



Government Operations Subcommittee

Wednesday, January 20, 2016

9:00 am

Webster Hall (212 Knott)

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Operations Subcommittee

Start Date and Time: Wednesday, January 20, 2016 09:00 am
End Date and Time: Wednesday, January 20, 2016 11:00 am
Location: Webster Hall (212 Knott)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 67 Classified Advertisement Websites by Watson, B.
PCS for HB 155 -- Central Florida Regional Transportation Authority
HB 527 Scrutinized Companies by Workman, Moskowitz, Rader
HB 593 Government Accountability by Metz
PCS for HB 869 -- Public Records/Security Systems
HB 1021 Award of Attorney Fees in Public Records Enforcement Actions by Steube
HB 1063 Public Records and Meetings/Nurse Licensure Compact by Pigman

NOTICE FINALIZED on 01/15/2016 4:25PM by Kaiser.Debbi

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 67 **Classified Advertisement Websites**
SPONSOR(S): Watson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1152

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Moore <i>AM</i>	Williamson <i>AW</i>
2) Civil Justice Subcommittee			
3) Government Operations Appropriations Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

In response to a continuing trend of crimes stemming from transactions related to online classified advertisement websites, such as Craigslist, a number of police departments have opened their lobbies and parking lots for citizens to use as safe havens to complete the sales transactions. The goal, according to police around the country, is to create a public space for legitimate transactions to take place, often in the presence of authorities.

The bill requires that a certain number of safe-haven facilities be established to facilitate sales transactions related to classified advertisement websites. A "safe-haven facility" is defined as a secure location open to the public for the purpose of conducting a sales transaction involving an item or a service that was offered for sale on a classified advertisement website.

The bill requires there to be:

- One safe-haven facility in each county with a population of less than 250,000 residents;
- Two safe-haven facilities in each county with at least 250,000 but less than 800,000 residents; and
- Four safe-haven facilities in each county with 800,000 or more residents.

The bill requires safe-haven facilities to be easily accessible and authorizes a state building, such as a college, university, or Florida Highway Patrol station, to serve as a safe-haven facility. In addition, a local governmental building, such as a sheriff's office or courthouse, may serve as a safe-haven facility if the local governmental body approves of the use.

The bill may have an indeterminate negative fiscal impact on state or local governments. See Fiscal Comments section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In response to a continuing trend of crimes stemming from transactions related to online classified advertisement websites, such as Craigslist, a number of police departments have opened their lobbies and parking lots for citizens to use as safe havens to complete the sales transactions.¹ The goal, according to police around the country, is to create a public space for legitimate transactions to take place, often in the presence of authorities.²

One of the first police departments to establish a safe haven for citizens to use to conduct transactions arranged online was the East Chicago Police Department.³ In May 2014, after a series of robberies related to Craigslist transactions, the department began "Operation Safe Sale," and offered the use of its headquarters parking lot and lobby to conduct transactions.⁴ The parties may request an officer to oversee a transaction in the lobby if it is conducted between 9 a.m. and 7 p.m. on weekdays or between 11 a.m. and 3 p.m. on Saturdays.⁵ If no officer is desired, the parking lot and police lobby are available for use for transactions any time.⁶

Similarly, in January 2015, the Virginia Beach, Virginia, Police Department launched the "Find a Safe Place" initiative, through which it offered its precinct lobbies for residents to use to conduct the transactions.⁷ The lobbies are available for use from 9 a.m. to 9 p.m., seven days a week.⁸ However, the lobbies may not be used for transactions involving large, cumbersome household items or the sale of any contraband, stolen property, or other illegal items.⁹

Safe havens have also been established in many other states across the country, including Georgia, Iowa, Indiana, Kansas, Louisiana, Michigan, Missouri, North Carolina, Nebraska, New Hampshire, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Texas.¹⁰

Florida police departments have also begun creating safe havens at their facilities. In July 2014, the Boca Raton Police Department, in response to "at least three cases in June where people were ripped off by buyers when trying to sell something off Craigslist," offered the department's lobby and parking

¹ Peter Holley, *After Craigslist Crimes, Police across U.S. Are Opening Safe Havens for Transactions*, THE WASHINGTON POST, March 2, 2015, available at <https://www.washingtonpost.com/news/morning-mix/wp/2015/03/02/following-craigslist-crimes-police-across-the-country-are-opening-safe-havens-for-transactions>.

² *Id.*

³ Juan Perez Jr., *East Chicago Police Offer Up Their Lobby, Parking Lot for Craigslist Transactions*, CHICAGO TRIBUNE, May 01, 2014, available at http://articles.chicagotribune.com/2014-05-01/news/chi-east-chicago-police-offer-up-their-lobby-parking-lot-for-craigslist-transactions-20140501_1_craigslist-transactions-becker-lobby.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Becca Mitchell and Todd Corillo, *Virginia Beach Police Offering Precinct Lobbies as a Safe Place for Craigslist Transactions*, WTKR NEWS CHANNEL 3, January 27, 2015, available at <http://wtkr.com/2015/01/27/virginia-beach-police-offering-precinct-lobbies-as-a-safe-place-for-craigslist-transactions/>.

⁸ *Id.*

⁹ *Id.*

¹⁰ SafeTrade, *Where to Trade*, available at <http://www.safetradestations.com/uploads/4/8/6/9/48698381/policestationlist.pdf>.

lot for transactions.¹¹ Safe havens have also been created by law enforcement in Boynton Beach, Delray Beach,¹² Gainesville, Gilchrist County, Miami-Dade County, and Hillsborough County.¹³

Effect of Proposed Changes

The bill requires that a certain number of safe-haven facilities be established to facilitate sales transactions related to classified advertisement websites. A "safe-haven facility" is defined as a secure location open to the public for the purpose of conducting a sales transaction involving an item or a service that was offered for sale on a classified advertisement website.

The bill requires there to be:

- One safe-haven facility in each county with a population of less than 250,000 residents;
- Two safe-haven facilities in each county with at least 250,000 but less than 800,000 residents; and
- Four safe-haven facilities in each county with 800,000 or more residents.

The bill requires safe-haven facilities to be easily accessible and authorizes a state building, such as a college, university, or Florida Highway Patrol station, to serve as a safe-haven facility. In addition, a local governmental building, such as a sheriff's office or courthouse, may serve as a safe-haven facility if the local governmental body approves of the use.

The bill specifies that an entity, or its officers, employees, or agents, that provides a safe-haven facility is not responsible for overseeing the sales transaction or is not otherwise liable for the actions of the parties involved in the transaction. An action may not be initiated on a claim against the state or a local government, including any agencies or subdivisions, based on an incident that occurs during a sales transaction at a safe-haven facility involving an individual who is not an officer, employee, or agent of the state, local government, agency, or subdivision.

B. SECTION DIRECTORY:

Section 1. creates s. 501.180, F.S., relating to safe-haven facilities.

Section 2. provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

¹¹ Kate Jacobson, *Boca Raton police ask Craigslist sellers to use station lobby*, THE SUN SENTINEL, July 5, 2014, available at http://articles.sun-sentinel.com/2014-07-05/news/fl-boca-raton-craigslist-lobby-20140701_1_boca-raton-police-station-lobby-craigslist-sellers.

¹² Alexandra Seltzer, *Safest place to sell on Craigslist? Police lobbies*, PALM BEACH POST, July 18, 2014, available at <http://www.mypalmbeachpost.com/news/news/local/safest-place-to-sell-on-craigslist-police-lobbies/ng79/>.

¹³ SafeTrade, *Where to Trade*, available at <http://www.safetradestations.com/uploads/4/8/6/9/48698381/policestationlist.pdf>.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate negative fiscal impact on state or local governments if they are required to expend funds to meet the requirement for the number of safe-haven facilities within each county.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires a certain number of safe-haven facilities to be established within each county; however, an exemption may apply if the bill results in an insignificant fiscal impact to county governments. The exceptions to the mandates provision of Art. VII, s. 18 of the Florida Constitution appear to be inapplicable because the bill does not articulate a threshold finding of serving an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The bill is silent regarding the process of designating a safe-haven facility. As such, it is unclear how safe-haven facilities will be designated and who is responsible for establishing them.

Other Comments: State Universities

The Board of Governors provided the following information regarding the bill:

The bill prevents legal action against safe-havens for incidents that may occur during a sales transaction if a party to the transaction is not an officer, employee, or agent of the safe haven. For transactions on a university campus, there is a likelihood that one or both parties to a transaction may be officers, employees, or an agent of the university therefore exposing the university to litigation if an incident arises during the sales transaction. Exposing the university to liability for personal commercial activity outside the assigned duties of a university officer,

employee, or agent defies established legal precedence and applicable university personnel regulations.¹⁴

The Board of Governors further stated that “[t]he provision of facilities for the conduct of general commercial activity is not part of the mission of the State University System, and the use of educational facilities for activities other than those specific to student education and associated events result in conflicts in the use of university buildings and raise safety concerns.”¹⁵

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

¹⁴ State University System of Florida Board of Governors, 2016 Legislative Bill Analysis for HB 67, Dec. 16, 2015, at 2 (on file with the Government Operations Subcommittee).

¹⁵ *Id.*

1 A bill to be entitled
 2 An act relating to classified advertisement websites;
 3 creating s. 501.180, F.S.; defining the term "safe-
 4 haven facility"; requiring a specified number of safe-
 5 haven facilities to be designated in each county based
 6 upon population size; authorizing state buildings, or
 7 alternatively, local governmental buildings, to serve
 8 as safe-haven facilities; limiting the liability of an
 9 entity that provides a safe-haven facility; limiting
 10 actions against the state or local government related
 11 to transactions taking place at a safe-haven facility;
 12 providing an effective date.

13
 14 WHEREAS, there have been a number of cases throughout this
 15 state in which people selling cellphones, computers, or other
 16 valuable goods through classified advertisement websites have
 17 been targeted by criminals who intend to rob them when they meet
 18 to exchange goods for cash, and

19 WHEREAS, even when the victims of these crimes select
 20 public and populated locations for the transactions that they
 21 feel are safe, such as shopping centers or parks, they still
 22 fall prey to these criminals, and

23 WHEREAS, identifying locations to serve as safe havens for
 24 transactions related to classified advertisement websites will
 25 deter these crimes and provide greater safety throughout the
 26 state, NOW, THEREFORE,

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

Section 1. Section 501.180, Florida Statutes, is created to read:

501.180 Safe-haven facilities.-

(1) As used in this section, the term "safe-haven facility" means a secure location open to the public for the purpose of conducting a sales transaction involving an item or a service that was offered for sale on a classified advertisement website.

(2) To promote the safety of an individual who is using a classified advertisement website that requires the seller and buyer to meet in person to conduct the transaction, there shall be at least:

(a) One safe-haven facility in each county with a population of less than 250,000 residents.

(b) Two safe-haven facilities in each county with at least 250,000 but less than 800,000 residents.

(c) Four safe-haven facilities in each county with 800,000 or more residents.

(3) A safe-haven facility must be easily accessible so that an individual is not discouraged from using the location. A state building, such as a college or university, Florida Highway Patrol station, or other state office building, may serve as a safe-haven facility. A local governmental building, such as a

53 sheriff's office or a county courthouse, may serve as a safe-
54 haven facility if the local governmental body approves of the
55 use of such building.

56 (4) An entity, or its officers, employees, or agents, that
57 provides a safe-haven facility is not responsible for overseeing
58 the sales transaction or is not otherwise liable for the actions
59 of the parties involved in the transaction.

60 (5) An action may not be initiated on a claim against the
61 state or local government or any of its agencies or subdivisions
62 based on an incident that occurs during a sales transaction at a
63 safe-haven facility involving an individual who is not an
64 officer, employee, or agent of the state or local government or
65 of its agencies or subdivisions.

66 Section 2. This act shall take effect July 1, 2016.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER _____

1 Committee/Subcommittee hearing bill: Government Operations
 2 Subcommittee
 3 Representative Watson, B. offered the following:

Amendment (with title amendment)

Remove lines 34-59 and insert:

7 facility" means a public local government building approved by
 8 the local governmental body to be used by the public for the
 9 purpose of conducting a sales transaction involving an item or a
 10 service that was offered for sale on a classified advertisement
 11 website.

(2) Local governmental bodies may designate at least:

13 (a) One safe-haven facility in each county with a
 14 population of less than 250,000 residents.

15 (b) Two safe-haven facilities in each county with at least
 16 250,000 but less than 800,000 residents.

17 (c) Four safe-haven facilities in each county with 800,000



Amendment No.

18 | or more residents.

19 | (3) A safe-haven facility must be easily accessible so
20 | that an individual is not discouraged from using the location. A
21 | local governmental body may approve the use of a public local
22 | government building, such as a sheriff's office or a county
23 | courthouse, to serve as a safe-haven facility.

24 | (4) A local governmental entity, or its officers,
25 | employees, or agents, that provides a safe-haven facility is not
26 | responsible for overseeing the sales transaction and is not
27 | otherwise liable for the actions of the parties involved in the
28 | transaction or nonparties present to the transaction.

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30 | -----

31 | **T I T L E A M E N D M E N T**

32 | Remove lines 4-9 and insert:
33 | haven facility"; authorizing local governmental bodies to
34 | designate a specified number of safe-haven facilities in each
35 | county based upon population size; authorizing a local
36 | governmental body to approve the use of local government
37 | buildings to serve as safe-haven facilities; limiting the
38 | liability of any local governmental entity that provides a safe-
39 | haven facility; limiting

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 155 Central Florida Regional Transportation Authority
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 738

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Moore <i>AM</i>	Williamson <i>RAW</i>

SUMMARY ANALYSIS

The Central Florida Regional Transportation Authority (LYNX) is an agency of the state created pursuant to the Central Florida Regional Transportation Authority Act. Its governing board is composed of the following five members:

- The chair of the Orange County Board of County Commissioners or another member designated by the chair;
- The chair of the Osceola County Board of County Commissioners or another member designated by the chair;
- The chair of the Seminole County Board of County Commissioners or another member designated by the chair;
- The mayor of the City of Orlando or a member of the Orlando City Council designated by the mayor; and
- The Department of Transportation (DOT) district secretary, or his or her designee, for the district within which the area served by LYNX is located.

The bill increases the number of governing board members from five to nine and provides that the board is composed as follows:

- The mayor of the City of Orlando must serve for the full extent of his or her term;
- The chairs of the boards of county commissioners of Orange, Osceola, and Seminole Counties must each appoint one member of the respective board of county commissioners;
- The board of county commissioners of Orange County must appoint one member of the board additional to the member appointed by the chair;
- The Speaker of the House of Representatives and the President of the Senate must alternate the appointment of one legislator whose district includes at least a portion of Orange, Osceola, or Seminole County; and
- The Governor must appoint three citizen members, one from Orange County, one from Osceola County, and one from Seminole County.

The bill provides that the district secretary of DOT within the area served by LYNX will serve as a nonvoting advisor to LYNX's governing board.

The bill establishes the terms of the board members, provides for expiration of the terms of standing board members, and establishes quorum requirements.

The bill may have a minimal fiscal impact on the state, but does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In 1993, the Legislature created the Central Florida Regional Transportation Authority, which replaced the Central Florida Commuter Rail Authority, and gave it the right to own, operate, maintain, and manage a public transportation system in the area of Seminole, Orange, and Osceola Counties.¹ On October 1, 1994, the Orange-Seminole-Osceola Transportation Authority, which provided transportation services under the name "LYNX," merged with the Central Florida Regional Transportation Authority. The consolidated Central Florida Regional Transportation Authority continued the practice of providing transportation services under the name "LYNX."²

The Central Florida Regional Transportation Authority (LYNX) is established in Part III of Ch. 343, F.S. It is created and established as a body politic and corporate and an agency of the state.³ Its governing board consists of five members:

- The chair of the Seminole County Commission or another member designated by the chair;
- The chair of the Orange County Commission or another member designated by the chair;
- The chair of the Osceola County Commission or another member designated by the chair;
- The mayor of the City of Orlando or a member of the Orlando City Council designated by the mayor; and
- The Department of Transportation (DOT) district secretary, or his or her designee, for the district within which the area served by LYNX is located.⁴

LYNX provides public transportation services to the greater Orlando metropolitan area, which covers Orange, Seminole, and Osceola Counties. LYNX also offers some out-of-county express service to Lake and Volusia Counties and flexible and fixed-route service to Polk County. LYNX provides alternative transportation services in the form of fixed-route bus services, bus rapid transit, neighborhood circulators, paratransit services, and vanpool services.

LYNX has an operating budget for Fiscal Year 2016 of approximately \$127 million and operates a fleet of 300 air-conditioned coaches. In Fiscal Year 2014, LYNX provided 30.1 million passenger trips and traveled more than 16.5 million vehicle miles.⁵

Section 343.64, F.S., authorizes LYNX to employ a secretary, an executive director, professional staff, and other employees as it may require⁶ and to delegate its powers to these employees, subject to the supervision and control of the governing board.⁷

In 2014, LYNX employed 744 transportation staff, 200 maintenance staff, and 161 administrative and general staff, for a total of 1,105 employees.⁸ The LYNX chief executive officer is responsible for

¹ Ch. 93-103, Laws of Fla.

² CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY D/B/A/ LYNX, *Comprehensive Annual Financial Report for Years Ended Sept. 30, 2014 and 2013*, http://www.golynx.com/core/fileparse.php/143255/urlt/2014-cfrta-d_b_a-lynx.pdf (last visited Dec. 18, 2015).

³ s. 343.63(1), F.S.

⁴ s. 343.63(2), F.S.

⁵ *LYNX Facts at a Glance*, <http://www.golynx.com/corporate-info/facts-glance.stml> (last visited Dec. 18, 2015).

⁶ s. 343.64(4), F.S.

⁷ s. 343.64(5), F.S.

⁸ CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY D/B/A/ LYNX, *Comprehensive Annual Financial Report for Years Ended Sept. 30, 2014 and 2013*, http://www.golynx.com/core/fileparse.php/143255/urlt/2014-cfrta-d_b_a-lynx.pdf (last visited Dec. 18, 2015).

administration and operations, and is supported by a general manager, a government affairs officer, and a compliance manager, as well as nine directors who oversee the departments of Engineering and Construction, Human Resources, Information Technology, Communications, Planning, Procurement and Contracts, Risk Management and Safety, Transportation and Vehicle Maintenance including the Paratransit division, and Finance including the Accounting and Finance, Budgets, and Material Control divisions.⁹

Effect of Proposed Changes

The bill revises the membership of the governing board of LYNX. The number of voting members is increased from five to nine, and the board is composed as follows:

- The mayor of the City of Orlando must serve for the full extent of his or her term;
- The chairs of the boards of county commissioners of Orange, Osceola, and Seminole Counties must each appoint a member of the respective board of county commissioners;
- The board of county commissioners of Orange County must appoint one member of the board additional to the member appointed by the chair;
- The Speaker of the House of Representatives and the President of the Senate must alternate the appointment of one legislator whose district includes at least a portion of Orange, Osceola, or Seminole County; and
- The Governor must appoint three citizen members, one from Orange County, one from Osceola County, and one from Seminole County.

The bill requires the district secretary of DOT within the area served by LYNX to serve as a nonvoting advisor to LYNX's governing board.¹⁰ The bill specifies that members appointed by the Governor will serve three-year terms and all other appointed members will serve two-year terms. The terms of standing board members expire on the effective date of the bill.

The bill requires the LYNX governing board to elect a chair, vice chair, and treasurer from among its membership. The bill provides that five members constitute a quorum, and that the vote of five members is required for any action taken by the board. A vacancy on the board will not impair the ability of the board to obtain a quorum.

B. SECTION DIRECTORY:

Section 1 Amends s. 343.63, F.S., relating to the governing body of the Central Florida Regional Transportation Authority.

Section 2 Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a minimal fiscal impact on state funds resulting from the addition of four members to the governing board.

⁹ *Id.*

¹⁰ District 5 includes Orange, Osceola, and Seminole Counties. FLORIDA DEPARTMENT OF TRANSPORTATION, *About District Five*, <http://www.dot.state.fl.us/publicinformationoffice/moreDOT/districts/dist5.shtm> (last visited Dec. 18, 2015).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities of counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to the Central Florida Regional
 3 Transportation Authority; amending s. 343.63, F.S.;
 4 revising the organization and membership of the
 5 governing board of the authority; providing an
 6 effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Section 343.63, Florida Statutes, is amended to
 11 read:

12 343.63 Central Florida Regional Transportation Authority.—

13 (1) There is created and established a body politic and
 14 corporate, an agency of the state, to be known as the "Central
 15 Florida Regional Transportation Authority," hereinafter referred
 16 to as the "authority."

17 (2) The governing board of the authority shall consist of
 18 nine voting members as follows:

19 (a) The mayor of the City of Orlando shall serve for the
 20 full extent of his or her term.

21 (b) The chairs of the boards of county commissioners of
 22 Orange, Osceola, and Seminole Counties shall each appoint
 23 himself or herself or another member of the respective board of
 24 county commissioners.

25 (c) The board of county commissioners of Orange County
 26 shall appoint one member of the board additional to the member

27 appointed pursuant to paragraph (b).

28 (d) The Speaker of the House of Representatives or the
 29 President of the Senate shall appoint one legislator whose
 30 district includes at least a portion of Orange, Osceola, or
 31 Seminole County. The Speaker of the House of Representatives
 32 shall appoint the first legislator to serve following the
 33 effective date of this act. The President of the Senate shall
 34 appoint the next legislator to serve at the expiration of the
 35 first legislator's term. Thereafter the appointment of the
 36 legislator shall continue to alternate between the Speaker of
 37 the House of Representatives and the President of the Senate. A
 38 vacancy occurring during a term must be filled by appointment by
 39 the presiding officer who appointed the member whose vacancy is
 40 to be filled.

41 (e) The Governor shall appoint three citizen members, one
 42 of whom shall be a citizen of Orange County, one of whom shall
 43 be a citizen of Osceola County, and one of whom shall be a
 44 citizen of Seminole County.

45
 46 Appointed members shall serve for 2 years, except that each
 47 citizen member appointed by the Governor shall serve for 3
 48 years. An appointed member's term expires December 31 of his or
 49 her last year of service. The terms of standing board members
 50 expire on the effective date of this act. Each appointed member
 51 shall hold office until his or her successor is appointed and
 52 qualified. A vacancy occurring during a term must be filled for

53 only the balance of the unexpired term. Each appointed member of
 54 the board shall be a person of outstanding reputation for
 55 integrity, responsibility, and business ability. Except as
 56 provided in this subsection, a person who is an officer or
 57 employee of a municipality or county may not be an appointed
 58 member of the board. Any member of the board is eligible for
 59 reappointment.

60 (3) The district secretary of the Department of
 61 Transportation district within the area served by the authority
 62 shall serve as a nonvoting advisor to the governing board of the
 63 authority.

64 (4) The governing board of the authority shall elect a
 65 chair, vice chair, and treasurer from among its membership, who
 66 shall each hold his or her office at the pleasure of the board.
 67 Five members of the board constitute a quorum, and the vote of
 68 five members is necessary for any action taken by the board. A
 69 vacancy on the board does not impair the right of a quorum to
 70 exercise all rights and perform all duties of the authority.

71 ~~(2) The governing board of the authority shall consist of~~
 72 ~~five voting members as follows:~~

73 ~~(a) The chairs of the county commissions of Seminole,~~
 74 ~~Orange, and Osceola Counties, or another member of the~~
 75 ~~commission designated by the county chair, shall each serve as a~~
 76 ~~representative on the board for the full extent of his or her~~
 77 ~~term.~~

78 ~~(b) The mayor of the City of Orlando, or a member of the~~

79 ~~Orlando City Council designated by the mayor, shall serve as a~~
80 ~~representative on the board for the full extent of his or her~~
81 ~~term.~~

82 ~~(c) The Secretary of Transportation shall appoint the~~
83 ~~district secretary, or his or her designee, for the district~~
84 ~~within which the area served by the authority is located and~~
85 ~~this member shall be a voting member.~~

86 ~~(3) A vacancy during a term shall be filled in the same~~
87 ~~manner as the original appointment and only for the balance of~~
88 ~~the unexpired term.~~

89 (5)~~(4)~~ The members of the authority shall not be entitled
90 to compensation, but shall be reimbursed for travel expenses
91 actually incurred in their duties as provided by law.

92 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 527 Scrutinized Companies
SPONSOR(S): Workman and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 86

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Moore <i>AM</i>	Williamson <i>WWT</i>
2) Appropriations Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The State Board of Administration (SBA) has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan investments and the FRS Investment Plan, which represent approximately \$153.8 billion, or 87.1 percent, of the \$176.5 billion in assets managed by the SBA. The SBA's ability to invest the FRS assets is governed by a "legal list" of the types of investments and the total percentage of funds that may be invested in each type. In 2007, the Legislature unanimously passed the Protecting Florida's Investment Act, which required the SBA to identify and divest of companies with certain business operations in Sudan or Iran.

Chapter 287, F.S., regulates state agency procurement of personal property and services. Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods. Current law prohibits a company with certain business operations in Sudan or Iran or that is engaged in business operations in Cuba or Syria from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of \$1 million or more.

The Boycott, Divestment, and Sanctions (BDS) Movement is a global campaign targeting Israel in an attempt to increase economic and political pressure on the country to comply with the movement's stated goals. The BDS Movement promotes the boycott, divestment, and sanction of Israel and has gained support from many academics, trade unions, political parties, and citizens around the world. However, opposition to the movement is widespread, and critics have claimed the movement is ineffective, immoral, based on false or biased information, and could end up harming the Palestinian cause. In response to the BDS Movement, some states have enacted legislation that condemns BDS activities.

The bill defines "boycott Israel" to mean refusing to deal with, terminating business activities with, or taking other actions intended to penalize, inflict economic harm, or otherwise limit commercial relations with Israel or persons or entities doing business in Israel or in Israeli-controlled territories for reasons other than business, investment, or commercial reasons

The bill requires the SBA to identify and create a list of all companies that boycott Israel in which the SBA, on behalf of the FRS trust fund, has direct or indirect holdings or could possibly have such holdings in the future. The SBA is prohibited from acquiring securities of companies on the list, with certain exceptions.

The bill also prohibits a company on the list from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of \$1 million or more, with certain exceptions.

The bill may have an indeterminate fiscal impact on the private sector, the state, and local governments. See Fiscal Comments section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Board of Administration

The State Board of Administration (SBA or board) is established by Art. IV, s. 4(e) of the State Constitution and is composed of the Governor, the Chief Financial Officer, and the Attorney General. The board members are commonly referred to as "Trustees." The SBA derives its powers to oversee state funds from Art. XII, s. 9 of the Constitution.

The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan investments and the FRS Investment Plan,¹ which represent approximately \$153.8 billion, or 87.1 percent, of the \$176.5 billion in assets managed by the SBA, as of October 31, 2015.² The SBA also manages more than 30 other investment portfolios with combined assets of \$22.9 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Pre-Paid College Plan, and various debt-service accounts for state bond issues.³

Investments

Investment decisions for the pension plan are made by fiduciaries hired by the state. Under Florida law, an SBA fiduciary charged with an investment decision must act as a prudent expert would under similar circumstances, taking into account all relevant substantive factors. A nine-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures.⁴

The SBA's ability to invest the FRS assets is governed by s. 215.47, F.S., which provides a "legal list" of the types of investments and the total percentage that may be invested in each type. Some "legal list" guidelines specific to the pension plan provide:

- No more than 80 percent of assets should be invested in domestic common stocks.
- No more than 75 percent of assets should be invested in internally managed common stocks.
- No more than 3 percent of equity assets should be invested in the equity securities of any one corporation, except to the extent a higher percentage of the same issue is included in a nationally recognized market index, based on market values, or except upon a specific finding by the board that such higher percentage is in the best interest of the fund.
- No more than 25 percent of assets should be invested in notes issued by FHA-insured or VA-guaranteed first mortgages on real property, or foreign government general obligations.
- No more than 35 percent of assets should be invested in foreign corporate or commercial securities or obligations.
- No more than 20 percent of assets should be invested in alternative investments.

Exchange-traded Funds

Exchange-traded funds (ETFs) are a type of investment product. ETFs offer investors a way to pool their money in a fund that makes investments in stocks, bonds, or other assets and, in return, to receive an interest in that investment pool. Unlike mutual funds, ETF shares are traded on a national

¹ Members in the FRS may elect to participate in the pension plan, which is a defined benefit plan, or the investment plan, which is a defined contribution plan.

² See State Board of Administration, *Performance Report to the Trustees*, October 31, 2015, issued December 15, 2015, p. 5-6, available at https://www.sbafla.com/fsb/Portals/Internet/Reports/20151031_Trustees_Performance_Reportrev.pdf.

³ *Id.*

⁴ Section 215.444, F.S.

stock exchange and at market prices that may or may not be the same as the net asset value of the shares.⁵

State Sponsors of Terrorism

Countries that are determined by the United States Secretary of State to have repeatedly provided support for acts of international terrorism are designated as "State Sponsors of Terrorism" and are subject to sanctions under the Export Administration Act, the Arms Export Control Act, and the Foreign Assistance Act.⁶ The four main categories of sanctions resulting from designations under these acts are: restrictions on U.S. foreign assistance, a ban on defense exports and sales, certain controls over exports of dual use items, and miscellaneous financial and other restrictions.⁷

The three countries currently designated by the U.S. Secretary of State as "State Sponsors of Terrorism" are Iran, Sudan, and Syria.⁸

Divestment of Securities

Divestment of securities is one method of applying economic pressures to companies, groups, or countries whose practices are not condoned by shareholders. Divestment may be used in conjunction with or in lieu of other sanctioning methods, such as economic embargoes and diplomatic and military activities. Alternatively, divestment may be used as a protective device if a particular investment carries a high level of risk to the performance of a fund.

State Divestment Laws

The state has practiced divestment three times in modern history. From 1986 to 1993, the Legislature directed the SBA to divest of companies doing business with South Africa. From 1997 until 2001, the SBA made a decision to divest of 16 tobacco stocks due to pending litigation involving the state and those companies. In 2007, the Legislature unanimously passed the Protecting Florida's Investment Act (PFIA), which required the SBA to divest of companies with certain business operations in the countries of Sudan or Iran. The PFIA requires the SBA to assemble and publish a list of "Scrutinized Companies"⁹ that have prohibited business operations in Sudan or Iran. Once a company

⁵ More information about ETFs can be found online at: <http://www.nasdaq.com/investing/etfs/what-are-ETFs.aspx> (last visited Jan. 13, 2016).

