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# **Government Operations Subcommittee**

**Wednesday, January 26, 2016**

**9:00 am**

**Webster Hall (212 Knott)**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Government Operations Subcommittee

**Start Date and Time:** Tuesday, January 26, 2016 09:00 am  
**End Date and Time:** Tuesday, January 26, 2016 11:00 am  
**Location:** Webster Hall (212 Knott)  
**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

CS/HB 355 Supervisor of Elections Salaries by Local Government Affairs Subcommittee, Artiles  
HB 371 Florida Commission on Poverty by Williams, A.  
HB 425 State-leased Space by Trumbull  
CS/HB 475 Public Records/Identity of Witness to a Felony by Criminal Justice Subcommittee, Narain, Stafford  
HB 513 Florida Holocaust Memorial by Moskowitz  
HB 533 Arthur G. Dozier School for Boys by Narain  
HB 587 Public Records/Agency Inspector General Personnel by Powell  
HB 593 Government Accountability by Metz  
HB 643 Pub. Rec./Department of Agriculture and Consumer Services by Trumbull  
HB 911 City of Delray Beach, Palm Beach County by Hager  
HB 1033 Information Technology Security by Artiles  
HB 1037 Pub. Rec./State Agency Information Technology Risk Assessments by Artiles  
HB 1195 Technology by Grant  
HB 4049 Scrutinized Companies by Combee  
HB 4065 Duties of Legislative Auditing Committee by Raulerson

**Consideration of the following proposed committee bill(s):**


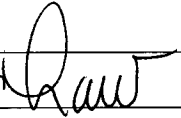
PCB GVOPS 16-07 -- OGSR Florida Health Choices Program

**NOTICE FINALIZED on 01/22/2016 4:04PM by Kaiser.Debbi**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 355 Supervisor of Elections Salaries  
**SPONSOR(S):** Local Government Affairs Subcommittee; Articles  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 514

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	11 Y, 0 N, As CS	Darden	Miller
2) Government Operations Subcommittee		Toliver 	Williamson 
3) Local & Federal Affairs Committee			

### SUMMARY ANALYSIS

The supervisor of elections is a county officer created by the Florida Constitution. The supervisor of elections is responsible for administering the state's voter registration system at the local level and managing the logistics of elections conducted in the county.

The salaries for most county constitutional officers are set by a statewide formula. This formula provides a base salary determined by a county's population group and a group rate for each person in excess of minimum number needed to qualify for the population group. While the base salary differs between the various county constitutional officers, the additional salary above the base for the population group is calculated using the same multiplier rate for all officers except the supervisor of elections.

The bill increases the population group multiplier rates used to calculate the salaries above the base for supervisors of elections to the same as used for other county constitutional officers. The bill also increases the base salary for supervisors of elections to the rate used to calculate the salaries for tax collectors, property appraisers, and clerks of circuit court.

The bill would have an insignificant negative fiscal impact on local governments, since it would increase the compensation for the county supervisor of elections.

The effective date of the bill is July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Supervisor of Elections

The supervisor of elections is a county office created by the Florida Constitution.<sup>1</sup> The specific duties and responsibilities of the office are defined by ch. 98, F.S. (Registration Office, Officers, and Procedures).<sup>2</sup> The supervisor of elections is responsible for:

- Updating voter registration information;<sup>3</sup>
- Entering new voter registrations into the statewide voter registration system;<sup>4</sup>
- Determining if a voter registration applicant is ineligible;<sup>5</sup>
- Acting as the official custodian of documents received related to the registration of electors and changes in the voter registration status of electors of the county;<sup>6</sup>
- Preserving certain statements and other documentation concerning campaign finances pursuant to ch. 106, F.S.;<sup>7</sup>
- Appointing deputy supervisors;<sup>8</sup>
- Making training for voter registration procedures available to individuals, groups, centers for independent living, and public libraries in the county;<sup>9</sup>
- Ensuring voter registration and list maintenance procedures comply with state and federal statutes and regulations;<sup>10</sup>
- Maintaining the registration list to ensure the integrity of the electoral process;<sup>11</sup> and
- Maintaining a list of valid residential street addresses for the purposes of verifying the legal addresses of all voters residing in the county.<sup>12</sup>

