

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/CS/SB 590

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

SUBJECT: Adoption

DATE: January 13, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>FP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 590 reduces the authority or influence of a parent to select a prospective adoptive parent for his or her child if the parent is in the process of losing his or her parental rights in a dependency proceeding. Under existing law, the dependency process starts with the filing of a petition alleging that a child has been abandoned, abused, or neglected by the child’s parent or parents or a legal custodian. While the dependency case is pending, an adoption entity may intervene on behalf of the child’s parent to have a child placed in the home of a prospective adoptive parent selected by the parent. The bill provides a timeline for the court to hold a final hearing on a motion to intervene and to issue a written final order. The timeline may not apply if good cause or mutual agreement of the parties warrants otherwise.

As under existing law, the bill requires a court to consider the best interests of the child when selecting a prospective adoptive parent from among competing prospective adoptive parents. However, the bill changes what a court must consider in determining the child’s best interests. Under existing law, a court must consider “the rights of the parent to determine an appropriate placement for a child, the permanency offered, the child’s binding with any potential adoptive home that the child has been residing in, and the importance of maintaining sibling relationships.”<sup>1</sup> Under the bill, the court must consider factors including the “rights of the parent

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<sup>1</sup> Section 63.082(6)(e), F.S.

based on the well-being of the child,” the permanency offered by a placement, the continuity of the current placement, sibling relationships, and the preferences of the child.

Although the bill limits a parent’s right to choose an adoptive parent, the bill requires parents to be given written notice of the right to participate in a private adoption plan at an earlier stage of the dependency proceedings. Current law does not require a court to notify a parent of these rights until just prior to the filing of a petition for termination of parental rights. Moving up the time of notice might expedite the permanent placement of a child.

Current law provides that a parent’s consent to an adoption is valid for children who are in the custody of the Department of Children and Families. This bill expressly allows a parent to consent when a child is under the supervision of the DCF, or is otherwise subject to the jurisdiction of the dependency court.

Once the court determines that potential adoptive parents are properly qualified and that adoption appears to be in the best interests of the child, current law requires the court to order an immediate transfer of custody of the child to potential adoptive parents. Rather than require immediate transfer of the child, the bill authorizes the court to establish reasonable requirements to allow the child a reasonable period of time to transition to final custody with the adoptive parents. This provision provides the court flexibility in determining transfer on a case-by-case basis.

## **II. Present Situation:**

### **The Department of Children and Families and Dependency**

Chapter 39, F.S., governs child protection for the state. Chapter 63, F.S., addresses adoption. The Department of Children and Families (DCF) investigates all allegations of abuse, neglect, and abandonment.<sup>2</sup> The DCF may file a petition with the circuit court to place the child in shelter and enter an adjudication that the child is dependent.

A child who is dependent is a child found by the court:

- (a) To have been abandoned, abused, or neglected by the child’s parent or parents or legal custodians;
- (b) To have been surrendered to the department, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency for purpose of adoption;
- (c) To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of this chapter, a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;
- (d) To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;

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<sup>2</sup> Section 39.301(1), F.S.

- (e) To have no parent or legal custodians capable of providing supervision and care;
- (f) To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians; or
- (g) To have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care.<sup>3</sup>

If the court adjudicates the child as dependent, the child is placed in the state's care.<sup>4</sup> When a child is placed in the state's care the state "acts in the protective and provisional role of in loco parentis" or in place of the parent for the child.<sup>5</sup>

### ***Dependency Proceedings***

The purpose of dependency proceedings is for the court to determine if allegations of child abuse, abandonment, or neglect stated in a petition filed by the DCF or other interested person are true.<sup>6</sup> If the court finds the allegations to be true, the court will direct a course of action to protect a child. A course of action is provided through a written case plan, which may include requiring a parent, legal guardian, or a child into treatment and services, dependency mediation, and placement of a child in protective supervision.<sup>7</sup>

Dependency proceedings may include a shelter hearing, an arraignment on dependency, an adjudication of dependency hearing, a disposition hearing, and a hearing on the termination of parental rights.

### **Detention or Shelter Determination of a Child**

A shelter hearing is a proceeding in which a court determines whether probable cause exists to keep a child in a home other than the parent's or a facility pending further investigation of the circumstances leading to the detention of a child.<sup>8</sup> The circumstances in which a child may be detained or taken into custody by DCF are limited.