⁶ U.S. Department of State, *State Sponsors of Terrorism*, <http://www.state.gov/j/ct/list/c14151.htm> (last visited Jan. 13, 2016).

⁷ *Id.*

⁸ *Id.*

⁹ Section 215.473(1)(t), F.S., defines "scrutinized company" as a company that meets any of the following criteria:

1. The company has business operations that involve contracts with or provision of supplies or services to the government of Sudan, companies in which the government of Sudan has any direct or indirect equity share, consortiums or projects commissioned by the government of Sudan, or companies involved in consortiums or projects commissioned by the government of Sudan, and:

a. More than 10 percent of the company's revenues or assets linked to Sudan involve oil-related activities or mineral-extraction activities; less than 75 percent of the company's revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral-extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and the company has failed to take substantial action; or

b. More than 10 percent of the company's revenues or assets linked to Sudan involve power-production activities; less than 75 percent of the company's power-production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action.

2. The company is complicit in the Darfur genocide.

3. The company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict. Examples of safeguards include post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

4. The company has business operations that involve contracts with or provision of supplies or services to the government of Iran, companies in which the government of Iran has any direct or indirect equity share, consortiums, or projects commissioned by the government of Iran, or companies involved in consortiums or projects commissioned by the government of Iran and:

a. More than 10 percent of the company's total revenues or assets are linked to Iran and involve oil-related activities or mineral-extraction activities; and the company has failed to take substantial action; or

is placed on the list, the SBA and its investment managers are prohibited from acquiring that company's securities and are required to divest the company's securities if the company does not cease the prohibited activities or take certain compensating actions involving petroleum or energy, oil or mineral extraction, power production, or military support activities.

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency¹⁰ procurement of personal property and services. Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods that include:

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals, which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate, which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services.¹¹

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process.¹² However, specified contractual services and commodities are not subject to competitive solicitation requirements.¹³

The Department of Management Services (DMS) is statutorily designated as the central executive agency procurement authority and its responsibilities include overseeing agency implementation of the procurement process,¹⁴ creating uniform agency procurement rules,¹⁵ implementing the online procurement program,¹⁶ and establishing state term contracts.¹⁷ The agency procurement process is partly decentralized in that agencies, except in the case of state term contracts, may procure goods and services themselves in accordance with requirements set forth in statute and rule, rather than placing orders through DMS.

Prohibition against Contracting with Scrutinized Companies and Companies Engaged in Business Operations in Cuba or Syria

Current law prohibits a company that is on the Scrutinized Companies with Activities in Sudan List (Sudan List) or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (Iran List) or that is engaged in business operations in Cuba¹⁸ or Syria from bidding on, submitting a

b. The company has, with actual knowledge, on or after August 5, 1996, made an investment of \$20 million or more, or any combination of investments of at least \$10 million each, which in the aggregate equals or exceeds \$20 million in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.

¹⁰ Section 287.012(1), F.S., defines the term "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

¹¹ See ss. 287.012(6) and 287.057(1), F.S.

¹² Section 287.057(1), F.S., requires all projects that exceed the Category Two threshold amount (\$35,000) contained in s. 287.017, F.S., to be competitively procured.

¹³ See s. 287.057(3)(e), F.S.

¹⁴ See ss. 287.032 and 287.042, F.S.

¹⁵ See ss. 287.032(2) and 287.042(3), (4), and (12), F.S.

¹⁶ See s. 287.057(23), F.S.

¹⁷ See ss. 287.042(2), 287.056, and 287.1345, F.S.

¹⁸ The law prohibiting a company that is engaged in business operations in Cuba from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of \$1 million or more is known as the "Cuba Amendment" and was passed in 2012. In *Odebrecht Const., Inc. v. Secretary, Fla. Dep't of Transp.*, 715 F.3d 1268 (11th

proposal for, or entering into or renewing a contract with an agency or local governmental entity¹⁹ for goods or services of \$1 million or more.²⁰ A company that submits a bid or proposal for or enters into or renews such a contract must certify that the company is not on the Sudan List or the Iran List or that it does not have business operations in Cuba or Syria.²¹ The certification must be submitted at the time a bid or proposal is submitted or before a contract is executed or renewed.²² In addition, a contract for goods or services of \$1 million or more entered into or renewed on or after July 1, 2012, must contain a provision that allows for the termination of the contract, at the option of the awarding body, if the company is found to have submitted a false certification, been placed on the Sudan List or the Iran List, or been engaged in business operations in Cuba or Syria.²³

If an agency or local governmental entity determines that a company has submitted a false certification, it must provide the company with written notice, and the company has 90 days to respond in writing to such determination.²⁴ If the company fails to demonstrate that the determination of false certification was made in error, the awarding body must bring a civil action against the company.²⁵ If a civil action is brought and the court determines that the company submitted a false certification, the company must pay all reasonable attorney fees and costs (including costs for investigations that led to the finding of false certification).²⁶ In addition, a civil penalty equal to the greater of \$2 million or twice the amount of the contract for which the false certification was submitted must be imposed.²⁷ The company is ineligible to bid on any contract with an agency or local governmental entity for three years after the date the agency or local governmental entity determined that the company submitted a false certification.²⁸ A civil action to collect the penalties must commence within three years after the date the false certification is submitted.²⁹

An agency or local governmental entity is authorized to make a case-by-case exception to the contracting prohibition for a company on the Sudan List or the Iran List if all of the following occur:

- The scrutinized business operations³⁰ were made before July 1, 2011;
- The scrutinized business operations have not been expanded or renewed after July 1, 2011;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company; and
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations.³¹

An agency or local governmental entity is also authorized to make a case-by-case exception to the contracting prohibition for a company engaged in business operations in Cuba or Syria if:

- The business operations were made before July 1, 2012;
- The business operations have not been expanded or renewed after July 1, 2012;

Cir. 2013), the Eleventh Circuit Court of Appeals affirmed an injunction prohibiting enforcement of the Cuba Amendment. The court found that the Cuba Amendment was preempted by extensive federal statutory and administrative sanctions and would undermine the President's discretionary authority concerning federal policy toward Cuba.

¹⁹ Section 287.135(1)(c), F.S., defines "local governmental entity" as a county, municipality, special district, or other political subdivision of the state.

²⁰ Section 287.135(2), F.S.

²¹ Section 287.135(5), F.S.

²² *Id.*

²³ Section 287.135(3)(b), F.S.

²⁴ Section 287.135(5)(a), F.S.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Section 287.135(5)(a)1., F.S.

²⁸ Section 287.135(5)(a)2., F.S.

²⁹ Section 287.135(5)(b), F.S.

³⁰ Section 215.473(1)(t), F.S., defines "scrutinized business operations" to mean business operations that result in a company becoming a scrutinized company.

³¹ Section 287.135(4)(a)1., F.S.

- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company; and
- The company has adopted, has publicized, and is implementing a formal plan to cease business operations and to refrain from engaging in any new business operations.³²

In addition, an agency or local governmental entity may make an exception to the contracting prohibition for a company on the Sudan List, on the Iran List, or that is engaged in business operations in Cuba or Syria if one of the following occurs:

- The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
- For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
- For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.³³

Section 287.135(8), F.S., specifies that the contracting prohibitions discussed above become inoperative on the date that federal law ceases to authorize the state to adopt and enforce such prohibitions.

Boycott, Divestment, and Sanctions against Israel

The Boycott, Divestment, and Sanctions (BDS) Movement is a global campaign targeting Israel in an attempt to increase economic and political pressure on the country to comply with the movement's stated goals, which are:

- Ending its occupation and colonization of all Arab lands occupied in June 1967 and dismantling the wall;
- Recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality; and
- Respecting, protecting, and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN Resolution 194.³⁴

The BDS Movement promotes the boycott, divestment, and sanction of Israel and has gained support from many academics, trade unions, political parties, and citizens around the world.³⁵ However, opposition to the movement is widespread, and critics have claimed the movement is ineffective,³⁶ immoral,³⁷ based on false or biased information,³⁸ and could end up harming the Palestinian cause.³⁹

In response to the BDS Movement, some states have enacted legislation that condemns BDS activities. In 2015, Illinois passed a law that requires state-funded retirement systems to divest of holdings in companies that boycott Israel under certain circumstances.⁴⁰ South Carolina also enacted

³² Section 287.135(4)(a)2., F.S.

³³ Section 287.135(4)(a)1., F.S.

³⁴ BDS Movement, *Introducing the BDS Movement*, <http://bdsmovement.net/bdsintro> (last visited Jan. 14, 2016).

³⁵ BDS Movement, *BDS in 2015: Seven ways our movement broke new ground against Israeli settler-colonialism and apartheid*, <http://bdsmovement.net/2015/7-ways-our-movement-broke-new-ground-13634> (last visited Jan. 14, 2016).

³⁶ *Boycotting Israel: New pariah on the block*, THE ECONOMIST (Sept. 13, 2007), available at <http://www.economist.com/node/9804231>.

³⁷ Naftalia Balanson, *The Moral Argument Against BDS*, ZEEK (Nov. 29, 2010), available at <http://zeek.forward.com/articles/117084/>.

³⁸ *Hundreds in academic world sign anti-BDS petition*, JEWISH TELEGRAPHIC AGENCY (Sept. 22, 2014), available at <http://www.jta.org/2014/09/22/news-opinion/united-states/hundreds-of-academics-sign-anti-bds-petition>.

³⁹ *Chomsky says BDS tactics won't work, may be harmful to Palestinians*, THE JERUSALEM POST (July 3, 2014), available at <http://www.jpost.com/Diplomacy-and-Politics/Chomsky-says-BDS-tactics-wont-work-may-be-harmful-to-Palestinians-361417>.

⁴⁰ *Illinois Gov. Signs First Anti-BDS Bill Into Law*, THE WASHINGTON FREE BEACON (July 23, 2015), <http://freebeacon.com/issues/ill-gov-signs-first-anti-bds-bill-into-law/>.

anti-BDS legislation that prohibits the state or a political subdivision of the state from accepting a proposal from or procuring goods or services from a business that engages in the boycott of a person or an entity based on race, color, religion, gender, or national origin.⁴¹ Other states, including Tennessee, Indiana, Pennsylvania, and New York, have passed resolutions condemning the BDS Movement. States considering anti-BDS legislation include Ohio, New York, and New Jersey.

In June of 2015, President Obama signed into law the first federal anti-BDS legislation. With respect to an agreement that is proposed to be entered into with the Transatlantic Trade and Investment Partnership countries, the law specifies that the principal negotiating objectives of the United States regarding commercial partnerships are the following:

- To discourage actions by potential trading partners that directly or indirectly prejudice or otherwise discourage commercial activity solely between the United States and Israel.
- To discourage politically motivated actions to boycott, divest from, or sanction Israel and to seek the elimination of politically motivated nontariff barriers on Israeli goods, services, or other commerce imposed on the State of Israel.
- To seek the elimination of state-sponsored unsanctioned foreign boycotts against Israel or compliance with the Arab League Boycott of Israel by prospective trading partners.

Effect of Proposed Changes

Prohibited Investments in Companies that Boycott Israel

The bill creates s. 215.4725, F.S., relating to prohibited investments by the SBA in companies that boycott Israel. It provides the following definitions:

- “Boycott Israel” or “boycott of Israel” means refusing to deal with, terminating business activities with, or taking other actions intended to penalize, inflict economic harm, or otherwise limit commercial relations with Israel or persons or entities doing business in Israel or in Israeli-controlled territories for reasons other than business, investment, or commercial reasons.
- “Company” means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies, that exists for the purpose of making profit.
- “Direct holdings” in a company means all securities of that company that are held directly by the state board on behalf of the public fund or in an account or fund in which the state board, on behalf of the public fund, owns all shares or interests.
- “Indirect holdings” in a company means all securities of that company that are held in a commingled fund or other collective investment, such as a mutual fund, in which the state board, on behalf of the public fund, owns shares or interests together with other investors not subject to the newly created section or that are held in an index fund.
- “Public fund” means the System Trust Fund as defined in s. 121.021(36), F.S.⁴²
- “Scrutinized companies” means companies that boycott Israel or engage in a boycott of Israel.
- “State board” means the SBA.
- “Trustees” means the Board of Trustees of the SBA.

⁴¹ Miles Terry, *South Carolina: The First State in the Country to Stand with Israel Against the BDS Movement*, ACLJ, <http://aclj.org/israel/south-carolina-the-first-state-in-the-country-to-stand-with-israel-against-the-bds-movement> (last visited Jan 14, 2016).

⁴² Section 121.021(36), F.S., defines “System Trust Fund” as the trust fund established in the State Treasury by ch. 121, F.S., for the purpose of holding and investing the contributions paid by FRS members and employers and paying the benefits to which members or their beneficiaries may become entitled.

By August 1, 2016, the SBA is required to make its best efforts to identify all scrutinized companies in which the SBA, on behalf of the public fund, has direct or indirect holdings or could possibly have such holdings in the future. The bill directs the SBA to use the following efforts to identify these companies:

- Reviewing and relying, as appropriate in the SBA's judgment, on publicly available information regarding companies that boycott Israel, including information provided by nonprofit organizations, research firms, international organizations, and government entities;
- Contacting asset managers contracted by the SBA, on behalf of the public fund, for information regarding companies that boycott Israel; and
- Contacting other institutional investors that prohibit such investments or that have engaged with companies that boycott Israel.

In addition, a statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered by the SBA as evidence that a company is participating in a boycott of Israel.

Before its first meeting following the identification of scrutinized companies, the SBA must compile and make available the Scrutinized Companies that Boycott Israel List (Israel List). The SBA is required to update and make publicly available quarterly the Israel List based on evolving information from the sources used to compile the initial list as well as other sources.

The bill prohibits the SBA, on behalf of the public fund, from acquiring securities of companies on the Israel List. However, the following securities are excluded from the prohibition:

- Indirect holdings;
- Securities that are not publicly traded, which the bill deems indirect holdings;
- Alternative investments, as defined in s. 215.4401, F.S.,⁴³ which the bill deems indirect holdings; and
- ETFs.

For indirect holdings containing companies that boycott Israel, the SBA is required to submit letters to managers of the investment funds requesting that the managers consider removing such companies from the fund or create a similar fund having indirect holdings devoid of such companies. If the investment manager creates a similar fund, the SBA, on behalf of the public fund, is required to replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards.

The bill requires the SBA to immediately determine companies on the Israel List in which the SBA, on behalf of the public fund, owns direct or indirect holdings. For each company the SBA newly identifies after August 1, 2016, the SBA must send a written notice informing the company of its scrutinized company status and advising the company that it may become subject to investment prohibition. The notice must inform the company of the opportunity to clarify its activities regarding the boycott of Israel and encourage the company to cease the boycott within 90 days to avoid qualifying for investment prohibition. If, within 90 days after notification by the SBA, the company ceases a boycott of Israel, the company must be removed from the Israel List, and the investment prohibition may no longer apply to that company unless the company resumes a boycott of Israel.

Within 30 days after the Israel List is created, the SBA is required to file a report with each member of the trustees, the President of the Senate, and the Speaker of the House of Representatives that includes the Israel List. The report must be made available to the public.

⁴³ Section 215.4401(3)(a)1., F.S., defines "alternative investment" as an investment by the SBA in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager.

At each quarterly meeting of the trustees thereafter, the SBA must file a report, which must be made available to the public and to each member of the trustees, the President of the Senate, and the Speaker of the House of Representatives. This report must include the following:

- A summary of correspondence with companies identified as scrutinized companies;
- All prohibited investments;
- Any progress related to communicating with managers of indirect holdings that contain companies that boycott Israel; and
- A list of all publicly traded securities held directly by the public fund.

The SBA is required to adopt and incorporate the actions it takes to comply with the bill's investment prohibition into the SBA's investment policy statement as set forth in s. 215.475, F.S.⁴⁴

Notwithstanding any other provision of the bill to the contrary, the SBA, on behalf of the public fund, may invest in certain scrutinized companies if clear and convincing evidence shows that the value of all the assets under management by the SBA, on behalf of the public fund, becomes equal to or less than 99.5 percent, or 50 basis points, of the hypothetical value of all assets under management by the SBA, on behalf of the public fund, assuming no investment prohibition for any scrutinized company had occurred. Cessation of the investment prohibition and any new investment in a scrutinized company is limited to the minimum steps necessary to avoid this contingency. For any cessation of the investment prohibition and new investment in a scrutinized company, the SBA must submit a written report to the trustees, the President of the Senate, and the Speaker of the House of Representatives in advance of the new investment. The report must be updated semiannually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease the investment prohibition in scrutinized companies.

Prohibition against Contracting with Companies that Boycott Israel

The bill amends current law to prohibit a company on the Israel List from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of \$1 million or more. At the time a company submits a bid or proposal for such a contract or before the company enters into or renews such a contract, the company must certify that it is not on the Israel List.

Any contract with an agency or local governmental entity for goods or services of \$1 million or more entered into or renewed on or after October 1, 2016, must contain a provision that allows for the termination of the contract by the awarding body if the company:

- Is found to have submitted a false certification; or
- Has been placed on the Israel List.

An agency or local governmental entity is authorized to make a case-by-case exception to the contracting prohibition for a company on the Israel List if all of the following occur:

- The scrutinized business operations were made before October 1, 2016;
- The scrutinized business operations have not been expanded or renewed after October 1, 2016;

⁴⁴ Section 215.475, F.S., entitled "Investment policy statement" provides:

(1) In making investments for the System Trust Fund pursuant to ss. 215.44-215.53, F.S., the board shall make no investment which is not in conformance with the Florida Retirement System Defined Benefit Plan Investment Policy Statement, hereinafter referred to as "the IPS," as developed by the executive director and approved by the board. The IPS must include, among other items, the investment objectives of the System Trust Fund; permitted types of securities in which the board may invest; and evaluation criteria necessary to measure the investment performance of the fund. As required from time to time, the executive director of the board may present recommended changes in the IPS to the board for approval.

(2) Prior to any recommended changes in the IPS being presented to the board, the executive director of the board shall present such changes to the Investment Advisory Council for review. The council shall present the results of its review to the board prior to the board's final approval of the IPS or changes in the IPS.

- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company; and
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations.

An agency or local governmental entity is also authorized to make an exception to the contracting prohibition for a company on the Israel List if one of the following occurs:

- The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
- For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
- For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

B. SECTION DIRECTORY:

Section 1. creates s. 215.4725, F.S., relating to prohibited investments by the SBA in companies that boycott Israel.

Section 2. amends s. 287.135, F.S., relating to the prohibition against contracting with scrutinized companies.

Section 3. provides an effective date of upon becoming a law except as expressly provided in the act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate fiscal impact on the private sector. Companies that engage in a boycott of Israel may not be eligible to contract with the state and local governmental entities, which may have a

negative fiscal impact. In addition, the SBA may be prohibited from acquiring securities in those companies as an asset of the FRS, which may also have a negative fiscal impact.⁴⁵

D. FISCAL COMMENTS:

Prohibition on Contracting with Companies that Boycott Israel

The bill has an indeterminate fiscal impact on the state and local governments. State agencies and local governments will not be authorized to contract with certain companies that boycott Israel in certain instances. This prohibition may eliminate companies that otherwise would have been the least expensive source for certain goods or services.

Prohibition on Investing in Companies that Boycott Israel

There will be a recurring cost to the SBA to subscribe to appropriate services and for additional staff time necessary to comply with requirements of the bill related to companies that boycott Israel. However, such costs should be less than \$25,000 per year and will be able to be budgeted within existing fees charged on assets under management by the SBA.⁴⁶

The fiscal impact of prohibiting the SBA from acquiring securities of companies that boycott Israel as an asset of the FRS is indeterminate. According to the SBA, there is a potential for an impact on contribution rates to the FRS, but such impact, if any, would be minimal.⁴⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Dormant Foreign Affairs Doctrine

The United States Constitution grants the federal government various powers related to foreign affairs, such as the power to declare war,⁴⁸ maintain a military,⁴⁹ enter into treaties and other international agreements,⁵⁰ regulate foreign commerce,⁵¹ and to hear cases involving foreign states and citizens.⁵² These grants of power have been interpreted to grant the federal government the exclusive power to act in the area of foreign affairs.⁵³ The federal government's exclusive authority to act in the area of foreign affairs is known as the dormant foreign affairs doctrine.

When a state law operates in the field of foreign affairs without federal authorization, a reviewing court might find the state law to be invalid as a violation of the dormant foreign affairs doctrine.⁵⁴

⁴⁵ State Board of Administration, Agency Analysis of 2016 House Bill 527, p. 4 (Dec. 16, 2015).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Section 8, Art. I, U.S. Constitution.

⁴⁹ *Id.*

⁵⁰ Section 2, Art. II, U.S. Constitution.

⁵¹ Section 8, Art. I, U.S. Constitution.

⁵² Section 2, Art. III, U.S. Constitution.

⁵³ *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) (stating that the "Federal Government, representing as it does the collective interests of the forty-eight states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties.").

⁵⁴ *Zschernig v. Miller*, 389 U.S. 429 (1968); *American Ins. Ass'n v. Garamendi*, 539 U.S. 396 (2003).

If the purpose of the bill is to impact foreign affairs,⁵⁵ or if the effects of the bill have a sufficiently serious impact on foreign policy,⁵⁶ the bill may be found in violation of the dormant foreign affairs doctrine.⁵⁷

South Carolina and Illinois have both enacted anti-BDS laws that have not been challenged.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

⁵⁵ *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 381 (2000) (pointing out that a congressional invocation of exclusively national powers with respect to addressing human rights violations in Burma precluded Massachusetts from restricting its agencies from purchasing goods or services from companies that did business with Burma; the case, however, was decided on the basis that a federal law preempted the state law.).

⁵⁶ *Clark v. Allen*, 331 U.S. 503, 517-518 (1947) (finding a state law that addressed the disposition of personal property of alien decedents valid, in spite of noting that the law would “have some incidental or indirect effect in foreign countries.”); *Zschernig v. Miller*, 389 U.S. 429 (1968).

⁵⁷ Matthew Shaefer, *Constraints on State-Level Foreign Policy: (Re) Justifying, Refining, and Distinguishing the Dormant Foreign Affairs Doctrine*, 41 SETON HALL L. REV. 201, 237-239 (2011).

1 A bill to be entitled
 2 An act relating to scrutinized companies; creating s.
 3 215.4725, F.S.; providing definitions; requiring the
 4 State Board of Administration to identify all
 5 companies that are boycotting Israel or are engaged in
 6 a boycott of Israel in which the public fund owns
 7 direct or indirect holdings; requiring the state board
 8 to create and maintain a scrutinized companies list
 9 that names all such companies; requiring the state
 10 board to provide written notice to a company that is
 11 identified as a scrutinized company; specifying
 12 contents of the notice; specifying circumstances under
 13 which a company may be removed from the list;
 14 prohibiting the acquisition of certain securities of
 15 scrutinized companies; prescribing reporting
 16 requirements; requiring certain information to be
 17 included in the investment policy statement;
 18 authorizing the state board to invest in certain
 19 scrutinized companies if the value of all assets under
 20 management by the state board becomes equal to or less
 21 than a specified amount; requiring the state board to
 22 provide a written report to the Board of Trustees of
 23 the state board and the Legislature before such
 24 investment occurs; specifying required contents of the
 25 report; reenacting and amending s. 287.135, F.S.,
 26 relating to the prohibition against contracting with

27 | scrutinized companies; prohibiting a state agency or
 28 | local governmental entity from contracting for goods
 29 | and services that exceed a specified amount if the
 30 | company has been placed on the Scrutinized Companies
 31 | that Boycott Israel List; requiring inclusion of a
 32 | contract provision that authorizes termination of a
 33 | contract under certain circumstances; providing
 34 | exceptions; requiring certification upon submission of
 35 | a bid or proposal for a contract, or before a company
 36 | enters into or renews a contract, with an agency or
 37 | governmental entity that the company is not on the
 38 | Scrutinized Companies that Boycott Israel List;
 39 | providing that certain contracting prohibitions become
 40 | inoperative if federal law ceases to authorize the
 41 | states to enforce certain contracting prohibitions;
 42 | providing effective dates.

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

Section 1. Section 215.4725, Florida Statutes, is created to read:

215.4725 Prohibited investments by the State Board of Administration; companies that boycott Israel.-

- (1) DEFINITIONS.-As used in this section, the term:
- (a) "Boycott Israel" or "boycott of Israel" means refusing to deal with, terminating business activities with, or taking

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

53 other actions that are intended to penalize, inflict economic
 54 harm, or otherwise limit commercial relations with Israel or
 55 persons or entities doing business in Israel or in Israeli-
 56 controlled territories for reasons other than business,
 57 investment, or commercial reasons. The term does not apply to
 58 decisions made during the course of a company's ordinary
 59 business or for other business, investment, or commercial
 60 reasons. A statement by a company that it is participating in a
 61 boycott of Israel, or that it has initiated a boycott in
 62 response to a request for a boycott of Israel or in compliance
 63 with, or in furtherance of, calls for a boycott of Israel, may
 64 be considered by the State Board of Administration to be
 65 evidence that a company is participating in a boycott of Israel.

66 (b) "Company" means a sole proprietorship, organization,
 67 association, corporation, partnership, joint venture, limited
 68 partnership, limited liability partnership, limited liability
 69 company, or other entity or business association, including all
 70 wholly owned subsidiaries, majority-owned subsidiaries, and
 71 parent companies, that exists for the purpose of making profit.

72 (c) "Direct holdings" in a company means all securities of
 73 that company that are held directly by the state board on behalf
 74 of the public fund or in an account or fund in which the state
 75 board, on behalf of the public fund, owns all shares or
 76 interests.

77 (d) "Indirect holdings" in a company means all securities
 78 of that company that are held in a commingled fund or other

79 collective investment, such as a mutual fund, in which the state
 80 board, on behalf of the public fund, owns shares or interests
 81 together with other investors not subject to this section or
 82 that are held in an index fund.

83 (e) "Public fund" means the System Trust Fund as defined
 84 in s. 121.021(36).

85 (f) "Scrutinized companies" means companies that boycott
 86 Israel or engage in a boycott of Israel.

87 (g) "State board" means the State Board of Administration.

88 (h) "Trustees" means the Board of Trustees of the State
 89 Board of Administration.

90 (2) IDENTIFICATION OF COMPANIES.—

91 (a) By August 1, 2016, the state board shall make its best
 92 efforts to identify all scrutinized companies in which the state
 93 board, on behalf of the public fund, has direct or indirect
 94 holdings or could possibly have such holdings in the future.
 95 Such efforts include:

96 1. To the extent that the state board finds it
 97 appropriate, reviewing and relying on publicly available
 98 information regarding companies that boycott Israel, including
 99 information provided by nonprofit organizations, research firms,
 100 international organizations, and government entities.

101 2. Contacting asset managers contracted by the state
 102 board, on behalf of the public fund, for information regarding
 103 companies that boycott Israel.

104 3. Contacting other institutional investors that prohibit

105 such investments or that have engaged with companies that
 106 boycott Israel.

107 (b) Before the first meeting of the state board following
 108 the identification of scrutinized companies in accordance with
 109 paragraph (a), the state board shall compile and make available
 110 the "Scrutinized Companies that Boycott Israel List."

111 (c) The state board shall update and make publicly
 112 available quarterly the Scrutinized Companies that Boycott
 113 Israel List based on evolving information from, among other
 114 sources, those listed in paragraph (a).

115 (3) REQUIRED ACTIONS.—The state board shall adhere to the
 116 following procedures for assembling companies on the Scrutinized
 117 Companies that Boycott Israel List.

118 (a) Engagement.—

119 1. The state board shall immediately determine the
 120 companies on the Scrutinized Companies that Boycott Israel List
 121 in which the state board, on behalf of the public fund, owns
 122 direct or indirect holdings.

123 2. For each company newly identified under this paragraph
 124 after August 1, 2016, the state board shall send a written
 125 notice informing the company of its scrutinized company status
 126 and that it may become subject to investment prohibition by the
 127 state board on behalf of the public fund. The notice must inform
 128 the company of the opportunity to clarify its activities
 129 regarding the boycott of Israel and encourage the company to
 130 cease the boycott of Israel within 90 days in order to avoid

131 qualifying for investment prohibition.

132 3. If, within 90 days after the state board's first
 133 engagement with a company pursuant to this paragraph, the
 134 company ceases a boycott of Israel, the company shall be removed
 135 from the Scrutinized Companies that Boycott Israel List, and
 136 this section shall cease to apply to that company unless that
 137 company resumes a boycott of Israel.

138 (b) Prohibition.—The state board, on behalf of the public
 139 fund, may not acquire securities of companies on the Scrutinized
 140 Companies that Boycott Israel List, except as provided in
 141 paragraph (c) and subsection (6).

142 (c) Excluded securities.—Notwithstanding this section,
 143 paragraph (b) does not apply to:

144 1. Indirect holdings. However, the state board shall
 145 submit letters to the managers of such investment funds
 146 containing companies that boycott Israel requesting that they
 147 consider removing such companies from the fund or create a
 148 similar fund having indirect holdings devoid of such companies.
 149 If the manager creates a similar fund, the state board, on
 150 behalf of the public fund, shall replace all applicable
 151 investments with investments in the similar fund in an expedited
 152 timeframe consistent with prudent investing standards. For the
 153 purposes of this section, an alternative investment, as the term
 154 is defined in s. 215.4401, and securities that are not publicly
 155 traded are deemed to be indirect holdings.

156 2. Exchange-traded funds.