The supervisor of elections is also responsible for managing the logistics of general, primary, and special elections.<sup>13</sup> These duties include:

- Providing recommendations to the board of county commissioners in drawing election precincts for the county and transmitting information to the Department of State;<sup>14</sup>
- Ensuring the security and maintenance of voting equipment;<sup>15</sup>
- Publishing a sample ballot in a newspaper of general circulation;<sup>16</sup>
- Appointing poll workers to serve as clerks or inspectors for each precinct of the county;<sup>17</sup>

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<sup>1</sup> Art. VIII, s. 1(d), Fla. Const. The other county constitutional officers are the sheriff, tax collector, property appraiser, and clerk of the circuit court.

<sup>2</sup> Chapter 98, F.S.

<sup>3</sup> Section 98.015(3), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 98.045, F.S.

<sup>6</sup> Section 98.015(3), F.S.

<sup>7</sup> Section 98.015(5), F.S.

<sup>8</sup> Section 98.015(8), F.S.

<sup>9</sup> Section 98.015(9), F.S.

<sup>10</sup> Section 98.015(10), F.S.

<sup>11</sup> Section 98.065, F.S.

<sup>12</sup> Section 98.015(12), F.S.

<sup>13</sup> *See generally* ch. 102, F.S.

<sup>14</sup> Section 101.001, F.S.

<sup>15</sup> Sections 101.015, 101.5612, F.S.

<sup>16</sup> Section 101.20, F.S.

- Conducting training for inspectors, clerks, and deputy sheriffs in their duties and responsibilities as election officials;<sup>18</sup>
- Informing the clerk of each polling location about the area in which soliciting is unlawful;<sup>19</sup>
- Creating the form for tabulation of votes and proclamation of results;<sup>20</sup>
- Serving as a member of the county canvassing board to publicly review absentee and provisional ballots;<sup>21</sup> and
- Presenting the certification of election to the winning candidate.<sup>22</sup>

### Compensation of County Officials

Since 1961, the salaries of county elected officials have been standardized across the state.<sup>23</sup> Previously, the salaries of county officials had been adjusted by a “haphazard, preferential, [and] inequitable” series of special acts.<sup>24</sup> The current system applies to all officials, except for those whose salary is set by a county home rule charter and officials of counties with a chartered consolidated form of government.<sup>25</sup>

The salaries of county elected officials are funded at the county level, by a resolution of the board of county commissioners in concurrence with the elected official involved.<sup>26</sup> This resolution remains in effect for the official’s current term of office, but may be rescinded at the end of each fiscal year by an agreement between the official and the board of county commissioners.<sup>27</sup> The payment of the official’s salary comes from the budget for his or her office, but the county is liable for paying the officer’s salary from the general revenue fund if the budget for the office is insufficient.<sup>28</sup> If this occurs, the county must notify the Department of Financial Services and the deficiency is listed in the comptroller’s annual report of county finances and county fee officers.<sup>29</sup>

The salaries for all county elected officials are based on a formula established by statute.<sup>30</sup> For the offices created by the Florida Constitution,<sup>31</sup> the salary schedule divides counties into six groups based on population.<sup>32</sup> These groups range from population group I, consisting of counties with less than 50,000 residents, to population group VI, consisting of counties with 1,000,000 or more residents. The salary rate of the official is calculated by adding the base salary for the county’s population group to the product of the county’s group rate and the number of residents in excess of the minimum for the population group.

Currently, all county constitutional officers except the supervisor of elections have the same group rate for each population group.<sup>33</sup> The current population group rate differential between the supervisor of

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<sup>17</sup> Section 102.012(1)(a), F.S.

<sup>18</sup> Section 102.014(1), F.S.

