

**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 Appropriations

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BILL: CS/SB 192

INTRODUCER: Education Committee and Senator Book and others

SUBJECT: Students with Disabilities in Public Schools

DATE: April 16, 2021

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Brick</u>	<u>Bouck</u>	<u>ED</u>	<b>Fav/CS</b>
2. <u>Underhill</u>	<u>Elwell</u>	<u>AED</u>	<b>Recommend: Favorable</b>
3. <u>Underhill</u>	<u>Sadberry</u>	<u>AP</u>	<b>Favorable</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 192 revises the circumstances and procedures required for restraining students with a disability in public schools and prohibits the use of seclusion. The bill also provides enhanced mechanisms for monitoring specified classrooms. Specifically, the bill requires:

- School districts to:
  - Adopt positive behavior interventions and supports for students with a disability and identify all school personnel authorized to use the interventions and supports.
  - Provide training to all school personnel authorized to use positive behavior interventions and supports.
  - Publish the procedures for training in positive behavior interventions and supports in the district's special policies and procedures manual.
- The development of a crisis intervention plan for a student who has been restrained twice during a semester.
- Schools within the Broward County school district, as part of the Video Cameras in Public School Classrooms Pilot Program, to install a video camera, upon the request of a parent, in self-contained classrooms where students with a disability are enrolled and specifies the circumstances under which the video recording may be viewed.
- The Department of Education (DOE) to collect information relating to the installation and maintenance of video cameras in self-contained classrooms as part of the pilot program.
- Data maintained by the DOE on the use of restraint to be updated monthly and made available to the public through the DOE's website by October 1, 2021.

- The Commissioner of Education to develop recommendations that incorporate instruction regarding emotional or behavioral disabilities into continuing education or in-service training requirements for instructional personnel.

The bill does not require a state appropriation. However, school districts may incur costs to provide training in the use of restraint or positive behavior interventions. The Broward County School District may incur costs related to the installation and maintenance of video recording equipment. See Section V.

The bill takes effect July 1, 2021.

## II. Present Situation:

The Individuals with Disabilities Education Act (IDEA)<sup>1</sup> was enacted to ensure that all children with a disability have available to them a free appropriate public education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and ensuring that the rights of children with disabilities and parents of such children are protected.<sup>2</sup> Accordingly, Florida law specifies conditions regarding the use of restraint and seclusion on students with a disability.<sup>3</sup>

### The Use of Restraint and Seclusion

The Florida Department of Education (DOE) requires that all documenting, reporting, and monitoring requirements related to the use of restraint in schools are based on the definitions issued by the Office for Civil Rights (OCR) within the United States Department of Education.<sup>4</sup>

#### *Restraint*

According to the DOE:

- Physical restraint immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely.
- Mechanical restraint is the use of any device or equipment to restrict a student's freedom of movement. The term does not include devices implemented by trained school personnel or devices used by a student that have been prescribed by an appropriate medical or related service professional and are used for specific and approved purposes for which such devices were designed.<sup>5</sup>

School personnel are prohibited from using a mechanical restraint or a physical or manual restraint that restricts a student's breathing.<sup>6</sup>

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<sup>1</sup> 20 U.S.C. s. 1400 et seq.

<sup>2</sup> U.S. Department of Education, *IDEA Purpose*, <https://sites.ed.gov/idea/about-idea> (last visited Mar. 18, 2021).

<sup>3</sup> Section 1003.573, F.S.

<sup>4</sup> Florida Department of Education, Bureau of Exceptional Education and Student Services, *Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities*, Technical Assistance Paper FY 2011-165 (Oct. 14, 2011), available at <https://info.fldoe.org/docushare/dsweb/Get/Document-6212/dps-2011-165.pdf>, at 2.

<sup>5</sup> *Id.*

<sup>6</sup> Section 1003.573(4), F.S.

### ***Seclusion***

The OCR defines seclusion as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Seclusion does not include a time out, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.<sup>7</sup> School personnel may not close, lock, or physically block a student in a room that is unlit and does not meet the rules of the State Fire Marshall for seclusion time-out rooms.<sup>8</sup>

### **School District Responsibilities**

Each school district must develop policies and procedures regarding the use of restraint and seclusion of students with a disability. School district policies and procedures must address:

- Incident-reporting procedures.
- Data collection and monitoring, including when, where, and why students are restrained or secluded.
- Training programs relating to manual or physical restraint and seclusion.
- The district's plan for reducing the use of restraint and seclusion, particularly in settings in which it occurs frequently or with students who are restrained repeatedly,<sup>9</sup> and for reducing the use of prone restraint and mechanical restraint.<sup>10</sup>