157 (4) REPORTING.—
 158 (a) The state board shall file a report with each member
 159 of the trustees, the President of the Senate, and the Speaker of
 160 the House of Representatives which includes the Scrutinized
 161 Companies that Boycott Israel List within 30 days after the list
 162 is created. This report shall be made available to the public.
 163 (b) At each quarterly meeting of the trustees thereafter,
 164 the state board shall file a report, which shall be made
 165 available to the public and to each member of the trustees, the
 166 President of the Senate, and the Speaker of the House of
 167 Representatives, which includes:
 168 1. A summary of correspondence with companies engaged by
 169 the state board under subparagraph (3) (a)2.
 170 2. All prohibited investments under paragraph (3) (b).
 171 3. Any progress made under paragraph (3) (c).
 172 4. A list of all publicly traded securities held directly
 173 by the public fund.
 174 (5) INVESTMENT POLICY STATEMENT OBLIGATIONS.—The state
 175 board's actions taken in compliance with this section, including
 176 all good faith determinations regarding companies as required by
 177 this act, shall be adopted and incorporated into the public
 178 fund's investment policy statement as provided in s. 215.475.
 179 (6) INVESTMENT IN CERTAIN SCRUTINIZED COMPANIES.—
 180 Notwithstanding any other provision of this section, the state
 181 board, on behalf of the public fund, may invest in certain
 182 scrutinized companies if clear and convincing evidence shows

183 that the value of all assets under management by the state
 184 board, on behalf of the public fund, becomes equal to or less
 185 than 99.5 percent, or 50 basis points, of the hypothetical value
 186 of all assets under management by the state board, on behalf of
 187 the public fund, assuming no investment prohibition for any
 188 company had occurred under paragraph (3) (b). Cessation of the
 189 investment prohibition and any new investment in a scrutinized
 190 company is limited to the minimum steps necessary to avoid the
 191 contingency described in this subsection. For any cessation of
 192 the investment prohibition and new investment authorized by this
 193 subsection, the state board shall provide a written report to
 194 each member of the trustees, the President of the Senate, and
 195 the Speaker of the House of Representatives in advance of the
 196 new investment, updated semiannually thereafter as applicable,
 197 setting forth the reasons and justification, supported by clear
 198 and convincing evidence, for its decisions to cease the
 199 investment prohibition in scrutinized companies.

200 Section 2. Effective October 1, 2016, section 287.135,
 201 Florida Statutes, is reenacted and amended to read:

202 287.135 Prohibition against contracting with scrutinized
 203 companies.-

204 (1) In addition to the terms defined in ss. 287.012 and
 205 215.473, as used in this section, the term:

206 (a) "Awarding body" means, for purposes of state
 207 contracts, an agency or the department, and for purposes of
 208 local contracts, the governing body of the local governmental

209 entity.

210 (b) "Business operations" means, for purposes specifically
 211 related to Cuba or Syria, engaging in commerce in any form in
 212 Cuba or Syria, including, but not limited to, acquiring,
 213 developing, maintaining, owning, selling, possessing, leasing,
 214 or operating equipment, facilities, personnel, products,
 215 services, personal property, real property, military equipment,
 216 or any other apparatus of business or commerce.

217 (c) "Local governmental entity" means a county,
 218 municipality, special district, or other political subdivision
 219 of the state.

220 (2) A company is ineligible to, and may not, bid on,
 221 submit a proposal for, or enter into or renew a contract with an
 222 agency or local governmental entity for goods or services of \$1
 223 million or more if that, at the time of bidding or submitting a
 224 proposal for a new contract or renewal of an existing contract,
 225 the company:

226 (a) Is on the Scrutinized Companies that Boycott Israel
 227 List, created pursuant to s. 215.4725;

228 (b) Is on the Scrutinized Companies with Activities in
 229 Sudan List or the Scrutinized Companies with Activities in the
 230 Iran Petroleum Energy Sector List, created pursuant to s.
 231 215.473; or

232 (c) Is engaged in business operations in Cuba or Syria,~~is~~
 233 ~~ineligible for, and may not bid on, submit a proposal for, or~~
 234 ~~enter into or renew a contract with an agency or local~~

235 ~~governmental entity for goods or services of \$1 million or more.~~

236 (3)(a) Any contract with an agency or local governmental
 237 entity for goods or services of \$1 million or more entered into
 238 or renewed on or after:

239 (a) July 1, 2011, through June 30, 2012, must contain a
 240 provision that allows for the termination of such contract at
 241 the option of the awarding body if the company is found to have
 242 submitted a false certification as provided under subsection (5)
 243 or been placed on the Scrutinized Companies with Activities in
 244 Sudan List or the Scrutinized Companies with Activities in the
 245 Iran Petroleum Energy Sector List.

246 ~~(b) Any contract with an agency or local governmental~~
 247 ~~entity for goods or services of \$1 million or more entered into~~
 248 ~~or renewed on or after July 1, 2012, through September 30, 2016,~~
 249 must contain a provision that allows for the termination of such
 250 contract at the option of the awarding body if the company is
 251 found to have submitted a false certification as provided under
 252 subsection (5), been placed on the Scrutinized Companies with
 253 Activities in Sudan List or the Scrutinized Companies with
 254 Activities in the Iran Petroleum Energy Sector List, or been
 255 engaged in business operations in Cuba or Syria.

256 (c) October 1, 2016, must contain a provision that allows
 257 for the termination of such contract at the option of the
 258 awarding body if the company:

259 1. Is found to have submitted a false certification as
 260 provided under subsection (5);

261 2. Has been placed on the Scrutinized Companies that
 262 Boycott Israel List;

263 3. Has been placed on the Scrutinized Companies with
 264 Activities in Sudan List or the Scrutinized Companies with
 265 Activities in the Iran Petroleum Energy Sector List; or

266 4. Has been engaged in business operations in Cuba or
 267 Syria.

268 (4) Notwithstanding subsection (2) or subsection (3), an
 269 agency or local governmental entity, on a case-by-case basis,
 270 may permit a company on the Scrutinized Companies that Boycott
 271 Israel List, the Scrutinized Companies with Activities in Sudan
 272 List, or the Scrutinized Companies with Activities in the Iran
 273 Petroleum Energy Sector List, or a company with business
 274 operations in Cuba or Syria, to be eligible for, bid on, submit
 275 a proposal for, or enter into or renew a contract for goods or
 276 services of \$1 million or more under the conditions set forth in
 277 paragraph (a) or the conditions set forth in paragraph (b):

278 (a)1. With respect to a company on the Scrutinized
 279 Companies with Activities in Sudan List or the Scrutinized
 280 Companies with Activities in the Iran Petroleum Energy Sector
 281 List, all of the following occur:

282 a. The scrutinized business operations were made before
 283 July 1, 2011.

284 b. The scrutinized business operations have not been
 285 expanded or renewed after July 1, 2011.

286 c. The agency or local governmental entity determines that

287 it is in the best interest of the state or local community to
 288 contract with the company.

289 d. The company has adopted, has publicized, and is
 290 implementing a formal plan to cease scrutinized business
 291 operations and to refrain from engaging in any new scrutinized
 292 business operations.

293 2. With respect to a company engaged in business
 294 operations in Cuba or Syria, all of the following occur:

295 a. The business operations were made before July 1, 2012.

296 b. The business operations have not been expanded or
 297 renewed after July 1, 2012.

298 c. The agency or local governmental entity determines that
 299 it is in the best interest of the state or local community to
 300 contract with the company.

301 d. The company has adopted, has publicized, and is
 302 implementing a formal plan to cease business operations and to
 303 refrain from engaging in any new business operations.

304 3. With respect to a company on the Scrutinized Companies
 305 that Boycott Israel List, all of the following occur:

306 a. The scrutinized business operations were made before
 307 October 1, 2016.

308 b. The scrutinized business operations have not been
 309 expanded or renewed after October 1, 2016.

310 c. The agency or local governmental entity determines that
 311 it is in the best interest of the state or local community to
 312 contract with the company.

313 d. The company has adopted, has publicized, and is
 314 implementing a formal plan to cease scrutinized business
 315 operations and to refrain from engaging in any new scrutinized
 316 business operations.

317 (b) One of the following occurs:

318 1. The local governmental entity makes a public finding
 319 that, absent such an exemption, the local governmental entity
 320 would be unable to obtain the goods or services for which the
 321 contract is offered.

322 2. For a contract with an executive agency, the Governor
 323 makes a public finding that, absent such an exemption, the
 324 agency would be unable to obtain the goods or services for which
 325 the contract is offered.

326 3. For a contract with an office of a state constitutional
 327 officer other than the Governor, the state constitutional
 328 officer makes a public finding that, absent such an exemption,
 329 the office would be unable to obtain the goods or services for
 330 which the contract is offered.

331 (5) At the time a company submits a bid or proposal for a
 332 contract or before the company enters into or renews a contract
 333 with an agency or governmental entity for goods or services of
 334 \$1 million or more, the company must certify that the company is
 335 not on the Scrutinized Companies that Boycott Israel List, the
 336 Scrutinized Companies with Activities in Sudan List, or the
 337 Scrutinized Companies with Activities in the Iran Petroleum
 338 Energy Sector List, or that it does not have business operations

339 | in Cuba or Syria.

340 | (a) If, after the agency or the local governmental entity
 341 | determines, using credible information available to the public,
 342 | that the company has submitted a false certification, the agency
 343 | or local governmental entity shall provide the company with
 344 | written notice of its determination. The company shall have 90
 345 | days following receipt of the notice to respond in writing and
 346 | to demonstrate that the determination of false certification was
 347 | made in error. If the company does not make such demonstration
 348 | within 90 days after receipt of the notice, the agency or the
 349 | local governmental entity shall bring a civil action against the
 350 | company. If a civil action is brought and the court determines
 351 | that the company submitted a false certification, the company
 352 | shall pay the penalty described in subparagraph 1. and all
 353 | reasonable attorney fees and costs, including any costs for
 354 | investigations that led to the finding of false certification.

355 | 1. A civil penalty equal to the greater of \$2 million or
 356 | twice the amount of the contract for which the false
 357 | certification was submitted shall be imposed.

358 | 2. The company is ineligible to bid on any contract with
 359 | an agency or local governmental entity for 3 years after the
 360 | date the agency or local governmental entity determined that the
 361 | company submitted a false certification.

362 | (b) A civil action to collect the penalties described in
 363 | paragraph (a) must commence within 3 years after the date the
 364 | false certification is submitted.

365 (6) Only the agency or local governmental entity that is a
 366 party to the contract may cause a civil action to be brought
 367 under this section. This section does not create or authorize a
 368 private right of action or enforcement of the penalties provided
 369 in this section. An unsuccessful bidder, or any other person
 370 other than the agency or local governmental entity, may not
 371 protest the award of a contract or contract renewal on the basis
 372 of a false certification.

373 (7) This section preempts any ordinance or rule of any
 374 agency or local governmental entity involving public contracts
 375 for goods or services of \$1 million or more with a company
 376 engaged in scrutinized business operations.

377 (8) The contracting prohibitions in this section
 378 applicable to companies on the Scrutinized Companies with
 379 Activities in Sudan List or the Scrutinized Companies with
 380 Activities in the Iran Petroleum Energy Sector List or to
 381 companies engaged in business operations in Cuba or Syria become
 382 ~~This section becomes~~ inoperative on the date that federal law
 383 ceases to authorize the states to adopt and enforce such ~~the~~
 384 contracting prohibitions ~~of the type provided for in this~~
 385 ~~section.~~

386 Section 3. Except as otherwise expressly provided in this
 387 act, this act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 593 Government Accountability
SPONSOR(S): Metz and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 686

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Moore <i>JM</i>	Williamson <i>RAW</i>
2) Appropriations Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Various statutes ensure government accountability of state and local governments. The bill makes various changes to some of these statutes. In part, the bill:

- Specifies that the Governor or Commissioner of Education, or designee, may notify the Legislative Auditing Committee of an entity's failure to comply with certain auditing and financial reporting requirements;
- Defines terms;
- Applies certain ethics standards and post-employment lobbying restrictions to certain corporations created or housed within the Department of Economic Opportunity;
- Applies the conflicting contractual relationship ban to include contracts held by a business entity in which a public officer or public employee holds a controlling interest or that he or she manages;
- Requires each agency, the judicial branch, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, the Guardian Ad Litem program, local governmental entities, charter schools, school districts, Florida College System institutions, and state universities to establish and maintain internal controls;
- Revises criminal provisions relating to bribery, misuse of public office, unlawful compensation or reward for official behavior, official misconduct, and bid tampering to replace the "corrupt intent" mens rea requirement with a "knowingly and intentionally" mens rea requirement;
- Requires all elected municipal officers to file a full and public disclosure of their financial interests;
- Adds school district to the list of governmental entities who may withhold salary-related payments for failure to timely file disclosure of financial interests;
- Expands the types of governmental entities subject to lobbyist registration requirements;
- Requires counties, municipalities, and special districts to maintain certain budget documents on their websites for specified timeframes;
- Requires a unit of government to investigate and take action to recover prohibited compensation, specifies methods of recovery and liability for violations, provides a reward structure to those reporting prohibited compensation, and exempts from the prohibition specified bonuses and severance pay;
- Revises the monthly financial statement requirements for water management districts;
- Revises the composition of an audit committee;
- Prohibits certain officers, members, or directors from representing a person or entity before Enterprise Florida, Inc., and its divisions and corporations, and the Florida Development Finance Corporation;
- Requires completion of an annual financial audit of the Florida Virtual School;
- Requires a district school board, Florida College System board of trustees, or university board of trustees to respond to audit recommendations under certain circumstances; and
- Prohibits a board or commission from requiring a member of the public to provide an advance written copy of his or her testimony or comments as a precondition of being given the opportunity to be heard.

The bill may have an indeterminate fiscal impact on the state, local governments, and the private sector. See Fiscal Comments section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Statement of Legislative Findings and Intent

The bill specifies that its intent is to prevent fraud, waste, and abuse and to safeguard government resources. It also provides that a proper and legitimate state purpose is served when internal controls are established to prevent and detect fraud, waste, and abuse and to safeguard and account for government funds and property.

Governmental Ethics Laws

Collection Methods for Unpaid Financial Disclosure Fines

Present Situation

Section 112.31455, F.S., authorizes the Commission on Ethics (COE) to engage in common-law withholding of wages and to seek garnishment in order to collect unpaid financial disclosure fines. Prior to referring such a fine to the Department of Financial Services (DFS), the COE must attempt to determine whether the filer is a current public officer or employee.¹ If the person is currently a public officer or employee, the COE may notify the Chief Financial Officer or the governing body of the appropriate county, municipality, or special district of the total amount of the fine owed to the COE by the individual. After receipt and verification of the notice from the COE, the Chief Financial Officer or the appropriate governing body is required to begin withholding the lesser of 10 percent or the maximum amount allowed under federal law from any salary-related payment. The withheld payments must be remitted to the COE until the fine is satisfied. Additionally, the Chief Financial Officer or appropriate governing body may retain an amount from each withheld payment to cover administrative costs incurred to comply with these requirements. In the event that the COE determines the individual owing a fine is no longer a public officer or employee or if the COE is unable to make such a determination, the COE must wait for six months after the order becomes final. After that period of time, the COE may seek garnishment pursuant to ch. 77, F.S. Additionally, the COE may refer the unpaid fine to a collection agency.² The collection agency may utilize any collection methods provided by law. The statute of limitations for an unpaid financial disclosure fine is 20 years.³

Effect of the Bill

The bill expressly requires school districts to withhold public salary-related payments after receiving notice from the COE that an employee has an unpaid fine, including a portion to cover any administrative costs incurred by the school district to comply with the requirement.

Lobbying Registration and Reporting Requirements for Certain Districts

Present Situation

Section 112.3261, F.S., requires a person who seeks to lobby a water management district (WMD) to register with the WMD as a lobbyist before he or she begins to lobby. Upon registration, the lobbyist must present a signed statement authorizing him or her to act on the principal's behalf. The statement must state the principal's main business. Any changes to this information must be reported within 15 days. WMDs may create their own lobbyist registration forms or use a legislative or executive branch lobbyist registration form. WMDs are required to be diligent in ascertaining whether lobbyists have properly registered and may not knowingly allow a lobbyist to lobby if he or she is not registered. The COE is charged with investigating complaints alleging that a lobbyist has failed to register or has

¹ Section 112.31455(1), F.S.

² Section 112.31455(3), F.S.

³ Section 112.31455(4), F.S.

provided false information in a report or registration. The Governor has the authority to enforce the COE's findings and recommendations. WMDs are authorized to adopt rules and establish procedures to govern lobbyist registration, including the adoption of forms and the establishment of a lobbyist registration fee, not to exceed \$40.

Effect of the Bill

The bill expands the scope of these lobbyist registration and reporting requirements to apply to hospital districts, children's services districts, expressway authorities, port authorities, counties and municipalities that have not adopted lobbyist registration and reporting requirements, and independent special districts with annual revenues of more than \$5 million that exercise ad valorem taxing authority.

Post Service Lobbying Restrictions

Present Situation

Section 288.92, F.S., authorizes Enterprise Florida, Inc., to create and dissolve divisions as necessary to carry out its mission and requires Enterprise Florida, Inc., to have divisions related to certain areas. The law also provides for the hiring of officers and members of the divisions and subjects certain officers and members to specified standards of conduct in the Code of Ethics for Public Officers and Employees.⁴ The law currently does not contain any post-employment or post-service restrictions.

The Florida Development Finance Authority is created in s. 288.9604, F.S., which addresses the appointment of members of the board of directors and the powers of the authority. The directors are subject to specified standards of conduct in the Code of Ethics for Public Officers and Employees. The law currently does not contain any post-employment or post-service restrictions.

The Department of Economic Opportunity (DEO) is created in s. 20.60, F.S., and has numerous entities under its purview in various chapters of the Florida Statutes. While DEO is an agency, and is therefore subject to the provisions of the Code of Ethics for Public Officers and Employees, many of the divisions and corporations created by, or administratively housed in, DEO may not be subject to its provisions. In 2014, the Legislature required the officers and board members of Enterprise Florida, Inc., its divisions, its subsidiaries, corporations created to carry out its mission, and corporations with which a division is required to contract in order to carry out its missions to be subject to specified standards of conduct.⁵ The Legislature also applied certain standards of conduct to the Florida Development Finance Corporation.⁶

Effect of the Bill

The bill prohibits the officers and members of the boards of directors of the divisions of Enterprise Florida, Inc., its subsidiaries, corporations created to carry out its missions, and corporations with which a division is required by law to contract to carry out its missions from representing another person or entity for compensation before Enterprise Florida, Inc., its divisions, its subsidiaries, and such corporations, for a period of six years after retirement or termination of service to a division. If the officer or member of the board of directors is removed or terminated for misconduct, as defined in s. 443.036(29), F.S.,⁷ that term is extended to a period of 10 years after termination of the service.

⁴ Part III, Chapter 112, Florida Statutes.

⁵ Section 8, Ch. 2014-183, L.O.F.

⁶ Section 9, Ch. 2014-183, L.O.F.

⁷ Section 443.036(29), F.S., provides that "misconduct," irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, which may not be construed in pari materia with each other:

(a) Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than \$50, or theft of employer property or property of a customer or invitee of the employer.

(b) Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent, or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.

The bill also prohibits a director of the Florida Development Finance Authority from representing another person or entity for compensation before the authority for a period of six years following his or her service on the board of directors.

The bill subjects the officers and members of the boards of directors of any corporation created pursuant to ch. 288, F.S., Space Florida, CareerSource Florida, Inc., the Florida Housing Finance Corporation, or any other corporation created by DEO to certain standards of conduct. Specifically, those individuals are subject to the anti-nepotism provision in s. 112.3135, F.S., the voting conflicts standard applicable to statewide officers in s. 112.3143(2), F.S., and the standards of conduct for public officers and employees in s. 112.313, F.S. Additionally, the bill prohibits a former officer or board member, for a period of six years after retirement or termination of service with the DEO corporate entity, from representing a person or entity for compensation before his or her corporation; a division, a subsidiary, or the board of directors of a corporation created to carry out the mission of his or her corporation; or a corporation with which his or her corporation within DEO is required by law to contract to carry out its missions. If he or she is removed due to misconduct, the prohibition applies for a period of 10 years.

Conflicting Employment and Contractual Relationships

Present Situation

Section 112.313(7)(a), F.S., prohibits public officers and employees of an agency from having employment or contractual relationships with a business entity or agency that is subject to the regulation of, or is doing business with, his or her agency. The law further prohibits public officers and employees of an agency from having an employment or a contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

In its annual reports to the Legislature for the past several years, the COE has advised that the law needs to be amended. Specifically, the COE has advised that individuals were creating a fictitious legal entity and subsequently using those fictitious legal entities to engage in contracts that would be prohibited if the people entered them individually.

Effect of the Bill

The bill provides that if a public officer or employee of an agency holds a controlling interest in a business entity or is an officer, a director, or a member who manages such an entity, contractual relationships held by the business entity are deemed to be held by the public officer or employee. As such, if a public officer or employee holds a controlling interest in a business entity or is an officer, a director, or a member who manages such an entity, it would be a violation for the business entity to have a contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties. The public officer or employee would face penalties ranging from censure and reprimand to removal from office. The penalties also permit a civil fine up to \$10,000 per violation.

(c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.

(d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.

(e)1. A violation of an employer's rule, unless the claimant can demonstrate that:

- a. He or she did not know, and could not reasonably know, of the rule's requirements;
- b. The rule is not lawful or not reasonably related to the job environment and performance; or
- c. The rule is not fairly or consistently enforced.

2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

CE Form 6 Financial Disclosure

Present Situation

Section 112.3144, F.S., requires certain officers that are specified in Art. II, s. 8 of the State Constitution, and other officers as required by law, to file a Full and Public Disclosure of Financial Interests (commonly referred to as a CE Form 6). The law specifies the information that must be disclosed, the due date of the disclosure, the processes to amend the disclosure, and penalties for failing to file the CE Form 6 as required. This filing is more detailed than what is referred to as a CE Form 1, which is filed annually by other officers as provided in s. 112.3145, F.S. Currently, elected municipal officers are subject to the CE Form 1 filing requirement.

Effect of the Bill

The bill requires all elected municipal officers to file the more detailed CE Form 6 annually as provided in s. 112.3144, F.S., beginning with the 2016 filing year.⁸ The bill also amends s. 99.061, F.S., to require a candidate for elected municipal office to file a CE Form 6 with his or her qualifying papers.

Criminal Ethics Provisions

Present Situation

Nineteenth Statewide Grand Jury

A statewide grand jury⁹ was impaneled in February 2010 upon the petition of Governor Charlie Crist to the Supreme Court of Florida. In the Petition for Order to Impanel a Statewide Grand Jury, Governor Crist stated that the following should be addressed statewide:

- Examine criminal activity of public officials who have abused their powers via their public office;
- Consider whether Florida's prosecutors have sufficient resources to effectively combat corruption;
- Address the effectiveness of Florida's current statutes in fighting public corruption;
- Identify any deficiencies in current laws, punishments, or enforcement efforts and make detailed recommendations to improve our anti-corruption initiatives;
- Investigate crimes, return indictments, and make presentments; and
- Examine public policy issues regarding public corruption and develop specific recommendations regarding improving current laws.¹⁰

The Nineteenth Statewide Grand Jury issued its *First Interim Report: A Study of Public Corruption in Florida and Recommended Solutions* on December 17, 2010. In its report, the Nineteenth Statewide Grand Jury made several recommendations to the Legislature, including revisions to ch. 838, F.S., regarding the definitions of the terms "public servant" and "corruptly" or "with corrupt intent" as well as the offenses of bribery, unlawful compensation or reward for official behavior, official misconduct, and bid tampering.

⁸ Financial disclosure, much like federal income tax filings, are done for the preceding year. Thus, elected municipal officers will be required to file the CE Form 6 for the first year by July 1, 2017.

⁹ See ss. 905.31-905.40, F.S., known as the Statewide Grand Jury Act.

¹⁰ Nineteenth Statewide Grand Jury First Interim Report: A Study of Public Corruption in Florida and Recommended Solutions, December 17, 2010, Case No. SC 09-1910, available at [http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/\\$file/19thSWGJInterimReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/$file/19thSWGJInterimReport.pdf) [hereinafter Interim Report].

Color of Law

Florida law does not enhance criminal classifications or felony sentencing penalties for criminal acts committed “under color of law,” which refers to criminal offenses that are committed by one who is acting or purporting to act in the performance of his or her official duties, unless acting or purporting to act in the performance of official duties is a necessary element of the underlying crime. The Nineteenth Statewide Grand Jury recommended that the Legislature consider reclassification of such offenses.¹¹

Doctrine of Mens Rea and Scienter

The term “mens rea” is defined as “a guilty mind; a guilty or wrongful purpose; a criminal intent.”¹² Black’s Law Dictionary notes that the term scienter is defined as “knowingly” and is frequently used to signify the defendant’s guilty knowledge.¹³ The general rule is that scienter or mens rea is a necessary element in the indictment for every crime.¹⁴

The Nineteenth Statewide Grand Jury found that the use of the word “corruptly” or “with corrupt intent” makes the prosecution of offenses under ch. 838, F.S., more difficult and might require additional evidence, such as testimony from persons involved.¹⁵ The Nineteenth Statewide Grand Jury recommended removing the element of “corruptly” or “with corrupt intent” from the ch. 838, F.S., offenses of bribery, unlawful compensation, official misconduct, and bid tampering.¹⁶

Definitions Related to Bribery and Misuse of Public Office

Chapter 838, F.S., pertains to bribery and other offenses concerning the misuse of public office.

Section 838.014(4), F.S., defines the term “corruptly” or “with corrupt intent” as acting knowingly and dishonestly for a wrongful purpose.

Section 838.014(6), F.S., defines the term “public servant” as:

- Any officer or employee of a state, county, municipal, or special district agency or entity;
- Any legislative or judicial officer or employee;
- Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or
- A candidate for election or appointment to any of the positions listed in this definition, or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

Bribery

Section 838.015, F.S., relates to the offense of bribery.¹⁷ Any individual who violates this section is guilty of a felony of the second degree, which is punishable as provided for in s. 775.082, s. 775.083, or s. 775.084, F.S.¹⁸

¹¹ *Id.*

¹² BLACK’S LAW DICTIONARY 1137 (4th Rev. 1968).

¹³ *Id.* at 1512.

¹⁴ *Chicone v. State*, 684 So. 2d 736, 741 (Fla. 1996); *see also U.S. v. Balint*, 258 U.S. 250 (1922).

¹⁵ *See Interim Report*, *supra* note 11, at 24.

¹⁶ *Id.*

¹⁷ Section 838.015(1), F.S., defines “bribery” as corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.

¹⁸ Section 838.015(3), F.S. Under ss. 775.082 and 775.083, F.S., a second degree felony is punishable by a term of imprisonment not to exceed 15 years, and a maximum fine of \$10,000. Section 775.084, F.S., relates to habitual felony offenders. If a habitual felony offender is convicted of a second degree felony, such offender may be sentenced for a term not exceeding 30 years.

Chapter 838, F.S., also contains three other bribery offenses, including bribery in athletic contests,¹⁹ commercial bribe receiving,²⁰ and commercial bribery.²¹ In *Roque v. State*, the Florida Supreme Court held that s. 838.15, F.S., the commercial bribe receiving law, was unconstitutionally vague.²² The Nineteenth Statewide Grand Jury Report opined that s. 838.16, F.S., commercial bribery, is most certainly also unconstitutionally vague since s. 838.16, F.S., refers to s. 838.15, F.S.²³

Unlawful Compensation or Reward for Official Behavior

Section 838.016, F.S., pertains to unlawful compensation or reward for official behavior. It is a second degree felony²⁴ for any person corruptly to give, offer, or promise to any public servant any benefit not authorized by law or for any public servant corruptly to request, solicit, accept, or agree to accept any benefit not authorized by law:

- For the past, present, or future performance, nonperformance, or violation of any act or omission that the person believes to have been, or the public servant represents as having been, either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty; or
- For the past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission that the person believes to have been, or the public servant represents as having been, either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

Official Misconduct

The offense of official misconduct contained in s. 838.022(1), F.S., provides that it is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another, to:

- Falsify, or cause another person to falsify, any official record or official document;
- Conceal, cover up, destroy, mutilate, or alter any official record or official document or cause another person to perform such an act; or
- Obstruct, delay, or prevent the communication of information relating to the commission of a felony that directly involves or affects the public agency or public entity served by the public servant.

Any person who violates these provisions commits a felony of the third degree, which is punishable as provided for in s. 775.082, s. 775.083, or s. 775.084, F.S.²⁵

Bid Tampering

Section 838.22, F.S., provides that:

- It is unlawful for a public servant, with corrupt intent to influence or attempt to influence the competitive bidding process undertaken by any state, county, municipal, or special district agency, or any other public entity, for the procurement of commodities or services, to:
 - Disclose material information concerning a bid or other aspects of the competitive bidding process when such information is not publicly disclosed.
 - Alter or amend a submitted bid, documents or other materials supporting a submitted bid, or bid results for the purpose of intentionally providing a competitive advantage to any person who submits a bid.

¹⁹ Section 838.12, F.S.

²⁰ Section 838.15, F.S.

²¹ Section 838.16, F.S.

²² *Roque v. State*, 664 So. 2d 928 (Fla. 1995).

²³ See Interim Report *supra* note 11, at 34.

²⁴ A second degree felony is punishable as provided for in ss. 775.082, 775.083, or 775.084, F.S. See *supra* note 19.

²⁵ Section 838.022(3), F.S. Under ss. 775.082 and 775.083, F.S., a third degree felony is punishable by a term of imprisonment not to exceed 5 years, and a maximum fine of \$5,000. Section 775.084, F.S., relates to habitual felony offenders. If a habitual felony offender is convicted of a third degree felony, such offender may be sentenced for a term not exceeding 10 years.

- It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause unlawful harm to another, to circumvent a competitive bidding process required by law or rule by using a sole-source contract for commodities or services.
- It is unlawful for any person to knowingly agree, conspire, combine, or confederate, directly or indirectly, with a public servant to violate one of the above provisions.
- It is unlawful for any person to knowingly enter into a contract for commodities or services that was secured by a public servant acting in violation of one of the above provisions.

Any person who violates one of these provisions commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.²⁶

Effect of the Bill

The bill amends s. 838.014, F.S., to define the term “governmental entity” as the state, including any unit of the executive, legislative, and judicial branches of government, political subdivisions and any agency or office thereof, or any other public entity that independently exercises any type of governmental function. The bill appears to expand the governmental entities subject to the crimes in ch. 383, F.S., to include public entities such as Citizens Property Insurance Corporation,²⁷ statutorily-created direct-support organizations,²⁸ and other statutorily-created public entities. The definition of “corruptly” or “with corrupt intent” is eliminated.

The definition of the term “public servant” is expanded to include any officer, director, partner, manager, representative, or employee of a nongovernmental entity, private corporation, quasi-public corporation, or quasi-public entity, or any person subject to ch. 119, F.S., who is acting on behalf of a governmental entity to the extent that the individual’s conduct relates to the performance of a public duty of a governmental entity. Also, for purposes of this definition, the term “nongovernmental entity” is defined to mean a person, an association, a cooperative, a corporation, a partnership, an organization, or any other entity, whether operating for profit or not for profit, that is not a governmental entity.