A hospital administrator or licensed health care professional may detain a child without parental consent if returning the child to the parent or caregiver presents an imminent danger to the child. If the child is detained, the medical provider must immediately notify the DCF. Upon receiving notification, the DCF must immediately notify the parents or legal custodians that their child is being detained and begin a child protective investigation.<sup>9</sup>

Alternatively, a law enforcement officer may take a child into custody, if probable cause exists that:

- The child has been abused, neglected, or abandoned, or suffers from or is in imminent danger of illness or injury due to abuse, neglect, or abandonment;

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<sup>3</sup> Section 39.01(15), F.S.

<sup>4</sup> Section 39.501(1) and (2), F.S.

<sup>5</sup> *Buckner v. Family Services of Central Florida, Inc.*, 876 So. 2d 1285, 1288 (Fla. 5th DCA 2004).

<sup>6</sup> Section 39.501(1) and (2), F.S.

<sup>7</sup> Section 39.501(1)(b), F.S.

<sup>8</sup> *See s. 39.001(72)*, F.S.

<sup>9</sup> Section 39.395, F.S.

- The parent or legal custodian of the child has materially violated a condition of placement ordered by the court; or
- The child has no parent, legal custodian, or responsible adult relative immediately known and able to provide care.<sup>10</sup>

If a child is taken custody, the attorney representing the DCF must request a hearing within 24 hours after the removal of the child.<sup>11</sup> A child may not be held in a shelter for more than 24 hours unless a court orders the child to remain in the shelter after a shelter hearing.<sup>12</sup>

#### Hearings on Arraignment and Adjudication of Dependency

The purpose of an arraignment hearing is for a parent to admit, deny, or consent to findings of dependency that are alleged in the petition for dependency.<sup>13</sup> Within 28 days after a child has been sheltered, the court must hold an arraignment hearing on the petition for dependency.<sup>14</sup> If a parent or legal guardian denies an allegation in the petition, the court must hold an adjudicatory hearing within 30 days.<sup>15</sup> If the court finds the child dependent at the adjudicatory hearing and the child is placed in out-of-home care, the court must first consider placement of the child with relatives.<sup>16</sup> If a child cannot remain safely in the original home and no adult relative is available for temporary, legal custody, the state may place the child with an adult willing to care for the child under the protective supervision of the DCF.<sup>17</sup> Placement of the child to the temporary, legal custody of the DCF invests the DCF with the rights and responsibilities of a legal custodian.<sup>18</sup>

#### **Disposition Hearing**

A court must hold a disposition hearing after any of the following:

- The court enters an adjudication of dependency;
- The parents or legal custodian consent to the finding of dependency or admit the allegations in the petition; or
- The parents or legal custodians have failed to appear at the arraignment hearing after being properly noticed, or are unable to be found despite a diligent search.<sup>19</sup>

The purpose of the disposition hearing is to determine a course of treatment and services and placement of the child under protective supervision.<sup>20</sup> After the disposition hearing, the court may hold a postdisposition hearing to change the temporary legal custody or conditions of

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<sup>10</sup> Section 39.401(1)(b), F.S.

<sup>11</sup> Section 39.401(3)(b), F.S.

<sup>12</sup> Section 39.402(8)(a), F.S.

<sup>13</sup> Section 39.506(1), F.S.

<sup>14</sup> If any party has requested a demand for early filing, the court must hold the arraignment hearing within 7 days after the date of filing of the petition Section 39.506(1), F.S.

<sup>15</sup> Section 39.506(1), F.S.

<sup>16</sup> Section 39.507(7)(c), F.S.

<sup>17</sup> Section 39.521(3)(c), F.S.

<sup>18</sup> Section 39.521(3)(d), F.S.

<sup>19</sup> Section 39.521(1), F.S.

<sup>20</sup> Section 39.521(1)(b), F.S.

protective supervision.<sup>21</sup> In determining whether to order a change in custody, the court must base its decision on the best interest of the child. As a factor of the best interest standard, the court must consider the continuity of the child's placement in the same out-of-home residence.<sup>22</sup>

#### Hearing on a Termination of Parental Rights

If an attorney for the DCF decides that a termination of parental rights is appropriate, the DCF must allege in a petition for a termination of parental rights one of the following grounds:

- The parent or parents voluntarily executed a written surrender of the child to the DCF for adoption;
- The parent or parents have abandoned the child;
- The parent or parents through their conduct demonstrate that continuing involvement threatens the child's life, safety, or well-being irrespective of the provision of services;
- The parent's status of incarceration is harmful to the child based on the length of time the parent is expected to be unavailable to the child or the nature of the criminal history of the parent;
- The parent or parents have failed to substantially comply with a case plan;
- The parent or parents have engaged in egregious conduct that threatens the child's life, safety, or well-being, such as subjecting the child to sexual abuse;
- The parent or parents have committed certain criminal acts, including having to register as a sexual predator;
- The parental rights of a parent of a sibling have been terminated involuntarily;
- The parent or parents have an extensive history of unsuccessfully treated substance abuse; including exposing the child in utero to a controlled substance or alcohol; or
- The child was conceived as a result of sexual battery by the parent.<sup>23</sup>

The DCF must file a petition to terminate parental rights within 60 days after the following if:

- The child is not returned to the physical custody of the parents within 12 months after the child was sheltered or adjudicated dependent, whichever is first;
- A petition for termination of parental rights has not otherwise been filed, and the child has been in out-of-home care in the responsibility of the state for 12 of the most recent 22 months;
- A parent has been convicted of the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child of the parent, or a felony battery that resulted in serious bodily injury to the child or another child of the parent; or
- A court determines that reasonable efforts to reunify the child and parent are not required.<sup>24</sup>

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<sup>21</sup> Section 39.522, F.S.

<sup>22</sup> Section 39.522(1), F.S.

<sup>23</sup> Section 39.806(1), F.S.

<sup>24</sup> Section 39.8055(1), F.S. Exceptions to the requirement to file a termination of parental rights include the following: the child is being cared for by a qualifying relative or that the DCF provides a compelling reason that filing such a petition is not in the best interests of the child. Compelling reasons include that: adoption is not the appropriate permanency goal for the child; no grounds to file a petition to terminate parental rights exist; the child is an unaccompanied refugee minor; international legal obligations or compelling foreign-policy reasons preclude terminating parental rights; or the department has not provided to the family, consistent with the time period in the case plan, services that the department deems necessary for the safe return of the child to the home. Section 39.8055(2), F.S.

### Adoption

If the DCF is given custody of a child for a subsequent adoption under chapter 39, F.S., the DCF may place the child with a licensed adoption agency, a registered child-caring agency, or a family home for prospective adoption.<sup>25</sup> Prospective adoptive parents may not file a petition for adoption until the court has entered a judgment terminating parental rights.

In instances in which a child is adjudicated dependent but parental rights have not yet been terminated, a parent may consent to place a minor with an adoption entity or qualified adoptive parents. The court considers consent given in these circumstances to be valid, binding, and enforceable.<sup>26</sup> After the parent gives consent, the adoption entity may intervene in the dependency case and provide the court with a copy of the preliminary home study of the prospective adoptive parents and other evidence of the suitability of the placement.<sup>27</sup> The dependency court will hold a hearing to review documents in support of intervention and determine whether a change in placement is appropriate.<sup>28</sup>

In determining whether the child's best interests are served by transferring custody to the prospective adoptive parent selected by the child's parent, the court must consider the rights of the parent to determine an appropriate placement, the permanency offered, the child's bonding to the potential adoptive home, and the importance of maintaining sibling relationships, if any.<sup>29</sup>

If a court determines that a prospective adoptive parent is properly qualified to adopt the child and that adoption appears to be in the best interests of the child, the court must immediately order the transfer of the custody of the child to prospective adoptive parents.<sup>30</sup>

### **Parental Rights to Select a Prospective Adoptive Parent**

In the case of *In re Adoption of K.A.G.*, 152 So. 3d 1271 (Fla. 5th DCA 2014), the DCF instituted dependency proceedings and filed a shelter petition on behalf of a child whose father awaited trial for murdering the child's mother. The child was placed in the temporary custody of his maternal aunt and her fiancé. After the DCF petitioned to involuntarily terminate parental rights, the paternal grandmother petitioned to terminate the father's parental rights and adopt the child. The father had given written consent to terminate parental rights and for the grandmother to adopt the child.<sup>31</sup>

The trial court ruled that the father's consent to terminate parental rights was conditional on allowing the grandmother to adopt the child. Therefore, the Aunt did not have the required consent to proceed with her petition for adoption.<sup>32</sup> The appeals court agreed with the trial court that the father's consent was properly conditional.<sup>33</sup> The court held that under these

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<sup>25</sup> Section 39.812(1), F.S.