### ***Confidentiality of Student Records***

With limited exceptions, school districts may not disclose personally identifiable information contained within student records to a third party without parental consent.<sup>11</sup> School districts may disclose personally identifiable information from an education record regarding threats of violence and other issues regarding a student's well-being without parental consent in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.<sup>12</sup>

School districts may also share student information with juvenile justice and criminal justice agencies if the disclosure concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released.<sup>13</sup> If the juvenile

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<sup>7</sup> U.S. Department of Education, Office of Civil Rights, *Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities* (Dec. 28, 2016), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>, at 7.

<sup>8</sup> Section 1003.573(5), F.S. Rule 69A-58.0084, F.A.C.

<sup>9</sup> The recurrent use of seclusion or restraint for an individual student indicates the need for a functional behavioral assessment (FBA) and should trigger a review and possible revision of that student's IEP and Behavioral Intervention Plan (BIP). For example, students with limited communication skills may exhibit aggressive behaviors in an effort to communicate. The FBA should be used to identify such situations and a BIP should be developed to address the need(s) through appropriate instructional techniques. Florida Department of Education, Bureau of Exceptional Education and Student Services, *Guidelines for the Use, Documentation, Reporting, and Monitoring of Restraint and Seclusion with Students with Disabilities*, Technical Assistance Paper FY 2011-165 (Oct. 14, 2011), available at <https://info.fldoe.org/docushare/dsweb/Get/Document-6212/dps-2011-165.pdf>, at 15.

<sup>10</sup> Section 1003.573(3)(a), F.S.

<sup>11</sup> Section 1002.22, F.S.; 20 U.S.C. s. 1232(g).

<sup>12</sup> 34 C.F.R. s. 99.36.

<sup>13</sup> 34 C.F.R. s. 99.38.

justice system seeks the disclosure of information on a student in order to identify and intervene with a juvenile at risk of delinquency, rather than to obtain information solely related to supervision of an adjudicated delinquent, the juvenile could be classified as a preadjudicated delinquent, and the records may be shared.<sup>14</sup>

### **School Responsibilities**

Florida law requires a school to prepare an incident report within 24 hours after a student is released from restraint or seclusion. The incident report must contain:

- The name, age, grade, ethnicity, and disability of the student restrained or secluded.
- The date and time of the event and the duration of the restraint or seclusion.
- A description of the type of restraint.
- A description of the incident.<sup>15</sup>

Before the end of the school day, a school must provide written notification to the parent or guardian of a student each time restraint or seclusion is used on the student. Reasonable efforts must also be taken to notify the parent or guardian by telephone or e-mail, or both, and these efforts must be documented. The school must obtain and keep in its records the parent's or guardian's signed acknowledgement that he or she was notified of his or her child's restraint or seclusion.<sup>16</sup> A school must also provide the parent or guardian with the completed incident report in writing by mail within three school days after a student was manually or physically restrained or secluded.<sup>17</sup>

Monitoring of the use of restraint and seclusion on students is required at the classroom, building, district, and state levels. The incident report and the notification to the parent or guardian must be provided to the school principal, the school district director of Exceptional Student Education, and the bureau chief of the Bureau of Exceptional Education and Student Services within the DOE electronically each month that school is in session.<sup>18</sup>

Forty-three school districts prohibited seclusion in the 2019-2020 school year. In the 2019-2020 school year, school districts reported 6,300 incidents of restraint and 557 incidents of seclusion.<sup>19</sup>

### **Florida Department of Education Responsibilities**

The DOE is required to maintain aggregate data of incidents of manual or physical restraint and seclusion by county, school, student exceptionality, and other variables, including the type and method of restraint or seclusion used. This information must be updated monthly. The DOE is

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<sup>14</sup> See U.S. Dep't. of Justice and U.S. Dep't of Ed., *Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs* (June 1997), available at <https://www.ncjrs.gov/pdffiles/163705.pdf> at 9.

<sup>15</sup> Section 1003.573(1), F.S. If the student's release occurs on a day before the school closes for the weekend, a holiday or another reason, the incident report must be completed by the end of the school day on the day the school reopens. *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Section 1003.573(1)(d), F.S.

<sup>18</sup> Section 1003.573(2)(a)-(b), F.S.

