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 Profes	sional Staff of the Approp	riations Subcommi	ttee on Health and Human Services	
BILL:	SB 900				
INTRODUCER:	Senator Rodriguez				
SUBJECT: Child Welf		re			
DATE:	April 7, 202	l revised:			
ANAL	YST	STAFF DIRECTOR	REFERENCE	ACTION	
. Preston		Cox	CF	Favorable	
2. Sneed		Kidd	AHS	Pre-meeting	
•			AP		

I. Summary:

SB 900 makes a number of changes in the laws relating to child welfare that are necessary for the Department of Children and Families (DCF) to be in compliance with new federal requirements that are the result of the expiration of the state's Title IV-E waiver and the upcoming implementation date of the federal Family First Prevention Services Act (FFPSA).

The bill provides a definition for the term "voluntary services" and expands the entities that have access to confidential reports and records in cases of child abuse or neglect to include employees, authorized agents, and contract providers of the Agency for Health Care Administration and the Agency for Persons with Disabilities.

The bill clarifies the Extended Foster Care (EFC) program requirements aligning eligibility with the federal law regarding supervised independent living settings by:

- Specifying that licensed foster homes are the preferred supervised living arrangements for young adults;
- Prohibiting specified living arrangements from being used; and
- Prohibiting involuntary placements for young adults participating in EFC.

The bill also provides that safe houses must care for children who are victims of commercial sexual exploitation in a manner that separates those children who have other needs, but specifies that this provision does not apply to safe foster homes.

The bill increases the capacity of children that can be placed in a licensed foster home without an additional assessment and provides the DCF with the ability to adopt rules to establish requirements for requesting a waiver for over-capacity.

The bill will require the DCF to update the Florida Safe Families Network (FSFN), however, the one-time cost is anticipated to be minimal and may be absorbed by the department within existing resources.

See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2021.

II. Present Situation:

Chapter 39, F.S., Dependency Process - Overview

The Department of Children and Families (DCF) operates the Florida central abuse hotline (hotline), which accepts reports of known or suspected child abuse, abandonment, or neglect, abused, abandoned, or neglected must report such knowledge or suspicion to the hotline. A child protective investigation begins if the hotline determines the allegations meet the statutory definition of abuse, abandonment, or neglect. A child protective investigator investigates the situation either immediately or within 24 hours after the report is received, depending on the nature of the allegation.

¹ Section 39.01(2), F.S., defines "abuse" to mean any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child also includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

² See s. 39.01(1), F.S., which defines "abandonment", in part, to mean a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. It further defines, "establish or maintain a substantial and positive relationship" to include, but not be limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. The definition specifically provides that marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child.

³ Section 39.01(50), F.S., defines "neglect" to mean when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. Circumstances are not to be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected. Further, a parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian, unless a court orders the following services to be provided, when the health of the child so requires: medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health care provider; or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization. The definition further provides that neglect of a child includes acts or omissions.

⁴ Section 39.201(5), F.S.

⁵ Section 39.201(a), F.S.

⁶ Section 39.201(2)(a), F.S.

⁷ Section 39.201(5), F.S.

If, after conducting an investigation in response to receiving a call to the hotline, the child protective investigator determines that the child is in need of protection and supervision that necessitates removal, the investigator may initiate formal proceedings to remove the child from his or her home. The proceeding, known as a shelter hearing, results in a court determining if probable cause exists to keep a child in shelter⁸ status pending further investigation of the circumstances leading to the detention of a child.⁹

When the DCF removes a child from the home, a series of dependency court proceedings must occur before a child may be adjudicated dependent. Within 28 days after a child has been sheltered, the court must hold an arraignment hearing on the petition for dependency. If a parent or legal guardian denies an allegation in the petition, the court must hold an adjudicatory hearing within 30 days. All the court must hold an adjudicatory hearing within 30 days.

Subsequent to a child being found dependent, a court must hold a disposition hearing to determine a course of treatment and services and placement of the child under protective supervision. The court must first consider placing the child with relatives. If a child cannot safely remain in the original home and no adult relative is available for temporary legal custody, the child may be placed with an adult willing to care for the child under the protective supervision of the DCF. Placing the child in the temporary legal custody of the DCF invests the DCF with the rights and responsibilities of a legal custodian.