The bill amends s. 838.015(1), F.S., relating to bribery; s. 838.016, F.S., relating to unlawful compensation or reward for official behavior; s. 838.022, F.S., relating to official misconduct; and s. 838.22, F.S., relating to bid tampering, to change the mens rea element of each crime from “corruptly” to “knowingly and intentionally.” Additionally, s. 838.022, F.S., relating to official misconduct, is clarified so that the benefit received by the other person must be an “improper” benefit or the harm caused to another must be an “unlawful” harm.

Online Posting of Governmental Budgets

Counties, Municipalities, and Special Districts

Present Situation

Counties,²⁹ municipalities,³⁰ and special districts³¹ are required to post their tentative budgets on their websites two days prior to consideration of the budget at a public hearing. The final budget of a county, municipality, or special district must be posted on its website within 30 days after adoption. An

²⁶ See *supra* note 19.

²⁷ Section 627.351(6), F.S. Citizens Property Insurance Corporation was created in 2002 as a not-for-profit insurer of last resort for homeowners who could not obtain insurance elsewhere.

²⁸ A direct-support organization is an organization incorporated under ch. 617, F.S., and approved by the Department of State as a Florida corporation not for profit that is approved by a state agency to operate for the benefit of a specific program, such as the Florida Historic Capitol Museum Council’s direct-support organization. See s. 272.136, F.S.

²⁹ Section 129.03, F.S.

³⁰ Section 166.241, F.S.

³¹ Section 189.016(4), F.S.

amendment to a budget must be posted to the website within five days of adoption.³² Current law does not specify how long these documents must remain available on the website.

Effect of the Bill

The bill requires a tentative budget to remain on a county's, municipality's, or special district's website for at least 45 days. The bill also requires a final budget to remain on the entity's website for at least two years. Finally, the bill requires an adopted amendment to a budget to remain on the website for at least two years.

Water Management Districts

Present Situation

Chapter 373, F.S., governs Florida's water resource management and authorizes the creation of WMDs, which are given taxing authority. Section 373.536, F.S., governs the budget process for WMDs and requires a WMD's tentative budget to be posted on the WMD's website at least two days before budget hearings are conducted. The law requires a WMD's final adopted budget to be posted on the WMD's official website within 30 days after adoption.

Effect of the Bill

The bill requires a WMD's tentative budget to remain on the WMD's website for at least 45 days and requires the final adopted budget to remain on the website for at least two years.

Internal Controls to Prevent and Detect Fraud, Waste, and Abuse

Present Situation

State Agencies and the Judicial Branch

Section 215.86, F.S., requires each state agency and the judicial branch as defined in s. 216.011, F.S., to establish and maintain management systems and controls that promote and encourage compliance; economic, efficient, and effective operations; reliability of records and reports; and safeguarding of assets. It requires accounting systems and procedures to be designed to fulfill the requirements of generally accepted accounting principles.

Local Governmental Entities

Section 218.33, F.S., requires each local governmental entity to begin its fiscal year on October 1 and end it on September 30. Section 218.33(2), F.S., requires each local governmental entity to follow uniform accounting practices and procedures as provided by rule of DFS to assure the use of proper accounting and fiscal management by such units. Such rules must include a uniform classification of accounts.

Charter Schools

Section 1002.33, F.S., authorizes charter schools as part of Florida's state program of education. In addition to creating charter schools, that section also imposes certain requirements on charter schools. In pertinent part, the law provides that the governing body of a charter school is responsible for:

- Ensuring that the charter school has retained a certified public accountant or auditor to perform its annual audit;
- Reviewing and approving the audit report;
- Establishing a corrective plan, if necessary;
- Monitoring a financial recovery plan to ensure compliance; and
- Participating in governance training approved by the Department of Education, which must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.³³

³² Sections 129.06(2)(f)2., 166.241(5), and 189.016(7), F.S.

³³ Section 1002.33(9)(j), F.S.

School Districts, Florida College System Institutions, and State Universities

Current law requires the financial records and accounts of each school district, Florida College System institution, and other institution or agency under the supervision of the State Board of Education (SBE) to be prepared and maintained as prescribed by law and rules of the SBE. The financial records and accounts of each state university under the supervision of the Board of Governors (BOG) must be prepared and maintained as prescribed by law and rules of the BOG. Rules of the SBE and rules of the BOG must incorporate the requirements of law and accounting principles generally accepted in the United States and must include a uniform classification of accounts. Each state university must annually file with the BOG financial statements prepared in conformity with accounting principles generally accepted by the United States and the uniform classification of accounts prescribed by the BOG. The BOG's rules must prescribe the filing deadline for the financial statements. The required financial accounts and reports must include provisions that are unique to each of the following: K-12 school districts, Florida College System institutions, and state universities, and must provide for the data to be reported to the National Center of Educational Statistics and other governmental and professional educational data information services as appropriate.³⁴

Justice Administrative Commission

The Justice Administrative Commission (Commission) is created in s. 43.16, F.S. As one of its duties, the Commission is charged with maintaining a central state office for administrative services and assistance when possible to and on behalf of the state attorneys and public defenders of Florida, the capital collateral regional counsel of Florida, the criminal conflict and civil regional counsel, and the Guardian Ad Litem Program. Additionally, the Commission records and submits certain documents prepared by a state attorney, public defender, or criminal conflict and civil regional counsel or the Guardian Ad Litem Program, including necessary budgets, vouchers that represent valid claims for reimbursement by the state for authorized expenses, and other things incidental to the proper administrative operation of the office, such as revenue transmittals to the Chief Financial Officer and automated systems plans.

Effect of the Bill

The bill requires state agencies, the judicial branch, local governmental entities, charter schools, school districts, Florida College System institutions, state universities, the Commission, each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, and the Guardian Ad Litem Program to establish and maintain internal controls designed to:

- Prevent and detect fraud, waste, and abuse;
- Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices;
- Support economical and efficient operations;
- Ensure reliability of financial records and reports; and
- Safeguard assets.

The bill also authorizes a district school board to retain an internal auditor to determine the adequacy of internal controls described above.

Extra Compensation Claims and False Claims Act Changes

Extra Compensation Claims

Present Situation

Section 215.425, F.S., prohibits extra compensation to any officer, agent, employee, or contractor after the service has been rendered or the contract made. In addition, no money may be appropriated or paid on any claim the subject matter of which has not been provided for by preexisting laws, unless such compensation or claim is allowed by a law enacted by two-thirds of the members elected to each

³⁴ Section 1010.01, F.S.
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house of the Legislature. However, when adopting salary schedules for a fiscal year, a district school board or community college district board of trustees may apply the schedule for payment of all services rendered subsequent to July 1 of that fiscal year. Current law also requires a unit of government that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay to include in the contract provisions that limit severance pay to 20 weeks and that prohibit severance pay when the individual is terminated for misconduct.³⁵

Effect of the Bill

The bill defines “public funds” to mean any taxes, tuition, grants, fines, fees, or other charges or any other type of revenue collected by the state or any county, municipality, special district, school district, Florida College System institution, state university, or other separate unit of government created pursuant to law, including any office, department, agency, division, subdivision, political subdivision, board, bureau, or commission of such entities.

The bill requires a contract or employment agreement, or renewal of an existing contract or agreement, entered into by a unit of local government on or after July 1, 2011, or by a state university on or after July 1, 2012, to contain a requirement that severance pay from public funds may not exceed 20 weeks and to prohibit the provision of severance pay paid from any source of revenue when the officer, agent, employee, or contractor has been fired for misconduct.

The bill specifies that if the payment and receipt does not otherwise violate the Code of Ethics for Public Officers and Employees, the following funds may be used to provide extra compensation:

- Revenues received by state universities through or from faculty practice plans, health services support organizations, hospitals with which state universities are affiliated, direct-support organizations, or private donations, so long as such extra compensation is paid to individuals who are primarily clinical practitioners.
- Revenues received by Florida College System institutions through or from faculty practice plans, health services support organizations, direct-support organizations, or private donations, so long as such extra compensation is paid to individuals who are primarily clinical practitioners.
- Revenues that are received by a hospital licensed under ch. 395, F.S., that has entered into a Medicaid provider contract, so long as such extra compensation is paid to individuals who are primarily clinical practitioners, and the revenues:
 - Are not derived from the levy of an ad valorem tax;
 - Are not derived from patient services paid through the Medicaid or Medicare program;
 - Are derived from patient services pursuant to contracts with private insurers or private managed care entities; or
 - Are not appropriated by the Legislature or by any county, municipality, special district, school district, Florida College System institution, state university, or other separate unit of government created pursuant to law, including any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, or institution of such entities, except for revenues otherwise authorized to be used.
- Revenues or fees received by a seaport or airport from sources other than through the levy of a tax or funds appropriated by any county or municipality or the Legislature.

The bill requires a unit of government that has made a prohibited compensation payment to investigate and take all actions necessary to recover the prohibited compensation. If the compensation was provided unintentionally, the unit of government must recover the prohibited compensation through its normal recovery methods for overpayments. If the prohibited compensation was willfully made, the unit of government must recover the compensation from either the recipient or the individual who authorized the prohibited payment. A person who willfully provides prohibited compensation commits a first degree misdemeanor under the bill. The bill provides for suspension and removal of officers who willfully provide prohibited compensation as follows: an officer who exercises the powers and duties of a state

³⁵ Section 215.425(4)(a), F.S.

or county officer may be suspended by the Governor and removed by the Florida Senate; any other officer may be suspended and removed by the Governor pursuant to s. 112.51, F.S.

A person who reports a prohibited compensation payment is eligible for a reward of at least \$500, or the lesser of 10 percent of the funds recovered or \$10,000 per incident. There is an exception to the reward provision where the recovery of the prohibited compensation is based on disclosures of information relating to allegations or transactions in a criminal, civil, or administrative hearing; in a legislative, administrative, inspector general's, or other governmental report; in an Auditor General's report, hearing, audit, or investigation; or in the news media. If the reporting person was involved in the authorization, approval, or receipt of the prohibited compensation or is convicted for his or her role in the authorization, approval, or receipt of the prohibited compensation, he or she is not eligible for the reward. Whistle-blowers are granted full protection under the Whistle-blower's Act.³⁶

If the unit of government fails to recover the prohibited compensation payment within 90 days, a lawsuit is authorized to recover those funds using the legal procedures in ss. 68.082 (governing false claims against the state) and s. 68.083, F.S., (governing civil actions for false claims). Litigation to recover such funds must be brought in the circuit court of the county in which the unit of local government is located.

The bill specifies that the provisions regarding the recovery of prohibited compensation apply prospectively to contracts or employment agreements, or the renewal or renegotiation of an existing contract or employment agreement, effective on or after October 1, 2016.

False Claims against the State

Present Situation

Section 68.082, F.S., prohibits a person from:

- Knowingly presenting or causing to be presented a false or fraudulent claim for payment or approval;
- Knowingly making, using, or causing to be made or used a false record or statement material to a false or fraudulent claim;
- Having possession, custody, or control of property or money used or to be used by the state and knowingly delivering or causing to be delivered less than all of that money or property;
- Making or delivering a document certifying receipt of property used or to be used by the state and, intending to defraud the state, making or delivering the receipt without knowing that the information on the receipt is true;
- Knowingly buying or receiving, as a pledge of an obligation or a debt, public property from an officer or employee of the state who may not sell or pledge the property;
- Knowingly making, using, or causing to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state, or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money or property to the state; or
- Conspiring to commit one of the above violations.

A person who does any of the foregoing is liable to the state for a civil penalty of not less than \$5,500 and not more than \$11,000 and for treble the amount of damages the state sustains as a result of the person's act.

Section 68.083, F.S., authorizes the Department of Legal Affairs to investigate an allegation of a false claim against the state. If the Department of Legal Affairs determines a violation has occurred, it is authorized to commence a civil action against the violator. Additionally, DFS may bring such a suit in certain circumstances if the Department of Legal Affairs has not done so.

³⁶ Section 112.3187, F.S.

Effect of the Bill

The bill makes it a “false claim against the state” for any person to knowingly authorize, approve, or receive payment of prohibited compensation in violation of s. 215.425, F.S. A person who authorizes, approves, or receives payment of prohibited compensation is subject to a civil penalty ranging from \$5,500 to \$11,000 and for treble the amount of damages that the state sustains as a result of the authorization, approval, or receipt of prohibited compensation.

The bill authorizes DFS to bring a civil action if the action arises from an investigation by DFS concerning a violation of the prohibited compensation claim and the Department of Legal Affairs has not filed an action to recover the civil penalty and damages.

Auditing

Joint Legislative Auditing Committee

Present Situation

Section 11.40, F.S., provides:

Following notification by the Auditor General, the Department of Financial Services, or the Division of Bond Finance of the State Board of Administration of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with the applicable provisions within ss. 11.45(5)-(7),³⁷ 218.32(1),³⁸ 218.38,³⁹ or 218.503(3),⁴⁰ the Legislative Auditing Committee may schedule a hearing to determine if the entity should be subject to further state action.

Section 11.45, F.S., defines the types of audits that may be conducted. That section requires the Auditor General to conduct certain state and local governmental audits and specifies the frequency with which the audits must occur. Section 11.45(3), F.S., also allows the Auditor General to conduct other audits he or she determines to be appropriate. For purposes of s. 11.45, F.S., the term local governmental entity means a county agency, municipality, or special district as defined in s. 189.012,⁴¹ F.S., but does not include any housing authority established under ch. 421, F.S.

The Auditor General is required to annually transmit, by July 15, to the President of the Senate, the Speaker of the House of Representatives, and DFS a list of all school districts, charter schools, charter technical career centers, Florida College System institutions, state universities, and WMDs that have failed to comply with certain transparency requirements.

Effect of the Bill

The bill provides that the Governor or his or her designee, or the Commissioner of Education or his or her designee, may also notify the Joint Legislative Auditing Committee that a local governmental entity, district school board, charter school, or charter technical career center has failed to comply with applicable auditing, financial reporting, bond issuance notification, or bond verification provisions or failed to disclose a financial emergency or provide information required during a financial emergency.

³⁷ Section 11.45, F.S., governs certain audits to be conducted by the Auditor General.

³⁸ Section 218.32(1), F.S., requires annual financial reports from local governmental entities.

³⁹ Section 218.38, F.S., requires notice of bond issuance and contains verification requirements.

⁴⁰ Section 218.503(3), F.S., requires those entities to disclose a financial emergency and provide certain information concerning a financial emergency.

⁴¹ Section 189.012(6), F.S., defines a “special district” to mean a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

The bill defines the terms “abuse,” “fraud,” and “waste” in s. 11.45, F.S., as follows:

- “Abuse” means behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain.
- “Fraud” means obtaining something of value through willful misrepresentation, including, but not limited to, the intentional misstatements or omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an entity’s assets, bribery, or the use of one’s position for personal enrichment through the deliberate misuse or misapplication of an organization’s resources.
- “Waste” means the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose.

The bill also redefines the term “local governmental entity” for purposes of s. 11.45, F.S., to include tourist development councils and county tourism promotion agencies.

The bill exempts WMDs from being subject to audits of local governmental entities conducted pursuant to s. 11.45(2)(j), F.S. The bill authorizes the Auditor General to conduct audits or other engagements of tourist development councils and county tourism promotion agencies. The bill also makes conforming changes to the Auditor General’s reporting requirement.

Florida Single Audit Act

Present Situation

The Florida Single Audit Act, codified in s. 215.97, F.S., is designed to

- Establish uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects;
- Promote sound financial management, including effective internal controls, with respect to state financial assistance administered by nonstate entities;
- Promote audit economy and efficiency by relying to the extent possible on already required audits of federal financial assistance provided to nonstate entities;
- Provide for identification of state financial assistance transactions in the state accounting records and recipient organization records;
- Promote improved coordination and cooperation within and between affected state agencies providing state financial assistance and nonstate entities receiving state assistance; and
- Ensure, to the maximum extent possible, that state agencies monitor, use, and follow-up on audits of state financial assistance provided to nonstate entities.

Pursuant to the Florida Single Audit Act, certain entities that meet the “audit threshold” requirements are subject to a state single audit or a project-specific audit. Currently, the “audit threshold” requires each nonstate entity that expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of such nonstate entity to have a state single audit, or a project-specific audit, for such fiscal year. Every two years, the Auditor General, after consulting with the Executive Office of the Governor, DFS, and all state awarding agencies, is required to review the threshold amount for requiring audits and may adjust the threshold amount.⁴²

Effect of the Bill

The bill increases the audit threshold from \$500,000 to \$750,000. Additionally, the bill changes the requirement that the Auditor General review the threshold amount for requiring audits from every two years to “periodically;” however, the term “periodically” is not defined. Finally, the bill authorizes the Auditor General to recommend to the Legislature a statutory change to revise the threshold amount in its annual report.

⁴² Section 215.97(2)(a), F.S.
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Annual Financial Audit Reports

Present Situation

If, by the first day in any fiscal year, a local governmental entity, district school board, charter school, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, those entities meeting certain requirements must have an annual financial audit of its accounts and records completed within nine months after the end of its fiscal year by an independent certified public accountant.⁴³ Section 218.39, F.S., specifies the minimum required information for the independent audits and provides for discussion between the governing body and the independent certified public accountant regarding certain specified conditions. If corrective action is required and has not been taken, the Legislative Auditing Committee can request a statement explaining why the corrective action has not been taken and take certain steps to determine whether the entity should be subject to further state action.⁴⁴

Effect of the Bill

The bill provides that if the audit report contains a recommendation that was included in the preceding financial audit report but remains unaddressed, the governing body of the audited entity, within 60 days after delivery of the audit report to the governing body, must indicate whether it intends to take a corrective action, the corrective action to be taken, and when the corrective action will occur. If the governing body does not intend to take any corrective action, it must explain its decision at a regularly scheduled public meeting.

Local Governmental Entity Annual Financial Reports

Present Situation

Section 218.32, F.S., requires local governmental entities that are required to provide for an audit under s. 218.39, F.S., to submit an audit report and annual financial report to DFS within 45 days after completion of the audit report, but no later than nine months after the end of the fiscal year. The annual financial report must be signed by the chair of the governing body and the chief financial officer of the local governmental entity. The law also specifies the information that must be included in the report.

In addition, DFS is required to file a verified report with the Governor, the Legislature, the Auditor General, and the Special District Accountability Program of DEO showing the revenues, both locally derived and derived from intergovernmental transfers, and the expenditures of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation that is required to submit an annual financial report.⁴⁵

Effect of the Bill

The bill requires an independent certified public accountant conducting an audit of a local governmental entity pursuant to s. 218.39, F.S., to determine, as part of the audit, whether the entity's annual financial report is in agreement with the audited financial statements. The accountant's audit report must be supported by the same level of detail as required for the annual financial report. If the reports are not in agreement, the bill requires the accountant to specify in the audit report the differences that exist between the annual financial report and the audit report.

The bill also authorizes DFS, in preparing the verified report, to request additional information from the local governmental entity. Any additional information requested must be provided to DFS within 45 days after the request. If the local governmental entity does not comply with the request, DFS must notify the Legislative Auditing Committee, which may take action pursuant to s. 11.40(2), F.S.

⁴³ Section 218.39(1), F.S.

⁴⁴ Section 11.40(2), F.S.

⁴⁵ Section 218.32(2), F.S.

Auditor Selection Procedures

Present Situation

Section 218.391, F.S., outlines the process that each local governmental entity, district school board, charter school, or charter technical career center must follow in selecting a certified public accounting firm to act as an auditor. Noncharter counties are required to create an audit committee consisting of each of its officers elected pursuant to the State Constitution and one member of the board of county commissioners or its designee. The audit committee must publicly announce requests for proposals for the audit services. The law specifies the factors that must be considered in selecting the firm and the procedures for negotiating for compensation.

Effect of the Bill

The bill requires all counties to have an auditor selection committee consisting of each of its elected county constitutional officers or its officers elected pursuant to the county charter or their respective designees. The bill requires municipalities, special districts, district school boards, charter schools, and charter technical career centers to create an audit committee with at least three members, one of whom must be a member of the governing body of the entity. That member must serve as the audit committee's chair. An employee, chief executive officer, or chief financial officer of the county, municipality, special district, district school board, charter school, or charter technical career center may not serve as a member of an audit committee.

The bill requires the audit report submitted pursuant to s. 218.39, F.S., to include an affidavit executed by the chair of the audit committee affirming that the committee complied with the auditor selection requirements. If the Auditor General determines that an entity failed to comply with the requirements in selecting an auditor, the entity must select a replacement auditor to conduct audits for subsequent fiscal years if the original audit was performed under a multiyear contract.

The Florida Virtual School

Present Situation

The Florida Virtual School is created to develop and deliver online and distance learning. The Commissioner of Education is charged with monitoring the Florida Virtual School. In pertinent part, the law requires the board of trustees to submit an annual report to the Governor, the Legislature, the Commissioner of Education, and the SBE that must address:

- The operations and accomplishments of the Florida Virtual School within the state and those occurring outside the state as Florida Virtual School Global;
- The marketing and operational plan for the Florida Virtual School and Florida Virtual School Global, including recommendations regarding methods for improving the delivery of education through the Internet and other distance learning technology;
- The assets and liabilities of the Florida Virtual School and Florida Virtual School Global at the end of the fiscal year;
- A copy of an annual financial audit of the accounts and records of the Florida Virtual School and Florida Virtual School Global, conducted by an independent certified public accountant and performed in accordance with rules adopted by the Auditor General;
- Recommendations regarding the unit cost of providing services to students through the Florida Virtual School and Florida Virtual School Global; and
- Recommendations regarding an accountability mechanism to assess the effectiveness of the services provided by the Florida Virtual School and Florida Virtual School Global.⁴⁶

The Auditor General must conduct an operational audit of the Florida Virtual School, including Florida Virtual School Global.⁴⁷ The scope of the audit must include, but is not limited to, the administration of responsibilities relating to personnel; procurement and contracting; revenue production; school funds,

⁴⁶ Section 1002.37(6), F.S.

⁴⁷ Section 1002.37(11), F.S.

including internal funds; student enrollment records; franchise agreements; information technology utilization, assets, and security; performance measures and standards; and accountability. The law specifies that the final report on the audit must be submitted to the President of the Senate and the Speaker of the House of Representatives no later than January 31, 2014.

Effect of the Bill

The bill eliminates the requirement for the Auditor General to conduct an operational audit and report to the presiding officers by January 31, 2014.

The bill creates a new requirement for the Florida Virtual School to have an annual financial audit of its accounts and records conducted by an independent auditor who is a licensed certified public accountant. The independent auditor must conduct the audit in accordance with the rules adopted by the Auditor General and must prepare an audit report in accordance with such rules. The audit report must include a written statement of the board of trustees describing corrective action to be taken in response to each of the independent auditor's recommendations. The independent auditor must submit the audit report to the board of trustees and the Auditor General no later than nine months after the end of the preceding fiscal year. The bill also makes conforming changes to the annual report provided to the Governor, the Legislature, the Commissioner of Education, and the SBE by requiring a copy of the audit report to be submitted with the board of trustees' annual statement.

Required Audits of Certain Educational Institutions

Present Situation

School districts, Florida College System institutions, and other institutions and agencies under the supervision of the SBE and state universities under the supervision of the BOG are subject to the audit provisions of ss. 11.45 and 218.39, F.S. If an audit contains a significant finding, the district school board, the Florida College System institution board of trustees, or the university board of trustees is required to conduct an audit overview during a public meeting.⁴⁸

Effect of the Bill

The bill provides that if an audit report includes a recommendation that was included in the preceding financial audit report but remains unaddressed, the district school board, the Florida College System institution board of trustees, or the university board of trustees must indicate during a regularly scheduled public meeting whether it intends to take corrective action, the corrective action to be taken, and when the corrective action will occur within 60 days after the delivery of the audit report. If the district school board, Florida College System institution board of trustees, or university board of trustees does not intend to take corrective action, it must explain its decision at the public meeting.

Other Provisions

Florida Clerks of Court Operations Corporation

Present Situation

Currently, s. 28.35, F.S., requires the Florida Clerks of Court Operations Corporation to develop and certify a uniform system of workload measures and applicable workload standards for court-related functions as developed by the corporation and clerk workload performance in meeting the workload performance standards. These workload measures and workload performance standards must be designed to facilitate an objective determination of the performance of each clerk in accordance with minimum standards for fiscal management, operational efficiency, and effective collection of fines, fees, service charges, and court costs. The corporation must develop the workload measures and workload performance standards in consultation with the Legislature. When the corporation finds a clerk has not met the workload performance standards, the corporation must identify the nature of each deficiency and any corrective action recommended and taken by the affected clerk of the court. The corporation

⁴⁸ Section 1010.30(2), F.S.

must notify the Legislature of any clerk not meeting workload performance standards and provide a copy of any corrective action plans.

Effect of the Bill

The bill requires the Florida Clerks of Court Operations Corporation to notify the Legislature of any clerk not meeting the workload performance standards and provide a copy of any corrective action plans within 45 days after the end of each quarter. For purposes of s. 28.35, F.S., the quarters end on the last day of March, June, September, and December of each year.

Transparency in Government Spending

Present Situation

The Transparency Florida Act (Act), codified in s. 215.985, F.S., requires the Governor, in consultation with the appropriations committees of the House and Senate, to maintain a central website providing access to all other websites required to be linked under the Act. It also requires certain budget information, certain contract information, and minimum functionality standards to be readily available online. In pertinent part, s. 215.985(11), F.S., requires each WMD to provide a monthly financial statement to its governing board and make the statement available for public access on its website.

Effect of the Bill

The bill requires the monthly financial statement to be in the form and manner prescribed by DFS to the district's governing board and requires each WMD to make the monthly financial statement available to the public on its website.

Reasonable Opportunity to be Heard at Public Meetings

Present Situation

Section 286.0114, F.S., requires, with certain exceptions, that members of the public be provided a reasonable opportunity to be heard before a board or commission. The law describes a general public comment process and allows entities to prescribe how public comment is made and create certain reasonable limitations.

Effect of the Bill

The bill specifies that a board or commission may not require a member of the public to provide an advance written copy of his or her testimony or comments as a precondition of being given the opportunity to be heard at a meeting.

B. SECTION DIRECTORY:

Section 1 provides that the act may be cited as the "Florida Anti-Corruption Act of 2016."

Section 2 amends s. 11.40, F.S., relating to the Legislative Auditing Committee.

Section 3 amends s. 11.45, F.S., relating to definitions; duties; authorities; reports; and rules of the Auditor General.

Section 4 amends s. 20.602, F.S., relating to standards of conduct; officers and board members of DEO corporate entities.

Section 5 amends s. 28.35, F.S., relating to the Florida Clerks of Court Operations Corporation.

Section 6 amends s. 43.16, F.S., relating to the Justice Administrative Commission.

Section 7 amends s. 112.313, F.S., relating to standards of conduct for public officers, employees of agencies, and local government attorneys.

Section 8 amends s. 112.3144, F.S., relating to full and public disclosure of financial interests.

Section 9 specifies that the changes made to s. 112.3144, F.S., apply to disclosures filed for the 2016 calendar year and all subsequent calendar years.

Section 10 amends s. 112.31455, F.S., relating to collection methods for unpaid automatic fines for failure to timely file disclosure of financial interests.

Section 11 amends s. 112.3261, F.S., relating to lobbying before WMDs; registration and reporting.

Section 12 amends s. 129.03, F.S., relating to preparation and adoption of county budgets.

Section 13 amends s. 129.06, F.S., relating to execution and amendment of county budgets.

Section 14 amends s. 166.241, F.S., relating to fiscal years, budgets, and budget amendments for municipalities.

Section 15 amends s. 189.016, F.S., relating to reports, budgets, and audits for special districts.

Section 16 amends s. 215.425, F.S., relating to extra compensation claims prohibited; bonuses; severance pay.

Section 17 amends s. 215.86, F.S., relating to management systems and controls for state agencies and the judicial branch.

Section 18 amends s. 215.97, F.S., relating to the Florida Single Audit Act.

Section 19 amends s. 215.985, F.S., relating to transparency in government spending.

Section 20 amends s. 218.32, F.S., relating to annual financial reports for local governmental entities.

Section 21 amends s. 218.33, F.S., relating to local governmental entities; establishment of uniform fiscal years and accounting practices and procedures.

Section 22 amends s. 218.39, F.S., relating to annual financial audit reports.

Section 23 amends s. 218.391, F.S., relating to auditor selection procedures.

Section 24 amends s. 286.0114, F.S., relating to public meetings; reasonable opportunity to be heard; attorney fees.

Section 25 amends s. 288.92, F.S., relating to divisions of Enterprise Florida, Inc.

Section 26 amends s. 288.9604, F.S., relating to creation of the Florida Development Finance Corporation.

Section 27 amends s. 373.536, F.S., relating to district budget and hearing thereon.

Section 28 amends s. 838.014, F.S., relating to definitions.

Section 29 amends s. 838.015, F.S., relating to bribery.

Section 30 amends s. 838.016, F.S., relating to unlawful compensation or reward for official behavior.

Section 31 amends s. 838.022, F.S., relating to official misconduct.

Section 32 amends s. 838.22, F.S., relating to bid tampering.

Section 33 amends s. 1001.42, F.S., relating to powers and duties of district school boards.

Section 34 amends s. 1002.33, F.S., relating to charter schools.

Section 35 amends s. 1002.37, F.S., relating to the Florida Virtual School.

Section 36 amends s. 1010.01, F.S., relating to uniform records and accounts.

Section 37 amends s. 1010.30, F.S., relating to audits required.

Section 38 amends s. 68.082, F.S., relating to false claims against the state; definitions; liability.

Section 39 amends s. 68.083, F.S., relating to civil actions for false claims.

Section 40 amends s. 99.061, F.S., relating to method of qualifying for nomination or election to federal, state, county, or district office.

Section 41 amends s. 218.503, F.S., relating to determination of financial emergency.

Section 42 amends s. 1002.455, F.S., conforming a cross-reference to changes made by the act.

Section 43 reenacts s. 817.568, F.S., relating to criminal use of personal identification information.

Section 44 specifies that the act fulfills an important state interest.

Section 45 provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill may have an indeterminate fiscal impact on the private sector because it requires a member of the public to register as a lobbyist when lobbying a specified unit of local government. Current law authorizes a fee for each registration, which may not exceed \$40. This change may also result in a positive fiscal impact on local governments.