<sup>19</sup> Florida Department of Education, *Legislative Bill Analysis for SB 192* (December 14, 2020) (on file with the Senate Committee on Education).

also required to establish standards for documenting, reporting, and monitoring the use of manual or physical restraint or mechanical restraint, and occurrences of seclusion.<sup>20</sup>

### **Commissioner of Education Responsibilities**

The Commissioner of Education is required to develop recommendations to incorporate instruction regarding autism spectrum disorder, Down syndrome, and other developmental disabilities into continuing education or in-service training requirements for personnel. These recommendations must address:

- Early identification and intervention methods.
- Curriculum planning and curricular and instructional modifications, adaptations, and specialized strategies and techniques.
- The use of available state and local resources.
- The use of positive behavioral supports to deescalate problem behaviors.
- Appropriate use of manual physical restraint and seclusion techniques.<sup>21</sup>

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

#### **The Use of Restraint and Seclusion**

The bill modifies s. 1003.573, F.S., revises the circumstances and procedures required for restraining students with a disability in public schools and prohibits the use of seclusion.

#### ***Restraint***

The bill defines terms related to restraint and ensures restraint is only used as a last resort to avoid imminent harm. Specifically, the bill defines:

- “Crisis intervention plan” to mean an individualized action plan for school personnel to implement when a student exhibits dangerous behavior that may lead to imminent risk of serious injury.
- “Imminent risk of serious injury” to mean the threat posed by dangerous behavior that may cause serious physical harm to self or others.
- “Positive behavior interventions and supports” means the use of behavioral interventions to prevent dangerous behaviors that may cause serious physical harm to the student or others.
- “Restraint” to mean the use of a mechanical or physical restraint.
- “Mechanical restraint” to mean the use of a device that restricts a student’s freedom of movement. The term does not include the use devices prescribed or recommended by physical or behavioral health professionals when used for indicated purposes.
- “Physical restraint” to mean the use of manual restraint techniques that involve significant physical force applied by a teacher or other staff member to restrict the movement of all or part of a student’s body but does not include briefly holding a student in order to calm or comfort the student or physically escorting a student to a safe location.
- “Seclusion” to mean the involuntary confinement of a student in a room or area alone and preventing the student from leaving the room or area. The term does not include time-out used as a behavior management technique intended to calm a student.

<sup>20</sup> Section 1003.573(2)(c)-(d), F.S.

<sup>21</sup> Section 1012.582(1), F.S.

- “Student,” as the term relates to the restraint of students with a disability, to mean a child with an individual education plan<sup>22</sup> enrolled in grades kindergarten through 12. The term does not include students in prekindergarten, students who reside in residential care facilities, or students participating in a Department of Juvenile Justice education program.

The bill specifies that restraint may only be used to protect the safety of students, school personnel, or others, and only after all behavioral interventions to prevent the dangerous behavior posing a risk of serious physical harm to the student or others have been exhausted, and the threat of injury posed by the dangerous behavior remains. When restraining a student, a person may only apply the degree of force necessary to protect the student or others from imminent risk of serious injury. Restraint may not:

- Be used to inflict pain, induce compliance, discipline a student, or to correct student noncompliance.
- Involve the use of straightjackets, zip ties, handcuffs, or tie-downs to obstruct or restrict breathing or blood flow.
- Be used in a manner that places a student in a facedown position with the student’s hands restrained behind the student’s back.

### ***Seclusion***

The bill prohibits the use of seclusion of students by school personnel. Seclusion is defined as the involuntary confinement of a student in a room or area alone. The term does not include time-out used as a behavior management technique to calm a student.

This prohibition may encourage school personnel to consider effective and appropriate intervention strategies to address student behavior in the school setting.

### **School District Responsibilities**

The bill requires school districts to adopt approved behavioral intervention and restraint training, pursuant to State Board of Education (SBE) rules, for students with a disability and identify all school personnel authorized to use the interventions. District policies and procedures on positive behavior interventions and supports must be publicly posted at the beginning of each school year, and any revisions must be filed with the bureau chief of the Bureau of Exceptional Education and Student Services within the DOE within 90 days after the revision.

Existing requirements governing policies and procedures for the seclusion and restraint of students with a disability are updated to align with the new definitions relating to restraint and the prohibition of the use of seclusion. The bill authorizes school districts to include in their required plans for achieving goals to reduce the use of restraint an analysis of data to determine trends related to the use of restraint.

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<sup>22</sup> The individualized education plan is the primary vehicle for communicating the school district’s commitment to addressing the unique educational needs of a student with a disability. Florida Department of Education, *Developing Quality Individual Education Plans* (2015), available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>, at 9.

