96 If the property appraiser denies the request for a discount, the
97 appraiser must notify the applicant in writing of the reasons
98 for the denial, and the veteran may reapply. The Legislature
99 may, by general law, waive the annual application requirement in
100 subsequent years. This subsection is self-executing and does not
101 require implementing legislation.

102 (f) By general law and subject to conditions and
103 limitations specified therein, the Legislature may provide ad
104 valorem tax relief equal to the total amount or a portion of the
105 ad valorem tax otherwise owed on homestead property to the:

106 (1) Surviving spouse of a veteran who died from service-
107 connected causes while on active duty as a member of the United
108 States Armed Forces.

109 (2) Surviving spouse of a first responder who died in the
110 line of duty.

111 (3) As used in this subsection and as further defined by
112 general law, the term:

113 a. "First responder" means a law enforcement officer, a
114 correctional officer, a firefighter, an emergency medical
115 technician, or a paramedic.

116 b. "In the line of duty" means arising out of and in the

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117 actual performance of duty required by employment as a first
118 responder.

119 BE IT FURTHER RESOLVED that the following statement be
120 placed on the ballot:

121 CONSTITUTIONAL AMENDMENT

122 ARTICLE VII, SECTION 6

123 HOMESTEAD TAX EXEMPTION FOR CERTAIN SENIOR, LOW-INCOME,
124 LONG-TERM RESIDENTS; DETERMINATION OF JUST VALUE.—Proposing an
125 amendment to the State Constitution to revise the homestead tax
126 exemption that may be granted by counties or municipalities, if
127 authorized by general law, for the assessed value of property
128 with a just value less than \$250,000 which is owned by a person
129 age 65 or older who meets certain residence and income
130 requirements, to specify that just value shall be determined at
131 the time of the owner's initial application for the exemption.



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: February 10, 2015

I respectfully request that **Senate Bill #652**, relating to Homestead Tax Exemption / Person 65 or Older, be placed on the:

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

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37

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 Community Affairs

BILL: SB 650

INTRODUCER: Senator Flores

SUBJECT: County and Municipality Homestead Tax Exemption

DATE: March 4, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	Favorable
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

I. Summary:

SB 650 specifies the timeframe for determining the just value of real estate under one of the two “additional homestead tax exemptions” that exist for certain low-income senior citizens. If SJR 652, or similar legislation, is passed by the Legislature and approved by the voters, the additional homestead exemption in s. 196.075(2)(b), F.S., may be granted by a municipality or county to anyone 65 or older who owns real estate with a just value less than \$250,000, as determined at the time the property owner first applies for the exemption.¹

The provisions of this bill would require an amendment to the Florida Constitution prior to implementation, as anticipated by SJR 652.

II. Present Situation:

Property Valuation in Florida

Florida law provides a number of options to reduce property tax liability. Article VII, section 2 of the Florida Constitution, provides for uniform ad valorem taxation, stating that “all ad valorem taxation shall be at a uniform rate within each taxing unit.”² The property tax burden for an owner of any particular piece of real estate will depend on the property’s just value, its assessed value, and whether the property benefits from any tax exemptions or assessment limitations.

Just Value

Article VII, section 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair

¹ Other requirements include permanent residence on the property for at least 25 years, and a household income threshold.

² FLA. CONST. art. VII, s. 2.

market value, or what a willing buyer would pay a willing seller for the property in an arms-length transaction.³

Assessed Value

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.⁴ Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.⁵ Land used for conservation purposes must be assessed solely on the basis of character or use.⁶ Counties and municipalities may authorize historic properties to be assessed solely on the basis of character or use.⁷ Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.⁸ The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.⁹ Certain working waterfront property is assessed based upon the property's current use.¹⁰

Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to, homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.¹¹

Assessment Limitations

Save Our Homes

The Save Our Homes assessment limitation was amended into the Florida Constitution in 1992. Article VII, section 4(d) of the Florida Constitution limits the amount that a homestead's assessed value can increase annually to the lesser of 3 percent or the percentage increase in the Consumer Price Index (CPI).¹² In addition, an assessment may not exceed just value.

In 2008, Florida voters approved an additional amendment to Article VII, section 4(d) of the Florida Constitution to provide for the portability of the accrued benefit under the Save Our Homes assessment limitation. This amendment allows homestead property owners who relocate to a new homestead to transfer up to \$500,000 of the accrued benefit to the new homestead.

³ See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

⁴ The constitutional provisions in Art. VII, section 4 of the Florida Constitution, are implemented in Part II of ch. 193, F.S.

⁵ FLA. CONST. art. VII, s. 4(a).

⁶ FLA. CONST. art. VII, s. 4(b).

⁷ FLA. CONST. art. VII, s. 4(e).

⁸ FLA. CONST. art. VII, s. 4(f).

⁹ FLA. CONST. art. VII, s. 4(i).

¹⁰ FLA. CONST. art. VII, s. 4(j).

¹¹ FLA. CONST. art. VII, ss. 3 and 6.

¹² FLA. CONST. art. VII, s. 4(d).

Property Tax Exemptions for Homesteads

The Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.¹³

Homestead Exemption

Article VII, section 6 of the Florida Constitution provides that every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including levies by school districts. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding ad valorem taxes levied by school districts.

Additional Homestead Exemptions for Qualified Senior Citizens

Since 1999, cities and counties have been authorized to offer an additional homestead exemption of up to \$50,000 to persons who are 65 or older and who satisfy certain low-income requirements. Section 196.075(2)(a), F.S., is the general law enacted to allow counties and municipalities to grant this additional homestead exemption.¹⁴ This additional exemption applies to any person who has legal and equitable title to real estate, maintains a property as a permanent residence, has attained the age of 65, and has a household income, as defined by general law, which does not exceed \$20,000. In the implementing legislation for the exemption, the Legislature indexed the \$20,000 figure to inflation. Adjusted each year on January 1 according to changes in the consumer price index, the current household income threshold for the senior low income exemption is \$28,448.¹⁵

In November 2012, the voters approved a constitutional amendment that authorized the Legislature to allow cities and counties to grant an additional homestead exemption for persons 65 or older.¹⁶ Amendment 11 allowed for an exemption equal to the assessed value of homestead property when the just value is less than \$250,000. The owner is still required to be 65 or older and maintain a permanent residence on the property; however, the owner must have maintained a permanent residence thereon for a minimum of 25 years. The same income limitations apply to both exemptions.

The county or municipality can grant either or both of the additional exemptions, and must do so by ordinance, adopted by a supermajority vote of the county or municipal governing body pursuant to the procedures prescribed in chapters 125 or 166, F.S. The county or municipality must specify that the exemption applies only to taxes levied by the unit of government granting

¹³*Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

¹⁴ Article VII, section 6(d)(1) of the Florida Constitution, allows the Legislature to adopt a general law allowing counties and municipalities to grant an additional homestead exemption of up to \$50,000.

¹⁵ Florida Department of Revenue, *Florida Property Tax Valuation and Income Limitation Rates*, available at <http://dor.myflorida.com/dor/property/resources/limitations.html> (last visited Feb. 25, 2015).

¹⁶ Amendment 11, 2012 General Election. The amendment originated as CS/HJR 169 (2012). The text of the amendment can be found on the website of the Florida Department of State at <http://election.dos.state.fl.us/initiatives/fulltext/pdf/10-89.pdf>.

the exemption.¹⁷ For purposes of the exemption, “household income” means “the adjusted gross income, as defined in s. 62 of the United States Internal Revenue Code, of all members of a household.”¹⁸ The term “household” means “a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding in or renting a portion of the dwelling.”¹⁹ The Florida Revenue Estimating Conference estimates that the 2014-2015 revenue impact of the s. 196.075(2)(a), F.S., exemption to be \$56.3 million, and \$2.4 million for the s. 196.075(2)(b), F.S., exemption.²⁰

III. Effect of Proposed Changes:

Section 1 of the bill proposes to amend Article VII, section 6 of the Florida Constitution to further specify a condition of the additional homestead tax exemption for persons 65 and older, found in s. 196.075(2)(b), F.S. Upon consideration of a given application for the homestead exemption, the county or municipal tax authority would be required to consider the just value of the real estate at the time the property owner first applies for the exemption. If the just value of the real estate is less than \$250,000 at the time the property owner first applied for the exemption, and all other statutory conditions are met, then the homestead exemption would equal the assessed value of the property. Presumably, by specifying that the determination be made in this timeframe, the tax benefits of the exemption may confer to applicants who otherwise would have lost, or been denied the exemption due to a quickly appreciating or volatile real estate market.

