The Judiciary Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled
An act relating to artificially provided sustenance and hydration; amending ss. 765.401 and 765.404, F.S.; excluding the withholding or withdrawing of artificially provided sustenance or hydration from certain authority to make health care decisions; creating s. 765.405, F.S.; prohibiting the withholding or withdrawing of artificially provided sustenance or hydration from a person in a persistent vegetative state in specific circumstances; providing conditions under which the prohibition does not apply; requiring consultation with an in-house or outside medical ethics committee under certain conditions; providing that certain individuals and facilities are not liable for decisions relating to the withholding or withdrawing of artificially provided sustenance or hydration; authorizing interested persons to petition the court to prevent the withholding or withdrawing of artificially provided sustenance or hydration based upon the prohibition; specifying that the act is remedial;
providing for application of the act; providing an effective date.

WHEREAS, the Legislature fully recognizes, respects, and preserves the right of a person to express his or her health care decisions through means such as advance directives, living wills, and designations of health care surrogates, and

WHEREAS, withholding or withdrawing artificially provided sustenance or hydration necessary to sustain life represents an action having the ultimate and profound consequence of death, and

WHEREAS, a person in a persistent vegetative state is, at that time, unable to express his or her decision regarding withholding or withdrawing artificially provided sustenance or hydration, and

WHEREAS, there are medically ethical reasons to withhold or withdraw artificially provided sustenance or hydration necessary to sustain life, and

WHEREAS, the state has a compelling interest in providing standards and procedural safeguards relating to withholding or withdrawing artificially provided sustenance or hydration for a person who is in a persistent vegetative state and whose decisions are not expressed, NOW, THEREFORE,

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

Section 1. Subsections (1), (2), and (3) of section 765.401, Florida Statutes, are amended to read:
765.401 The proxy.--

(1) If an incapacitated or developmentally disabled patient has not executed an advance directive, or designated a surrogate to execute an advance directive, or the designated or alternate surrogate is no longer available to make health care decisions, health care decisions, other than the decision to withhold or withdraw artificially provided sustenance or hydration for a person in a persistent vegetative state, may be made for the patient by any of the following individuals, in the following order of priority, if no individual in a prior class is reasonably available, willing, or competent to act:

(a) The judicially appointed guardian of the patient or the guardian advocate of the person having a developmental disability as defined in s. 393.063, who has been authorized to consent to medical treatment, if such guardian has previously been appointed; however, this paragraph shall not be construed to require such appointment before a treatment decision can be made under this subsection;

(b) The patient's spouse;

(c) An adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;

(d) A parent of the patient;

(e) The adult sibling of the patient or, if the patient has more than one sibling, a majority of the adult siblings who are reasonably available for consultation;

(f) An adult relative of the patient who has exhibited special care and concern for the patient and who has maintained
regular contact with the patient and who is familiar with the patient's activities, health, and religious or moral beliefs; or

(g) A close friend of the patient; or

(h) A clinical social worker licensed pursuant to chapter 491, or who is a graduate of a court-approved guardianship program. Such a proxy must be selected by the provider's bioethics committee and must not be employed by the provider. If the provider does not have a bioethics committee, then such a proxy may be chosen through an arrangement with the bioethics committee of another provider. The proxy will be notified that, upon request, the provider shall make available a second physician, not involved in the patient's care to assist the proxy in evaluating treatment. Decisions to withhold or withdraw life-prolonging procedures will be reviewed by the facility's bioethics committee. Documentation of efforts to locate proxies from prior classes must be recorded in the patient record.

(2) Any health care decision made under this part must be based on the proxy's informed consent and on the decision the proxy reasonably believes the patient would have made under the circumstances. If there is no indication of what the patient would have chosen, the proxy may consider the patient's best interest in deciding that proposed treatments, other than artificially provided sustenance or hydration for a person in a persistent vegetative state, are to be withheld or that treatments currently in effect are to be withdrawn.

(3) Before exercising the incapacitated patient's rights to select or decline health care, the proxy must comply with the provisions of ss. 765.205 and 765.305, except that a proxy's
decision to withhold or withdraw life-prolonging procedures, other than artificially provided sustenance or hydration for a person in a persistent vegetative state, must be supported by clear and convincing evidence that the decision would have been the one the patient would have chosen had the patient been competent or, if there is no indication of what the patient would have chosen, that the decision is in the patient's best interest.