Title IV-E and Title IV-E Waivers

Title IV-E of the Social Security Act¹⁷ is the largest federal funding stream for child welfare activities. The funding stream supports foster care, adoption assistance, and guardianship assistance programs. States receive a level of reimbursement from the federal government for eligible claims. Title IV-E also includes the Chafee Foster Care Independence Program, a capped entitlement for which states are entitled to reimbursement for claims it submits to the federal government, up to a certain level, related to preparing children in out-of-home care for self-sufficiency when they transition out.¹⁸

⁸ Section 39.01(78), F.S., defines "shelter" to mean a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication.

⁹ Section 39.01(79), F.S.

¹⁰ See s. 39.01(15), F.S., for the definition of "child who is found to be dependent".

¹¹ 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. 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.

¹² Section 39.506(1), F.S.

¹³ Section 39.521(1), F.S.

¹⁴ Section 39.507(7)(c), F.S.

¹⁵ Section 39.521(3)(c), F.S.

¹⁶ Section 39.521(3)(d), F.S.

¹⁷ 42 U.S.C. ss. 671-679b.

¹⁸ Child Trends, *A Primer on Title IV-E Funding for Child Welfare, a*vailable at https://www.childtrends.org/wp-content/uploads/2016/01/2016-04TitleIV-EPrimer.pdf (last visited March 8, 2021).

To be eligible for the Title IV-E Foster Care Program, the vehicle through which states receive Title IV-E funds for children in foster care, children must:

- Be in out-of-home placements;
- Have been removed from families that are considered "needy";
- Have entered care through a judicial determination or voluntary placement; and
- Be in licensed or approved foster care placements. 19

Title IV-E waivers were first available as an option to states in 1994, when Section 1130 of the Social Security Act gave the U.S. Department of Health and Human Services the authority to approve demonstration projects for which states can waive certain requirements of Title IV-E. These were designed to provide states with opportunities and the flexibility to use federal funds to test innovative approaches to child welfare service delivery and financing.²⁰

The DCF participated in the Title IV-E Waiver Demonstration for approximately 13 years. The Florida Title IV-E Waiver Demonstration Project was implemented statewide on October 1, 2006. The purpose of the waiver project was to determine whether increased spending flexibility of Title IV-E funding would support changes in the state's service delivery system, maintain cost neutrality to the federal government, and most importantly, maintain child safety as well as improving permanency and well-being outcomes for children and their families being served within Florida's child welfare system. In exchange, Florida agreed to a capped allocation with annual automatic increases plus triggers to adjust the allocation if actual levels significantly exceeded estimates. ²¹

The need for DCF to claim Title IV-E funding returned to traditional program requirements due to the expiration of the state's waiver demonstration on September 30, 2019. In order to minimize the potential gap in needed funding, the DCF began to implement a plan it referred to as Path Forward in the 2018-19 fiscal year. The Path Forward plan encompassed four initiatives including: Title IV-E Extended Foster Care, Title IV-E Guardianship Assistance Program (GAP), Foster Care Candidacy, and Title IV-E Eligibility Rate Improvements. Currently, the DCF has implemented all of these initiatives and is monitoring performance closely to ensure the projected goals are met. In addition, the DCF is attempting to ensure that Florida statutes align with federal requirements to enable the DCF to maximize federal IV-E claiming.²²

Family First Prevention Services Act

The federal Family First Prevention Services Act (FFPSA), included in the 2018 Bipartisan Budget Act,²³ focuses on evidence-based services to prevent children from entering foster care;

¹⁹ *Id*.

²⁰ Child Welfare Information Gateway, *Child Welfare Demonstration Waivers*, available at https://www.childwelfare.gov/topics/management/reform/waivers/ (last visited March 8, 2021).

²¹ Armstrong, M.I., Vargo, A.C., Jordan, N., Sharrock, P., Sowell, C, Yampolskaya, S., Kip. S. (2009). *Evaluation brief on the status, activities and findings related to Florida's IV-E waiver demonstration project: Two years post-implementation.* University of South Florida, Louis de la Parte Florida Mental Health Institute, available at https://www.myflfamilies.com/general-information/publications-forms/docs/APSR/S10-008463_Title%20IV-E%20Brief%202%20January2010.pdf (last visited March 8, 2021).

²² The DCF, 2021 Agency Legislative Bill Analysis, SB 900, January 24, 2021, p. 2 (on file with the Senate Committee on Children, Families and Elder Affairs) (hereinafter cited as "The DCF SB 900 Agency Analysis").