Section 2 of the bill provides that it be implemented after amendment has been made to the state constitution, which will require 60 percent voter approval.²¹

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill clarifies a condition of the optional homestead exemption found in s. 196.075(2)(b), F.S., and, as such, does not fall within the mandate provisions of Article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁷ Because the exemption applies only to tax millage levied by the county or city that enacts the exemption, it does not apply to millage of school districts or other taxing authorities. *See* s. 196.075, F.S.

¹⁸ Section 196.075(1)(b), F.S.

¹⁹ Section 196.075(1)(a), F.S.

²⁰ These figures represent revenue lost, not the taxable value. Florida Revenue Estimating Conference, *2014 Florida Tax Handbook*, at 205 (2014).

²¹ *See* SJR 652 (2015).

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

The bill would clarify the criteria of the homestead exemption for low-income seniors, found in s. 196.075(2)(b), F.S. By establishing the time for determining the real estate's just value as "at the time of the owner's initial application for exemption," the tax benefits of the exemption may confer to applicants who would otherwise have been denied the exemption due to a quickly appreciating or volatile real estate market.

B. Private Sector Impact:

If local governments grant the exemption, low-income seniors could receive property tax relief.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

As noted by the Department of Revenue,²² the bill does not address any future changes, additions, improvements, or deletions made to the homestead property. It is unclear whether an increase in just value of the homestead, due to improvements made to the property by the owner, or someone acting on the owner's behalf, would affect the exemption.²³

Additionally, the DOR recommends that language on lines 30-31, be replaced with, "in the year the exemption is first granted," because county property appraisers determine just value as of January 1 each year, not any other day. Property appraisers would not have the information necessary to determine a just value on any every possible specific date that the application is made. Relatedly, an owner may have filed and been denied the exemption for not meeting other criteria, prior to receiving the exemption for a subsequent application. In this case, it is unclear why the just value of the property should be taken at the time of first application.

VIII. Statutes Affected:

This bill substantially amends section 196.075 of the Florida Statutes.

²² Dep't of Revenue, Legislative Bill Analysis of SB 650, at 5 (2015).

²³ For examples of how changes, additions, improvements, or deletions have been addressed, see ss. 193.155, 193.1554, and 193.1555, F.S.

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 Flores

37-00550-15

2015650__

1 A bill to be entitled
2 An act relating to a county and municipality homestead
3 tax exemption; amending s. 196.075, F.S.; revising the
4 homestead tax exemption that may be adopted by a
5 county or municipality by ordinance for the assessed
6 value of property with a just value less than \$250,000
7 which is owned by persons age 65 or older who meet
8 certain residence and income requirements; specifying
9 that just value shall be determined at the time of the
10 owner's initial application for the exemption;
11 providing a contingent effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Subsection (2) of section 196.075, Florida
16 Statutes, is amended to read:

17 196.075 Additional homestead exemption for persons 65 and
18 older.—

19 (2) In accordance with s. 6(d), Art. VII of the State
20 Constitution, the board of county commissioners of any county or
21 the governing authority of any municipality may adopt an
22 ordinance to allow either or both of the following additional
23 homestead exemptions:

24 (a) Up to \$50,000 for a ~~any~~ person who has the legal or
25 equitable title to real estate and maintains thereon the
26 permanent residence of the owner, who has attained age 65, and
27 whose household income does not exceed \$20,000. ~~† or~~

28 (b) The amount of the assessed value of the property for a
29 ~~any~~ person who has the legal or equitable title to real estate

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30 with a just value less than \$250,000, as determined at the time
31 of the owner's initial application for the exemption, and who
32 has maintained thereon the permanent residence of the owner for
33 at least 25 years, who has attained age 65, and whose household
34 income does not exceed the income limitation prescribed in
35 paragraph (a), as calculated in subsection (3).

36 Section 2. This act shall take effect on the same date that
37 Senate Joint Resolution _____, or a similar joint resolution
38 having substantially the same specific intent and purpose, takes
39 effect, if such joint resolution is approved by the electors at
40 the general election to be held in November 2016 or at an
41 earlier special election specifically authorized by law for that
42 purpose.



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: February 10, 2015

I respectfully request that **Senate Bill #650**, relating to County and Municipality Homestead Tax Exemption, be placed on the:

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

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37

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 Community Affairs

BILL: CS/SB 290

INTRODUCER: Criminal Justice Committee and Senator Brandes and others

SUBJECT: Carrying a Concealed Weapon or a Concealed Firearm

DATE: March 3, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 290 creates an exception to s. 790.01, F.S., which prohibits carrying a concealed weapon or firearm unless a person is licensed to do so or if the weapon is a self-defense chemical spray or nonlethal stun gun or similar device designed for defensive purposes.

The exception provided in the bill allows a person to carry a concealed weapon or firearm while in the act of complying with a mandatory evacuation order issued during a state of emergency declared by the Governor pursuant to ch. 252, F.S., or declared by a local authority pursuant to ch. 870, F.S., regardless of the person's licensure status, so long as he or she may otherwise lawfully possess a firearm.

The bill provides a definition for "in the act of evacuating." It also sets forth a 48-hour period within which the exception to s. 790.01, F.S., is applicable, which may be extended by executive order.

II. Present Situation:

Under current Florida law, it is lawful for a person to carry a concealed weapon without a concealed weapon license for purposes of lawful self-defense, so long as the weapon is limited to

self-defense chemical spray, a nonlethal stun gun, a dart-firing stun gun, or other nonlethal electric weapon or device that is designed solely for defensive purposes.¹

Without licensure, carrying a different type of concealed weapon,² electric weapon, or device other than one designed solely for defensive purposes is a first degree misdemeanor.³ Carrying a concealed firearm without proper licensure is a third degree felony offense.⁴

It is lawful for a person to openly carry a self-defense chemical spray, nonlethal stun gun or dart-firing stun gun, or other nonlethal electric weapon or device that is designed solely for defensive purposes.⁵

Certain persons under particular circumstances are exempt from the limitations on the open carry of weapons in s. 790.053, F.S., and the concealed firearm carry licensure requirements in s. 790.06, F.S., when the weapons and firearms are lawfully owned, possessed, and used. These persons and circumstances include:

- Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization;
- Citizens of this state subject to duty in the Armed Forces under s. 2, Art. X of the State Constitution, under chs. 250 and 251, F.S., and under federal laws, when on duty or when training or preparing themselves for military duty;
- Persons carrying out or training for emergency management duties under ch. 252, F.S.;
- Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of ch. 354, F.S., and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the federal government who are carrying out official duties while in this state;
- Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state;
- Officers or employees of the state or United States duly authorized to carry a concealed weapon;
- Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting,

¹ Section 790.01(4), F.S.

² A concealed weapon, under s. 790.001(3)(a), F.S., means any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person. The weapons listed in this definition require licensure to carry them in a concealed manner.

³ Section 790.01(1), F.S.

⁴ Section 790.01(2), F.S.

⁵ Section 790.053, F.S.

while such members are at or going to or from their collectors' gun shows, conventions, or exhibits;

- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition;
- A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business;
- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place;
- A person firing weapons in a safe and secure indoor range for testing and target practice;
- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession;
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business;
- A person possessing arms at his or her home or place of business; and
- Investigators employed by the public defenders and capital collateral regional counsel of the state, while actually carrying out official duties.⁶

Concealed Weapons and Firearm Licensure

The Department of Agriculture and Consumer Services (DACCS) is authorized to issue concealed weapon and firearm licenses to those applicants that qualify.⁷ Concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie but not a machine gun for purposes of the licensure law.⁸

To obtain a concealed weapons or firearm license, a person must complete, under oath, an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents;
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense;
- A full set of fingerprints;
- Documented proof of completion of a firearms safety and training course; and
- A nonrefundable license fee.⁹

⁶ Section 790.25(3), F.S.

⁷ Section 790.06(1), F.S.