The bill may have an indeterminate negative fiscal impact on state agencies, the court system, court-related entities, local governments, district school boards, charter schools, and state colleges and universities because it requires them to establish specified internal controls. This requirement may require additional time and expense to create the internal controls.

The bill amends provisions related to the prohibition against extra compensation. It requires the investigation of allegations and repayment of any prohibited compensation. It also requires the payment of rewards to individuals who report violations. The bill may have an indeterminate fiscal impact on the state because these changes may result in the recovery of prohibited payments, but there will also be an associated increased cost due to the workload for conducting investigations and the payment of rewards.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the State Constitution may apply because the bill requires county and municipal governments to establish and maintain specified internal controls. An exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. An exception also may apply because similarly situated persons are all required to comply and the bill specifies that it serves an important state interest.

2. Other:

Other Comments: Single-Subject Requirement

Article III, s. 6 of the State Constitution provides, in relevant part, that “[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” In interpreting this provision, the Florida Supreme Court has stated, “[a]n act may be as broad as the Legislature chooses, provided the matters included in the act have a natural or logical connection.”⁴⁹

The title of the bill is “Government Accountability” and it contains many provisions related to governmental ethics, governmental auditing and reporting requirements, and prohibited acts by governmental officers and employees, among others. Section 24 of the bill amends s. 286.0114, F.S., to prohibit a board or commission from requiring a member of the public to provide an advance written copy of his or her testimony or comments as a precondition of being given the opportunity to be heard at a meeting. It is unclear whether a reviewing court would conclude that this provision has a “natural or logical connection” with government accountability.

B. RULE-MAKING AUTHORITY:

The bill requires DFS to specify the form and manner for the submission of WMD monthly financial statements.

⁴⁹ *Chenoweth v. Kemp*, 396 So. 2d 1122 (Fla. 1981).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to government accountability;
3 providing a short title; amending s. 11.40, F.S.;
4 specifying that the Governor, the Commissioner of
5 Education, or the designee of the Governor or of the
6 Commissioner of Education may notify the Legislative
7 Auditing Committee of an entity's failure to comply
8 with certain auditing and financial reporting
9 requirements; amending s. 11.45, F.S.; defining the
10 terms "abuse," "fraud," and "waste"; revising the
11 definition of the term "local governmental entity";
12 excluding water management districts from certain
13 audit requirements; removing a cross-reference;
14 authorizing the Auditor General to conduct audits of
15 tourist development councils and county tourism
16 promotion agencies; revising reporting requirements
17 applicable to the Auditor General; creating s. 20.602,
18 F.S.; specifying the applicability of certain
19 provisions of the Code of Ethics for Public Officers
20 and Employees to officers and board members of
21 corporate entities associated with the Department of
22 Economic Opportunity; prohibiting such officers and
23 board members from representing a person or an entity
24 for compensation before certain bodies for a specified
25 timeframe; providing for construction; amending s.
26 28.35, F.S.; revising reporting requirements

27 applicable to the Florida Clerks of Court Operations
 28 Corporation; amending s. 43.16, F.S.; revising the
 29 responsibilities of the Justice Administrative
 30 Commission, each state attorney, each public defender,
 31 a criminal conflict and civil regional counsel, a
 32 capital collateral regional counsel, and the Guardian
 33 Ad Litem Program, to include the establishment and
 34 maintenance of certain internal controls; amending s.
 35 112.313, F.S.; specifying that prohibitions on
 36 conflicting employment or contractual relationships
 37 for public officers or employees of an agency apply to
 38 contractual relationships held by certain business
 39 entities; making technical changes; amending s.
 40 112.3144, F.S.; requiring elected municipal officers
 41 to file a full and public disclosure of financial
 42 interests, rather than a statement of financial
 43 interests; providing for applicability; amending s.
 44 112.31455, F.S.; revising provisions governing
 45 collection methods for unpaid automatic fines for
 46 failure to timely file disclosure of financial
 47 interests to include school districts; amending s.
 48 112.3261, F.S.; revising terms to conform to changes
 49 made by the act; expanding the types of governmental
 50 entities that are subject to lobbyist registration
 51 requirements; requiring a governmental entity to
 52 create a lobbyist registration form; amending ss.

53 129.03, 129.06, 166.241, and 189.016, F.S.; requiring
 54 counties, municipalities, and special districts to
 55 maintain certain budget documents on the entities'
 56 websites for a specified period; amending s. 215.425,
 57 F.S.; defining the term "public funds"; revising
 58 exceptions to the prohibition on extra compensation
 59 claims; requiring certain contracts to which a unit of
 60 government or state university is a party during a
 61 specified period to contain certain prohibitions on
 62 severance pay; requiring a unit of government to
 63 investigate and take necessary action to recover
 64 prohibited compensation; specifying methods of
 65 recovery for unintentional and willful violations;
 66 providing a penalty; specifying applicability of
 67 procedures regarding suspension and removal of an
 68 officer who commits a willful violation; establishing
 69 eligibility criteria and amounts for rewards;
 70 specifying circumstances under which an employee has a
 71 cause of action under the Whistle-blower's Act;
 72 establishing causes of action if a unit of government
 73 fails to recover prohibited compensation within a
 74 certain timeframe; providing for applicability;
 75 amending s. 215.86, F.S.; revising the purposes for
 76 which management systems and internal controls must be
 77 established and maintained by each state agency and
 78 the judicial branch; amending s. 215.97, F.S.;

79 | revising the definition of the term "audit threshold";
 80 | amending s. 215.985, F.S.; revising the requirements
 81 | for a monthly financial statement provided by a water
 82 | management district; amending s. 218.32, F.S.;
 83 | revising the requirements of the annual financial
 84 | audit report of a local governmental entity;
 85 | authorizing the Department of Financial Services to
 86 | request additional information from a local
 87 | governmental entity; requiring a local governmental
 88 | entity to respond to such requests within a specified
 89 | timeframe; requiring the department to notify the
 90 | Legislative Auditing Committee of noncompliance;
 91 | amending s. 218.33, F.S.; requiring local governmental
 92 | entities to establish and maintain internal controls
 93 | to achieve specified purposes; amending s. 218.39,
 94 | F.S.; requiring an audited entity to respond to audit
 95 | recommendations under specified circumstances;
 96 | amending s. 218.391, F.S.; revising the composition of
 97 | an audit committee; prohibiting an audit committee
 98 | member from being an employee, chief executive
 99 | officer, or chief financial officer of the respective
 100 | governmental entity; requiring the chair of an audit
 101 | committee to sign and execute an affidavit affirming
 102 | compliance with auditor selection procedures;
 103 | prescribing procedures in the event of noncompliance
 104 | with auditor selection procedures; amending s.

105 | 286.0114, F.S.; prohibiting a board or commission from
 106 | requiring an advance copy of testimony or comments
 107 | from a member of the public as a precondition to be
 108 | given the opportunity to be heard at a public meeting;
 109 | amending s. 288.92, F.S.; prohibiting specified
 110 | officers and board members of Enterprise Florida,
 111 | Inc., from representing a person or entity for
 112 | compensation before Enterprise Florida, Inc., and
 113 | associated entities thereof, for a specified
 114 | timeframe; amending s. 288.9604, F.S.; prohibiting a
 115 | director of the Florida Development Finance
 116 | Corporation from representing a person or entity for
 117 | compensation before the corporation for a specified
 118 | timeframe; amending s. 373.536, F.S.; deleting
 119 | obsolete language; requiring water management
 120 | districts to maintain certain budget documents on the
 121 | districts' websites for a specified period; amending
 122 | s. 838.014, F.S.; deleting the definition of the term
 123 | "corruptly" or "with corrupt intent"; defining the
 124 | term "governmental entity"; expanding the definition
 125 | of the term "public servant" to include certain
 126 | persons who are acting on behalf of a governmental
 127 | entity; amending s. 838.015, F.S.; redefining the term
 128 | "bribery" to include knowing and intentional, rather
 129 | than corrupt, acts; amending s. 838.016, F.S.;
 130 | revising the prohibition against unlawful compensation

131 or reward for official behavior to conform to changes
 132 made by the act; amending s. 838.022, F.S.; revising
 133 the prohibition against official misconduct to conform
 134 to changes made by the act; amending s. 838.22, F.S.;
 135 revising the prohibition against bid tampering to
 136 conform to changes made by the act; amending s.
 137 1001.42, F.S.; authorizing additional internal audits
 138 as directed by the district school board; amending s.
 139 1002.33, F.S.; revising the responsibilities of the
 140 governing board of a charter school to include the
 141 establishment and maintenance of internal controls;
 142 amending s. 1002.37, F.S.; requiring completion of an
 143 annual financial audit of the Florida Virtual School;
 144 specifying audit requirements; requiring an audit
 145 report to be submitted to the board of trustees of the
 146 Florida Virtual School and the Auditor General;
 147 removing obsolete provisions; amending s. 1010.01,
 148 F.S.; requiring each school district, Florida College
 149 System institution, and state university to establish
 150 and maintain certain internal controls; amending s.
 151 1010.30, F.S.; requiring a district school board,
 152 Florida College System institution board of trustees,
 153 or university board of trustees to respond to audit
 154 recommendations under certain circumstances; amending
 155 ss. 68.082, 68.083, 99.061, 218.503, and 1002.455,
 156 F.S.; conforming provisions and cross-references to

157 changes made by the act; reenacting s. 817.568(11),
 158 F.S., relating to criminal use of personal
 159 identification information, to incorporate the
 160 amendment made to s. 838.014, F.S., in a reference
 161 thereto; declaring that the act fulfills an important
 162 state interest; providing an effective date.
 163

164 Be It Enacted by the Legislature of the State of Florida:
 165

166 Section 1. This act may be cited as the "Florida Anti-
 167 Corruption Act of 2016."

168 Section 2. Subsection (2) of section 11.40, Florida
 169 Statutes, is amended to read:

170 11.40 Legislative Auditing Committee.—

171 (2) Following notification by the Auditor General, the
 172 Department of Financial Services, ~~or~~ the Division of Bond
 173 Finance of the State Board of Administration, the Governor or
 174 his or her designee, or the Commissioner of Education or his or
 175 her designee of the failure of a local governmental entity,
 176 district school board, charter school, or charter technical
 177 career center to comply with the applicable provisions within s.
 178 11.45(5)-(7), s. 218.32(1), s. 218.38, or s. 218.503(3), the
 179 Legislative Auditing Committee may schedule a hearing to
 180 determine if the entity should be subject to further state
 181 action. If the committee determines that the entity should be
 182 subject to further state action, the committee shall:

183 (a) In the case of a local governmental entity or district
 184 school board, direct the Department of Revenue and the
 185 Department of Financial Services to withhold any funds not
 186 pledged for bond debt service satisfaction which are payable to
 187 such entity until the entity complies with the law. The
 188 committee shall specify the date that such action must ~~shall~~
 189 begin, and the directive must be received by the Department of
 190 Revenue and the Department of Financial Services 30 days before
 191 the date of the distribution mandated by law. The Department of
 192 Revenue and the Department of Financial Services may implement
 193 ~~the provisions of~~ this paragraph.

194 (b) In the case of a special district created by:
 195 1. A special act, notify the President of the Senate, the
 196 Speaker of the House of Representatives, the standing committees
 197 of the Senate and the House of Representatives charged with
 198 special district oversight as determined by the presiding
 199 officers of each respective chamber, the legislators who
 200 represent a portion of the geographical jurisdiction of the
 201 special district pursuant to s. 189.034(2), and the Department
 202 of Economic Opportunity that the special district has failed to
 203 comply with the law. Upon receipt of notification, the
 204 Department of Economic Opportunity shall proceed pursuant to s.
 205 189.062 or s. 189.067. If the special district remains in
 206 noncompliance after the process set forth in s. 189.034(3), or
 207 if a public hearing is not held, the Legislative Auditing
 208 Committee may request the department to proceed pursuant to s.

209 189.067(3).

210 2. A local ordinance, notify the chair or equivalent of
 211 the local general-purpose government pursuant to s. 189.035(2)
 212 and the Department of Economic Opportunity that the special
 213 district has failed to comply with the law. Upon receipt of
 214 notification, the department shall proceed pursuant to s.
 215 189.062 or s. 189.067. If the special district remains in
 216 noncompliance after the process set forth in s. 189.034(3), or
 217 if a public hearing is not held, the Legislative Auditing
 218 Committee may request the department to proceed pursuant to s.
 219 189.067(3).

220 3. Any manner other than a special act or local ordinance,
 221 notify the Department of Economic Opportunity that the special
 222 district has failed to comply with the law. Upon receipt of
 223 notification, the department shall proceed pursuant to s.
 224 189.062 or s. 189.067(3).

225 (c) In the case of a charter school or charter technical
 226 career center, notify the appropriate sponsoring entity, which
 227 may terminate the charter pursuant to ss. 1002.33 and 1002.34.

228 Section 3. Subsection (1), paragraph (j) of subsection
 229 (2), paragraph (u) of subsection (3), and paragraph (i) of
 230 subsection (7) of section 11.45, Florida Statutes, are amended,
 231 and paragraph (x) is added to subsection (3) of that section, to
 232 read:

233 11.45 Definitions; duties; authorities; reports; rules.-

234 (1) DEFINITIONS.—As used in ss. 11.40–11.51, the term:

235 (a) "Abuse" means behavior that is deficient or improper
 236 when compared with behavior that a prudent person would consider
 237 a reasonable and necessary operational practice given the facts
 238 and circumstances. The term includes the misuse of authority or
 239 position for personal gain.

240 (b)(a) "Audit" means a financial audit, operational audit,
 241 or performance audit.

242 (c)(b) "County agency" means a board of county
 243 commissioners or other legislative and governing body of a
 244 county, however styled, including that of a consolidated or
 245 metropolitan government, a clerk of the circuit court, a
 246 separate or ex officio clerk of the county court, a sheriff, a
 247 property appraiser, a tax collector, a supervisor of elections,
 248 or any other officer in whom any portion of the fiscal duties of
 249 a body or officer expressly stated in this paragraph are the
 250 above are under law separately placed by law.

251 (d)(e) "Financial audit" means an examination of financial
 252 statements in order to express an opinion on the fairness with
 253 which they are presented in conformity with generally accepted
 254 accounting principles and an examination to determine whether
 255 operations are properly conducted in accordance with legal and
 256 regulatory requirements. Financial audits must be conducted in
 257 accordance with auditing standards generally accepted in the
 258 United States and government auditing standards as adopted by
 259 the Board of Accountancy. When applicable, the scope of
 260 financial audits must ~~shall~~ encompass the additional activities

261 necessary to establish compliance with the Single Audit Act
 262 Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other
 263 applicable federal law.

264 (e) "Fraud" means obtaining something of value through
 265 willful misrepresentation, including, but not limited to, the
 266 intentional misstatements or omissions of amounts or disclosures
 267 in financial statements to deceive users of financial
 268 statements, theft of an entity's assets, bribery, or the use of
 269 one's position for personal enrichment through the deliberate
 270 misuse or misapplication of an organization's resources.

271 (f)(d) "Governmental entity" means a state agency, a
 272 county agency, or any other entity, however styled, that
 273 independently exercises any type of state or local governmental
 274 function.

275 (g)(e) "Local governmental entity" means a county agency,
 276 municipality, tourist development council, county tourism
 277 promotion agency, or special district as defined in s. 189.012.
 278 The term, ~~but~~ does not include any housing authority established
 279 under chapter 421.

280 (h)(f) "Management letter" means a statement of the
 281 auditor's comments and recommendations.

282 (i)(g) "Operational audit" means an audit whose purpose is
 283 to evaluate management's performance in establishing and
 284 maintaining internal controls, including controls designed to
 285 prevent and detect fraud, waste, and abuse, and in administering
 286 assigned responsibilities in accordance with applicable laws,

287 administrative rules, contracts, grant agreements, and other
 288 guidelines. Operational audits must be conducted in accordance
 289 with government auditing standards. Such audits examine internal
 290 controls that are designed and placed in operation to promote
 291 and encourage the achievement of management's control objectives
 292 in the categories of compliance, economic and efficient
 293 operations, reliability of financial records and reports, and
 294 safeguarding of assets, and identify weaknesses in those
 295 internal controls.

296 (j) ~~(h)~~ "Performance audit" means an examination of a
 297 program, activity, or function of a governmental entity,
 298 conducted in accordance with applicable government auditing
 299 standards or auditing and evaluation standards of other
 300 appropriate authoritative bodies. The term includes an
 301 examination of issues related to:

- 302 1. Economy, efficiency, or effectiveness of the program.
- 303 2. Structure or design of the program to accomplish its
 304 goals and objectives.
- 305 3. Adequacy of the program to meet the needs identified by
 306 the Legislature or governing body.
- 307 4. Alternative methods of providing program services or
 308 products.
- 309 5. Goals, objectives, and performance measures used by the
 310 agency to monitor and report program accomplishments.
- 311 6. The accuracy or adequacy of public documents, reports,
 312 or requests prepared under the program by state agencies.

313 7. Compliance of the program with appropriate policies,
 314 rules, or laws.

315 8. Any other issues related to governmental entities as
 316 directed by the Legislative Auditing Committee.

317 (k)~~(i)~~ "Political subdivision" means a separate agency or
 318 unit of local government created or established by law and
 319 includes, but is not limited to, the following and the officers
 320 thereof: authority, board, branch, bureau, city, commission,
 321 consolidated government, county, department, district,
 322 institution, metropolitan government, municipality, office,
 323 officer, public corporation, town, or village.

324 (l)~~(j)~~ "State agency" means a separate agency or unit of
 325 state government created or established by law and includes, but
 326 is not limited to, the following and the officers thereof:
 327 authority, board, branch, bureau, commission, department,
 328 division, institution, office, officer, or public corporation,
 329 as the case may be, except any such agency or unit within the
 330 legislative branch of state government other than the Florida
 331 Public Service Commission.

332 (m) "Waste" means the act of using or expending resources
 333 unreasonably, carelessly, extravagantly, or for no useful
 334 purpose.

335 (2) DUTIES.—The Auditor General shall:

336 (j) Conduct audits of local governmental entities when
 337 determined to be necessary by the Auditor General, when directed
 338 by the Legislative Auditing Committee, or when otherwise

339 required by law. No later than 18 months after the release of
 340 the audit report, the Auditor General shall perform such
 341 appropriate followup procedures as he or she deems necessary to
 342 determine the audited entity's progress in addressing the
 343 findings and recommendations contained within the Auditor
 344 General's previous report. The Auditor General shall notify each
 345 member of the audited entity's governing body and the
 346 Legislative Auditing Committee of the results of his or her
 347 determination. For purposes of this paragraph, local
 348 governmental entities do not include water management districts.
 349

350 The Auditor General shall perform his or her duties
 351 independently but under the general policies established by the
 352 Legislative Auditing Committee. This subsection does not limit
 353 the Auditor General's discretionary authority to conduct other
 354 audits or engagements of governmental entities as authorized in
 355 subsection (3).

356 (3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The
 357 Auditor General may, pursuant to his or her own authority, or at
 358 the direction of the Legislative Auditing Committee, conduct
 359 audits or other engagements as determined appropriate by the
 360 Auditor General of:

361 (u) The Florida Virtual School ~~pursuant to s. 1002.37.~~

362 (x) Tourist development councils and county tourism
 363 promotion agencies.

364 (7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

365 (i) The Auditor General shall annually transmit by July
 366 15, to the President of the Senate, the Speaker of the House of
 367 Representatives, and the Department of Financial Services, a
 368 list of all school districts, charter schools, charter technical
 369 career centers, Florida College System institutions, state
 370 universities, and local governmental entities ~~water management~~
 371 ~~districts~~ that have failed to comply with the transparency
 372 requirements as identified in the audit reports reviewed
 373 pursuant to paragraph (b) and those conducted pursuant to
 374 subsection (2).

375 Section 4. Section 20.602, Florida Statutes, is created to
 376 read:

377 20.602 Standards of conduct; officers and board members of
 378 Department of Economic Opportunity corporate entities.-

379 (1) The following officers and board members are subject
 380 to ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and
 381 112.3143(2):

382 (a) Officers and members of the board of directors of:

383 1. Any corporation created under chapter 288;

384 2. Space Florida;

385 3. CareerSource Florida, Inc., or the programs or entities
 386 created by CareerSource Florida, Inc., pursuant to s. 445.004;

387 4. The Florida Housing Finance Corporation; or

388 5. Any other corporation created by the Department of
 389 Economic Opportunity in accordance with its powers and duties
 390 under s. 20.60.

391 (b) Officers and members of the board of directors of a
 392 corporate parent or subsidiary corporation of a corporation
 393 described in paragraph (a).

394 (c) Officers and members of the board of directors of a
 395 corporation created to carry out the missions of a corporation
 396 described in paragraph (a).

397 (d) Officers and members of the board of directors of a
 398 corporation with which a corporation described in paragraph (a)
 399 is required by law to contract with to carry out its missions.

400 (2) For purposes of applying ss. 112.313(1)-(8), (10),
 401 (12), and (15); 112.3135; and 112.3143(2) to activities of the
 402 officers and members of the board of directors specified in
 403 subsection (1), those persons shall be considered public
 404 officers or employees and the corporation shall be considered
 405 their agency.

406 (3) For a period of 6 years after retirement from or
 407 termination of service, or for a period of 10 years if removed
 408 or terminated for cause or for misconduct, as defined in s.
 409 443.036(29), an officer or a member of the board of directors
 410 specified in subsection (1) may not represent another person or
 411 entity for compensation before:

412 (a) His or her corporation;

413 (b) A division, a subsidiary, or the board of directors of
 414 a corporation created to carry out the mission of his or her
 415 corporation; or

416 (c) A corporation with which the corporation is required

417 by law to contract to carry out its missions.

418 (4) This section does not supersede any additional or more
 419 stringent standards of conduct applicable to an officer or a
 420 member of the board of directors of an entity specified in
 421 subsection (1) prescribed by any other provision of law.

422 Section 5. Paragraph (d) of subsection (2) of section
 423 28.35, Florida Statutes, is amended to read:

424 28.35 Florida Clerks of Court Operations Corporation.—

425 (2) The duties of the corporation shall include the
 426 following:

427 (d) Developing and certifying a uniform system of workload
 428 measures and applicable workload standards for court-related
 429 functions as developed by the corporation and clerk workload
 430 performance in meeting the workload performance standards. These
 431 workload measures and workload performance standards shall be
 432 designed to facilitate an objective determination of the
 433 performance of each clerk in accordance with minimum standards
 434 for fiscal management, operational efficiency, and effective
 435 collection of fines, fees, service charges, and court costs. The
 436 corporation shall develop the workload measures and workload
 437 performance standards in consultation with the Legislature. When
 438 the corporation finds a clerk has not met the workload
 439 performance standards, the corporation shall identify the nature
 440 of each deficiency and any corrective action recommended and
 441 taken by the affected clerk of the court. For quarterly periods
 442 ending on the last day of March, June, September, and December

443 | of each year, the corporation shall notify the Legislature of
 444 | any clerk not meeting workload performance standards and provide
 445 | a copy of any corrective action plans. Such notifications shall
 446 | be submitted no later than 45 days after the end of the
 447 | preceding quarterly period. As used in this subsection, the
 448 | term:

449 | 1. "Workload measures" means the measurement of the
 450 | activities and frequency of the work required for the clerk to
 451 | adequately perform the court-related duties of the office as
 452 | defined by the membership of the Florida Clerks of Court
 453 | Operations Corporation.

454 | 2. "Workload performance standards" means the standards
 455 | developed to measure the timeliness and effectiveness of the
 456 | activities that are accomplished by the clerk in the performance
 457 | of the court-related duties of the office as defined by the
 458 | membership of the Florida Clerks of Court Operations
 459 | Corporation.

460 | Section 6. Present subsections (6) and (7) of section
 461 | 43.16, Florida Statutes, are redesignated as subsections (7) and
 462 | (8), respectively, and a new subsection (6) is added to that
 463 | section, to read:

464 | 43.16 Justice Administrative Commission; membership,
 465 | powers and duties.—

466 | (6) The commission, each state attorney, each public
 467 | defender, the criminal conflict and civil regional counsel, the
 468 | capital collateral regional counsel, and the Guardian Ad Litem

469 Program shall establish and maintain internal controls designed
 470 to:

- 471 (a) Prevent and detect fraud, waste, and abuse.
- 472 (b) Promote and encourage compliance with applicable laws,
 473 rules, contracts, grant agreements, and best practices.
- 474 (c) Support economical and efficient operations.
- 475 (d) Ensure reliability of financial records and reports.
- 476 (e) Safeguard assets.

477 Section 7. Subsection (7) of section 112.313, Florida
 478 Statutes, is amended to read:

479 112.313 Standards of conduct for public officers,
 480 employees of agencies, and local government attorneys.—

481 (7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—

482 (a) A ~~Ne~~ public officer or employee of an agency may not
 483 ~~shall~~ have or hold any employment or contractual relationship
 484 with any business entity or any agency that ~~which~~ is subject to
 485 the regulation of, or is doing business with, an agency of which
 486 he or she is an officer or employee, excluding those
 487 organizations and their officers who, when acting in their
 488 official capacity, enter into or negotiate a collective
 489 bargaining contract with the state or any municipality, county,
 490 or other political subdivision of the state; and ~~nor shall~~ an
 491 officer or employee of an agency may not have or hold any
 492 employment or contractual relationship that will create a
 493 continuing or frequently recurring conflict between his or her
 494 private interests and the performance of his or her public

495 duties or that would impede the full and faithful discharge of
 496 his or her public duties. For purposes of this subsection, if a
 497 public officer or employee of an agency holds a controlling
 498 interest in a business entity or is an officer, a director, or a
 499 member who manages such an entity, contractual relationships
 500 held by the business entity are deemed to be held by the public
 501 officer or employee.

502 1. When the agency referred to is a ~~that certain kind of~~
 503 special tax district created by general or special law and is
 504 limited specifically to constructing, maintaining, managing, and
 505 financing improvements in the land area over which the agency
 506 has jurisdiction, or when the agency has been organized pursuant
 507 to chapter 298, ~~then~~ employment with, or entering into a
 508 contractual relationship with, such a business entity by a
 509 public officer or employee of such an agency is ~~shall~~ not ~~be~~
 510 prohibited by this subsection or ~~be~~ deemed a conflict per se.
 511 However, conduct by such officer or employee that is prohibited
 512 by, or otherwise frustrates the intent of, this section must
 513 ~~shall~~ be deemed a conflict of interest in violation of the
 514 standards of conduct set forth by this section.

515 2. When the agency referred to is a legislative body and
 516 the regulatory power over the business entity resides in another
 517 agency, or when the regulatory power that ~~which~~ the legislative
 518 body exercises over the business entity or agency is strictly
 519 through the enactment of laws or ordinances, ~~then~~ employment or
 520 a contractual relationship with such a business entity by a

521 public officer or employee of a legislative body is ~~shall~~ not be
 522 prohibited by this subsection or ~~be~~ deemed a conflict.

523 (b) This subsection does ~~shall~~ not prohibit a public
 524 officer or employee from practicing in a particular profession
 525 or occupation when such practice by persons holding such public
 526 office or employment is required or permitted by law or
 527 ordinance.

528 Section 8. Subsections (1) and (2) of section 112.3144,
 529 Florida Statutes, are amended to read:

530 112.3144 Full and public disclosure of financial
 531 interests.-

532 (1) In addition to officers specified in s. 8, Art. II of
 533 the State Constitution or other state law, all elected municipal
 534 officers are required to file a full and public disclosure of
 535 their financial interests. An officer who is required ~~by s. 8,~~
 536 ~~Art. II of the State Constitution~~ to file a full and public
 537 disclosure of ~~his or her~~ financial interests for any calendar or
 538 fiscal year shall file that disclosure with the ~~Florida~~
 539 ~~Commission on Ethics. Additionally, beginning January 1, 2015,~~
 540 An officer who is required to complete annual ethics training
 541 pursuant to s. 112.3142 must certify on his or her full and
 542 public disclosure of financial interests that he or she has
 543 completed the required training.

544 (2) A person who is required, ~~pursuant to s. 8, Art. II of~~
 545 ~~the State Constitution,~~ to file a full and public disclosure of
 546 financial interests and who has filed a full and public

547 disclosure of financial interests for any calendar or fiscal
 548 year ~~is shall~~ not ~~be~~ required to file a statement of financial
 549 interests pursuant to s. 112.3145(2) and (3) for the same year
 550 or for any part thereof notwithstanding any requirement of this
 551 part. If an incumbent in an elective office has filed the full
 552 and public disclosure of financial interests to qualify for
 553 election to the same office or if a candidate for office holds
 554 another office subject to the annual filing requirement, the
 555 qualifying officer shall forward an electronic copy of the full
 556 and public disclosure of financial interests to the commission
 557 no later than July 1. The electronic copy of the full and public
 558 disclosure of financial interests satisfies the annual
 559 disclosure requirement of this section. A candidate who does not
 560 qualify until after the annual full and public disclosure of
 561 financial interests has been filed pursuant to this section
 562 shall file a copy of his or her disclosure with the officer
 563 before whom he or she qualifies.

564 Section 9. The amendment made to s. 112.3144, Florida
 565 Statutes, by this act applies to disclosures filed for the 2016
 566 calendar year and all subsequent calendar years.

567 Section 10. Subsection (1) of section 112.31455, Florida
 568 Statutes, is amended to read:

569 112.31455 Collection methods for unpaid automatic fines
 570 for failure to timely file disclosure of financial interests.-

571 (1) Before referring any unpaid fine accrued pursuant to
 572 s. 112.3144(5) or s. 112.3145(7) to the Department of Financial

573 Services, the commission shall attempt to determine whether the
 574 individual owing such a fine is a current public officer or
 575 current public employee. If so, the commission may notify the
 576 Chief Financial Officer or the governing body of the appropriate
 577 county, municipality, school district, or special district of
 578 the total amount of any fine owed to the commission by such
 579 individual.

580 (a) After receipt and verification of the notice from the
 581 commission, the Chief Financial Officer or the governing body of
 582 the county, municipality, school district, or special district
 583 shall begin withholding the lesser of 10 percent or the maximum
 584 amount allowed under federal law from any salary-related
 585 payment. The withheld payments shall be remitted to the
 586 commission until the fine is satisfied.

587 (b) The Chief Financial Officer or the governing body of
 588 the county, municipality, school district, or special district
 589 may retain an amount of each withheld payment, as provided in s.
 590 77.0305, to cover the administrative costs incurred under this
 591 section.