### ***Training***

The bill requires school districts to provide training to all school personnel authorized to use positive behavior interventions and supports and publish the procedures for the training in the district's special policies and procedures manual. The bill adds the date an individual was last trained in the use of positive behavior interventions and supports to the required components of the incident report that is prepared within 24 hours after a student is released from restraint.

Training must be provided annually and include:

- The use of positive behavior interventions and supports.
- Risk assessment procedures to identify when restraint may be used.
- Examples of when positive behavior interventions and support techniques have failed to reduce the imminent risk of serious injury.
- Examples of safe and appropriate restraint techniques and how to use these techniques with multiple staff members working as a team.
- Instruction in the district's documentation and reporting requirements.
- Procedures to identify and deal with possible medical emergencies arising during the use of restraint.
- Cardiopulmonary resuscitation.

The establishment of school district training protocol on the use of positive behavior interventions and supports may provide school personnel with additional resources and knowledge related to the techniques to deescalate disruptive student behavior.

### ***Crisis Intervention Plan***

The bill requires a team comprised of school personnel, applicable physical and behavioral health professionals, and a student's parent to develop a crisis intervention plan after the second time the student is restrained during a semester. A crisis intervention plan is an individualized action plan for school personnel to implement when a student exhibits dangerous behavior that may lead to imminent risk of serious injury. The bill adds the date the crisis intervention plan was last reviewed, and whether changes were recommended, to the required components to be included in an incident report prepared within 24 hours after a student is released from restraint. The crisis intervention plan must be provided to the student's parent and include:

- Specific positive behavior interventions and supports to use in response to dangerous behaviors that create a threat of imminent risk of serious injury.
- Known physical and behavioral health concerns that will limit the use of restraint for the student.
- A timetable for the review and, if necessary, revision of the crisis intervention plan.

### **Video Cameras in Self-Contained Classrooms**

#### ***Operation of Video Cameras***

The bill creates s. 1003.574, F.S., which requires the Broward County school district to participate in the three-year Video Cameras in Public School Classrooms Pilot Program to provide a video camera to any school with a self-contained classroom upon the written request of a parent of a student in the classroom. A self-contained classroom is a classroom at a public school in which a majority of the students in regular attendance are provided special education

services and are assigned to one or more such classrooms for at least 50 percent of the instructional day. Before the video camera is placed in any classroom, schools must provide written notification of the placement of the video camera to the parents of each student assigned to the self-contained classroom, the school district, and each employee assigned to work with any of the students in the self-contained classroom. The video camera must be operational in each classroom in which the student is in attendance within 30 days after receipt of the parent's written request. The bill does not apply to self-contained classrooms in which the only students receiving special education services are those who have been deemed gifted.

The video camera must be capable of recording, through both video and audio, all areas of the self-contained classroom and any room attached to that classroom when students are present.

Schools are prohibited from:

- Recording a restroom or any area where a student changes his or her clothes.
- Using videos for teacher evaluations or any purpose other than for ensuring the health, safety, and well-being of students receiving special education services in a self-contained classroom.
- Allowing regular or continuous monitoring of the video recording.

Any interruption in the operation of the video camera must be explained in writing to the school principal and the district school board. The explanation must include the duration of the interruption, and the district school board office is required to maintain the written explanation for at least one year.

If the parent withdraws the request or the student no longer attends the classroom, the school must notify the parents of the other students in the classroom at least five school days prior to ceasing operation of the video camera. The school must notify the parents that operation of the video camera will cease unless the continued use of the camera is requested by a parent. The school must also send the notification at least ten school days prior to the end of each school year.

### ***Maintenance and Disclosure of Video Camera Recordings***

The bill provides measures related to the maintenance and disclosure of recordings generated by video cameras in self-contained classrooms. The school principal is the custodian of video cameras, video recordings, and access to video recordings and must protect the confidentiality of all student records contained in video camera recordings in accordance with Florida laws governing the disclosure of student records. When making video recordings available for viewing, the school principal must conceal the identity of any student who appears in a video camera recording, but is not involved in the incident that formed the basis of the request for disclosure.

The school must make a recording available for viewing within seven days after receiving a request from:

- A school or school district employee who is involved in an alleged incident that is documented by the video recording as part of the investigative process.
- A parent of a student who is involved in an alleged incident that is documented by the video recording and has been reported to the school or school district.