Section 2. Section 765.404, Florida Statutes, is amended to read:

765.404 Persistent vegetative state.--For persons in a persistent vegetative state, as determined by the attending physician in accordance with currently accepted medical standards, who have no advance directive and for whom there is no evidence indicating what the person would have wanted under such conditions, and for whom, after a reasonably diligent inquiry, no family or friends are available or willing to serve as a proxy to make health care decisions for them, life-prolonging procedures, other than artificially provided sustenance or hydration, may be withheld or withdrawn under the following conditions:

(1) The person has a judicially appointed guardian representing his or her best interest with authority to consent to medical treatment; and

(2) The guardian and the person's attending physician, in consultation with the medical ethics committee of the facility where the patient is located, conclude that the condition is permanent and that there is no reasonable medical probability
for recovery and that withholding or withdrawing life-prolonging procedures, other than artificially provided sustenance or hydration, is in the best interest of the patient. If there is no medical ethics committee at the facility, the facility must have an arrangement with the medical ethics committee of another facility or with a community-based ethics committee approved by the Florida Bio-ethics Network. The ethics committee shall review the case with the guardian, in consultation with the person's attending physician, to determine whether the condition is permanent and there is no reasonable medical probability for recovery. The individual committee members and the facility associated with an ethics committee shall not be held liable in any civil action related to the performance of any duties required in this subsection.

Section 3. Section 765.405, Florida Statutes, is created to read:

765.405 Prohibition against withholding or withdrawing artificially provided sustenance or hydration in specific circumstances.--

(1) Artificially provided sustenance or hydration shall not be withheld or withdrawn from a person in a persistent vegetative state, except as provided in subsection (2).

(2) The prohibition in subsection (1) does not apply under the conditions prescribed in paragraph (a), paragraph (b), paragraph (c), or paragraph (d).

(a) A written advance directive, written living will, or written designation of a health care surrogate prepared in
accordance with s. 765.202 authorizes withholding or withdrawing
life-prolonging procedures, as defined in s. 765.101.

(b) Clear and convincing evidence exists that the person,
while competent and prior to entering into a persistent
vegetative state, expressly directed or instructed the
withholding or withdrawing of artificially provided sustenance
or hydration. For purposes of this section, this paragraph does
not authorize the application of substituted judgment.

(c) In the reasonable medical judgment of the person's
attending physician and a second consulting physician, and in
consultation with the medical ethics committee of the facility
where the person is located, maintenance of artificially
provided sustenance or hydration:

1. Is not medically possible;
2. Would hasten death;
3. Would cause severe, intractable, or significant long-last-
   ing pain to the person; or
4. Would not contribute to sustaining the person's life or
   providing comfort to the person.

(d) In the reasonable medical judgment of the person's
attending physician and a second consulting physician, and in
consultation with the medical ethics committee of the facility
where the person is located:

1. Death is imminent;
2. Even with artificially provided sustenance or
   hydration, the person will die within a reasonably short period
   of time due to a terminal illness or injury; and
3. The purpose of withholding or withdrawing artificially provided sustenance or hydration is not to cause death by starvation or dehydration.

(3) For purposes of making the determination in paragraph (2)(c) or paragraph (2)(d), if there is no medical ethics committee at the facility, the facility must have an arrangement with the medical ethics committee of another facility or with a community-based ethics committee approved by the Florida Bio-ethics Network. The individual committee members and the facility associated with an ethics committee shall not be held liable in any civil action related to the performance of any duties required in paragraph (2)(c) or paragraph (2)(d).

(4) Any interested person may petition a court of competent jurisdiction at any time, based upon the prohibition in subsection (1), to prevent the withholding or withdrawing of artificially provided sustenance or hydration.

Section 4. The provisions of this act are remedial and apply to every living person on the effective date of this act. Specifically, it is the intent of the Legislature and the policy of this state to apply the provisions of this act to all situations in which a person is in a persistent vegetative state on or after the effective date of this act.

Section 5. This act shall take effect upon becoming a law.