<sup>19</sup> Section 102.031(4)(c), F.S. “Soliciting” includes, but is not limited to, seeking votes, facts, opinions, or contributions; distributing political or campaign materials, leaflets, and handouts; conducting an unauthorized poll; seeking signatures on a petition; and selling any item. Section 102.031 (4)(b), F.S.

<sup>20</sup> Section 102.071, F.S.

<sup>21</sup> Section 102.141, F.S.

<sup>22</sup> Section 102.155, F.S.

<sup>23</sup> Chapter 61-461, Laws of Fla., codified as Ch. 145, F.S.

<sup>24</sup> Section 145.011(2), F.S.

<sup>25</sup> Section 145.012, F.S.

<sup>26</sup> Section 145.022(1), F.S.

<sup>27</sup> Section 145.022(2), F.S.

<sup>28</sup> Section 145.141, F.S.

<sup>29</sup> *Id.*

<sup>30</sup> See s. 145.031, F.S. (board of county commissioners); *see also* s. 145.051, F.S. (clerk of circuit court).

<sup>31</sup> Art. VIII, s. 1(d), Fla. Const.

<sup>32</sup> See s. 145.051, F.S. (clerk of circuit court); *see also* s. 145.071, F.S. (sheriff).

<sup>33</sup> Compare s. 145.051, F.S. (clerk of circuit court), s. 145.071 (sheriff), s. 145.10 (property appraiser), s. 145.11 (tax collector), with s. 145.091 (supervisor of elections).

elections and other county constitutional officers has existed since 1980.<sup>34</sup> The base salaries for county constitutional officers have more variance, with the sheriff receiving the highest amount, the clerk of circuit court, tax collector, and property appraiser each receiving the same, lower amount, and the supervisor of elections receiving the lowest amount.<sup>35</sup> This gradation has existed in essentially the same form since the current formula was enacted in 1973.<sup>36</sup>

The final salary<sup>37</sup> paid to each county constitutional officer is determined by the product of the salary rate calculated from the relevant section of ch. 145, F.S., the annual factor,<sup>38</sup> the cumulative annual factor,<sup>39</sup> and the initial factor.<sup>40</sup> The annual factor and the cumulative annual factor are certified each year by the Department of Management Services.<sup>41</sup> Each constitutional officer is eligible for an additional \$2,000 per year if that officer meets the certification requirement applicable to the office.<sup>42</sup>

### **Effect of Proposed Changes**

The bill increases the group rate used in calculating the salary of supervisor of elections to the group rate used for other county constitutional officers. The bill also increases the base salary for supervisors of elections to the rate used to calculate the salaries for tax collectors, property appraisers, and clerks of circuit court.

#### **B. SECTION DIRECTORY:**

Section 1: Amends s. 145.09, F.S., increasing the base salary and group rate for the supervisor of elections.

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.

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<sup>34</sup> See ch. 80-377, Laws of Fla. (increasing group rate for clerk of circuit court, sheriff, property appraiser, and tax collector in all county with less than 1,000,000 residents); *but see* ch. 85-322, Laws of Fla. (eliminating separate population group for counties with less than 10,000 residents for all county constitutional officers, increasing base salary for all county constitutional officers, establishing a group rate for all county constitutional officers in counties with 1,000,000 or more residents).

<sup>35</sup> E.g. In population group I, the base salary of the sheriff is \$23,350 per year, the base salary of the clerk of circuit court, tax collector, and property appraiser is \$21,250 per year, and the base salary for the supervisor of elections is \$17,228.

<sup>36</sup> See ch. 73-173, Laws of Fla. (In population group I, base salary of sheriff was \$15,000, base salary of clerk of circuit court was \$14,000, base salary of property appraiser and tax collector was \$12,000, base salary of supervisor of elections was \$8,500); *see also* ch. 85-322, Laws of Fla. (increasing base salaries for all county constitutional officers, with population group I sheriff base salary of \$21,250; clerk of circuit court, tax collector, and property appraiser base salary of \$19,150, supervisor of elections base salary of \$15,128).

<sup>37</sup> A sample final salary calculation is attached in Appendix A.