<sup>26</sup> Section 63.082(6)(a), F.S.

<sup>27</sup> Section 63.082(6)(b), F.S.

<sup>28</sup> Section 63.082(6)(c), F.S.

<sup>29</sup> Section 63.082(e), F.S.

<sup>30</sup> Section 63.082(6)(d), F.S.

<sup>31</sup> *Id.* at 1271.

<sup>32</sup> *Id.* at 1272.

<sup>33</sup> *Id.* at 1276.

circumstances, the court must analyze the best interest of the child through whether “the birth parent’s choice of prospective adoptive parents is appropriate and protects the well-being of the child; not that it is the best choice as evaluated by the court or the Department in light of other alternatives.”<sup>34</sup>

### ***Due Process Protections for Parents***

A parent who is a party in a dependency action is entitled to due process safeguards. A parent must receive notice of all proceedings or hearings involving the child.<sup>35</sup> Notice of shelter hearings<sup>36</sup> or hearings resulting from medical emergencies must approximate actual notice. Notice by summons is required for other hearings or proceedings before the dependency court.<sup>37</sup>

During a dependency proceeding, a court may decide that a child’s reunification with his or her parent is not viable. In those circumstances, the adoption of the child would often be in the child’s best interest. However, once reunification is no longer viable, but before the parent’s parental rights are terminated, the court must provide written notice to the parent of his or her right to participate in a private adoption plan.

At each stage of dependency proceedings, parents have the right to counsel appointed by the court if the parents are indigent.<sup>38</sup>

### **III. Effect of Proposed Changes:**

The bill reduces the authority or influence of a parent who is in the process of losing parental rights to select a prospective adoptive parent for his or her child.

Under existing law, an adoption entity may intervene in dependency proceedings to have a child who is under the supervision of the DCF placed in the home of a prospective adoptive parent selected by the child’s parent. As under existing law, the bill requires a court to determine the best interests of the child in deciding where a child should be placed. However, the bill changes what a court must consider in determining the child’s best interests. Under existing law, a court must consider “the rights of the parent to determine an appropriate placement for a child, the permanency offered, the child’s bonding with any potential adoptive home that the child has been residing in, and the importance of maintaining sibling relationships.”<sup>39</sup> The bill preserves as a factor the rights of the parent, but requires the rights of the parent to be based on the well-being of the child. This change appears to limit parental choice of a potential adoptive parent. The bill also requires the court to consider the reasonable preferences and wishes of a child, provided that the child is sufficiently mature enough to express a preference.

The bill attempts to expedite the final placement of a child in an adoptive home in two ways.

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<sup>34</sup> *Id.* at 1276, n. 4.

<sup>35</sup> Section 39.502(1), F.S.

<sup>36</sup> A shelter hearing is a hearing in which the court determines whether there is probable cause for keeping a child in shelter status pending investigation of the case. Section 39.01(71), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> Section 39.013(1) and (9)(a), F.S. In fact, the State Constitution requires greater due process than the federal provision, including the appointment of counsel in every case. *M.E.K. v. R.L.K.*, 921 So. 2d 787, 790 (Fla. 5th DCA 2006).

<sup>39</sup> Section 63.082(6)(e), F.S.

First, the bill requires parents to be given notice of the right to participate in a private adoption plan at an earlier stage of the dependency proceedings. Current law requires parental notice to be given just prior to the filing of a petition for termination of parental rights. The bill requires the court to provide written notice to a parent earlier in the process, at the time of arraignment, in addition to other significant markers of the dependency process. Moving up the time of notice might expedite the permanent placement of a child.

In addition to requiring parental notice to be given earlier in the dependency process, the bill imposes a timeline on the court for holding a final hearing on a motion to intervene and issuing a written final order. Under the bill, the court must hold the final hearing on the motion to intervene and change of placement of the child within 30 days after the motion is filed. Additionally, the court must issue a written final order within 15 days after the hearing. The timeline may not apply if good cause or mutual agreement of the parties warrants otherwise.

Current law provides that a parent's consent to an adoption is valid for children who are in the custody of the DCF. This bill expressly expands the circumstances in which a parent may consent for the adoption of a child in dependency proceedings by allowing a parent to consent when a child is under the supervision of the DCF, or otherwise subject to the jurisdiction of the dependency court. Children whose cases are under DCF supervision would include children who are in relative care.