592 Section 11. Section 112.3261, Florida Statutes, is amended
 593 to read:

594 112.3261 Lobbying before governmental entities ~~water~~
 595 ~~management districts~~; registration and reporting.—

596 (1) As used in this section, the term:

597 (a) "Governmental entity" or "entity" ~~"District"~~ means a
 598 water management district created in s. 373.069 and operating

599 under the authority of chapter 373, a hospital district, a
 600 children's services district, an expressway authority as the
 601 term "authority" is defined in s. 348.0002, the term "port
 602 authority" as defined in s. 315.02, a county or municipality
 603 that has not adopted lobbyist registration and reporting
 604 requirements, or an independent special district with annual
 605 revenues of more than \$5 million which exercises ad valorem
 606 taxing authority.

607 (b) "Lobbies" means seeking, on behalf of another person,
 608 to influence a governmental entity ~~district~~ with respect to a
 609 decision of the entity ~~district~~ in an area of policy or
 610 procurement or an attempt to obtain the goodwill of an a
 611 ~~district~~ official or employee of a governmental entity. The term
 612 "~~lobbies~~" shall be interpreted and applied consistently with the
 613 rules of the commission implementing s. 112.3215.

614 (c) "Lobbyist" has the same meaning as provided in s.
 615 112.3215.

616 (d) "Principal" has the same meaning as provided in s.
 617 112.3215.

618 (2) A person may not lobby a governmental entity ~~district~~
 619 until such person has registered as a lobbyist with that entity
 620 ~~district~~. Such registration shall be due upon initially being
 621 retained to lobby and is renewable on a calendar-year basis
 622 thereafter. Upon registration, the person shall provide a
 623 statement signed by the principal or principal's representative
 624 stating that the registrant is authorized to represent the

625 principal. The principal shall also identify and designate its
 626 main business on the statement authorizing that lobbyist
 627 pursuant to a classification system approved by the governmental
 628 entity ~~district~~. Any changes to the information required by this
 629 section must be disclosed within 15 days by filing a new
 630 registration form. The registration form must ~~shall~~ require each
 631 lobbyist to disclose, under oath, the following:

632 (a) The lobbyist's name and business address.

633 (b) The name and business address of each principal
 634 represented.

635 (c) The existence of any direct or indirect business
 636 association, partnership, or financial relationship with an
 637 official ~~any officer~~ or employee of a governmental entity
 638 ~~district~~ with which he or she lobbies or intends to lobby.

639 (d) A governmental entity shall create a lobbyist
 640 registration form modeled after the ~~In lieu of creating its own~~
 641 ~~lobbyist registration forms, a district may accept a completed~~
 642 legislative branch or executive branch lobbyist registration
 643 form, which must be returned to the governmental entity.

644 (3) A governmental entity ~~district~~ shall make lobbyist
 645 registrations available to the public. If a governmental entity
 646 ~~district~~ maintains a website, a database of currently registered
 647 lobbyists and principals must be available on the entity's
 648 ~~district's~~ website.

649 (4) A lobbyist shall promptly send a written statement to
 650 the governmental entity ~~district~~ canceling the registration for

651 a principal upon termination of the lobbyist's representation of
 652 that principal. A governmental entity ~~district~~ may remove the
 653 name of a lobbyist from the list of registered lobbyists if the
 654 principal notifies the entity ~~district~~ that a person is no
 655 longer authorized to represent that principal.

656 (5) A governmental entity ~~district~~ may establish an annual
 657 lobbyist registration fee, not to exceed \$40, for each principal
 658 represented. The governmental entity ~~district~~ may use
 659 registration fees only to administer this section.

660 (6) A governmental entity ~~district~~ shall be diligent to
 661 ascertain whether persons required to register pursuant to this
 662 section have complied. A governmental entity ~~district~~ may not
 663 knowingly authorize a person who is not registered pursuant to
 664 this section to lobby the entity ~~district~~.

665 (7) Upon receipt of a sworn complaint alleging that a
 666 lobbyist or principal has failed to register with a governmental
 667 entity ~~district~~ or has knowingly submitted false information in
 668 a report or registration required under this section, the
 669 commission shall investigate a lobbyist or principal pursuant to
 670 the procedures established under s. 112.324. The commission
 671 shall provide the Governor with a report of its findings and
 672 recommendations in any investigation conducted pursuant to this
 673 subsection. The Governor is authorized to enforce the
 674 commission's findings and recommendations.

675 (8) A governmental entity ~~Water management districts~~ may
 676 adopt rules to establish procedures to govern the registration

677 of lobbyists, including the adoption of forms and the
 678 establishment of a lobbyist registration fee.

679 Section 12. Paragraph (c) of subsection (3) of section
 680 129.03, Florida Statutes, is amended to read:

681 129.03 Preparation and adoption of budget.-

682 (3) The county budget officer, after tentatively
 683 ascertaining the proposed fiscal policies of the board for the
 684 next fiscal year, shall prepare and present to the board a
 685 tentative budget for the next fiscal year for each of the funds
 686 provided in this chapter, including all estimated receipts,
 687 taxes to be levied, and balances expected to be brought forward
 688 and all estimated expenditures, reserves, and balances to be
 689 carried over at the end of the year.

690 (c) The board shall hold public hearings to adopt
 691 tentative and final budgets pursuant to s. 200.065. The hearings
 692 shall be primarily for the purpose of hearing requests and
 693 complaints from the public regarding the budgets and the
 694 proposed tax levies and for explaining the budget and any
 695 proposed or adopted amendments. The tentative budget must be
 696 posted on the county's official website at least 2 days before
 697 the public hearing to consider such budget and must remain on
 698 the website for at least 45 days. The final budget must be
 699 posted on the website within 30 days after adoption and must
 700 remain on the website for at least 2 years. The tentative
 701 budgets, adopted tentative budgets, and final budgets shall be
 702 filed in the office of the county auditor as a public record.

703 Sufficient reference in words and figures to identify the
 704 particular transactions must ~~shall~~ be made in the minutes of the
 705 board to record its actions with reference to the budgets.

706 Section 13. Paragraph (f) of subsection (2) of section
 707 129.06, Florida Statutes, is amended to read:

708 129.06 Execution and amendment of budget.—

709 (2) The board at any time within a fiscal year may amend a
 710 budget for that year, and may within the first 60 days of a
 711 fiscal year amend the budget for the prior fiscal year, as
 712 follows:

713 (f) Unless otherwise prohibited by law, if an amendment to
 714 a budget is required for a purpose not specifically authorized
 715 in paragraphs (a)-(e), the amendment may be authorized by
 716 resolution or ordinance of the board of county commissioners
 717 adopted following a public hearing.

718 1. The public hearing must be advertised at least 2 days,
 719 but not more than 5 days, before the date of the hearing. The
 720 advertisement must appear in a newspaper of paid general
 721 circulation and must identify the name of the taxing authority,
 722 the date, place, and time of the hearing, and the purpose of the
 723 hearing. The advertisement must also identify each budgetary
 724 fund to be amended, the source of the funds, the use of the
 725 funds, and the total amount of each fund's appropriations.

726 2. If the board amends the budget pursuant to this
 727 paragraph, the adopted amendment must be posted on the county's
 728 official website within 5 days after adoption and must remain on

729 the website for at least 2 years.

730 Section 14. Subsections (3) and (5) of section 166.241,
731 Florida Statutes, are amended to read:

732 166.241 Fiscal years, budgets, and budget amendments.—

733 (3) The tentative budget must be posted on the
734 municipality's official website at least 2 days before the
735 budget hearing, held pursuant to s. 200.065 or other law, to
736 consider such budget, and must remain on the website for at
737 least 45 days. The final adopted budget must be posted on the
738 municipality's official website within 30 days after adoption
739 and must remain on the website for at least 2 years. If the
740 municipality does not operate an official website, the
741 municipality must, within a reasonable period of time as
742 established by the county or counties in which the municipality
743 is located, transmit the tentative budget and final budget to
744 the manager or administrator of such county or counties who
745 shall post the budgets on the county's website.

746 (5) If the governing body of a municipality amends the
747 budget pursuant to paragraph (4)(c), the adopted amendment must
748 be posted on the official website of the municipality within 5
749 days after adoption and must remain on the website for at least
750 2 years. If the municipality does not operate an official
751 website, the municipality must, within a reasonable period of
752 time as established by the county or counties in which the
753 municipality is located, transmit the adopted amendment to the
754 manager or administrator of such county or counties who shall

755 post the adopted amendment on the county's website.

756 Section 15. Subsections (4) and (7) of section 189.016,
757 Florida Statutes, are amended to read:

758 189.016 Reports; budgets; audits.—

759 (4) The tentative budget must be posted on the special
760 district's official website at least 2 days before the budget
761 hearing, held pursuant to s. 200.065 or other law, to consider
762 such budget, and must remain on the website for at least 45
763 days. The final adopted budget must be posted on the special
764 district's official website within 30 days after adoption and
765 must remain on the website for at least 2 years. If the special
766 district does not operate an official website, the special
767 district must, within a reasonable period of time as established
768 by the local general-purpose government or governments in which
769 the special district is located or the local governing authority
770 to which the district is dependent, transmit the tentative
771 budget or final budget to the manager or administrator of the
772 local general-purpose government or the local governing
773 authority. The manager or administrator shall post the tentative
774 budget or final budget on the website of the local general-
775 purpose government or governing authority. This subsection and
776 subsection (3) do not apply to water management districts as
777 defined in s. 373.019.

778 (7) If the governing body of a special district amends the
779 budget pursuant to paragraph (6)(c), the adopted amendment must
780 be posted on the official website of the special district within

781 5 days after adoption and must remain on the website for at
 782 least 2 years. If the special district does not operate an
 783 official website, the special district must, within a reasonable
 784 period of time as established by the local general-purpose
 785 government or governments in which the special district is
 786 located or the local governing authority to which the district
 787 is dependent, transmit the adopted amendment to the manager or
 788 administrator of the local general-purpose government or
 789 governing authority. The manager or administrator shall post the
 790 adopted amendment on the website of the local general-purpose
 791 government or governing authority.

792 Section 16. Present subsections (1) through (5) of section
 793 215.425, Florida Statutes, are redesignated as subsections (2)
 794 through (6), respectively, present subsection (2) and paragraph
 795 (a) of present subsection (4) of that section are amended, and a
 796 new subsection (1) and subsections (7) through (13) are added to
 797 that section, to read:

798 215.425 Extra compensation claims prohibited; bonuses;
 799 severance pay.—

800 (1) As used in this section, the term "public funds" means
 801 any taxes, tuition, grants, fines, fees, or other charges or any
 802 other type of revenue collected by the state or any county,
 803 municipality, special district, school district, Florida College
 804 System institution, state university, or other separate unit of
 805 government created pursuant to law, including any office,
 806 department, agency, division, subdivision, political

807 subdivision, board, bureau, or commission of such entities.

808 (3)~~(2)~~ Notwithstanding subsection (2), if the payment and
 809 receipt does not otherwise violate part III of chapter 112, the
 810 following funds may be used to provide extra compensation:

811 (a) Revenues received by state universities through or
 812 from faculty practice plans, health services support
 813 organizations, hospitals with which state universities are
 814 affiliated, direct-support organizations, or private donations,
 815 so long as such extra compensation is paid to individuals who
 816 are primarily clinical practitioners;

817 (b) Revenues received by Florida College System
 818 institutions through or from faculty practice plans, health
 819 services support organizations, direct-support organizations, or
 820 private donations, so long as such extra compensation is paid to
 821 individuals who are primarily clinical practitioners;

822 (c) Revenues that are received by a hospital licensed
 823 under chapter 395 which has entered into a Medicaid Provider
 824 Contract, so long as such extra compensation is paid to
 825 individuals who are primarily clinical practitioners, and such
 826 revenues that:

- 827 1. Are not derived from the levy of an ad valorem tax;
 828 2. Are not derived from patient services paid through the
 829 Medicaid or Medicare program;
 830 3. Are derived from patient services pursuant to contracts
 831 with private insurers or private managed care entities; or
 832 4. Are not appropriated by the Legislature or by any

833 county, municipality, special district, school district, Florida
 834 College System institution, state university, or other separate
 835 unit of government created pursuant to law, including any
 836 office, department, agency, division, subdivision, political
 837 subdivision, board, bureau, commission, authority, or
 838 institution of such entities, except for revenues otherwise
 839 authorized to be used pursuant to subparagraphs 2. and 3.

840 ~~This section does not apply to:~~

841 ~~(a) a bonus or severance pay that is paid wholly from~~
 842 ~~nontax revenues and nonstate appropriated funds, the payment and~~
 843 ~~receipt of which does not otherwise violate part III of chapter~~
 844 ~~112, and which is paid to an officer, agent, employee, or~~
 845 ~~contractor of a public hospital that is operated by a county or~~
 846 ~~a special district; or~~

847 ~~(d)(b)~~ A clothing and maintenance allowance given to
 848 plainclothes deputies pursuant to s. 30.49.

849 (e) Revenues or fees received by a seaport or airport from
 850 sources other than through the levy of a tax or funds
 851 appropriated by any county or municipality or the Legislature.

852 ~~(5)(4)(a)~~ On or after July 1, 2011, A unit of government,
 853 on or after July 1, 2011, or a state university, on or after
 854 July 1, 2012, which is a party to that enters into a contract or
 855 employment agreement, or renewal or renegotiation of an existing
 856 contract or employment agreement, that contains a provision for
 857 severance pay with an officer, agent, employee, or contractor
 858 must include the following provisions in the contract:

859 1. A requirement that severance pay paid from public funds
 860 ~~provided~~ may not exceed an amount greater than 20 weeks of
 861 compensation.

862 2. A prohibition of provision of severance pay paid from
 863 any source of revenue when the officer, agent, employee, or
 864 contractor has been fired by the unit of government for
 865 misconduct, as defined in s. 443.036(29), ~~by the unit of~~
 866 ~~government~~.

867 (7) Upon discovery or notification that a unit of
 868 government has provided prohibited compensation to any officer,
 869 agent, employee, or contractor in violation of this section,
 870 such unit of government shall investigate and take all necessary
 871 action to recover the prohibited compensation.

872 (a) If the violation was unintentional, the unit of
 873 government shall recover the prohibited compensation from the
 874 individual receiving the prohibited compensation through normal
 875 recovery methods for overpayments.

876 (b) If the violation was willful, the unit of government
 877 shall recover the prohibited compensation from either the
 878 individual receiving the prohibited compensation or the
 879 individual or individuals responsible for approving the
 880 prohibited compensation.

881 (8) A person who willfully violates this section commits a
 882 misdemeanor of the first degree, punishable as provided in s.
 883 775.082 or s. 775.083, and is jointly and severally liable for
 884 repayment of the prohibited compensation.

885 (9) An officer who exercises the powers and duties of a
 886 state or county officer and willfully violates this section is
 887 subject to the Governor's power under s. 7(a), Art. IV of the
 888 State Constitution. An officer who exercises powers and duties
 889 other than those of a state or county officer and willfully
 890 violates this section is subject to the suspension and removal
 891 procedures under s. 112.51.

892 (10) (a) A person who reports a violation of this section
 893 is eligible for a reward of at least \$500, or the lesser of 10
 894 percent of the funds recovered or \$10,000 per incident of a
 895 prohibited compensation payment recovered by the unit of
 896 government, depending upon the extent to which the person
 897 substantially contributed to the discovery, notification, and
 898 recovery of such prohibited payment.

899 (b) In the event that the recovery of the prohibited
 900 compensation is based primarily on disclosures of specific
 901 information, other than information provided by such person,
 902 relating to allegations or transactions in a criminal, civil, or
 903 administrative hearing; in a legislative, administrative,
 904 inspector general's, or other governmental report; in an Auditor
 905 General's report, hearing, audit, or investigation; or reported
 906 in the news media, such person is not eligible for a reward or
 907 for an award of a portion of the proceeds or the payment of
 908 attorney fees and costs pursuant to s. 68.085.

909 (c) If it is determined that the person who reported a
 910 violation of this section was involved in the authorization,

911 approval, or receipt of the prohibited compensation, or if that
 912 person is convicted of criminal conduct arising from his or her
 913 role in the authorization, approval, or receipt of the
 914 prohibited compensation, he or she is not eligible for a reward
 915 or for an award of a portion of the proceeds or payment of
 916 attorney fees and costs pursuant to s. 68.085.

917 (11) A cause of action under s. 112.3187 exists for an
 918 employee who is discharged, demoted, suspended, threatened,
 919 harassed, or in any manner discriminated against by his or her
 920 employer in the terms and conditions of employment for lawful
 921 acts performed on his or her behalf or on behalf of others in
 922 furtherance of bringing an action under this section, including
 923 investigation for initiation of, testimony for, or assistance in
 924 an action filed or to be filed under this section.

925 (12) In the case of a willful violation of this section,
 926 if the unit of government fails to recover prohibited
 927 compensation within 90 days after discovering or being notified
 928 that such compensation occurred, a cause of action may be
 929 brought to recover state funds in accordance with ss. 68.082 and
 930 68.083. Other funds may be recovered by:

931 (a) The Department of Legal Affairs using the procedures
 932 set forth in ss. 68.082 and 68.083, except that venue shall lie
 933 in the circuit court of the county in which the unit of
 934 government is located.

935 (b) A person using the procedures set forth in ss. 68.082
 936 and 68.083, except that venue shall lie in the circuit court of

937 the county in which the unit of government is located.

938 (13) Subsections (7)-(12) apply prospectively to contracts
 939 or employment agreements, or the renewal or renegotiation of an
 940 existing contract or employment agreement, effective on or after
 941 October 1, 2016.

942 Section 17. Section 215.86, Florida Statutes, is amended
 943 to read:

944 215.86 Management systems and controls.—Each state agency
 945 and the judicial branch as defined in s. 216.011 shall establish
 946 and maintain management systems and internal controls designed
 947 to:

- 948 (1) Prevent and detect fraud, waste, and abuse. ~~that~~
- 949 (2) Promote and encourage compliance with applicable laws,
 950 rules, contracts, grant agreements, and best practices.†
- 951 (3) Support economical and ~~economic,~~ efficient, ~~and~~
 952 effective operations.†
- 953 (4) Ensure reliability of financial records and reports.†
- 954 (5) Safeguard ~~and safeguarding of~~ assets. ~~Accounting~~
 955 ~~systems and procedures shall be designed to fulfill the~~
 956 ~~requirements of generally accepted accounting principles.~~

957 Section 18. Paragraph (a) of subsection (2) of section
 958 215.97, Florida Statutes, is amended to read:

959 215.97 Florida Single Audit Act.—

- 960 (2) Definitions; as used in this section, the term:
- 961 (a) "Audit threshold" means the threshold amount used to
 962 determine when a state single audit or project-specific audit of

963 a nonstate entity shall be conducted in accordance with this
 964 section. Each nonstate entity that expends a total amount of
 965 state financial assistance equal to or in excess of \$750,000
 966 ~~\$500,000~~ in any fiscal year of such nonstate entity shall be
 967 required to have a state single audit, or a project-specific
 968 audit, for such fiscal year in accordance with the requirements
 969 of this section. ~~Every 2 years the Auditor General,~~ After
 970 consulting with the Executive Office of the Governor, the
 971 Department of Financial Services, and all state awarding
 972 agencies, the Auditor General shall periodically review the
 973 threshold amount for requiring audits under this section and may
 974 recommend any appropriate statutory change to revise the
 975 threshold amount in the annual report submitted pursuant to s.
 976 11.45(7)(h) to the Legislature ~~may adjust such threshold amount~~
 977 ~~consistent with the purposes of this section.~~

978 Section 19. Subsection (11) of section 215.985, Florida
 979 Statutes, is amended to read:

980 215.985 Transparency in government spending.—

981 (11) Each water management district shall provide a
 982 monthly financial statement in the form and manner prescribed by
 983 the Department of Financial Services to the district's ~~its~~
 984 governing board and make such monthly financial statement
 985 available for public access on its website.

986 Section 20. Paragraph (d) of subsection (1) and subsection
 987 (2) of section 218.32, Florida Statutes, are amended to read:

988 218.32 Annual financial reports; local governmental

989 entities.-

990 (1)

991 (d) Each local governmental entity that is required to
 992 provide for an audit under s. 218.39(1) must submit a copy of
 993 the audit report and annual financial report to the department
 994 within 45 days after the completion of the audit report but no
 995 later than 9 months after the end of the fiscal year. In
 996 conducting an audit of a local governmental entity pursuant to
 997 s. 218.39, an independent certified public accountant shall
 998 determine whether the entity's annual financial report is in
 999 agreement with the audited financial statements. The
 1000 accountant's audit report must be supported by the same level of
 1001 detail as required for the annual financial report. If the
 1002 accountant's audit report is not in agreement with the annual
 1003 financial report, the accountant shall specify and explain the
 1004 significant differences that exist between the annual financial
 1005 report and the audit report.

1006 (2) The department shall annually by December 1 file a
 1007 verified report with the Governor, the Legislature, the Auditor
 1008 General, and the Special District Accountability Program of the
 1009 Department of Economic Opportunity showing the revenues, both
 1010 locally derived and derived from intergovernmental transfers,
 1011 and the expenditures of each local governmental entity, regional
 1012 planning council, local government finance commission, and
 1013 municipal power corporation that is required to submit an annual
 1014 financial report. In preparing the verified report, the

1015 department may request additional information from the local
 1016 governmental entity. The information requested must be provided
 1017 to the department within 45 days after the request. If the local
 1018 governmental entity does not comply with the request, the
 1019 department shall notify the Legislative Auditing Committee,
 1020 which may take action pursuant to s. 11.40(2). The report must
 1021 include, but is not limited to:

1022 (a) The total revenues and expenditures of each local
 1023 governmental entity that is a component unit included in the
 1024 annual financial report of the reporting entity.

1025 (b) The amount of outstanding long-term debt by each local
 1026 governmental entity. For purposes of this paragraph, the term
 1027 "long-term debt" means any agreement or series of agreements to
 1028 pay money, which, at inception, contemplate terms of payment
 1029 exceeding 1 year in duration.

1030 Section 21. Present subsection (3) of section 218.33,
 1031 Florida Statutes, is redesignated as subsection (4), and a new
 1032 subsection (3) is added to that section, to read:

1033 218.33 Local governmental entities; establishment of
 1034 uniform fiscal years and accounting practices and procedures.—

1035 (3) Each local governmental entity shall establish and
 1036 maintain internal controls designed to:

1037 (a) Prevent and detect fraud, waste, and abuse.

1038 (b) Promote and encourage compliance with applicable laws,
 1039 rules, contracts, grant agreements, and best practices.

1040 (c) Support economical and efficient operations.

1041 (d) Ensure reliability of financial records and reports.

1042 (e) Safeguard assets.

1043 Section 22. Present subsections (8) through (12) of
 1044 section 218.39, Florida Statutes, are redesignated as
 1045 subsections (9) through (13), respectively, and a new subsection
 1046 (8) is added to that section, to read:

1047 218.39 Annual financial audit reports.—

1048 (8) If the audit report includes a recommendation that was
 1049 included in the preceding financial audit report but remains
 1050 unaddressed, the governing body of the audited entity, within 60
 1051 days after the delivery of the audit report to the governing
 1052 body, shall indicate during a regularly scheduled public meeting
 1053 whether it intends to take corrective action, the intended
 1054 corrective action, and the timeframe for the corrective action.
 1055 If the governing body indicates that it does not intend to take
 1056 corrective action, it shall explain its decision at the public
 1057 meeting.

1058 Section 23. Subsection (2) of section 218.391, Florida
 1059 Statutes, is amended, and subsection (9) is added to that
 1060 section, to read:

1061 218.391 Auditor selection procedures.—

1062 (2) The governing body of a ~~charter~~ county, municipality,
 1063 special district, district school board, charter school, or
 1064 charter technical career center shall establish an audit
 1065 committee.

1066 (a) The audit committee for a county ~~Each noncharter~~

1067 ~~county shall establish an audit committee that, at a minimum,~~
 1068 ~~shall consist of each of the county officers elected pursuant to~~
 1069 ~~the county charter or s. 1(d), Art. VIII of the State~~
 1070 ~~Constitution, or their respective designees a designee,~~ and one
 1071 member of the board of county commissioners or its designee.

1072 (b) The audit committee for a municipality, special
 1073 district, district school board, charter school, or charter
 1074 technical career center shall consist of at least three members.
 1075 One member of the audit committee must be a member of the
 1076 governing body of an entity specified in this paragraph, who
 1077 shall also serve as the chair of the committee.

1078 (c) An employee, chief executive officer, or chief
 1079 financial officer of the county, municipality, special district,
 1080 district school board, charter school, or charter technical
 1081 career center may not serve as a member of an audit committee
 1082 established under this subsection.

1083 (d) The primary purpose of the audit committee is to
 1084 assist the governing body in selecting an auditor to conduct the
 1085 annual financial audit required in s. 218.39; however, the audit
 1086 committee may serve other audit oversight purposes as determined
 1087 by the entity's governing body. The public ~~may~~ shall not be
 1088 excluded from the proceedings under this section.

1089 (9) An audit report submitted pursuant to s. 218.39 must
 1090 include an affidavit executed by the chair of the audit
 1091 committee affirming that the committee complied with the
 1092 requirements of subsections (3)-(6) in selecting an auditor. If

1093 the Auditor General determines that an entity failed to comply
 1094 with the requirements of subsections (3)-(6) in selecting an
 1095 auditor, the entity shall select a replacement auditor in
 1096 accordance with this section to conduct audits for subsequent
 1097 fiscal years if the original audit was performed under a
 1098 multiyear contract. If the replacement of an auditor would
 1099 preclude the entity from timely completing the annual financial
 1100 audit required by s. 218.39, the entity shall replace an auditor
 1101 in accordance with this section for the subsequent annual
 1102 financial audit. A multiyear contract between an entity or an
 1103 auditor may not prohibit or restrict an entity from complying
 1104 with this subsection.

1105 Section 24. Subsection (2) of section 286.0114, Florida
 1106 Statutes, is amended to read:

1107 286.0114 Public meetings; reasonable opportunity to be
 1108 heard; attorney fees.—

1109 (2) Members of the public shall be given a reasonable
 1110 opportunity to be heard on a proposition before a board or
 1111 commission. The opportunity to be heard need not occur at the
 1112 same meeting at which the board or commission takes official
 1113 action on the proposition if the opportunity occurs at a meeting
 1114 that is during the decisionmaking process and is within
 1115 reasonable proximity in time before the meeting at which the
 1116 board or commission takes the official action. A board or
 1117 commission may not require a member of the public to provide an
 1118 advance written copy of his or her testimony or comments as a

1119 | precondition of being given the opportunity to be heard at a
 1120 | meeting. This section does not prohibit a board or commission
 1121 | from maintaining orderly conduct or proper decorum in a public
 1122 | meeting. The opportunity to be heard is subject to rules or
 1123 | policies adopted by the board or commission, as provided in
 1124 | subsection (4).

1125 | Section 25. Paragraph (b) of subsection (2) of section
 1126 | 288.92, Florida Statutes, is amended to read:

1127 | 288.92 Divisions of Enterprise Florida, Inc.—

1128 | (2)

1129 | (b)1. The following officers and board members are subject
 1130 | to ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and
 1131 | 112.3143(2):

1132 | a. Officers and members of the board of directors of the
 1133 | divisions of Enterprise Florida, Inc.

1134 | b. Officers and members of the board of directors of
 1135 | subsidiaries of Enterprise Florida, Inc.

1136 | c. Officers and members of the board of directors of
 1137 | corporations created to carry out the missions of Enterprise
 1138 | Florida, Inc.

1139 | d. Officers and members of the board of directors of
 1140 | corporations with which a division is required by law to
 1141 | contract to carry out its missions.

1142 | 2. For a period of 6 years after retirement from or
 1143 | termination of service to a division, or for a period of 10
 1144 | years if removed or terminated for cause or for misconduct, as

1145 defined in s. 443.036(29), the officers and board members
 1146 specified in subparagraph 1. may not represent another person or
 1147 entity for compensation before:

1148 a. Enterprise Florida, Inc.;

1149 b. A division, a subsidiary, or the board of directors of
 1150 corporations created to carry out the missions of Enterprise
 1151 Florida, Inc.; or

1152 c. A division with which Enterprise Florida, Inc., is
 1153 required by law to contract to carry out its missions.

1154 3.2- For purposes of applying ss. 112.313(1)-(8), (10),
 1155 (12), and (15); 112.3135; and 112.3143(2) to activities of the
 1156 officers and members of the board of directors specified in
 1157 subparagraph 1., those persons shall be considered public
 1158 officers or employees and the corporation shall be considered
 1159 their agency.

1160 4.3- It is not a violation of s. 112.3143(2) or (4) for
 1161 the officers or members of the board of directors of the Florida
 1162 Tourism Industry Marketing Corporation to:

1163 a. Vote on the 4-year marketing plan required under s.
 1164 288.923 or vote on any individual component of or amendment to
 1165 the plan.

1166 b. Participate in the establishment or calculation of
 1167 payments related to the private match requirements of s.
 1168 288.904(3). The officer or member must file an annual disclosure
 1169 describing the nature of his or her interests or the interests
 1170 of his or her principals, including corporate parents and

1171 subsidiaries of his or her principal, in the private match
 1172 requirements. This annual disclosure requirement satisfies the
 1173 disclosure requirement of s. 112.3143(4). This disclosure must
 1174 be placed ~~either~~ on the Florida Tourism Industry Marketing
 1175 Corporation's website or included in the minutes of each meeting
 1176 of the Florida Tourism Industry Marketing Corporation's board of
 1177 directors at which the private match requirements are discussed
 1178 or voted upon.

1179 Section 26. Paragraph (a) of subsection (3) of section
 1180 288.9604, Florida Statutes, is amended to read:

1181 288.9604 Creation of the authority.-

1182 (3)(a)1. A director may not receive compensation for his
 1183 or her services, but is entitled to necessary expenses,
 1184 including travel expenses, incurred in the discharge of his or
 1185 her duties. Each director shall hold office until his or her
 1186 successor has been appointed.

1187 2. Directors are subject to ss. 112.313(1)-(8), (10),
 1188 (12), and (15); 112.3135; and 112.3143(2). For purposes of
 1189 applying ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and
 1190 112.3143(2) to activities of directors, directors shall be
 1191 considered public officers and the corporation shall be
 1192 considered their agency.