<sup>38</sup> Section 145.19(1)(a), F.S. The "annual factor" is 1 plus the lesser of the average percentage increase in the salaries of state career service employees for the current fiscal year or seven percent

<sup>39</sup> Section 145.19(1)(b), F.S. The "cumulative annual factor" of the product of all annual factors prior to the current fiscal year.

<sup>40</sup> Section 145.19(1)(c), F.S. The "initial factor" is 1.292.

<sup>41</sup> Section 145.19(2), F.S.

<sup>42</sup> Section 145.051(2)(a), F.S. (certification requirements for clerk of circuit court established by Florida Supreme Court); s. 145.071(2)(a), F.S. (certification requirements for sheriff established by FDLE); s. 145.09(3)(a), F.S. (certification requirements for supervisor of elections established by Department of State); s. 145.10 (2)(a), F.S. (certification requirements for property appraiser established by Department of Revenue); s. 145.11(2)(a), F.S. (certification requirements for tax collector established by Department of Revenue).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The base salary and group rate changes would result in additional compensation to the supervisors of elections. The Office of Economic and Demographic Research indicated the statewide total cost would \$1.2 million in salary increases, which is an average increase of \$18,540 per county.<sup>43</sup>

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 county/municipality mandates provision of Florida Constitution<sup>44</sup> may apply because this bill requires counties to increase the compensation for the supervisor of elections; however, an exemption may apply as the fiscal impact is likely to be insignificant.<sup>45</sup>

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Effective Date

The bill provides an effective of July 1, 2016; however, s. 218.33(1), F.S., requires each local governmental entity to begin its fiscal year on October 1 of each year and end it on September 30.

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<sup>43</sup> Spreadsheet emailed from the Office of Economic and Demographic Research on December 2, 2015 (on file with the Government Operations Subcommittee).

<sup>44</sup> Art. VII, s. 18, Fla. Const.

<sup>45</sup> A law having an insignificant fiscal impact on counties or municipalities is exempt from art. VII, s. 18, Fla. Const. Art. VII, s. 18(d), Fla. Const. *E.g.* see Adopted FY 15 Budget, Hillsborough County at p. 28, available at <http://www.hillsboroughcounty.org/index.aspx?NID=3637> (\$20,000 is 0.00049% of FY 2015-16 Hillsborough County budget); *see also* Tentative Budget 2015-2016, Liberty County at p. 2, available at <http://libertybocc.com/commissioners/budget/> (\$20,000 is 0.36% of FY 2015-16 Liberty County budget).



#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 18, 2015, the Local Government Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment increased the base salary for the supervisor of elections in each population group to the base salary for tax collectors, property appraisers, and the clerk of circuit court.

This analysis is drawn to the bill as amended.

#### APPENDIX A: Final Salary Calculation

Salaries for the five constitutionally-created county officers are calculated according to the following formula:

$$[\text{Base Salary} + (\text{Population Above Group Minimum} \times \text{Group Rate})] \times (\text{Initial Factor}) \times (\text{Certified Annual Factor}) \times (\text{Certified Cumulative Annual Factor}) = \text{Total Salary}$$

Example: Calculation of 2015 salary for Indian River County Supervisor of Elections:

$$\{(\$23,228) + [(40,955) \times (0.025) = \$1,023.88]\} \times (1.292) \times (1.0011) \times (3.2949) = \$103,354$$

The following table shows the impact of the bill on this calculation:

	Current Law	HB 355/SB 514
2014 Population Estimate	140,955	140,955
Group Number Minimum	100,000	100,000
Base Salary for Group	\$23,228	<b>\$27,550</b>
Population Above Group Minimum	40,955	40,955
Group Rate for Group	0.025	<b>0.02625</b>
(Population Above Group Minimum) x (Group Rate)	\$1023.88	\$1075.07
Initial Factor	1.292	1.292
Certified Annual Factor	1.0011	1.0011
Certified Cumulative Annual Factor	3.2949	3.2949
Final Salary	\$103,354	\$121,911
Difference		<b>\$18,637</b>

1 A bill to be entitled  
 2 An act relating to supervisor of elections salaries;  
 3 amending s. 145.09, F.S.; revising the base salary and  
 4 group rate used to calculate additional compensation  
 5 for a supervisor of elections based on population  
 6 increments; providing an effective date.