⁸ *Id.*

⁹ Section 790.06(1)-(5), F.S.

Additionally, the applicant must attest that he or she is in compliance with the criteria contained in subsections (2) and (3) of s. 790.06, F.S.

Subsection (2) of s. 790.06, F.S., requires DACS to issue the license to carry a concealed weapon, if all other requirements are met, and the applicant:

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm pursuant to s. 790.23, F.S., by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;
- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.¹⁰

¹⁰ Section 790.06(2), F.S.

DACS must deny the application if the applicant has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence constituting a misdemeanor, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or the record has been sealed or expunged.¹¹

DACS shall revoke a license if the licensee has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence within the preceding 3 years.¹²

DACS shall, upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license under this section, until final disposition of the case.¹³ DACS shall suspend a license or the processing of an application for a license if the licensee or applicant is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.¹⁴

In addition, DACS is required to suspend or revoke a concealed weapons license if the licensee:

- Is found to be ineligible under the criteria set forth in s. 790.06(2), F.S.;
- Develops or sustains a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is convicted of a felony which would make the licensee ineligible to possess a firearm pursuant to s. 790.23, F.S.;
- Is found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state, relating to controlled substances;
- Is committed as a substance abuser under ch. 397, F.S., or is deemed a habitual offender under s. 856.011(3), F.S., or similar laws of any other state;
- Is convicted of a second violation of s. 316.193, F.S., or a similar law of another state, within 3 years of a previous conviction of such section, or similar law of another state, even though the first violation may have occurred prior to the date on which the application was submitted;
- Is adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of any other state.¹⁵

Licensees must carry their license and valid identification any time they are in actual possession of a concealed weapon or firearm and display both documents upon demand by a law enforcement officer.¹⁶ Failure to have proper documentation and display it upon demand is a second degree misdemeanor.¹⁷

¹¹ Section 790.06(3), F.S.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 790.06(10), F.S.

¹⁶ Section 790.790.06(1), F.S.

¹⁷ Section 790.06(1), F.S.

A concealed weapon or firearms license does not authorize a person to carry a weapon or firearm in a concealed manner into:

- Any place of nuisance as defined in s. 823.05, F.S.;
- Any police, sheriff, or highway patrol station;
- Any detention facility, prison, or jail;
- Any courthouse;
- Any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;
- Any polling place;
- Any meeting of the governing body of a county, public school district, municipality, or special district;
- Any meeting of the Legislature or a committee thereof;
- Any school, college, or professional athletic event not related to firearms;
- Any school administration building;
- Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
- Any elementary or secondary school facility;
- Any career center;
- Any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;
- Inside the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or
- Any place where the carrying of firearms is prohibited by federal law.

Any person who willfully violates any of the above-listed provisions commits a misdemeanor of the second degree.¹⁸

Firearms in Vehicles

It is lawful for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use. The same is true for a legal long gun, without the need for encasement, when it is carried in the private conveyance for a lawful purpose.¹⁹

“Securely encased” means in a glove compartment, whether or not locked; snapped in a holster; in a gun case, whether or not locked; in a zippered gun case; or in a closed box or container which requires a lid or cover to be opened for access.²⁰ The term “readily accessible for

¹⁸ Section 790.06(12), F.S.

¹⁹ Section 790.25(5), F.S.

²⁰ Section 790.001(17), F.S.

immediate use” means that a firearm or other weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as easily and quickly as if carried on the person.²¹

Reciprocity

DACS provides an up-to-date list of the states that honor Florida concealed carry licenses.²² It should be noted that travel with a concealed weapon or firearm into states that do not honor Florida’s concealed carry licenses, or when a person does not possess a concealed carry license subjects the person to the laws of that state.

Limitations on Purchase of a Firearm

Florida law prohibits transfer of a firearm by a federally licensed firearm dealer to a person who:

- Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23, F.S.;
- Has been convicted of a misdemeanor crime of domestic violence;
- Has had an adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless three years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred;
- Has been indicted or has had an information filed against her or him for an offense that is a felony under state or federal law (pending disposition information that indicates the potential buyer is not prohibited);
- Has had an injunction for protection against domestic violence entered against him or her under s. 741.30, F.S.;
- Has had an injunction for protection against repeat violence entered against him or her under s. 784.046, F.S.; or
- Has been arrested for a dangerous crime as specified under s. 907.041(4)(a), F.S., or the crimes listed in s. 790.065(2)(c), F.S., (pending disposition information that indicates the potential buyer is not prohibited).

Emergency Management Powers of the Governor

Section 252.36(1), F.S., states that the Governor is responsible for meeting the dangers presented to this state and its people by emergencies. Under that authority the Governor can declare a state of emergency.

Section 252.36(2), F.S., provides that the state of emergency shall continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and she or he terminates the state of emergency by executive order or proclamation, but no state of emergency may continue for longer than 60 days unless renewed by the Governor. The Legislature by concurrent resolution may terminate a state of emergency at any time. Thereupon, the Governor shall issue an executive order or proclamation ending the state of emergency.

²¹ Section 790.001(16), F.S.

²² <http://www.freshfromflorida.com/content/download/7444/118465/ReciprocityList.pdf>.

In addition, pursuant to s. 252.36(5), F.S., the Governor may:

- Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state;²³ and
- Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles. However, nothing contained in ss. 252.31-252.90, F.S., shall be construed to authorize the seizure, taking, or confiscation of firearms that are lawfully possessed, unless a person is engaged in the commission of a criminal act.²⁴

Local States of Emergency for Overt Acts of Violence

Section 870.043, F.S., authorizes sheriffs and designated city officials to declare a state of emergency if he or she determines that there has been an act of violence or a flagrant and substantial defiance of, or resistance to, a lawful exercise of public authority and that, on account thereof, there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order and to the general welfare of the jurisdiction affected or a part or parts thereof. The state of emergency commences upon its declaration and terminates 72 hours thereafter unless, prior to the end of the 72-hour period, the public official, Governor, county commission, or city council terminate it.²⁵

Whenever a sheriff or city official declares a state of emergency, he or she may order and promulgate all or any of the following emergency measures, in whole or in part, with any limitations and conditions he or she deems appropriate:

- The establishment of curfews, including, but not limited to, the prohibition of or restrictions on pedestrian and vehicular movement, standing, and parking;
- The prohibition of the sale or distribution of any alcoholic beverage;
- The prohibition of the possession on any person in a public place of any portable container containing any alcoholic beverage;
- The closing of places of public assemblage with designated exceptions;
- The prohibition of the sale or other transfer of possession, with or without consideration, of gasoline or any other flammable or combustible liquid altogether or except by delivery into a tank properly affixed to an operable motor-driven vehicle, bike, scooter, boat, or airplane and necessary for the propulsion thereof; and
- The prohibition of the possession in a public place of any portable container containing gasoline or any other flammable or combustible liquid.²⁶

In addition to the above-described measures that a local public official has discretion to order, the following acts are prohibited during a state of emergency declared under ch. 870, F.S.:

- The sale of, or offer to sell, with or without consideration, any ammunition or gun or other firearm of any size or description;

²³ Section 252.36(5)(e), F.S.

²⁴ Section 252.36(5)(h), F.S.

²⁵ Section 870.047, F.S.

²⁶ Section 870.045, F.S.

- The intentional display, after the emergency is declared, by or in any store or shop of any ammunition or gun or other firearm of any size or description; and
- The intentional possession in a public place of a firearm by any person, except a duly authorized law enforcement official or person in military service acting in the official performance of her or his duty.²⁷

A violation of any of the above-described provisions is a first degree misdemeanor.

III. Effect of Proposed Changes:

Section 1 creates an exception to s. 790.01, F.S., which prohibits carrying a concealed weapon or firearm unless a person is licensed to do so. If the weapon is a self-defense chemical spray or nonlethal stun gun or similar device designed for defensive purposes, a person may carry it concealed without a license.

The exception provided in the bill allows a person to carry a concealed weapon or firearm on or about his or her person, regardless of licensure status, while in the act of complying with a mandatory evacuation order issued during a state of emergency declared by the Governor pursuant to ch. 252, F.S., or declared by a local authority pursuant to ch. 870, F.S., so long as the person may lawfully possess a firearm.