- A school or school district employee as part of an investigation into an alleged incident that is documented by the video recording and has been reported to the school or school district.
- A law enforcement officer as part of an investigation into an alleged incident that is documented by the video recording and has been reported to the law enforcement agency.
- The Department of Children and Families (DCF) as part of a child abuse or neglect investigation.

An incident is defined as an event, circumstance, act, or omission that results in the abuse or neglect of a student by an employee of a public school, school district or another student. The person who requested to view the recording must view the recording within 30 days of receiving notice that his or her request for viewing has been granted and report any suspected child abuse to the DCF. The bill specifies that an incidental viewing by a school employee or contractor involved in the installation, operation, or maintenance of video equipment, or the retention of video recordings does not violate limitations on the disclosure of video recordings.

Schools must retain video footage for at least three months after the date the video was recorded or until the conclusion of any investigation or legal proceedings that result from the recording, including the exhaustion of all appeals.

### ***State Board of Education Appeals***

An individual may appeal to the SBE an action by a school or school district which the individual alleges violates requirements related to video cameras in self-contained classrooms, and the SBE must grant a hearing within 45 days<sup>23</sup> of receiving the request for appeal. The bill specifies that statutory requirements related to video cameras in self-contained classrooms do not:

- Limit the access of the parent of a student, under the Family Educational Rights and Privacy Act (FERPA)<sup>24</sup> or any other law, to a video recording regarding his or her student.
- Waive any immunity from liability of a school district or an employee of a school district.
- Create any liability for a cause of action against a school or school district or an employee of a school or school district carrying out the duties and responsibilities related to video cameras in self-contained classrooms.

The bill provides rulemaking authority to the SBE to implement requirements related to video cameras in classrooms.

### **Florida Department of Education Responsibilities**

The bill requires the DOE to collect various information. As part of the pilot program, DOE is required to collect information related to the installation and maintenance of video cameras. The DOE is required to make available to the public through DOE's website aggregate-level data on incidents of restraint by county, school, student exceptionality, and other variables by October 1, 2020.

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<sup>23</sup> The State Board of Education generally meets every other month, it is unclear if the SBE would have to schedule special meetings specifically to meet the 45-day appeal deadline. Florida Department of Education, *Legislative Bill Analysis for SB 192* (2021), at 7 and 11.

<sup>24</sup> 20 U.S.C. s. 1232g.

The bill replaces the requirement for the DOE to establish standards for documenting, reporting, and monitoring the use of restraint with the requirement to establish standards for documenting, reporting, and monitoring the incident reports related to the use of restraint. This may assist school districts in documenting and reporting incidents related to the use of restraint.

### **Commissioner of Education Responsibilities**

The bill requires the Commissioner of Education to develop recommendations that incorporate instruction regarding emotional or behavioral disabilities into continuing education or in-service training requirements for instructional personnel. The bill also modifies the information required to be addressed in such recommendations by requiring the recommendations to address the use of positive behavior interventions and support, and effective classroom behavior management strategies.

Accordingly, the bill may help instructional personnel to be better informed and trained in strategies to teach students with emotional or behavioral disabilities.

The bill takes effect July 1, 2021.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

### **D. State Tax or Fee Increases:**

None.

### **E. Other Constitutional Issues:**

None.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

School districts may incur costs to provide professional development in the use of restraint or positive behavior interventions. These costs are indeterminate.

In addition, the Broward County School District may incur costs associated with installing and maintaining video cameras and retaining recordings. The Department of Education estimates a cost of \$960 to install a 360-degree video camera in each classroom. However, the configuration of some classrooms may require up to two cameras per classroom. In addition to the cameras, schools would need to purchase software capable of concealing the identity of any student in the video recording who is not involved in the alleged incident.<sup>25</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1003.573, 1003.574, and 1012.582.

**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 Education Committee on March 23, 2021:**

The committee Substitute removes the Volusia County school district from the pilot program created in the bill for the installation of video cameras in self-contained classrooms. The committee substitute retains Broward County in the pilot program. The committee substitute also:

- Clarifies that mechanical restraints may not be used in a manner that place a student in a facedown position with the student's hands restrained behind the student's back.
- Modifies the requirement for school districts to adopt positive behavior interventions and supports to require school districts to adopt approved behavioral intervention and restraint training, pursuant to State Board of Education rules, for students with a disability and identify all school personnel authorized to use the interventions.

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<sup>25</sup> Florida Department of Education, *Legislative Bill Analysis for SB 192* (December 14, 2020) (on file with the Senate Committee on Education).

- Corrects a cross-reference to s. 1003.52, F.S., related to educational services in Department of Juvenile Justice programs.

**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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