²³ H.R. 1862 of 2018. Pub.L. 115-123

limits reimbursement for congregate (group home) care; and makes changes affecting adoption subsidies, reunification, and extended foster care supports. The FFPSA reformed the federal child welfare funding streams. Unlike the previous Title IV-E provisions which primarily funded out-of-home care for families with very low incomes, the FFPSA gives states the ability to earn federal Title IV-E matching funds in support of certain prevention services provided on a time-limited basis that avoid an out-of-home placement for children without regard to family income. In providing for children and their families meeting eligibility requirements, the FFPSA provides for the reimbursement of specific federally approved, evidence-based services that address mental health, substance abuse, family counseling, and parent skills training. The FFPSA also limits federal funding for group homes placements.²⁴

The Title IV- E Prevention Services Clearinghouse was established by the U.S. Department of Health and Human Services Administration for Children and Families (ACF) to conduct an objective and transparent review of research on programs and services intended to provide enhanced support to children and families and prevent foster care placements. The Prevention Services Clearinghouse, developed in accordance with the FFPSA and codified in Title IV-E of the Social Security Act, rates programs and services as well-supported, supported, promising, or does not currently meet criteria. ²⁵

Congress made the FFPSA effective October 1, 2018, but gave states the opportunity to delay implementation of select provisions of the law.²⁶ Florida received approval to delay the implementation of the FFPSA until October 1, 2021.²⁷

Voluntary Services

Currently, there is no definition for the term "voluntary services" in Florida law, even though it's used either specifically or conceptually in a number of places in ch. 39, F.S., including:

- Section 39.501(3)(d)1., F.S., relating to a petition for dependency, provides whether a parent or legal custodian named in the petition has previously unsuccessfully participated in voluntary services offered by the DCF.
- **Section 39.823, F.S.**, relating to guardian advocates for drug dependent newborns, provides because of the parents' continued dependence upon drugs, the parents may temporarily leave their child with a relative or other adult or may have agreed to voluntary family services under s. 39.301(14), F.S.

²⁴ The DCF, *The Florida Center for Child Welfare FFPSA Updates*, available at http://centerforchildwelfare.fmhi.usf.edu/FFPSA.shtmll; *see also* the National Conference of State Legislatures (NCSL), *Family First Prevention Services Act*, available at https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx (all sites last visited March 14, 2021).

²⁵ See the U.S. Department of Health and Human Services, Office of Planning, Research, and Evaluation, *Title IV-E Prevention Services Clearinghouse*, 2018 – 2023, available at https://www.acf.hhs.gov/opre/project/title-iv-e-prevention-services-clearinghouse-2018-2023 (last visited March 15, 2021).

²⁶ The NCSL, *Family First Prevention Services Act*, available at https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx (last visited March 15, 2021).

²⁷ The DCF SB 900 Agency Analysis, p. 4.

Out-of-Home Placement Settings

When it becomes necessary for the DCF to remove a child from the home, efforts must be made to place the child in the least restrictive placement.²⁸ The community-based care lead agency (lead agency) is required to complete a comprehensive placement assessment to determine the appropriate level of care.²⁹ Relatives and non-relatives are considered the least restrictive level of care but should a suitable relative or non-relative not be available, a foster home would be the next appropriate level of care and then a group home setting.³⁰

A safe house is one of the FFPSA placement settings currently licensed and certified by the DCF.³¹ The DCF currently allows for the placement of victims of, or at risk of, human trafficking to be placed in the same safe house setting with any other population, as long as the children who have not experienced commercial sexual exploitation do not interact with victims of trafficking.³² There are ten group homes that wish to transition to a safe house. FFPSA will require that safe houses strictly serve victims of, or at risk of, human trafficking. Current laws create a barrier to the DCF's ability to claim Title IV-E as a safe house is permitted to serve a victim of, or at risk of, human trafficking in the same setting with children of any population.³³

Parenting Partnerships for Children in Out-of-Home Care

Current law requires all direct caregivers employed by residential group homes to meet the same education, training, and background and other screening requirements as foster parents. The current law creates a barrier to group home providers that are gathering criminal records in a timely manner, thus affecting Title IV-E payments.