The bill defines the term “in the act of evacuating” as the immediate and urgent movement of a person away from the evacuation zone within 48 hours after a mandatory evacuation is ordered. It provides that the 48-hour period may be extended by order of the Governor.

Section 2 provides an effective date of July 1, 2015.

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.

²⁷ Section 870.044, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has not yet met to consider the prison bed impact, if any, of SB 290. However, SB 296 (2014 Session) was considered on January 30, 2014, by CJIC and determined that it would have an insignificant prison bed impact.

VI. Technical Deficiencies:

Section 870.044(3), F.S., prohibits a person from intentionally possessing a firearm in a public place during a state of emergency declared by a local authority. This provision appears to conflict with the bill, which allows a person to carry a concealed weapon or firearm while complying with a mandatory evacuation order issued during a state of emergency declared by a local authority. This apparent conflict may be resolved with a notwithstanding clause.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 790.01 of the Florida Statutes.

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

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

CS by Criminal Justice on February 16, 2015:

Provides a definition for the term “in the act of evacuating.” It sets forth a 48 hour timeframe within which the exception to s. 790.01, F.S., is applicable. The 48 hours may be extended by an order issued by the Governor.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senators Brandes, Bradley, Evers, and Negron

591-01635-15

2015290c1

1 A bill to be entitled
2 An act relating to carrying a concealed weapon or a
3 concealed firearm; amending s. 790.01, F.S.; providing
4 an exemption from criminal penalties for carrying a
5 concealed weapon or a concealed firearm when
6 evacuating pursuant to a mandatory evacuation order
7 during a declared state of emergency; defining the
8 term "in the act of evacuating"; providing an
9 effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Section 790.01, Florida Statutes, is amended to
14 read:

15 790.01 Unlicensed carrying of concealed weapons or
16 concealed firearms.—

17 (1) Except as provided in subsection (3) ~~(4)~~, a person who
18 is not licensed under s. 790.06 and who carries a concealed
19 weapon or electric weapon or device on or about his or her
20 person commits a misdemeanor of the first degree, punishable as
21 provided in s. 775.082 or s. 775.083.

22 (2) Except as provided in subsection (3), a person who is
23 not licensed under s. 790.06 and who carries a concealed firearm
24 on or about his or her person commits a felony of the third
25 degree, punishable as provided in s. 775.082, s. 775.083, or s.
26 775.084.

27 (3) This section does not apply to: ~~a person licensed to~~
28 ~~carry a concealed weapon or a concealed firearm pursuant to the~~
29 ~~provisions of s. 790.06.~~

591-01635-15

2015290c1

30 (a) A person who carries a concealed weapon, or a person
31 who may lawfully possess a firearm and who carries a concealed
32 firearm, on or about his or her person while in the act of
33 evacuating during a mandatory evacuation order issued during a
34 state of emergency declared by the Governor pursuant to chapter
35 252 or declared by a local authority pursuant to chapter 870. As
36 used in this subsection, the term "in the act of evacuating"
37 means the immediate and urgent movement of a person away from
38 the evacuation zone within 48 hours after a mandatory evacuation
39 is ordered. The 48 hours may be extended by an order issued by
40 the Governor.

41 ~~(b) (4) It is not a violation of this section for~~ A person
42 who carries ~~to carry~~ for purposes of lawful self-defense, in a
43 concealed manner:

44 1. (a) A self-defense chemical spray.

45 ~~2. (b)~~ A nonlethal stun gun or dart-firing stun gun or other
46 nonlethal electric weapon or device that is designed solely for
47 defensive purposes.

48 ~~(4) (5)~~ This section does not preclude any prosecution for
49 the use of an electric weapon or device, a dart-firing stun gun,
50 or a self-defense chemical spray during the commission of any
51 criminal offense under s. 790.07, s. 790.10, s. 790.23, or s.
52 790.235, or for any other criminal offense.

53 Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15

Meeting Date

290

Bill Number (if applicable)

Topic Conceal Carry

Amendment Barcode (if applicable)

Name Electra Boustle

Job Title Southern Strategy Group

Address 123 S. Adams St.

Phone _____

Street

Tally FL 32301

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida Sheriffs 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)

3/4/15
Meeting Date

290
Bill Number (if applicable)

Topic Concealed CARRY

Amendment Barcode (if applicable)

Name Amy Mercer

Job Title EX, Director

Address P O Box 14038

Phone 8502193631

Street
City Tallahassee, FL State FL Zip 32317

Email amercer@fpca.co

Speaking: For Against Information

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

Representing Florida Police Chiefs Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/04/15

Meeting Date

SB 0290

Bill Number (if applicable)

Topic Carrying a Concealed Weapon or a Concealed Firearm

Amendment Barcode (if applicable)

Name Lieutenant George Maddox

Job Title Lieutenant (VCSSO)

Address 123 W. Indiana Ave,

Phone 386-736-5961

Street

DeLand FL 32720

Email _____

City

State

Zip

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)

TESTIFY LAST PLEASE

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-4-15

Meeting Date

Topic FIREARMS - EMER. EVAC

Bill Number SB-290
(if applicable)

Name MARION P. HAMMER

Amendment Barcode _____
(if applicable)

Job Title _____

Address P.O. BOX 1387

Phone 850-222-9518

Street

TALLAHASSEE FL 32302

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing NRA (NATIONAL RIFLE ASSOCIATION) UNITED SPORTSMEN OF FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Community Affairs

Subject: Committee Agenda Request

Date: February 17, 2015

I respectfully request that **Senate Bill #290**, relating to **Carrying a Concealed Weapon or a Concealed Firearm**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 22



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
01/16/15	SM	Fav/1 amendment
02/17/15	JU	Fav/CS
03/04/15	CA	Favorable
	AP	

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 60** – Judiciary Committee and Senator Wilton Simpson
Relief of Roy Wright and Ashley Wright

SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLED EXCESS JUDGMENT CLAIM FOR \$395,000. THE CLAIM SEEKS COMPENSATION FROM THE NORTH BREVARD COUNTY HOSPITAL DISTRICT D/B/A PARRISH MEDICAL CENTER FOR ALLEGED MEDICAL MALPRACTICE COMMITTED DURING THE BIRTH OF TUCKER WRIGHT.

FINDINGS OF FACT:

Ashley Wright was admitted to Parrish Medical Center in Titusville at approximately 10:30 p.m. on July 15, 2009, to give birth to her son, Tucker Wright. Because very little prenatal information was available on Ashley Wright, an ultrasound was ordered by Dr. Denis Perez, the admitting obstetrician, to obtain an estimated birth weight of the baby. The ultrasound projected the baby's weight to be 7 pounds and 6 ounces¹ at approximately 35 or 36 weeks of gestation.

Dr. Vidya Haté, an obstetrician employed by Parrish Medical Center, visited Ashley Wright the next day, at approximately 12:30 p.m. and conducted a vaginal examination. Dr. Haté asked certified nurse midwife Cara Starkey, who was attending Ashley Wright, to call her when the patient was either fully dilated or began to push. It is unclear from the available records if this call was simply to be a status update

or if Dr. Haté would leave her office and return to the hospital upon receiving the call. After the exam, Dr. Haté returned to her office, a drive of less than 3 minutes by car, to continue seeing other patients. Medical notes indicate that the patient was pushing at 3:20 p.m. and her cervix was fully dilated at 3:45 p.m., but Dr. Haté was not called at her office and advised of this status. Dr. Haté called midwife Starkey at approximately 4:00 p.m., when midwife Starkey's work shift was ending, and asked her to work until 4:30 p.m. and stated that she, Dr. Haté, would be there by 4:30 p.m.

At some undetermined time during labor, but after 4:00 p.m., the baby's head appeared outside the mother's body and then retracted, making a "turtle sign," which signals shoulder dystocia. Shoulder dystocia is an obstetric emergency in which a shoulder is trapped behind the mother's pubic bone. Midwife Starkey performed a medical procedure known as the McRoberts maneuver and additionally rotated the posterior, or lower, shoulder to release the anterior, or upper, shoulder, permitting release of the trapped shoulder and delivery of the baby. The McRoberts maneuver is accomplished by hyperflexing the mother's legs to her abdomen which tilts the pelvis more horizontally and helps facilitate delivery of the shoulder. In some instances, suprapubic pressure is simultaneously applied to the mother's abdomen to help manipulate the shoulder downward for delivery.