1193 3. A director of the corporation may not represent another
 1194 person or entity for compensation before the corporation for a
 1195 period of 6 years following his or her service on the board of
 1196 directors.

1197 Section 27. Paragraph (e) of subsection (4), paragraph (d)
 1198 of subsection (5), and paragraph (d) of subsection (6) of
 1199 section 373.536, Florida Statutes, are amended to read:

1200 373.536 District budget and hearing thereon.—

1201 (4) BUDGET CONTROLS; FINANCIAL INFORMATION.—

1202 (e) ~~By September 1, 2012,~~ Each district shall provide a
 1203 monthly financial statement in the form and manner prescribed by
 1204 the Department of Financial Services to the district's governing
 1205 board and make such monthly financial statement available for
 1206 public access on its website.

1207 (5) TENTATIVE BUDGET CONTENTS AND SUBMISSION; REVIEW AND
 1208 APPROVAL.—

1209 (d) Each district shall, by August 1 of each year, submit
 1210 for review a tentative budget and a description of any
 1211 significant changes from the preliminary budget submitted to the
 1212 Legislature pursuant to s. 373.535 to the Governor, the
 1213 President of the Senate, the Speaker of the House of
 1214 Representatives, the chairs of all legislative committees and
 1215 subcommittees having substantive or fiscal jurisdiction over
 1216 water management districts, as determined by the President of
 1217 the Senate or the Speaker of the House of Representatives, as
 1218 applicable, the secretary of the department, and the governing
 1219 body of each county in which the district has jurisdiction or
 1220 derives any funds for the operations of the district. The
 1221 tentative budget must be posted on the district's official
 1222 website at least 2 days before budget hearings held pursuant to

1223 s. 200.065 or other law and must remain on the website for at
 1224 least 45 days.

1225 (6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN;
 1226 WATER RESOURCE DEVELOPMENT WORK PROGRAM.—

1227 (d) The final adopted budget must be posted on the water
 1228 management district's official website within 30 days after
 1229 adoption and must remain on the website for at least 2 years.

1230 Section 28. Section 838.014, Florida Statutes, is amended
 1231 to read:

1232 838.014 Definitions.—As used in this chapter, the term:

1233 (1) "Benefit" means gain or advantage, or anything
 1234 regarded by the person to be benefited as a gain or advantage,
 1235 including the doing of an act beneficial to any person in whose
 1236 welfare he or she is interested, including any commission, gift,
 1237 gratuity, property, commercial interest, or any other thing of
 1238 economic value not authorized by law.

1239 (2) "Bid" includes a response to an "invitation to bid,"
 1240 "invitation to negotiate," "request for a quote," or "request
 1241 for proposals" as those terms are defined in s. 287.012.

1242 (3) "Commodity" means any goods, merchandise, wares,
 1243 produce, chose in action, land, article of commerce, or other
 1244 tangible or intangible property, real, personal, or mixed, for
 1245 use, consumption, production, enjoyment, or resale.

1246 (4) "Governmental entity" means the state, including any
 1247 unit of the executive, legislative, and judicial branches of
 1248 government, political subdivisions and any agency or office

1249 thereof, or any other public entity that independently exercises
 1250 any type of governmental function ~~"Corruptly" or "with corrupt~~
 1251 ~~intent" means acting knowingly and dishonestly for a wrongful~~
 1252 ~~purpose.~~

1253 (5) "Harm" means pecuniary or other loss, disadvantage, or
 1254 injury to the person affected.

1255 (6) "Public servant" means:

1256 (a) Any officer or employee of a governmental state,
 1257 ~~county, municipal, or special district agency or entity;~~

1258 (b) Any legislative or judicial officer or employee;

1259 (c) Any person, except a witness, who acts as a general or
 1260 special magistrate, receiver, auditor, arbitrator, umpire,
 1261 referee, consultant, or hearing officer while performing a
 1262 governmental function; ~~or~~

1263 (d) A candidate for election or appointment to any of the
 1264 positions listed in this subsection, or an individual who has
 1265 been elected to, but has yet to officially assume the
 1266 responsibilities of, public office; or

1267 (e) To the extent that the individual's conduct relates to
 1268 the performance of a public duty of a governmental entity, any
 1269 officer, director, partner, manager, representative, or employee
 1270 of a nongovernmental entity, private corporation, quasi-public
 1271 corporation, or quasi-public entity, or any person subject to
 1272 chapter 119 who is acting on behalf of a governmental entity.

1273 For purposes of this paragraph, "nongovernmental entity" means a
 1274 person, an association, a cooperative, a corporation, a

1275 partnership, an organization, or any other entity, whether
 1276 operating for profit or not for profit, which is not a
 1277 governmental entity.

1278 (7) "Service" means any kind of activity performed in
 1279 whole or in part for economic benefit.

1280 Section 29. Subsection (1) of section 838.015, Florida
 1281 Statutes, is amended to read:

1282 838.015 Bribery.—

1283 (1) For purposes of this section, "bribery" means
 1284 ~~corruptly~~ to knowingly and intentionally give, offer, or promise
 1285 to any public servant, or, if a public servant, ~~corruptly~~ to
 1286 knowingly and intentionally request, solicit, accept, or agree
 1287 to accept for himself or herself or another, any pecuniary or
 1288 other benefit not authorized by law with an intent or purpose to
 1289 influence the performance of any act or omission which the
 1290 person believes to be, or the public servant represents as
 1291 being, within the official discretion of a public servant, in
 1292 violation of a public duty, or in performance of a public duty.

1293 Section 30. Subsections (1) and (2) of section 838.016,
 1294 Florida Statutes, are amended to read:

1295 838.016 Unlawful compensation or reward for official
 1296 behavior.—

1297 (1) It is unlawful for any person ~~corruptly~~ to knowingly
 1298 and intentionally give, offer, or promise to any public servant,
 1299 or, if a public servant, ~~corruptly~~ to knowingly and
 1300 intentionally request, solicit, accept, or agree to accept, any

1301 pecuniary or other benefit not authorized by law, for the past,
 1302 present, or future performance, nonperformance, or violation of
 1303 any act or omission which the person believes to have been, or
 1304 the public servant represents as having been, either within the
 1305 official discretion of the public servant, in violation of a
 1306 public duty, or in performance of a public duty. This section
 1307 may not ~~Nothing herein shall~~ be construed to preclude a public
 1308 servant from accepting rewards for services performed in
 1309 apprehending any criminal.

1310 (2) It is unlawful for any person ~~corruptly~~ to knowingly
 1311 and intentionally give, offer, or promise to any public servant,
 1312 or, if a public servant, ~~corruptly~~ to knowingly and
 1313 intentionally request, solicit, accept, or agree to accept, any
 1314 pecuniary or other benefit not authorized by law for the past,
 1315 present, or future exertion of any influence upon or with any
 1316 other public servant regarding any act or omission which the
 1317 person believes to have been, or which is represented to him or
 1318 her as having been, either within the official discretion of the
 1319 other public servant, in violation of a public duty, or in
 1320 performance of a public duty.

1321 Section 31. Subsection (1) of section 838.022, Florida
 1322 Statutes, is amended, and subsection (2) of that section is
 1323 republished, to read:

1324 838.022 Official misconduct.—

1325 (1) It is unlawful for a public servant, ~~with corrupt~~
 1326 ~~intent~~ to knowingly and intentionally obtain an improper a

1327 benefit for any person or to cause unlawful harm to another, by
 1328 ~~to~~:

1329 (a) Falsifying ~~Falsify~~, or causing ~~cause~~ another person to
 1330 falsify, any official record or official document;

1331 (b) Concealing, covering up, destroying, mutilating, or
 1332 altering ~~Conceal, cover up, destroy, mutilate, or alter~~ any
 1333 official record or official document or causing ~~cause~~ another
 1334 person to perform such an act; or

1335 (c) Obstructing, delaying, or preventing ~~Obstruct, delay,~~
 1336 ~~or prevent~~ the communication of information relating to the
 1337 commission of a felony that directly involves or affects the
 1338 governmental ~~public agency or public~~ entity served by the public
 1339 servant.

1340 (2) For the purposes of this section:

1341 (a) The term "public servant" does not include a candidate
 1342 who does not otherwise qualify as a public servant.

1343 (b) An official record or official document includes only
 1344 public records.

1345 Section 32. Subsections (1) and (2) of section 838.22,
 1346 Florida Statutes, are amended to read:

1347 838.22 Bid tampering.—

1348 (1) It is unlawful for a public servant, ~~with corrupt~~
 1349 ~~intent~~ to knowingly and intentionally influence or attempt to
 1350 influence, in an improper manner, the competitive bidding
 1351 process undertaken by any governmental ~~state, county, municipal,~~
 1352 ~~or special district agency, or any other public entity,~~ for the

1353 procurement of commodities or services, by ~~to~~:

1354 (a) Disclosing ~~Disclose~~ material information concerning a
 1355 bid or other aspects of the competitive bidding process when
 1356 such information is not publicly disclosed.

1357 (b) Altering or amending ~~Alter or amend~~ a submitted bid,
 1358 documents or other materials supporting a submitted bid, or bid
 1359 results for the purpose of intentionally providing a competitive
 1360 advantage to any person who submits a bid.

1361 (2) It is unlawful for a public servant, ~~with corrupt~~
 1362 ~~intent~~ to knowingly and intentionally obtain an improper a
 1363 benefit for any person or to cause unlawful harm to another, to
 1364 circumvent a competitive bidding process required by law or rule
 1365 by using a sole-source contract for commodities or services.

1366 Section 33. Paragraph (1) of subsection (12) of section
 1367 1001.42, Florida Statutes, is amended to read:

1368 1001.42 Powers and duties of district school board.—The
 1369 district school board, acting as a board, shall exercise all
 1370 powers and perform all duties listed below:

1371 (12) FINANCE.—Take steps to assure students adequate
 1372 educational facilities through the financial procedure
 1373 authorized in chapters 1010 and 1011 and as prescribed below:

1374 (1) *Internal auditor.*—May employ an internal auditor to
 1375 perform ongoing financial verification of the financial records
 1376 of the school district and such other audits and reviews as the
 1377 district school board directs for the purpose of determining:

1378 1. The adequacy of internal controls designed to prevent

1379 | and detect fraud, waste, and abuse.

1380 | 2. Compliance with applicable laws, rules, contracts,
 1381 | grant agreements, district school board-approved policies, and
 1382 | best practices.

1383 | 3. The efficiency of operations.

1384 | 4. The reliability of financial records and reports.

1385 | 5. The safeguarding of assets.

1386 |

1387 | The internal auditor shall report directly to the district
 1388 | school board or its designee.

1389 | Section 34. Paragraph (j) of subsection (9) of section
 1390 | 1002.33, Florida Statutes, is amended to read:

1391 | 1002.33 Charter schools.—

1392 | (9) CHARTER SCHOOL REQUIREMENTS.—

1393 | (j) The governing body of the charter school shall be
 1394 | responsible for:

1395 | 1. Establishing and maintaining internal controls designed
 1396 | to:

1397 | a. Prevent and detect fraud, waste, and abuse.

1398 | b. Promote and encourage compliance with applicable laws,
 1399 | rules, contracts, grant agreements, and best practices.

1400 | c. Support economical and efficient operations.

1401 | d. Ensure reliability of financial records and reports.

1402 | e. Safeguard assets.

1403 | ~~2.1.~~ Ensuring that the charter school has retained the
 1404 | services of a certified public accountant or auditor for the

1405 annual financial audit, pursuant to s. 1002.345(2), who shall
 1406 submit the report to the governing body.

1407 ~~3.2.~~ Reviewing and approving the audit report, including
 1408 audit findings and recommendations for the financial recovery
 1409 plan.

1410 ~~4.a.3.a.~~ Performing the duties in s. 1002.345, including
 1411 monitoring a corrective action plan.

1412 b. Monitoring a financial recovery plan in order to ensure
 1413 compliance.

1414 ~~5.4.~~ Participating in governance training approved by the
 1415 department which must include government in the sunshine,
 1416 conflicts of interest, ethics, and financial responsibility.

1417 Section 35. Present subsections (6) through (10) of
 1418 section 1002.37, Florida Statutes, are redesignated as
 1419 subsections (7) through (11), respectively, a new subsection (6)
 1420 is added to that section, and present subsections (6) and (11)
 1421 of that section are amended, to read:

1422 1002.37 The Florida Virtual School.—

1423 (6) The Florida Virtual School shall have an annual
 1424 financial audit of its accounts and records conducted by an
 1425 independent auditor who is a certified public accountant
 1426 licensed under chapter 473. The independent auditor shall
 1427 conduct the audit in accordance with rules adopted by the
 1428 Auditor General pursuant to s. 11.45 and, upon completion of the
 1429 audit, shall prepare an audit report in accordance with such
 1430 rules. The audit report must include a written statement of the

1431 board of trustees describing corrective action to be taken in
 1432 response to each of the recommendations of the independent
 1433 auditor included in the audit report. The independent auditor
 1434 shall submit the audit report to the board of trustees and the
 1435 Auditor General no later than 9 months after the end of the
 1436 preceding fiscal year.

1437 (7)(6) The board of trustees shall annually submit to the
 1438 Governor, the Legislature, the Commissioner of Education, and
 1439 the State Board of Education the audit report prepared pursuant
 1440 to subsection (6) and a complete and detailed report setting
 1441 forth:

1442 (a) The operations and accomplishments of the Florida
 1443 Virtual School within the state and those occurring outside the
 1444 state as Florida Virtual School Global.

1445 (b) The marketing and operational plan for the Florida
 1446 Virtual School and Florida Virtual School Global, including
 1447 recommendations regarding methods for improving the delivery of
 1448 education through the Internet and other distance learning
 1449 technology.

1450 (c) The assets and liabilities of the Florida Virtual
 1451 School and Florida Virtual School Global at the end of the
 1452 fiscal year.

1453 ~~(d) A copy of an annual financial audit of the accounts~~
 1454 ~~and records of the Florida Virtual School and Florida Virtual~~
 1455 ~~School Global, conducted by an independent certified public~~
 1456 ~~accountant and performed in accordance with rules adopted by the~~

1457 ~~Auditor General.~~

1458 ~~(e)~~ Recommendations regarding the unit cost of providing
 1459 services to students through the Florida Virtual School and
 1460 Florida Virtual School Global. In order to most effectively
 1461 develop public policy regarding any future funding of the
 1462 Florida Virtual School, it is imperative that the cost of the
 1463 program is accurately identified. The identified cost of the
 1464 program must be based on reliable data.

1465 (e)(f) Recommendations regarding an accountability
 1466 mechanism to assess the effectiveness of the services provided
 1467 by the Florida Virtual School and Florida Virtual School Global.

1468 ~~(11) The Auditor General shall conduct an operational~~
 1469 ~~audit of the Florida Virtual School, including Florida Virtual~~
 1470 ~~School Global. The scope of the audit shall include, but not be~~
 1471 ~~limited to, the administration of responsibilities relating to~~
 1472 ~~personnel; procurement and contracting; revenue production;~~
 1473 ~~school funds, including internal funds; student enrollment~~
 1474 ~~records; franchise agreements; information technology~~
 1475 ~~utilization, assets, and security; performance measures and~~
 1476 ~~standards; and accountability. The final report on the audit~~
 1477 ~~shall be submitted to the President of the Senate and the~~
 1478 ~~Speaker of the House of Representatives no later than January~~
 1479 ~~31, 2014.~~

1480 Section 36. Subsection (5) is added to section 1010.01,
 1481 Florida Statutes, to read:

1482 1010.01 Uniform records and accounts.—

1483 (5) Each school district, Florida College System
 1484 institution, and state university shall establish and maintain
 1485 internal controls designed to:

- 1486 (a) Prevent and detect fraud, waste, and abuse.
- 1487 (b) Promote and encourage compliance with applicable laws,
 1488 rules, contracts, grant agreements, and best practices.
- 1489 (c) Support economical and efficient operations.
- 1490 (d) Ensure reliability of financial records and reports.
- 1491 (e) Safeguard assets.

1492 Section 37. Subsection (2) of section 1010.30, Florida
 1493 Statutes, is amended to read:

1494 1010.30 Audits required.—

1495 (2) If a school district, Florida College System
 1496 institution, or university audit report includes a
 1497 recommendation that was included in the preceding financial
 1498 audit report but remains unaddressed, ~~an audit contains a~~
 1499 ~~significant finding,~~ the district school board, the Florida
 1500 College System institution board of trustees, or the university
 1501 board of trustees, within 60 days after the delivery of the
 1502 audit report to the school district, Florida College System
 1503 institution, or university, shall indicate ~~conduct an audit~~
 1504 ~~overview~~ during a regularly scheduled public meeting whether it
 1505 intends to take corrective action, the intended corrective
 1506 action, and the timeframe for the corrective action. If the
 1507 district school board, Florida College System institution board
 1508 of trustees, or university board of trustees indicates that it

1509 does not intend to take corrective action, it shall explain its
 1510 decision at the public meeting.

1511 Section 38. Subsection (2) of section 68.082, Florida
 1512 Statutes, is amended to read:

1513 68.082 False claims against the state; definitions;
 1514 liability.-

1515 (2) Any person who:

1516 (a) Knowingly presents or causes to be presented a false
 1517 or fraudulent claim for payment or approval;

1518 (b) Knowingly authorizes, approves, or receives payment of
 1519 prohibited compensation in violation of s. 215.425;

1520 (c)~~(b)~~ Knowingly makes, uses, or causes to be made or used
 1521 a false record or statement material to a false or fraudulent
 1522 claim;

1523 (d)~~(e)~~ Conspires to commit a violation of this subsection;

1524 (e)~~(d)~~ Has possession, custody, or control of property or
 1525 money used or to be used by the state and knowingly delivers or
 1526 causes to be delivered less than all of that money or property;

1527 (f)~~(e)~~ Is authorized to make or deliver a document
 1528 certifying receipt of property used or to be used by the state
 1529 and, intending to defraud the state, makes or delivers the
 1530 receipt without knowing that the information on the receipt is
 1531 true;

1532 (g)~~(f)~~ Knowingly buys or receives, as a pledge of an
 1533 obligation or a debt, public property from an officer or
 1534 employee of the state who may not sell or pledge the property;

1535 or

1536 (h) ~~(g)~~ Knowingly makes, uses, or causes to be made or used
 1537 a false record or statement material to an obligation to pay or
 1538 transmit money or property to the state, or knowingly conceals
 1539 or knowingly and improperly avoids or decreases an obligation to
 1540 pay or transmit money or property to the state

1541

1542 is liable to the state for a civil penalty of not less than
 1543 \$5,500 and not more than \$11,000 and for treble the amount of
 1544 damages the state sustains because of the act of that person.

1545 Section 39. Subsection (1) of section 68.083, Florida
 1546 Statutes, is amended to read:

1547 68.083 Civil actions for false claims.—

1548 (1) The department may diligently investigate a violation
 1549 under s. 68.082. If the department finds that a person has
 1550 violated or is violating s. 68.082, the department may bring a
 1551 civil action under the Florida False Claims Act against the
 1552 person. The Department of Financial Services may bring a civil
 1553 action under this section if the action arises from an
 1554 investigation by that department and the Department of Legal
 1555 Affairs has not filed an action under this act. For a violation
 1556 of s. 68.082 regarding prohibited compensation paid from state
 1557 funds, the Department of Financial Services may bring a civil
 1558 action under this section if the action arises from an
 1559 investigation by that department concerning a violation of s.
 1560 215.425 by the state and the Department of Legal Affairs has not

1561 filed an action under this act.

1562 Section 40. Subsection (5) of section 99.061, Florida
 1563 Statutes, is amended to read:

1564 99.061 Method of qualifying for nomination or election to
 1565 federal, state, county, or district office.—

1566 (5) At the time of qualifying for office, each candidate
 1567 for a constitutional office or an elected municipal office shall
 1568 file a full and public disclosure of financial interests
 1569 pursuant to s. 8, Art. II of the State Constitution, which must
 1570 be verified under oath or affirmation pursuant to s.

1571 92.525(1)(a), and a candidate for any other office, ~~including~~
 1572 ~~local elective office,~~ shall file a statement of financial
 1573 interests pursuant to s. 112.3145.

1574 Section 41. Subsection (3) of section 218.503, Florida
 1575 Statutes, is amended to read:

1576 218.503 Determination of financial emergency.—

1577 (3) Upon notification that one or more of the conditions
 1578 in subsection (1) have occurred or will occur if action is not
 1579 taken to assist the local governmental entity or district school
 1580 board, the Governor or his or her designee shall contact the
 1581 local governmental entity or the Commissioner of Education or
 1582 his or her designee shall contact the district school board, as
 1583 appropriate, to determine what actions have been taken by the
 1584 local governmental entity or the district school board to
 1585 resolve or prevent the condition. The information requested must
 1586 be provided within 45 days after the date of the request. If the

1587 local governmental entity or the district school board does not
 1588 comply with the request, the Governor or his or her designee or
 1589 the Commissioner of Education or his or her designee shall
 1590 notify ~~the members of~~ the Legislative Auditing Committee, which
 1591 ~~who~~ may take action pursuant to s. 11.40(2) ~~s. 11.40~~. The
 1592 Governor or the Commissioner of Education, as appropriate, shall
 1593 determine whether the local governmental entity or the district
 1594 school board needs state assistance to resolve or prevent the
 1595 condition. If state assistance is needed, the local governmental
 1596 entity or district school board is considered to be in a state
 1597 of financial emergency. The Governor or the Commissioner of
 1598 Education, as appropriate, has the authority to implement
 1599 measures as set forth in ss. 218.50-218.504 to assist the local
 1600 governmental entity or district school board in resolving the
 1601 financial emergency. Such measures may include, but are not
 1602 limited to:

1603 (a) Requiring approval of the local governmental entity's
 1604 budget by the Governor or approval of the district school
 1605 board's budget by the Commissioner of Education.

1606 (b) Authorizing a state loan to a local governmental
 1607 entity and providing for repayment of same.

1608 (c) Prohibiting a local governmental entity or district
 1609 school board from issuing bonds, notes, certificates of
 1610 indebtedness, or any other form of debt until such time as it is
 1611 no longer subject to this section.

1612 (d) Making such inspections and reviews of records,

1613 information, reports, and assets of the local governmental
 1614 entity or district school board as are needed. The appropriate
 1615 local officials shall cooperate in such inspections and reviews.

1616 (e) Consulting with officials and auditors of the local
 1617 governmental entity or the district school board and the
 1618 appropriate state officials regarding any steps necessary to
 1619 bring the books of account, accounting systems, financial
 1620 procedures, and reports into compliance with state requirements.

1621 (f) Providing technical assistance to the local
 1622 governmental entity or the district school board.

1623 (g)1. Establishing a financial emergency board to oversee
 1624 the activities of the local governmental entity or the district
 1625 school board. If a financial emergency board is established for
 1626 a local governmental entity, the Governor shall appoint board
 1627 members and select a chair. If a financial emergency board is
 1628 established for a district school board, the State Board of
 1629 Education shall appoint board members and select a chair. The
 1630 financial emergency board shall adopt such rules as are
 1631 necessary for conducting board business. The board may:

1632 a. Make such reviews of records, reports, and assets of
 1633 the local governmental entity or the district school board as
 1634 are needed.

1635 b. Consult with officials and auditors of the local
 1636 governmental entity or the district school board and the
 1637 appropriate state officials regarding any steps necessary to
 1638 bring the books of account, accounting systems, financial

1639 | procedures, and reports of the local governmental entity or the
 1640 | district school board into compliance with state requirements.

1641 | c. Review the operations, management, efficiency,
 1642 | productivity, and financing of functions and operations of the
 1643 | local governmental entity or the district school board.

1644 | d. Consult with other governmental entities for the
 1645 | consolidation of all administrative direction and support
 1646 | services, including, but not limited to, services for asset
 1647 | sales, economic and community development, building inspections,
 1648 | parks and recreation, facilities management, engineering and
 1649 | construction, insurance coverage, risk management, planning and
 1650 | zoning, information systems, fleet management, and purchasing.

1651 | 2. The recommendations and reports made by the financial
 1652 | emergency board must be submitted to the Governor for local
 1653 | governmental entities or to the Commissioner of Education and
 1654 | the State Board of Education for district school boards for
 1655 | appropriate action.

1656 | (h) Requiring and approving a plan, to be prepared by
 1657 | officials of the local governmental entity or the district
 1658 | school board in consultation with the appropriate state
 1659 | officials, prescribing actions that will cause the local
 1660 | governmental entity or district school board to no longer be
 1661 | subject to this section. The plan must include, but need not be
 1662 | limited to:

1663 | 1. Provision for payment in full of obligations outlined
 1664 | in subsection (1), designated as priority items, which are

1665 | currently due or will come due.

1666 | 2. Establishment of priority budgeting or zero-based
1667 | budgeting in order to eliminate items that are not affordable.

1668 | 3. The prohibition of a level of operations which can be
1669 | sustained only with nonrecurring revenues.

1670 | 4. Provisions implementing the consolidation, sourcing, or
1671 | discontinuance of all administrative direction and support
1672 | services, including, but not limited to, services for asset
1673 | sales, economic and community development, building inspections,
1674 | parks and recreation, facilities management, engineering and
1675 | construction, insurance coverage, risk management, planning and
1676 | zoning, information systems, fleet management, and purchasing.

1677 | Section 42. Subsection (2) of section 1002.455, Florida
1678 | Statutes, is amended to read:

1679 | 1002.455 Student eligibility for K-12 virtual
1680 | instruction.-

1681 | (2) A student is eligible to participate in virtual
1682 | instruction if:

1683 | (a) The student spent the prior school year in attendance
1684 | at a public school in the state and was enrolled and reported by
1685 | the school district for funding during October and February for
1686 | purposes of the Florida Education Finance Program surveys;

1687 | (b) The student is a dependent child of a member of the
1688 | United States Armed Forces who was transferred within the last
1689 | 12 months to this state from another state or from a foreign
1690 | country pursuant to a permanent change of station order;

1691 (c) The student was enrolled during the prior school year
 1692 in a virtual instruction program under s. 1002.45 or a full-time
 1693 Florida Virtual School program under s. 1002.37(9)(a) ~~s.~~
 1694 ~~1002.37(8)(a)~~;

1695 (d) The student has a sibling who is currently enrolled in
 1696 a virtual instruction program and the sibling was enrolled in
 1697 that program at the end of the prior school year;

1698 (e) The student is eligible to enter kindergarten or first
 1699 grade; or

1700 (f) The student is eligible to enter grades 2 through 5
 1701 and is enrolled full-time in a school district virtual
 1702 instruction program, virtual charter school, or the Florida
 1703 Virtual School.

1704 Section 43. For the purpose of incorporating the amendment
 1705 made by this act to section 838.014, Florida Statutes, in a
 1706 reference thereto, subsection (11) of section 817.568, Florida
 1707 Statutes, is reenacted to read:

1708 817.568 Criminal use of personal identification
 1709 information.—

1710 (11) A person who willfully and without authorization
 1711 fraudulently uses personal identification information concerning
 1712 an individual who is 60 years of age or older; a disabled adult
 1713 as defined in s. 825.101; a public servant as defined in s.
 1714 838.014; a veteran as defined in s. 1.01; a first responder as
 1715 defined in s. 125.01045; an individual who is employed by the
 1716 State of Florida; or an individual who is employed by the

1717 Federal Government without first obtaining the consent of that
 1718 individual commits a felony of the second degree, punishable as
 1719 provided in s. 775.082, s. 775.083, or s. 775.084.

1720 Section 44. The Legislature finds that a proper and
 1721 legitimate state purpose is served when internal controls are
 1722 established to prevent and detect fraud, waste, and abuse and to
 1723 safeguard and account for government funds and property.

1724 Therefore, the Legislature determines and declares that this act
 1725 fulfills an important state interest.

1726 Section 45. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 869 Public Records/Security Systems
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 1004

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Moore <i>AM</i>	Williamson <i>RAW</i>

SUMMARY ANALYSIS

Current law provides public record and public meeting exemptions for certain information related to security systems. A security system plan or any portion thereof and any information relating to security systems held by an agency is confidential and exempt from public record requirements if the plan or information is for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.

Current law authorizes the release of the confidential and exempt security system plans in certain instances, but it does not authorize the release of the confidential and exempt information relating to security systems.

The bill amends the public record exemption for security systems plans to expand the list of authorized releases as follows:

- In furtherance of the official duties and responsibilities of the custodial agency;
- To another local, state, or federal agency in furtherance of that agency's official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.

It also amends the public record exemption for information relating to security systems to authorize release of the confidential and exempt information as follows:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the custodial agency;
- To another local, state, or federal agency in the furtherance of that agency's duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.

The bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Meetings Law

Article I, s. 24(b) of the Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.¹ The board or commission must provide reasonable notice of all public meetings.² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or that operates in a manner that unreasonably restricts the public's access to the facility.³ Minutes of a public meeting must be promptly recorded and open to public inspection.⁴

Public Record and Public Meeting Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.⁵ The general law must state with specificity the public necessity justifying the exemption⁶ and must be no more broad than necessary to accomplish its purpose.⁷

Furthermore, the Open Government Sunset Review Act⁸ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.

¹ Section 286.011(1), F.S.

² *Id.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ FLA. CONST. art. I, s. 24(c).

⁶ This portion of a public record exemption is commonly referred to as a "public necessity statement."

⁷ FLA. CONST. art. I, s. 24(c).

⁸ Section 119.15, F.S.

- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.⁹

The Act also requires the automatic repeal of a public record or public meeting exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁰

Public Record and Public Meeting Exemptions Related to Security Systems

Current law provides public record and public meeting exemptions for certain information related to security systems. The law specifies the circumstances under which the information may be disclosed and to whom it may be disclosed.

Security System Plans

Section 119.071(3)(a)1., F.S., defines "security system plan" to include all:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- Threat assessments conducted by any agency or any private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security personnel, emergency equipment, or security training.

A security system plan or any portion thereof that is held by an agency¹¹ is confidential and exempt¹² from public record requirements if the plan is for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.¹³

An agency's custodian of public records¹⁴ is authorized to disclose the confidential and exempt information to:

- The property owner or leaseholder; or
- Another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual act of terrorism, or to prosecute those persons who are responsible for such attempts or acts.¹⁵

⁹ Section 119.15(6)(b), F.S.

¹⁰ Section 119.15(3), F.S.

¹¹ Section 119.011(2), F.S., defines "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

¹² There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹³ Section 119.071(3)(a)2., F.S.