After the final hearing on the motion to intervene, if the court finds both that the prospective adoptive parents are properly qualified and that the adoption is in the best interests of the child, the court must order the transfer of custody of the child to the prospective adoptive parents. Current law requires the court to immediately transfer the custody of a child to the prospective adoptive parents. The bill instead authorizes the court to establish a reasonable timeline to transition custody pending adoption. This provision provides the court flexibility in determining transfer on a case-by-case basis.

The bill takes effect July 1, 2016.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.



**D. Other Constitutional Issues:**

The United States Supreme Court has long recognized that even parents in dependency proceedings have not entirely lost their fundamental rights to parent, as guaranteed by the 14th Amendment of the U.S. Constitution. As stated in *Santosky v. Kramer*, 455 U.S. 745, 753 (1982), the “fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.” Therefore, certain due process protections are required, including the burden of proof in a termination of parental rights case. A court must not enter an order terminating parental rights without a finding of clear and convincing evidence that termination is warranted.<sup>40</sup> Other due process rights include notice and appointment of counsel for indigent parents.<sup>41</sup>

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Based on an analysis of the CS/SB 590, the Office of the State Courts Administrator indicates that an impact on judicial or court workload may result from the bill. Current law recognizes as valid, binding, and enforceable adoption consent from a parent for a child who is in the custody of the DCF. This bill recognizes parental consent for adoption for children who are not just in the custody of the DCF, but also under the supervision of the DCF or otherwise under the jurisdiction of the dependency court. Expanding the pool of cases may increase the number of adoptions. However, OSCA reports that it cannot accurately determine the fiscal impact due to the unavailability of data needed to quantifiably establish any impact.<sup>42</sup> OSCA further notes that the expedited timeframes to act on motions by an adoption entity may affect judicial workloads. However, any impact is unknown at this time.<sup>43</sup>

The Department of Children and Families does not expect a fiscal impact from the bill.<sup>44</sup>

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<sup>40</sup> *Id.* at 756, 769.

<sup>41</sup> *M.E.K. v. R.L.K.*, 921 So.2d 787, 790 (Fla. 5th DCA 2006).

<sup>42</sup> The Office of the State Courts Administrator, *2016 Judicial Impact Statement for CS/SB 590* (Dec. 21, 2015) (on file with the Senate Committee on Judiciary).

<sup>43</sup> Email from Alexis Rojas, The Office of the State Courts Administrator (Jan. 12, 2016) (on file with the Senate Committee on Judiciary).

<sup>44</sup> The Department of Children and Families, *2016 Agency Legislative Bill Analysis for CS/SB 590* (Dec. 8, 2015)(on file with the Senate Committee on Judiciary).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 63.082, 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 Judiciary Committee on January 12, 2016:**

- Expands conditions in which adoption consent by a parent is valid, binding, and enforceable by the court based on a child being under the jurisdiction of the dependency court;
- Provides a timeline for the court to hold a final hearing on a motion to intervene and issue a written final order in response to motions by an adoption entity;
- Redefines for purposes of transferring custody of a child to prospective adoption parents the standard of the best interests of the child by:
  - Restoring the rights of the parent as a factor of best interest, provided that it is based on the well-being of the child;
  - Adding as a factor the preferences of the child, if the child is sufficiently mature to express a preference; and
  - Increasing the amount of information a court may use to determine what is best for the child.
- Authorizes the court to establish reasonable requirements and timeframes for the transfer of final custody of a child to prospective adoptive parents pending adoption.
- Clarifies that the court must provide written notice to a parent of his or her right to participate at three different phases of dependency proceedings: at the arraignment hearing, in the order that approves the case plan, and in the order that changes the permanency goal to adoption.

**CS by Children, Families, and Elder Affairs Committee on November 19, 2015:**

- Allows a parent to execute a consent for placement of a minor that is under the supervision of the department with an adoption entity or qualified prospective adoptive parents and that the consent is valid, binding, and enforceable by the court.
- Revises the standard of review used by the court when making a determination of a change of placement of a child from the appropriateness of the placement to the best interests of the child.
- Ensures that the biological parent is provided written notice of his or her right to participate in a private adoption plan at the arraignment hearing held pursuant to s. 39.506, in the order approving the case plan pursuant to s. 39.603, or in the order

that changes the permanency goal to adoption and terminates the parental rights pursuant to s. 39.621, F.S.

**B. Amendments:**

None.

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

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