Midwife Starkey recruited Ms. Wright's husband, Roy, and one of her sisters to assist with the McRoberts maneuver. They were to flex Ashley's legs back against her abdomen. Midwife Starkey requested that the attending nurse, Donna Hayashi, apply suprapubic pressure to Ashley's abdomen, thereby ultimately allowing the baby's shoulder to be dislodged and the baby delivered.

The testimony describing the amount of time that elapsed during the maneuver and delivery is in conflict. According to midwife Starkey, the procedure took approximately 1 to 2 minutes from the time she noticed the shoulder dystocia until the baby was delivered. In contrast, Ashley Wright stated that the process took approximately 10 minutes, and Roy Wright stated that it took between 10 and 15 minutes.

Also, the evidence of whether the McRoberts maneuver and delivery were properly performed is in conflict. Midwife

Starkey testified in her deposition that she rotated the shoulders of Tucker Wright and performed the maneuver correctly. In contrast, the Wrights and their medical expert argue that midwife Starkey twisted Tucker's head, instead of his shoulders, while performing the McRoberts maneuver, thereby injuring their son.

After his birth, Tucker Wright was diagnosed with Erb's palsy, a limitation of the use of the arm which results from a stretching or tearing injury to the brachial plexus nerves. The brachial plexus is a group of nerves which run from the spine through the neck and into the arm and stimulate the arm and hand. Tucker underwent surgeries when he was almost 7 months old and again at 3 years of age in an attempt to repair and give him full use of his right arm. He has regularly received physical therapy. While he will experience some limitations with the use of his right arm, the surgeon's prognosis is good that Tucker will have most of the normal function of his arm.

LITIGATION HISTORY

The Wrights filed a medical malpractice lawsuit in 2012 against North Brevard County Medical Hospital District doing business as Parrish Medical Center. The case was resolved through mediation in 2013 and a claim bill for the excess judgment was filed in 2014.

A claim bill hearing was held on October 27, 2014, before the House and Senate special masters. Bill Ogle appeared with his clients, Roy and Ashley Wright and their son Tucker, and presented the plaintiffs' case. David Doyle, who represents the North Brevard County Hospital District, attended by Skype and was available for questions by the special masters. Because the hospital district agreed that it would not oppose the claim bill, he did not present any evidence on the hospital district's behalf. However, Mr. Doyle provided documents in response to specific requests by the special masters. The hospital district has not admitted fault in this claim.

CONCLUSIONS OF LAW:

Parrish Medical Center is a public, not-for-profit hospital in Titusville which is operated by the North Brevard County Hospital District. Under the legal doctrine of *respondeat superior*, the hospital district is liable for its employees' wrongful acts, or medical negligence, committed within the scope of their employment.

When a plaintiff seeks to recover damages for a personal injury and alleges that the injury resulted from the negligence of a health care provider, the plaintiff bears the legal burden of proving, by the greater weight of the evidence, that the alleged actions of the health care provider were a breach of the prevailing professional standard of care for that health care provider. The prevailing professional standard of care is defined in statute as “that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.”ⁱⁱ

To establish liability in a medical malpractice action, the plaintiff must prove (1) a duty by the healthcare provider to the patient, (2) a breach of that duty, (3) that the breach of that duty caused the plaintiff's injury, and (4) damages.ⁱⁱⁱ

These elements as outlined below are based upon depositions, testimony, and other information provided during the special master hearing. Medical malpractice cases generally “involve a battle of expert witnesses”^{iv} and this claim is no exception.

Duty

A hospital generally has a duty to provide adequate staffing and care to its patients. In the matter of this claim bill, at least before settlement, the specific duty that the hospital owed to Ashley and Tucker Wright was in dispute. In the claimants' opinion, the hospital's duty required it to have an obstetrician participating in the delivery of Tucker Wright. Documents provided by the hospital indicated that it was prepared to argue that midwife Starkey's qualifications, including her training and experiences in performing the McRoberts maneuver, made her qualified to deliver Tucker Wright without the presence of an obstetrician.

Additionally, when medical personnel perform a medical procedure, they have a duty to perform the procedure in a non-negligent manner. Thus, when medical personnel perform a McRoberts maneuver and delivery, those personnel have a duty to properly perform the procedures. Whether the maneuver and delivery were properly performed is the primary issue that governs the hospital's liability in this matter.

Breach of Duty

If this case had proceeded to trial, it would likely have been disputed whether the duty of care owed to Ashley Wright was breached. Based upon the evidence, each side had a plausible argument to support its case.

The Wrights' Arguments

Staffing and the Absence of Dr. Haté: In addressing the issue of whether an adequate number of staff was on hand for the delivery, the Wrights enlisted Dr. Ray King, an obstetrician and gynecologist, to provide expert medical testimony. Dr. King testified that, at a minimum for a high risk patient, three hospital staff members should be in the room or immediately available, one of whom is taking notes, and the midwife or physician performing the delivery. Because only midwife Starkey and nurse Donna Hayashi were present, he concluded that the hospital district breached its duty of care in adequately staffing the delivery room.

The Wrights argue that Dr. Haté should have been present during Tucker's delivery. Dr. Haté knew that Ashley Wright's high-risk pregnancy, caused by her obesity and gestational diabetes, could result in a large baby or a complicated delivery. To support their argument, they look to Dr. Haté's deposition, which was prepared for trial, in which she asked to be called when the patient was fully dilated and pushing. Moreover, Dr. Haté was not called and informed when the shoulder dystocia was discovered. Additionally, Dr. Haté's progress notes of July 16, 2009, record that Dr. Haté discussed with Ashley the possibility of shoulder problems, among other things, in a high risk pregnancy.

To further develop their breach of care theory, the Wrights' relied on Dr. King who stated that, even though he believed that Dr. Haté was a qualified physician, he believed that she deviated from the standard of care in her treatment of Ashley and Tucker Wright. He stated that Dr. Haté did not monitor the progress of Ashley Wright's labor sufficiently to be present at the time of delivery, but left her to the care of a midwife, even though she knew that Ashley Wright was a high risk delivery due to her gestational diabetes and obesity which can produce a larger baby. He concluded that it was highly unlikely that the injury to Tucker Wright would have occurred if an experienced obstetrician had been present to deliver the baby.

Dr. King stated that, although he did not have any criticisms of midwife Starkey's training, experience, or qualifications, he did not feel that she was qualified to deliver a baby whose mother was a gestational diabetic or obese without the supervision and presence of a physician. He faulted midwife Starkey, not for performing a McRoberts maneuver with suprapubic pressure, but for allegedly rotating the baby's head on the perineum as indicated in her typed delivery notes. Dr. King found that to be a deviation from the standard of care.

The Hospital District's Arguments

Staffing and the Absence of Dr. Haté: Based upon the evidence, the hospital was preparing to argue that it did not breach its standard of care to Ashley Wright. The hospital demonstrated that midwife Starkey was an experienced professional with sufficient training and qualifications to deliver a high-risk pregnancy unassisted. Cara Starkey has a bachelor's and master's degree in nursing and is a certified nurse midwife who had previously worked in a high-risk obstetrical unit. She testified in her deposition that she was trained in school and had participated in drills at Parrish Medical Center, using various maneuvers, to deliver babies having shoulder dystocia. She stated that she had likely performed the McRoberts maneuver 10 times or more in a year and had never had a child sustain a brachial plexus injury. Midwife Starkey testified in a deposition that she used an average, not excessive, amount of traction on Tucker to deliver him.

When asked why she did not call someone else into the delivery room to document what was happening, Ms. Starkey replied that she was focused on "getting the baby out" and believed that Dr. Haté was on her way to the delivery room, based upon the time and an earlier phone call from Dr. Haté.

In her deposition, Dr. Haté stated that she planned only to be the backup for Ashley Wright's delivery in case her help was needed. They were not expecting shoulder dystocia because, according to the ultrasound performed when Ashley was admitted for delivery, the baby's weight was projected at 7 pounds 6 ounces, not a large baby, and a size that would not suggest complications or shoulder dystocia. Dr. Haté explained in her deposition that shoulder dystocia does not become apparent until the head delivers. At that point, time is of the essence for the baby's survival and the healthcare workers cannot leave the patient to summon additional

assistance. If the baby is not quickly delivered, brain damage or death will be the result.