¹⁴ Section 119.011(5), F.S., defines "custodian of public records" as the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

¹⁵ Section 119.071(3)(a)3., F.S.

Other Information Related to Security Systems

Section 281.301, F.S., provides that information relating to security systems that is in the possession of an agency and all meetings relating directly to or that would reveal such security systems or information are confidential and exempt from public record and public meeting requirements if the security systems are for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.

The law specifies that the protected information includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information. There are no exceptions provided to authorize an agency to disclose the information under certain circumstances.

Application of the Exemptions to Security Videos

In 2015, the Fifth District Court of Appeal (DCA) in *Central Florida Regional Transportation Authority v. Post-Newsweek Stations, Orlando, Inc.*,¹⁶ considered whether security videos from cameras installed on transit authority buses were confidential and exempt from public record requirements under ss. 119.071(3)(a) and 281.301, F.S. The court concluded that the video footage captured by the bus camera “directly relates to and reveals information about a security system,” and is therefore protected under the exemptions. The court found that “the videos, which are records, reveal the capabilities—and as a corollary, the vulnerabilities—of the current system.”

More recently, the Attorney General considered whether surveillance tapes from a security system for a public building are protected under ss. 119.071(3)(a) and 281.301, F.S. Citing the Fifth DCA case, the Attorney General opined that the surveillance tapes at issue constituted information that would reveal the existence of a security system and were therefore confidential and exempt from public record requirements pursuant to the exemptions.

As a result of these interpretations, agencies are limited in the circumstances under which they may release security and surveillance videos.

Effect of the Bill

The bill amends s. 119.071(3)(a), F.S., which provides a public record exemption for security system plans held by an agency, to expand the list of authorized releases as follows:

- In furtherance of the official duties and responsibilities of the custodial agency;
- To another local, state, or federal agency in furtherance of that agency’s official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.

It removes the provision authorizing release to a state or federal agency for purposes of preventing, detecting, or guarding against an attempted or actual act of terrorism because release for such purposes is encompassed in the newly added, more broad exceptions to the exemption.

The bill also amends s. 281.301, F.S., which provides public record and public meeting exemptions related to security systems, to provide that the confidential and exempt information may be disclosed:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the custodial agency;
- To another local, state, or federal agency in furtherance of that agency’s duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2 amends s. 281.301, F.S., relating to security systems; records and meetings exempt from public access or disclosure.

Section 3 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing additional exceptions to the
 4 public record exemption for security system plans;
 5 removing unnecessary language; amending s. 281.301,
 6 F.S.; providing exceptions to the public record
 7 exemption for information relating to certain security
 8 systems; providing an effective date.

9

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

11

12 Section 1. Paragraph (a) of subsection (3) of section
 13 119.071, Florida Statutes, is amended to read:

14 119.071 General exemptions from inspection or copying of
 15 public records.—

16 (3) SECURITY.—

17 (a)1. As used in this paragraph, the term "security system
 18 plan" includes all:

19 a. Records, information, photographs, audio and visual
 20 presentations, schematic diagrams, surveys, recommendations, or
 21 consultations or portions thereof relating directly to the
 22 physical security of the facility or revealing security systems;

23 b. Threat assessments conducted by any agency or any
 24 private entity;

25 c. Threat response plans;

26 d. Emergency evacuation plans;

27 e. Sheltering arrangements; or
 28 f. Manuals for security personnel, emergency equipment, or
 29 security training.
 30 2. A security system plan or portion thereof for:
 31 a. Any property owned by or leased to the state or any of
 32 its political subdivisions; or
 33 b. Any privately owned or leased property
 34
 35 held by an agency is confidential and exempt from s. 119.07(1)
 36 and s. 24(a), Art. I of the State Constitution. This exemption
 37 is remedial in nature, and it is the intent of the Legislature
 38 that this exemption apply to security system plans held by an
 39 agency before, on, or after the effective date of this
 40 paragraph.
 41 3. Information made confidential and exempt by this
 42 paragraph may be disclosed ~~by the custodian of public records~~
 43 ~~to:~~
 44 a. To the property owner or leaseholder; or
 45 b. In furtherance of the official duties and
 46 responsibilities of the agency holding the information;
 47 c. To another local, state, or federal agency in
 48 furtherance of that agency's official duties and
 49 responsibilities; or
 50 d. Upon a showing of good cause before a court of
 51 competent jurisdiction.
 52 ~~b. Another state or federal agency to prevent, detect,~~

53 ~~guard against, respond to, investigate, or manage the~~
 54 ~~consequences of any attempted or actual act of terrorism, or to~~
 55 ~~prosecute those persons who are responsible for such attempts or~~
 56 ~~acts.~~

57 Section 2. Section 281.301, Florida Statutes, is amended
 58 to read:

59 281.301 Security systems; records and meetings exempt from
 60 public access or disclosure.—

61 (1) Information relating to the security systems for any
 62 property owned by or leased to the state or any of its political
 63 subdivisions, and information relating to the security systems
 64 for any privately owned or leased property which is in the
 65 possession of any agency as defined in s. 119.011(2), including
 66 all records, information, photographs, audio and visual
 67 presentations, schematic diagrams, surveys, recommendations, or
 68 consultations or portions thereof relating directly to or
 69 revealing such systems or information, and all meetings relating
 70 directly to or that would reveal such systems or information are
 71 confidential and exempt from ss. 119.07(1) and 286.011 and other
 72 laws and rules requiring public access or disclosure.

73 (2) Such confidential and exempt information may be
 74 disclosed:

75 a. To the property owner or leaseholder;

76 b. In furtherance of the official duties and
 77 responsibilities of the agency holding the information;

78 c. To another local, state, or federal agency in

79 | furtherance of that agency's official duties and
80 | responsibilities; or

81 | d. Upon a showing of good cause before a court of
82 | competent jurisdiction.

83 | Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1021 Award of Attorney Fees in Public Records Enforcement Actions
SPONSOR(S): Steube
TIED BILLS: IDEN./SIM. BILLS: SB 1220

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Moore <i>JM</i>	Williamson <i>AW</i>
2) Government Operations Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

If an agency unlawfully fails to provide a public record, the person making the public records request may sue to have the request enforced. Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of fees. The assessment of attorney fees is considered a legal consequence that is independent of the public records request.

Once an enforcement action has been filed, an agency, or a contractor acting on behalf of an agency, can be held liable for attorney fees even after the agency has produced the requested records. The public policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial. Granting attorney fees also makes it more likely that public agencies will comply with public records laws and deter improper denials of requests. If the court finds that the agency unlawfully refused access to a public record, the court must order the agency to pay for the requestor's reasonable costs of enforcement, including reasonable attorney fees.

The bill amends current law to provide that in a public records enforcement lawsuit, a court may, but is not required to, award reasonable enforcement costs, including attorney fees, to the complainant if the court determines the agency unlawfully refused to provide a public record. To be awarded such costs, the bill also requires a complainant to provide written notice of the public records request to the agency's records custodian at least 5 business days before filing the lawsuit.

The bill may have a negative fiscal impact on the private sector and a positive fiscal impact on the state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency¹ to provide access to public records.² Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records.

Inspection and Copying of Public Records

Current law describes the duties and responsibilities of a custodian of public records³ (records custodian). Section 119.07(1), F.S., requires a records custodian to permit records to be inspected and copied by any person, at any reasonable time,⁴ under reasonable conditions, and under supervision by the records custodian. Generally, a records custodian may not require that a request for public records be submitted in a specific fashion.⁵

An agency is permitted to charge fees for inspection or copying of records. Those fees are prescribed by law and are based upon the nature or volume of the public records requested. Section 119.07(4), F.S., provides that if the nature or volume of the request requires extensive use of information technology or extensive clerical or supervisory assistance, the agency may charge, in addition to the actual cost of duplication, a reasonable service charge based on the cost incurred for the use of information technology and the labor cost that is actually incurred by the agency in responding to the request. The term "labor cost" includes the entire labor cost, including benefits in addition to wages or salary.⁶ Such service charge may be assessed, and payment may be required, by an agency prior to providing a response to the request.⁷

¹ Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any agency.

² Section 119.011(12), F.S., defines the term "public records" to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

³ Section 119.011(5), F.S., defines the term "custodian of public records" to mean the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

⁴ There is no specific time limit established for compliance with public records requests. A response must be prepared within a reasonable time of the request. *Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984). What constitutes a reasonable time for a response will depend on such factors as the volume of records that are responsive to a request, as well as the amount of confidential or exempt information contained within the request.

⁵ See *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302 (Fla. 3d DCA 2001) (holding that public records requests need not be made in writing).

⁶ *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008).

⁷ Section 119.07(4), F.S.; see also *Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991) (stating if a requestor identifies a record with sufficient specificity to permit [an agency] to identify it and forwards the appropriate fee, [the agency] must furnish by mail a copy of the record).

Enforcing Public Records Laws and Attorney Fees

If an agency unlawfully fails to provide a public record, the person making the public records request may sue to have the request enforced.⁸ Whenever such an action is filed, the court must give the case priority over other pending cases and must set an immediate hearing date.⁹

Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of fees. The assessment of attorney fees is considered a legal consequence that is independent of the public records request.¹⁰ Once an enforcement action has been filed, an agency can be held liable for attorney fees even after the agency has produced the requested records.¹¹ The public policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial.¹² Granting attorney fees also makes it more likely that agencies will comply with public records laws and deter improper denials of requests.¹³

If the court finds that the agency unlawfully refused access to a public record, the court must order the agency to pay for the requestor's reasonable costs of enforcement, including reasonable attorney fees.¹⁴ If a contractor acting on behalf of the agency fails to comply with a public records request, the requestor may sue the contractor to enforce his or her rights to have access to records.¹⁵ If a court determines that the contractor unlawfully withheld public records, the court must order the contractor to pay for the cost of the enforcement lawsuit and the requestor's attorney fees in the same manner that an agency would be liable.¹⁶ Attorney fees for efforts expended to obtain attorney fees are not currently permitted.¹⁷

A court will not take into consideration whether a records custodian intended to violate public records laws or was simply inept,¹⁸ and it is immaterial if a records custodian did not willfully refuse to provide a public record.¹⁹ In addition, to be entitled to attorney fees against the state or any of its agencies, the plaintiff must serve a copy of the pleading claiming the fees on the Department of Financial Services (DFS). DFS is then entitled to participate with the agency in the defense of the suit and any appeal thereof with respect to such fees.²⁰

Recent Litigation

In recent years, allegations have arisen that some individuals and entities have used public records enforcement lawsuits as a way to generate fees rather than to make lawful public records requests.²¹

On December 1, 2014, a circuit court judge in Duval County denied relief to a plaintiff in a lawsuit to enforce a public records request and for assessment of attorney fees.²² According to the court order, the plaintiff made two separate requests for public records to a nonprofit organization under contract to provide social services for the Department of Children and Families. The contract manager refused to provide the documents because the contract manager believed the documents were not public records.

⁸ Section 119.11, F.S.

⁹ Section 119.11(1), F.S.

¹⁰ Section 119.12, F.S.

¹¹ *Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002); *Barfield v. Town of Eatonville*, 675 So. 2d 223 (Fla. 5th DCA 1996); *Althouse v. Palm Beach County Sheriff's Office*, 92 So. 3d 899, 902 (Fla. 4th DCA 2012).

¹² *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993).

¹³ *Id.*

¹⁴ Section 119.12, F.S.

¹⁵ *See New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27 (Fla. 1993).

¹⁶ *See s. 119.12, F.S.; see also New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993).

¹⁷ *Downs v. Austin*, 559 So. 2d 246, 248 (Fla. 1st DCA 1990).

¹⁸ *Barfield v. Town of Eatonville*, 675 So. 2d 223, 225 (Fla. 5th DCA 1996).

¹⁹ *Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654 (Fla. 1st DCA 2014).

²⁰ Section 284.30, F.S.

²¹ *See* Tristram Korten and Trevor Aaronson, *Florida nonprofit's ties to law firm questioned after dozens of lawsuits filed*, NAPLES DAILY NEWS, Dec. 6, 2014; Jan Pudlow, *A new scam: Public records shakedown*, THE FLORIDA BAR NEWS, Feb. 1, 2015, at 1.

²² *Gray v. Lutheran Social Services of Northeast Florida, Inc.*, Final Order Denying Relief Under Public Records Act, No. 2014-CA-4647 (Fla. 4th Cir. Ct. Dec. 2, 2014).

The court found that the manner in which the plaintiff (and his companions) made the request ensured that “they obtained exactly what they wanted, namely an initial denial of an unreasonable and bogus request.”²³

The court found that the plaintiff’s method of requesting public records was an abuse of the public records laws noting that the actions of the requester amounted to “nothing more than a scam.”²⁴ The Final Order stated that the plaintiff and his attorney, who had an arrangement to split his attorney fees with the plaintiff, had “a financial interest in assuring that his requests for public records [were] refused.”²⁵ The court noted that in 2014, the plaintiff filed 18 public records lawsuits in Duval County, and that the attorney represented the plaintiff on approximately 13 of those cases; the court noted that all of the cases followed a similar pattern.

The court opined that:

If a private entity must pay an attorney’s fee every time an agent denies a needless request, the cost to the state to provide important services by contracting with private entities will increase; or private entities might discontinue bidding on these contracts. The chilling effect could be disastrous to the State. Further the [Public Records] Act was not designed to create a cottage industry for so-called “civil rights activists” or others who seek to abuse the [Public Records] Act for financial gain.²⁶

The case was affirmed by the First District Court of Appeal on December 16, 2015.²⁷

Effect of Proposed Changes

The bill amends current law to provide that in a public records enforcement lawsuit, a court may, but is not required to, award reasonable enforcement costs, including attorney fees, to the complainant if the court determines the agency unlawfully refused to provide a public record. To be awarded such costs, the bill also requires a complainant to provide written notice of the public records request to the agency’s records custodian at least 5 business days before filing the lawsuit. It is not clear whether the intent of providing notice of a failure to comply with a public records request is to cure further legal action.

B. SECTION DIRECTORY:

Section 1 amends s. 119.12, F.S., relating to attorney fees in public records enforcement actions.

Section 2 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a positive fiscal impact on the state if there are fewer instances when a court assesses against an agency the reasonable costs of enforcement in a public records lawsuit.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Gray v. Lutheran Social Services of Northeast Florida, Inc.*, 2015 WL 9091680 (Fla. 1st DCA 2015).

2. Expenditures:

The bill does not appear to have an impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a positive fiscal impact on local governments if there are fewer instances when a court assesses against a local government the reasonable costs of enforcement in a public records lawsuit.

2. Expenditures:

The bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a negative fiscal impact on the private sector if there are fewer instances when a court awards to a prevailing complainant in a public records lawsuit the reasonable costs of enforcement.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to public records; amending s. 119.12,
 3 F.S.; revising conditions under which the award of
 4 attorney fees is authorized in certain civil actions
 5 for enforcement of chapter 119, F.S.; providing that
 6 the award of such attorney fees is within the
 7 discretion of the court; providing an effective date.

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

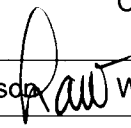
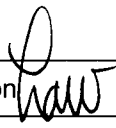
10
 11 Section 1. Section 119.12, Florida Statutes, is amended to
 12 read:

13 119.12 Attorney ~~Attorney's~~ fees.—If a civil action is
 14 filed against an agency to enforce ~~the provisions of~~ this
 15 chapter and ~~if~~ the court determines that the complainant
 16 provided written notice of the public records request to the
 17 agency's custodian of public records at least 5 business days
 18 before filing the civil action and the ~~such~~ agency unlawfully
 19 refused to permit a public record listed in the notice to be
 20 inspected or copied, the court may ~~shall~~ assess and award,
 21 against the responsible agency ~~responsible,~~ the reasonable costs
 22 of enforcement, including reasonable attorney ~~attorneys'~~ fees.

23 Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1063 Public Records and Meetings/Nurse Licensure Compact
SPONSOR(S): Pigman
TIED BILLS: HB 1061 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Committee on Affordable Healthcare Access	11 Y, 0 N	Siples	Calamas
2) Government Operations Subcommittee		Williamson 	Williamson 
3) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 1063 authorizes Florida to become a party state to the Nurse Licensure Compact (NLC or compact), which is a multistate compact that establishes a mutual recognition system for the licensure of registered nurses and licensed practical or vocational nurses. The NLC requires states to submit nurse licensure and regulation records, including any actions taken against the ability to practice, to a coordinated licensure information system. The NLC also requires a commission to be formed to oversee the implementation and administration of the compact and the coordinated licensure information system.

The bill, which is linked to passage of HB 1061, creates public record and public meeting exemptions for certain records and meetings relating to the NLC.

The bill makes personal identifying information of nurses obtained pursuant to the compact and held by the Department of Health or Board of Nursing confidential and exempt from public record requirements, unless the laws of the state that originally reported the information authorizes its disclosure.

The bill also creates a public meeting exemption for commission meetings, at which any of the following is discussed:

- Noncompliance of a party state with its obligations under the NLC;
- Employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedure;
- Current, threatened, or reasonably anticipated litigation;
- Contract negotiations for the purchase or sale of goods, services, or real estate;
- Accusing a person of a crime or formally censuring a person;
- Trade secrets or commercial or financial information that is privileged or confidential;
- Information of a personal nature which the commission determines would constitute a clearly unwarranted invasion of personal privacy if disclosed to the public;
- Active investigatory records compiled for law enforcement purposes;
- Information related to reports prepared by or on behalf of the commission for the purpose of investigation of compliance with the NLC;
- Information made confidential or exempt pursuant to federal law or the laws of any party state; and
- Information made exempt pursuant to the rules or bylaws of the commission, which would protect the public's interest, the privacy of individuals, and proprietary information.

The bill provides that the public record and public meeting exemptions will stand repealed on October 2, 2021, unless saved from repeal by reenactment by the Legislature. It also provides a public necessity statement as required by the State Constitution.

The bill will have an indeterminate, negative fiscal impact on the Department of Health.

The bill will be effective on the same date that HB 1061 or similar legislation takes effect.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it appears to require a two-thirds vote for final passage.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1063b.GVOPS.DOCX

DATE: 1/15/2016

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Meetings Law

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.¹ The board or commission must provide reasonable notice of all public meetings.² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.³ Minutes of a public meeting must be promptly recorded and open to public inspection.⁴

Public Record and Public Meeting Exemptions

The Legislature may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.⁵

Furthermore, the Open Government Sunset Review Act⁶ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

¹ Section 286.011(1), F.S.

² *Ibid.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ Art. I, s. 24(c), Fla. Const.

⁶ Section 119.15, F.S.

- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.⁷

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁸

Nurse Licensure Compact

HB 1061 authorizes Florida to become a party to the Nurse Licensure Compact (NLC or compact) by enacting its provisions into Florida law. The NLC is a multistate compact that establishes a mutual recognition system for the licensure of registered nurses (RNs) and licensed practical or vocational nurses (LPN/LVN). The primary purposes of the NLC is to address the expanded mobility of nurses and the use of advanced communication technologies, such as telemedicine.

The Department of Health (DOH) licenses nurses and the Board of Nursing regulates the practice of nursing in this state. The NLC establishes uniform requirements for the issuance of a multistate license. States retain the right to establish additional qualifications for licensure and to issue single-state licenses, which allows the holder to practice only in the state of issuance. The state in which a nurse is a permanent resident is considered the nurse's home state and the nurse is subject to the home state's licensure and regulation.

Under the compact, a nurse who holds a multistate license issued by one of the party states is permitted to practice in any other party state, without obtaining a license from that state. A nurse practicing under the multistate licensure practice privilege must comply with the practice laws of the state in which he or she is practicing or where the patient is located.

Under the NLC, the party states are required to report all adverse actions⁹ taken against a nurse's license or a nurse's multistate licensure practice privilege; any current, significant investigative information that has not yet been acted upon; and denials of applications and reasons for such denials; and nurse participation in alternative programs¹⁰ to a coordinated licensure information system. Only party states have access to information related to ongoing investigations and participation in alternative programs. A party state may designate information it reports as confidential and therefore, cannot be shared with nonparty states or other entities without the express permission of the reporting state.

The compact also creates the Interstate Commission of Nurse Licensure Compact Administrators (commission) to oversee and administer the provisions of the NLC. Each party state has one administrator, the head of the licensing board, who is a member of the commission. The compact details the authority and responsibilities of the commission, such as the promulgation of rules, the oversight of fiscal matters, the mediation of conflict between party states, and the management of noncompliant party states.

Effect of Proposed Changes

The bill creates public record and public meeting exemptions related to the Nurse Licensure Compact.

⁷ Section 119.15(6)(b), F.S.

⁸ Section 119.15(3), F.S.

⁹ Adverse action is any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege, such as revocation, suspension, probation, monitoring of the license, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.

¹⁰ An alternative program is a non-disciplinary monitoring program approved by a licensing board.

Specifically, the bill provides that personal identifying information of nurses obtained from the coordinated licensure information system held by the DOH or Board of Nursing is confidential and exempt¹¹ from public record requirements, unless the laws of the state that originally reported the information authorizes its disclosure. Disclosure under such circumstance is limited to the extent permitted under the laws of the reporting state.

The bill also creates a public meeting exemption for those portions of commission meetings during which the following is discussed:

- Noncompliance of a party state with its obligations under the NLC;
- Employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedure;
- Current, threatened, or reasonably anticipated litigation;
- Contract negotiations for the purchase or sale of goods, services, or real estate;
- Accusing a person of a crime or formally censuring a person;
- Trade secrets¹² or commercial or financial information required by the commission's bylaws or rules to be kept privileged or confidential;
- Information of a personal nature that the commission determines by majority vote would constitute a clearly unwarranted invasion of personal privacy if disclosed to the public;
- Active¹³ investigatory records compiled for law enforcement purposes;
- Information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with the NLC;
- Information that is confidential or exempt pursuant to federal law or the laws of any party state; and
- Information made exempt pursuant to the rules or bylaws of the commission, which would protect the public's interest, the privacy of individuals, and proprietary information.

This bill provides that any recordings, minutes, and records are confidential and exempt from public record requirements. HB 1061, which is linked to this bill, provides that the minutes and documents of the closed meeting may be disclosed pursuant to a majority vote of the commission or pursuant to a court order.

¹¹ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See *WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

¹² The bill provides that the term "trade secrets" has the same meaning as provided in the Uniform Trade Secrets Act (ch. 688, F.S.) Section 688.002, F.S., defines "trade secrets" as information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

¹³ The bill provides that "active" has the same meaning as provided in s. 119.011(3)(d), F.S., which provides that "active" has the following meaning:

- Criminal intelligence information is considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
- Criminal investigative information is considered "active" as long as it is related to an ongoing investigation that is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

In addition, criminal intelligence and criminal investigative information is considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" does not apply to information in cases that are barred from prosecution under the provisions of s. 775.15, F.S., or other statute of limitation.

The bill provides that the public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless saved from repeal by reenactment by the Legislature.

The bill provides a public necessity statement as required by the State Constitution, which states the exemptions are necessary for the state's effective and efficient implementation and administration of the provisions of the Nurse Licensure Compact, which requires such exemptions.

B. SECTION DIRECTORY:

Section 1: Creates s. 464.0096, F.S., relating to public records and meetings exemptions associated with the Nurse Licensure Compact.

Section 2: Provides a public necessity statement.

Section 3: Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may create an insignificant, negative impact on the DOH because staff responsible for complying with public record requests may require training related to the public record exemption.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates new exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new exemptions; thus, it includes a public necessity statement.

Breadth of Exemption Bills

Article I, s. 24(a) of the State Constitution guarantees every person the right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Further, Art. I, s. 24(b) of the State Constitution provides that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public. However, Art. I, s. 24(c) of the State Constitution authorizes the legislature to provide by general law for the exemption of public records and public meetings from this constitutional requirement provided that certain requirements are met, including that the exemption be no broader than necessary to accomplish the stated purpose of the law. It is unclear whether the exemptions created by the bill meet this requirement.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rule-making or rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to public records and meetings;
3 creating s. 464.0096, F.S.; providing an exemption
4 from public records requirements for certain
5 information held by the Department of Health or the
6 Board of Nursing pursuant to the Nurse Licensure
7 Compact; authorizing disclosure of the information
8 under certain circumstances; providing an exemption
9 from public meeting requirements for certain meetings
10 of the Interstate Commission of Nurse Licensure
11 Compact Administrators; providing an exemption from
12 public records requirements for recordings, minutes,
13 and records generated during the closed portion of
14 such a meeting; providing for future legislative
15 review and repeal of the exemptions; providing a
16 statement of public necessity; providing a contingent
17 effective date.

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

20
21 Section 1. Section 464.0096, Florida Statutes, is created
22 to read:

23 464.0096 Nurse Licensure Compact; public records and
24 meetings exemptions.—

25 (1) A nurse's personal identifying information obtained
26 from the coordinated licensure information system, as defined in

27 s. 464.0095, and held by the department or the board is
 28 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 29 of the State Constitution unless the state that originally
 30 reported the information to the coordinated licensure
 31 information system authorizes the disclosure of such information
 32 by law. Under such circumstances, the information may only be
 33 disclosed to the extent permitted by the reporting state's law.

34 (2)(a) A meeting or portion of a meeting of the Interstate
 35 Commission of Nurse Licensure Compact Administrators established
 36 under s. 464.0095 during which any of the following is discussed
 37 is exempt from s. 286.011 and s. 24(b), Art. I of the State
 38 Constitution:

39 1. Failure of a party state to comply with its obligations
 40 under the Nurse Licensure Compact.

41 2. The employment, compensation, discipline, or other
 42 personnel matters, practices, or procedures related to specific
 43 employees or other matters related to the commission's internal
 44 personnel practices and procedures.

45 3. Current, threatened, or reasonably anticipated
 46 litigation.

47 4. Negotiation of contracts for the purchase or sale of
 48 goods, services, or real estate.

49 5. Accusing any person of a crime or formally censuring
 50 any person.

51 6. Trade secrets as defined in s. 688.002 or commercial or
 52 financial information required by the commission's bylaws or

53 rules to be kept privileged or confidential.

54 7. Information of a personal nature which the commission
 55 determines by majority vote would constitute a clearly
 56 unwarranted invasion of personal privacy if disclosed to the
 57 public.

58 8. Active investigatory records compiled for law
 59 enforcement purposes. For the purposes of this subparagraph, the
 60 term "active" has the same meaning as provided in s.
 61 119.011(3)(d).

62 9. Information related to any reports prepared by or on
 63 behalf of the commission for the purpose of investigation of
 64 compliance with the Nurse Licensure Compact.

65 10. Information made confidential or exempt pursuant to
 66 federal law or pursuant to the laws of any party state.

67 11. Information made exempt pursuant to rules or bylaws of
 68 the commission, which would protect the public's interest and
 69 the privacy of individuals, and proprietary information.

70 (b) Recordings, minutes, and records generated during an
 71 exempt meeting are confidential and exempt from s. 119.07(1) and
 72 s. 24(a), Art. I of the State Constitution.

73 (3) This section is subject to the Open Government Sunset
 74 Review Act in accordance with s. 119.15 and shall stand repealed
 75 on October 2, 2021, unless reviewed and saved from repeal
 76 through reenactment by the Legislature.

77 Section 2. (1) The Legislature finds that it is a public
 78 necessity that a nurse's personal identifying information

79 obtained from the coordinated licensure information system, as
 80 defined in s. 464.0095, Florida Statutes, and held by the
 81 Department of Health or the Board of Nursing be made
 82 confidential and exempt from s. 119.07(1), Florida Statutes, and
 83 s. 24(a), Article I of the State Constitution. Protection of
 84 such information is required under the Nurse Licensure Compact,
 85 which the state must adopt in order to become a party state to
 86 the compact. Without the public records exemption, this state
 87 will be unable to effectively and efficiently implement and
 88 administer the compact.

89 (2) (a) The Legislature finds that it is a public necessity
 90 that any meeting or portion of a meeting of the Interstate
 91 Commission of Nurse Licensure Compact Administrators established
 92 under s. 464.0095, Florida Statutes, at which any of the
 93 following is discussed be made exempt from s. 286.011, Florida
 94 Statutes, and s. 24(b), Article I of the State Constitution:

95 1. Failure of a party state to comply with its obligations
 96 under the Nurse Licensure Compact.

97 2. The employment, compensation, discipline, or other
 98 personnel matters, practices, or procedures related to specific
 99 employees or other matters related to the commission's internal
 100 personnel practices and procedures.

101 3. Current, threatened, or reasonably anticipated
 102 litigation.

103 4. Negotiation of contracts for the purchase or sale of
 104 goods, services, or real estate.

105 5. Accusing any person of a crime or formally censuring
 106 any person.

107 6. Trade secrets as defined in s. 688.002, Florida
 108 Statutes, or commercial or financial information required by the
 109 commission's bylaws or rules to be kept privileged or
 110 confidential.

111 7. Information of a personal nature which the commission
 112 determines by majority vote would constitute a clearly
 113 unwarranted invasion of personal privacy if disclosed to the
 114 public.

115 8. Active investigatory records compiled for law
 116 enforcement purposes.

117 9. Information related to any reports prepared by or on
 118 behalf of the commission for the purpose of investigation of
 119 compliance with the Nurse Licensure Compact.

120 10. Information made confidential or exempt pursuant to
 121 federal law or pursuant to the laws of any party state.

122 11. Information made exempt pursuant to rules or bylaws of
 123 the commission, which would protect the public's interest, the
 124 privacy of individuals, and proprietary information.

125 (b) The Nurse Licensure Compact requires any meeting or
 126 portion of a meeting in which the substance of paragraph (a) is
 127 discussed to be closed to the public. Without the public meeting
 128 exemption, this state will be prohibited from becoming a party
 129 state to the compact. Thus, this state will be unable to
 130 effectively and efficiently administer the compact.

131 (3) The Legislature also finds that it is a public
 132 necessity that the recordings, minutes, and records generated
 133 during a meeting that is exempt pursuant to s. 464.0096, Florida
 134 Statutes, be made confidential and exempt from s. 119.07(1),
 135 Florida Statutes, and s. 24(a), Article I of the State
 136 Constitution. Release of such information would negate the
 137 public meeting exemption. As such, the Legislature finds that
 138 the public records exemption is a public necessity.

139 Section 3. This act shall take effect on the same date
 140 that HB 1061 or similar legislation takes effect, if such
 141 legislation is adopted in the same legislative session or an
 142 extension thereof and becomes a law.