Foster Home Capacity

Section 409.175(3), F.S., requires an over-capacity waiver assessment when the number of children in a foster home exceeds five, including the foster parents own children, while the federal language allows up to six children to be placed in a foster home, excluding the foster parents own children, before being considered over-capacity.³⁴ In addition, current language allows for the ability to assess and grant an over-capacity waiver for any reason, while federal language only allows for over-capacity when:

- A parenting youth in foster care needs to remain with their child;
- Siblings need to remain together;
- A child with an established meaningful relationship with the family needs to remain with the family; or
- A family with special training or skills needs to provide care to a child who has a severe disability.³⁵

²⁸ Section 39.523(1)(a), F.S.

²⁹ The DCF, *Community-Based Care*, available at https://www.myflfamilies.com/service-programs/community-basedcare/overview.shtml (last visited March 15, 2021).

³⁰ Section 39.523(2), F.S.

³¹ Section 409.1678(1)(b), F.S., defines the term "safe house" as a group residential placement certified by the DCF to care for sexually exploited.

³² Section 409.1678(2)(b), F.S.

³³ The DCF SB 900 Agency Analysis, p. 6.

³⁴ 42 U.S.C. s. 672(c)(B).

³⁵ *Id*.

Continuing Care for Young Adults – Extended Foster Care (EFC)

Section 39.6251, F.S., provides conditions pertaining to supervised living environments requiring an independent living setting, giving some flexibility based on lead agency assessment and approval. The statute does not define independent living for the purposes of supervised living environments, but requires that the young adult reside in a supervised living environment that is approved by the DCF or lead agency. The young adult must live independently, but in an environment in which he or she is provided supervision, case management, and supportive services by the DCF or lead agency. Such an environment must offer developmentally appropriate freedom and responsibility to prepare the youth for adulthood.³⁶

Such a supervised living arrangement may include a licensed foster home, licensed group home, college dormitory, shared housing, apartment, or another housing arrangement if the arrangement is approved by the lead agency and is acceptable to the young adult. A young adult may also continue to reside with the same licensed foster family or group care provider with whom he or she was residing at the time the youth reached the age of 18.³⁷

In addition, current law does not prohibit involuntary placements nor does it exclude settings in which delinquent youth or young adults are detained or incarcerated.³⁸

Confidentiality of Reports and Records

Currently, in order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, s. 39.202, F.S., provides that all records held by the DCF concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, are confidential and exempt from the provisions of s. 119.07(1), F.S., and must not be disclosed except as specifically authorized by chapter 39, F.S. The exemption also applies to information in the possession of those entities granted access under this section.³⁹

Information made confidential and exempt under s. 39.202, F.S., may only be released in a specified manner and to specified individuals. Exceptions to this are provided for cases involving a child who is missing. Current law does not provide the Agency for Health Care Administration (AHCA) and the Agency for Person with Disability (APD) the capability to complete child abuse and neglect record checks for their employees who work in direct contact with children placed by the DCF in facilities licensed by the AHCA.

³⁶ Section 39.6251(4)(a), F.S.

³⁷ *Id*.

³⁸ Section 39.6251, F.S.

³⁹ Section 39.202(1). F.S. When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record. Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.

⁴⁰ Section 39.202(2), F.S.

⁴¹ See s. 39.202(4), F.S.

⁴² Section 39.202(2), F.S.

Protective Investigations of Institutional Child Abuse, Abandonment, or Neglect

Current law allows that when a person who is employed as a caregiver in a licensed residential group home and is named in any capacity in three or more reports of institutional child abuse, abandonment, or neglect within a five-year period, the DCF may review all reports for the purposes of the employment screening requirements in s. 409.145(2)(e), F.S.⁴³

Section 409.175(2)(m), F.S., relating to the licensure of family foster homes, residential child-caring agencies, and child-placing agencies, provides that the term "screening" means the act of assessing the background of personnel of level II through level V family foster homes and includes, but is not limited to, employment history checks as provided in chapter 435, using level 2 screening standards.

III. Effect of Proposed Changes:

Title IV-E Waiver

Confidentiality of Reports and Records

The bill amends s. 39.202, F.S., related to the confidentiality of reports and records pertaining to child abuse, neglect, and abandonment, allowing the Agency for Health Care Administration (AHCA) and the Agency for Persons with Disabilities (APD) to review child abuse and neglect reports for employees who work in facilities licensed under chs. 393, 394, and 409, F.S., to meet federal requirements for children under the care and supervision of the DCF who are placed in these facilities. ⁴⁴ The changes will allow the agencies to ensure children remain safe during their placement through receiving reports related to an employee that indicate safety concerns for the children in such facilities.