At one point in his deposition, Dr. King, the Wright's expert, was asked if Tucker could still have had the very same injury had Dr. Haté been present, and he acknowledged that Tucker could have.

The hospital district offered the deposition of Dr. Jordan Perlow, an obstetrician, as its expert witness. Dr. Perlow disagreed with Dr. King, the Wrights' medical expert, and said that it was not necessary nor below the standard of care for midwife Starkey to attend this particular delivery without a physician in the room. Dr. Perlow felt that the management that midwife Starkey provided was within the scope of her practice and that she had the backup support available from Dr. Haté if needed. He did note, though, that there was some lack of documentation and detail in the medical record of midwife Starkey.

Dr. Perlow testified that he looked specifically at the hospital's collaborative protocol and found it to be specifically within the scope of practice for a midwife to assess and provide management of shoulder dystocia. He further believed that midwife Starkey's actions were within the midwifery domain to deliver Ashley Wright's baby because she had a normal labor course, a normal estimated fetal weight, and a normal reassuring fetal heart rate. Midwife Starkey recognized the shoulder dystocia problem as soon as it occurred and then acted efficiently and appropriately in a timely fashion. Dr. Perlow said midwife Starkey resolved the shoulder dystocia in 1 to 2 minutes as evidenced by the fact that there was no fetal asphyxia and no fetal or neonatal death, and the Apgar scores were good at 5 minutes. His expert testimony, supported by his medical conclusions, lends credence to the theory that the amount of time that elapsed from the recognition of the shoulder dystocia to Tucker's delivery was 1 to 2 minutes, not 10 to 15 minutes as the Wrights suggest.

In assessing Ashley Wright's medical condition, Dr. Perlow noted that Ashley Wright was not medication-dependent for her gestational diabetes and was perhaps not as high-risk as others with gestational diabetes who were medication dependent.

When asked his opinion of Dr. Haté's prenatal medical care, Dr. Perlow responded that Dr. Haté's conduct was appropriate and within the standard of care. She continued to provide care to Ashley Wright when concerned about her noncompliance^v and gestational diabetes, wanted her referred back to her previous obstetrician, and tried to refer her to a high-risk obstetrician. Dr. Haté remained within 3 minutes' drive from the hospital and was available to the nurse-midwife.

When the Wrights' attorney asked if Dr. Perlow believed that there were enough staff in the delivery room, he stated that he thought it met the standard of care although more staff and better notification for more people to come would have been ideal. Nevertheless, he said that in all probability, the shoulder dystocia would have likely been resolved by the time that additional staff would have arrived.

The McRoberts Maneuver and Delivery: Each side has a seemingly valid argument as to whether the McRoberts maneuver and delivery were properly performed.

The Wrights argue that they were not properly performed. In support of their position they look to midwife Starkey's delivery notes which state that "moderate shoulder dystocia relieved with McRoberts, suprapubic pressure and *rotation of the head on the perineum ...*" Because of this notation, the Wrights argue that midwife Starkey rotated the baby's head on the mother's perineum which should not have been undertaken because the rotation of the head would damage the fragile brachial plexus nerves that control the use of the baby's arm, and thereby cause Erb's palsy. A proper execution of the McRoberts maneuver and delivery would have only involved rotating the infant's shoulder, not his head.

The hospital district relied on midwife Starkey's deposition testimony and its medical expert, Dr. Perlow to support its position that the McRoberts maneuver was properly executed.

Midwife Starkey stated that when Tucker's head came out and retracted, she realized, based upon her training, that she had encountered shoulder dystocia and quickly needed to perform a McRoberts maneuver to help manipulate the shoulder downward for delivery. Ms. Starkey called for Donna Hayashi, the attending nurse, who came to the bed and began applying suprapubic pressure while Ashley Wright's legs were pulled back by family members. Ms. Starkey said that while she had

her hands supporting Tucker's head, she rotated the left shoulder which allowed for the release of the right shoulder and delivery of the baby. She testified that she did not pull on the baby's head in the delivery process and was able to get behind the baby's shoulder to rotate him.

Dr. Perlow, the hospital district's expert, said that midwife Starkey recognized and resolved the shoulder dystocia problem, prevented any neurologic injury from the brain, and concluded that she saved the baby's life. When asked about the seeming contradiction between the delivery notes, which said midwife Starkey rotated the baby's head versus her deposition testimony in which she said that she rotated the shoulder, Dr. Perlow felt that she wrote the note after dealing with a true obstetrical emergency and either misstated what she did or perhaps didn't accurately write what she did but that her actions were not below the standard of care.^{vi}

Causation

The Wrights argue that midwife Starkey's improper rotation of Tucker's head caused the brachial plexus injury and the resulting Erb's palsy. They also argue that if the more experienced Dr. Haté had been present to deliver Tucker, his injury would not have occurred.

Dr. John Grossman, the Wright's expert, a hand and peripheral nerve surgeon who specializes in performing brachial plexus surgeries has operated on Tucker twice. It is his opinion that the damage to the nerves was caused by traction to the brachial plexus during delivery. He did not believe that the injury could have been caused by the maternal pressure of the delivery.

In contrast, the hospital district does not believe that midwife Starkey's actions were necessarily the cause of Tucker's injury as one might assume. Dr. Perlow noted that "there can be rotation of the head to a degree in order to effect the delivery." He explained that when the baby's head comes out, he or she is "essentially looking straight down at the ground" and there has to be a process of "restitution where the head then goes 90 degrees one way or the other, depending upon the baby's position ... [and] there can be a need for some rotation to get to that point." Dr. Perlow believed that midwife Starkey also completed a technique referred to as a Rubin maneuver, which involves the rotation of the shoulder, and a resulting rotation of the head on the perineum. If, however,

midwife Starkey rotated the baby's head as opposed to rotating the baby's shoulder, he concluded that it would be a violation of the standard of care.

Dr. Perlow noted that medical literature has recognized that shoulder dystocia in itself, the stretching of the baby's neck as it continues down the birth canal with the shoulder hung up at the pubic symphysis, would be sufficient to cause the baby's injury without additional traction forces. The special master found this statement was corroborated by medical research.

The American College of Obstetricians and Gynecologists released a 2014 report entitled "Neonatal Brachial Plexus Palsy." The report stated that neonatal brachial plexus palsy, or NBPP, which includes Erb's palsy and Klumpke palsy, is a rare event and occurs only in approximately 1.5 of every 1,000 births. The report addressed the difficulty of determining which risk factors are statistically reliable predictors of NBPP. While noting that NBPP occurs more often as birth weight increases, the report concluded that the majority of NBPP cases occur with mothers who do not have diabetes and in babies who weigh less than 8.8 pounds. For women who have diabetes and an estimated baby birth weight greater than 9.92 pounds, the ability to accurately predict NBPP was only 5 percent. In addressing the issue of causation, the report stated that risk factors for shoulder dystocia are not very reliable. The report also provided that, while it was routinely believed during most of the last century that NBPP was caused by force used by the person delivering the baby, there was no clinical data supporting that conclusion. More recently, data began appearing which indicated that other forces unrelated to the injury, such as congenital and uterine abnormalities or malpositioning of the fetus within the uterus, played a role in NBPP.^{vii}

When the hospital district deposed Dr. Andrew Price, who has assisted Dr. Grossman in Tucker's surgeries, Dr. Price testified that Tucker's injury was due to traction forces, but had no opinion as to the mechanical causes of the injury. He also noted that he had seen children with brachial plexus injuries who were delivered by Cesarean sections.

Damages

Because Tucker has Erb's palsy, his doctors have testified that Tucker will have a weakness in his right arm throughout his life.

Dr. Price testified that there will be some limitations on Tucker's future activities and career opportunities. He projects that Tucker will experience muscle weakening and his right arm will be somewhat smaller, perhaps a centimeter or two smaller, than his left arm. The shoulder girdle will also be a little smaller creating an asymmetry. Tucker does not have any impairment in the function of his hand or wrist. Sports that require the use of both hands will not be easy for Tucker, but Dr. Price testified that Tucker should be able to play sports such as football, basketball, baseball, soccer, tennis, swimming, martial arts, most everything else.

Dr. Price testified that Tucker's injury should not impair his academic performance but that some careers would be difficult for him. He would not likely be able to perform many upward motion labors requiring significant strength and he would probably not be able to pursue a military career or work as a firefighter, law enforcement officer, or mechanic. But a wide range of other careers should be open to him.

Unlike the claim bill, Dr. Price declined to characterize and refer to Tucker as having "partial paralysis," but rather as having deficits of strength and flexibility.

Dr. Price noted that Tucker does not need any adaptive equipment to compensate for his injury and is not on any medications for his injury nor should he need any future medications for the injury.

Final Conclusion in Light of the Evidence

The evidence made available to the special masters indicates that the hospital district had a plausible defense to the medical malpractice claims by the Wrights. However, the Wrights claims are also at least plausible. A negligently performed McRoberts maneuver and delivery can cause Erb's palsy, but no independent verifiable evidence such as a video tape exists to prove what actually happened as Tucker Wright was being born. Similarly, one might agree with Dr. Perlow as he stated in his deposition, "I would say that the nurse, Nurse Starkey, saved this baby's life" even though Tucker was born with Erb's palsy. Thus, considering the costs of litigation and the uncertainty of juries, the settlement agreement is reasonable under the circumstances.

SETTLEMENT AGREEMENT

Per the terms of its settlement with the Wrights, the North Brevard County Hospital District did not present evidence or make any arguments during the de novo special master hearing. The district, however, did provide information or evidence in response to specific requests. Much of the information was prepared as part of its defense to the Wright's medical malpractice lawsuit. However, the information or evidence provided by the hospital district suggests that the hospital district, at least initially, intended to dispute the Wright's negligence allegations.

The Wrights initially offered to settle the claim for \$2,500,000. However, the parties settled this suit at mediation for \$595,000, of which \$200,000 has been paid. The Order Approving Settlement authorized the payment of attorney fees of 25 percent, or \$50,000, and attorney costs of \$15,790.15 from the initial \$200,000. A petition to reduce medical liens was approved and their payment authorized in two installments, with the first installment of \$28,123.20 coming from the initial allocation and the second installment being paid contingent upon passage of the claim bill. Roy and Ashley Wright received 25 percent or \$26,521.66 and the Tucker Wright Trust received 75 percent of the net balance or \$79,564.99.

Should the claim bill pass, the proceeds would be distributed first to pay attorney fees of 25 percent or \$98,750, plus costs followed by a net award of 25 percent distributed to Roy and Ashley Wright for the expenses they have incurred caring for Tucker and the remaining 75 percent to Tucker's trust. Roy and Ashley Wright were approved as co-trustees to manage the assets of Tucker until he reaches majority. The funds are restricted to his educational and healthcare needs and may be invested only in secure, conservative minimal risk investments.

The settlement release, dated December 20, 2013, states that neither the release nor payments are to be construed as an admission of liability on the part of the North Brevard County Hospital District. The Hospital District does not oppose the claim bill. The claim bill will be solely funded by a dedicated trust fund of the North Brevard County Hospital District d/b/a Parrish Medical Center because the district does not maintain professional liability insurance that applies to the claim.

Because the settlement amount exceeds \$50,000, the settlement agreement had to be approved by a judge who was required to appoint a guardian ad litem to represent Tucker's interests.^{viii} Tucker's guardian ad litem, attorney Arthur W. Niergarth, Jr., reviewed the proposed settlement on behalf of Tucker and filed his recommendation with the court in support of the proposed settlement

ATTORNEYS FEES:

Section 768.28, F.S., limits the claimant's attorney fees to 25 percent of the claimant's total recovery by way of any judgment or settlement obtained pursuant to s. 768.28, F.S. The claimant's attorney has acknowledged this limitation and verified in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorney fees.

RECOMMENDATIONS:

Based upon the foregoing, the undersigned recommends that Senate Bill 60 be reported FAVORABLY.

Respectfully submitted,

Eva M. Davis
Senate Special Master

CS by Judiciary on February 17, 2015:

The committee substitute corrects the spelling of midwife Starkey, clarifies that the McRoberts maneuver does not involve the rotation of an infant's head during delivery, states that an additional procedure was performed to deliver the baby, deletes a reference to the infant's arm being paralyzed, and removes references to the negligence of "an employee of" the Parrish Medical Center.

ⁱ When Tucker was born, he actually weighed over a pound more than what the sonogram projected. Even at that birth weight, however, he did not meet the definition of "macrosomic" or excessively large baby.

ⁱⁱ Section 766.102(1), F.S.

ⁱⁱⁱ *Saunders v. Dickens*, No. SC12-2314, 2014 WL 3361813, at *6 (Fla. July 10, 2014).

^{iv} *Id.*, at *7.

^v In her progress notes on the date of the delivery, Dr. Haté described Ashley Wright as being noncompliant. She stated that Ashley Wright left her first obstetrician late in the pregnancy and refused to return to that obstetrician's care when encouraged to do so. Ashley chose to discontinue taking insulin to treat her gestational diabetes, and did not keep her high risk appointment when referred to a high risk specialist. The facts are in dispute as to why she did not keep the appointment.

^{vi} Dr. Perlow indicates that he believed that midwife Starkey might have actually performed a Rubin maneuver in addition to a McRoberts maneuver. The Rubin maneuver involves reaching in and rotating a shoulder of the baby to help dislodge it.

vii American College of Obstetricians and Gynecologists, Task Force on Neonatal Brachial Plexus Palsy, *Neonatal Brachial Plexus Palsy*, 2014.

viii Sections 744.3025 and 744.387, F.S.

By the Committee on Judiciary; and Senator Simpson

590-01674-15

201560c1

1 A bill to be entitled
2 An act for the relief of Roy Wright and Ashley Wright
3 by the North Brevard County Hospital District;
4 providing for an appropriation to compensate Roy
5 Wright and Ashley Wright, individually and as
6 guardians of Tucker Wright, for injuries and damages
7 sustained by Tucker Wright as a result of the
8 negligence of Parrish Medical Center; providing a
9 limitation on the payment of fees and costs; providing
10 that certain payments and the appropriation satisfy
11 all present and future claims related to the negligent
12 act; providing an effective date.

13
14 WHEREAS, on July 15, 2009, Ashley Wright, suffering from
15 gestational diabetes, was admitted as a high-risk obstetrical
16 patient at Parrish Medical Center, operated by the North Brevard
17 County Hospital District, in Titusville, Florida, and

18 WHEREAS, mothers with gestational diabetes are classified
19 as high-risk obstetrical patients because their fetuses tend to
20 be larger than normal and large fetuses are at risk for
21 complications during the birth process, and

22 WHEREAS, Ashley Wright's care at Parrish Medical Center was
23 provided by Vidya Hate, M.D., an obstetrician, and Cara Starkey,
24 R.N., a midwife, both employees of Parrish Medical Center, and

25 WHEREAS, on July 16, 2009, Ashley Wright was in labor with
26 her unborn child, Tucker Wright, and Nurse Starkey failed to
27 notify Dr. Hate of the impending delivery as previously
28 instructed and delivered Tucker Wright herself without the
29 presence, supervision, or assistance of Dr. Hate, and

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30 WHEREAS, complications arose during the delivery, and
31 Tucker Wright developed shoulder dystocia, a condition in which
32 the shoulder of a fetus becomes wedged on the mother's pelvic
33 bone as the fetus transits the birth canal, which condition is a
34 known and recognized risk for mothers with gestational diabetes,
35 and

36 WHEREAS, Nurse Starkey attempted to resolve the shoulder
37 dystocia by performing a McRoberts maneuver and a procedure in
38 which the shoulders of a fetus are gently rotated by hand
39 underneath the shoulders, allowing the shoulders to pass
40 underneath the pelvic bone and out through the birth canal, and

41 WHEREAS, Nurse Starkey negligently rotated the head of the
42 fetus on the perineum, causing a brachial plexus injury to
43 Tucker Wright which injured his right arm and will limit his
44 activities and future career options, and