When an employee is deemed unsafe and remains in a caregiver role, payments for children placed in these facilities will not be federally reimbursable through Title IV-E. The inability to claim federal funding will result in expending more state general revenue funds on these group home placements.

Screenings for Employees of Group Homes Parenting for Children in Out-of-Home Care

The bill amends s. 409.1415(2)(c), F.S., relating to group home employee requirements, removing specific references to background screening and other screening requirements and maintaining the requirement to have the same education and training as licensed foster care placements. The background screening required by the group home employee is maintained as level 2 screening as required in s. 39.0138, F.S., and ch. 435, F.S. This will allow the DCF flexibility to work closely with law enforcement and other background screening units to ensure all checks are completed accurately to avoid costly penalties.

⁴³ Section 39.302(7)(b), F.S.

⁴⁴ Facilities licensed under ch. 393, F.S., care for individuals who have a developmental disability; facilities licensed under ch. 394, F.S., provide care for individuals with mental health issues; and facilities licensed under ch. 409, F.S., provide care for children who are in out-of-home care through the child welfare system.

Protective Investigations for Institutional Abuse

The bill amends s. 39.302(7)(b), F.S., to codify current practice and align the changes in s. 409.1415(2)(c), F.S., to the federal requirements in the FFPSA, allowing the DCF the opportunity to claim federal Title IV-E funds for children placed in facilities licensed by either AHCA or APD.⁴⁵

Continuing Care for Young Adults – Extended Foster Care

The bill amends s. 39.6251, F.S., clarifying that young adults participating in EFC are to reside in *voluntary*, supervised independent living environments. The bill specifies that a supervised living arrangement cannot be a detention facility, forestry camp, training school, or other facility operated primarily for the detention of delinquent children.⁴⁶ The bill also provides that an involuntary placement is only authorized if a court-appointed guardian has placed the young adult in such placement.

Family First Prevention Services Act

Voluntary Services

The bill amends s. 39.01, F.S., creating a new definition for the term "voluntary services" to mean social services and other preventive and rehabilitative services provided to the parent or legal custodian of the child or directly to the child, or services provided on behalf of the child, when a parent or legal custodian requests or voluntarily agrees to receive assistance. This new definition will align with federal language that says services can be provided to the parent or legal custodian of the child, and to the child or on behalf of the child.⁴⁷

The new definition will give the DCF the opportunity to claim Title IV-E federal funds for evidence-based prevention services that have been approved through the Federal Clearing House as promising, supported, and well-supported. The amount of increased claiming is currently indeterminate as there is no way to determine how many prevention services statewide will meet the requirements of the Clearinghouse.⁴⁸

Out-of-Home Placement Settings

The bill amends s. 409.1678(2), F.S., to exempt safe foster homes and restrict safe houses from serving victims of commercial sexual exploitation. The new language will restrict placement of populations who are not victims of commercial sexual exploitation from being placed in a safe house setting. This will align with the FFPSA requirements and the DCF's ability to claim Title IV-E federal funds for safe house settings.⁴⁹

Foster Home Capacity

The bill amends s. 409.175, F.S., increasing the capacity of children that can be placed in a licensed foster home without the need for an additional assessment from five children, including

⁴⁵ 42 U.S.C. s. 671(a)(20).

⁴⁶ Section 39.6251(4), F.S.

⁴⁷ 42 U.S.C. ss. 475(13), 471(e), and 474(a)(6).

⁴⁸ The DCF SB 900 Agency Analysis, p. 9.

⁴⁹ 42 U.S.C. s. 472(k)(2).

the family's own children, to six children, not including the family's own children. In addition, the increase in capacity enables the DCF to adopt rules for approving over-capacity assessments that align with Title IV-E requirements.

I۷	' .	Constitutional Issues:
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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 identified.				
Fiscal Impact Statement:					
A.	Tax/Fee Issues:				
	None.				
B.	Private Sector Impact:				

C. Government Sector Impact:

The DCF estimates it will cost \$115,600 for one-time technology updates to implement provisions in the bill.⁵⁰ However, it is anticipated that these expenditures can be absorbed by the DCF using existing department resources.

VI. Technical Deficiencies:

None.

None.

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⁵⁰ The DCF SB 900 Agency Analysis, p. 12-13.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends ss. 39.01, 39.202, 39.302, 39.6251, 409.1415, 409.1678, and 409.175 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.