45 WHEREAS, all parties to this claim agree that rotation of
46 the head of a fetus on the perineum is an improper maneuver
47 because rotation of the head with pressure can stretch and
48 damage the nerves in a fetus's neck which control the use of
49 muscles in the arm, and

50 WHEREAS, Tucker Wright has undergone two surgeries on his
51 right shoulder and regained some use of his right arm but
52 continues to be challenged with functional deficits that may be
53 permanent, and

54 WHEREAS, Roy Wright and Ashley Wright have incurred medical
55 expenses on behalf of Tucker Wright in the amount of \$320,016.91
56 due to the injury caused by the negligence of Parrish Medical
57 Center, and may incur additional expenses for surgeries needed
58 as Tucker Wright grows older, and

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59 WHEREAS, on January 11, 2012, Roy Wright and Ashley Wright,
60 individually and as guardians of Tucker Wright, filed suit
61 against the North Brevard County Hospital District in the
62 Circuit Court for Brevard County, Case No. 05-2012-CA-024060, to
63 recover damages for the injuries sustained by Tucker Wright as a
64 result of the negligence of Parrish Medical Center, and

65 WHEREAS, the North Brevard County Hospital District, Roy
66 Wright, and Ashley Wright agreed to settle the lawsuit for
67 \$595,000, and

68 WHEREAS, the North Brevard County Hospital District paid
69 \$200,000 of the settlement pursuant to the statutory limits of
70 liability set forth in s. 768.28, Florida Statutes, and there
71 remains \$395,000 of the settlement unsatisfied, and

72 WHEREAS, the North Brevard County Hospital District does
73 not oppose passage of this claim bill, NOW, THEREFORE,

74
75 Be It Enacted by the Legislature of the State of Florida:

76
77 Section 1. The facts stated in the preamble to this act are
78 found and declared to be true.

79 Section 2. The North Brevard County Hospital District is
80 authorized and directed to appropriate from funds of the
81 district not otherwise appropriated and to draw a warrant,
82 payable to Roy Wright and Ashley Wright, individually and as
83 guardians for Tucker Wright, for the total amount of \$395,000 as
84 compensation for injuries and damages sustained by Tucker Wright
85 as a result of the negligence of Parrish Medical Center.

86 Section 3. The total amount paid for attorney fees,
87 lobbying fees, costs, and other similar expenses relating to

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88 this claim may not exceed 25 percent of the amount awarded under
89 this act.

90 Section 4. The amount paid by the North Brevard County
91 Hospital District pursuant to s. 768.28, Florida Statutes, and
92 the amount awarded under this act are intended to provide the
93 sole compensation for all present and future claims arising out
94 of the factual situation described in this act which resulted in
95 the injuries to Tucker Wright.

96 Section 5. This act shall take effect upon becoming a law.

CourtSmart Tag Report

Room: SB 301
Caption: Senate Committee on Community Affairs

Case:

Type:
Judge:

Started: 3/4/2015 1:03:16 PM
Ends: 3/4/2015 2:33:15 PM **Length:** 01:30:00

1:03:25 PM Call to order
1:04:27 PM Tab 6 SB 408 Senator Simmons
1:06:43 PM Bill Barrett, City of St. Cloud
1:06:58 PM Roll call on SB 408
1:07:10 PM Bill reported favorably
1:07:28 PM Tab 2 SB 140 Senator Hukill
1:10:19 PM Ellen Darden, NSB Board of Realtors
1:11:46 PM G. G. Galloway, Commercial Broker
1:13:29 PM Senator Thompson
1:13:57 PM Trey Price, Florida Realtors
1:14:45 PM Carolyn Johnson, Florida Chamber of Commerce
1:17:34 PM Roll call SB 140
1:17:47 PM Bill reported favorably
1:18:25 PM Tab 3 SB 136
1:18:48 PM Nancy Corwell, Senator Hays LA
1:19:42 PM Amendment 1 Barcode 979716
1:20:11 PM Amendment passes
1:20:48 PM Senator Brandes
1:21:39 PM Roll call SB 136
1:21:46 PM Bill reported favorably
1:21:54 PM Tab 5 SB 154
1:22:24 PM Nancy Corwell, Senator Hays LA
1:23:33 PM Amendment 1 Barcode 389656
1:24:04 PM Amendment passes
1:24:26 PM Eric Poole, Florida Assoc. of Counties
1:25:10 PM Senator Bradley
1:27:30 PM Roll call SB 154
1:27:42 PM Bill reported favorably
1:28:06 PM Tab 9 SJR 652 Senator Flores
1:29:08 PM Senator Brandes
1:30:43 PM Senator Simpson
1:31:35 PM Roll call on SJR 652
1:31:39 PM Bill reported favorably
1:31:49 PM Tab 10 SB 650 Senator Flores
1:31:55 PM Roll call SB 650
1:32:02 PM Bill reported favorably
1:32:19 PM Tab 8 SB 594
1:32:34 PM Ms. Barnes, Senator Stargel LA
1:32:57 PM Amendment 1 Barcode 162498
1:33:21 PM Amendment passes
1:33:42 PM Michelle Welch, Wishing Well Barn
1:37:59 PM Angela Higgenbotham, Rocking H Ranch
1:42:16 PM Senator Abruzzo
1:43:35 PM Senator Simpson
1:43:42 PM Senator Thompson
1:43:56 PM Ms. Barnes
1:44:15 PM Senator Bradley
1:46:11 PM Roll call on SB 594
1:46:22 PM Bill reported favorably
1:46:31 PM Tab 4 SB 778 Senator Hays
1:47:36 PM Amendment 1 Barcode 569074
1:47:42 PM Senator Hays

1:48:22 PM Amendment passes
1:48:33 PM Amendment 2 Barcode 904154
1:48:37 PM Senator Hays
1:49:20 PM Amendment to Amendment Barcode 534942
1:49:24 PM Senator Brandes
1:49:30 PM Senator Bradley
1:49:38 PM Senator Dean
1:50:27 PM Casey Cook, Florida League of Cities
1:50:45 PM Senator Abruzzo
1:51:19 PM Senator Brandes
1:52:28 PM Amendment to Amendment fails
1:52:55 PM Amendment 2 Barcode 904154 passes
1:53:20 PM Eric Poole, Florida Assoc. of Counties
1:55:46 PM Senator Brandes
1:56:51 PM Casey Cook, Florida League of Cities
1:58:48 PM Senator Abruzzo
1:59:28 PM Senator Brandes
2:00:29 PM Senator Dean
2:01:05 PM Senator Diaz de la Portilla
2:02:02 PM Senator Brandes
2:03:10 PM Rich Templin, Florida AFL-CIO
2:08:11 PM Richard Watson, Associated Builders and Contractors
2:11:09 PM Senator Diaz de la Portilla
2:14:55 PM Senator Thompson
2:16:26 PM Senator Hays close
2:20:55 PM Roll call on SB 778
2:21:22 PM Bill reported favorably
2:21:34 PM Tab 1 SB 668 Senator Latvala
2:23:28 PM Amendment 1 Barcode 244864
2:23:34 PM Senator Diaz de la Portilla
2:24:09 PM Amendment passes
2:24:24 PM Senator Brandes
2:25:03 PM Amy Datz, Environmental Caucus of Florida
2:25:59 PM Senator Abruzzo
2:26:09 PM Senator Diaz de la Portilla
2:26:33 PM Senator Simpson
2:26:40 PM Roll call SB 668
2:26:46 PM Bill reported favorably
2:27:03 PM Tab 11 SB 290 Senator Brandes
2:27:41 PM Senator Diaz de la Portilla
2:28:42 PM Senator Dean
2:29:14 PM Marion Hammer, NRA
2:29:39 PM Lieutenant George Maddox, Florida Sheriff's Association
2:29:47 PM Senator Abruzzo
2:31:04 PM Roll call on SB 290
2:31:18 PM Bill reported favorably
2:31:30 PM Senator Diaz de la Portilla
2:31:38 PM Senator Brandes
2:31:41 PM Senator Abruzzo
2:32:07 PM Tab 12 SB 60 Senator Simpson
2:32:33 PM Senator Dean
2:32:48 PM Roll call SB 60
2:33:01 PM Bill reported favorably
2:33:09 PM Adjourned