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

9  
 10 Section 1. Subsection (1) of section 145.09, Florida  
 11 Statutes, is amended to read:

12 145.09 Supervisor of elections.-

13 (1) Each supervisor of elections shall receive as salary  
 14 the amount indicated, based on the population of his or her  
 15 county. In addition, a compensation shall be made for population  
 16 increments over the minimum for each population group, which  
 17 shall be determined by multiplying the population in excess of  
 18 the minimum for the group times the group rate.

19

Pop. Group	County Pop. Range	Base Salary	Group Rate
	Minimum	Maximum	
I -0-	49,999	<u>\$21,250</u> <del>\$17,228</del>	<u>\$0.07875</u> <del>\$0.075</del>

20  
21  
22

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

CS/HB 355

2016

23	II			<u>24,400</u>		
		50,000	99,999	<del>20,228</del>	<u>0.06300</u>	<del>0.060</del>
24	III			<u>27,550</u>		
		100,000	199,999	<del>23,228</del>	<u>0.02625</u>	<del>0.025</del>
25	IV			<u>30,175</u>		
		200,000	399,999	<del>25,728</del>	<u>0.01575</u>	<del>0.015</del>
26	V			<u>33,325</u>		
		400,000	999,999	<del>28,728</del>	<u>0.00525</u>	<del>0.005</del>
27	VI			<u>36,475</u>	<del>31,728</del>	<u>0.00400</u>
		1,000,000				<del>0.004</del>

28 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

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1 Committee/Subcommittee hearing bill: Government Operations

2 Subcommittee

3 Representative Artiles offered the following:

4

5 **Amendment**

6 Remove line 28 and insert:

7 Section 2. This act shall take effect October 1, 2016.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 371 Florida Commission on Poverty

**SPONSOR(S):** Williams

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 556

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

### SUMMARY ANALYSIS

The bill establishes the Florida Commission on Poverty and assigns it to the Department of Economic Opportunity. The commission serves as an advisory board to the Governor and Cabinet, the Legislature, and appropriate state agencies and entities on matters relating to poverty.

The commission provides for appointment of five voting members and any number of non-voting members, requires the voting members to be confirmed by the Senate, and provides that members serve 4-year terms. Members of the commission serve without compensation, but voting members are entitled to reimbursement for per diem and travel expenses.

The bill requires the commission to conduct a study and develop strategies to address the causes of poverty in Florida. The commission must solicit the participation of counties in the study. The commission may procure information and assistance, contract for necessary goods and services, and apply for and accept funds, grants, gifts, and services.

By January 15 of each year, the commission must submit an annual report to the Governor, President of the Senate, and the Speaker of the House of Representatives. The report must contain an accounting of the commission's activities as well as any recommendations the commission has for legislative, administrative, or regulatory reforms for the purpose of mitigating the existence of poverty in Florida.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

The United States Census Bureau (bureau) tracks the rate of poverty throughout the population of the United States.<sup>1</sup> The bureau estimates that in 2013 there were 48.8 million Americans living in poverty, which equates to 15.8 percent of the country's population.<sup>2</sup> Florida's poverty rate of 17 percent exceeds the national average.<sup>3</sup> As of 2013, there were approximately 3.25 million persons living below the poverty line in Florida,<sup>4</sup> and of Florida's 66 counties, 47 had poverty rates exceeding the national average.<sup>5</sup>

In order to reduce the number of persons in poverty, some states have created statewide anti-poverty initiatives. The following are examples of such initiatives:

- The Legislative Commission to End Poverty in Minnesota by 2020 was created in 2006 to develop guidelines to end poverty and prepare recommendations on how to do so.<sup>6</sup>
- The Speaker of the House of Representatives for Alabama created a poverty task force in September 2007 to identify and assess conditions that create or worsen poverty throughout Alabama and to develop and propose policy initiatives to reduce or eliminate those conditions.<sup>7</sup>
- The Illinois Commission on the Elimination of Poverty was established in 2008 to address poverty in Illinois consistent with international human rights standards, with an initial goal to reduce extreme poverty in Illinois by 50 percent or more by 2015.<sup>8</sup>
- The Child Poverty Prevention Council for Louisiana was created in 2008 to pursue programs to reduce child poverty in the state by 50 percent over the following decade.<sup>9</sup>
- The Connecticut Legislature created a Child Poverty Council in 2004 to develop a 10-year plan to reduce the number of children living in poverty in Connecticut by 50 percent.<sup>10</sup>
- The Rhode Island Legislature created a legislative commission on family income and asset building in 2007 to conduct a comprehensive review of Rhode Island laws, policies, and activities that benefit those in poverty.<sup>11</sup>

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<sup>1</sup> The United States Bureau of the Census determines the poverty status of an individual or group of individual by comparing annual income to a set of dollar values called poverty thresholds that vary by family size, number of children, and the age of the householder. Poverty: 2012 and 2013, American Community Survey Briefs, U.S. Census Bureau, available at <https://www.census.gov/content/dam/Census/library/publications/2014/acs/acsbr13-01.pdf> (last visited Jan. 10, 2016).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> The following counties have poverty rates exceeding the national average: Wakulla, Manatee, Lee, Volusia, Hillsborough, Monroe, Duval, Citrus, Escambia, Bay, Orange, Baker, Columbia, St. Lucie, Polk, Walton, Jefferson, Marion, Highlands, Osceola, Miami-Dade, Leon, Bradford, Gilchrist, Gulf, Washington, Levy, Calhoun, Union, Taylor, Glades, Suwannee, Hendry, Lafayette, Gadsden, Alachua, Okeechobee, Franklin, Jackson, Putnam, Dixie, Holmes, Liberty, Hardee, Madison, Hamilton, DeSoto. See United States Department of Agriculture, Economic Research Service, County-level Poverty Data Sets, available at <http://www.ers.usda.gov/data-products/county-level-data-sets/poverty.aspx> (last visited Jan. 24, 2016).

<sup>6</sup> Minnesota Laws 2006, ch. 282, part. 2, s. 27.

<sup>7</sup> Alabama House of Representatives, Poverty Task Force, Final Report (2008) available at <http://www.clasp.org/documents/PTF-Final-Report.pdf> (last visited Jan. 5, 2016).

<sup>8</sup> 20 ILL. COMP. STAT. 4080/10 (2008).

<sup>9</sup> LA, REV. STAT. ANN. s. 46:2801 (2008).

<sup>10</sup> CONN. GEN. STAT. s. 4-67x (2004).

<sup>11</sup> 2007 RI H 6561 (2007).

### Advisory Bodies

Section 20.052, F.S., provides that an advisory body created by specific statutory enactment as an adjunct to an executive agency must be established, evaluated, or maintained in accordance with certain requirements.

An advisory body may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose,<sup>12</sup> and it must be terminated by the Legislature when it is no longer necessary and beneficial to the furtherance of the public purpose.<sup>13</sup> An advisory body may not be created unless:

- Its powers and responsibilities conform with the definitions for governmental units in s. 20.03, F.S.;
- Its members are appointed for 4-year staggered terms; and
- Its members serve without additional compensation or honorarium, but may receive per diem and reimbursement for travel expenses.<sup>14</sup>

The private citizen members of an advisory body that is adjunct to an executive agency must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.<sup>15</sup>

### **Effect of the Bill**

The bill establishes the Florida Commission on Poverty and assigns it to the Department of Economic Opportunity. The commission serves as an advisory board to the Governor and Cabinet, the Legislature, and appropriate state agencies and entities on matters relating to poverty. It is unclear whether staff of the Department of Economic Opportunity will provide administrative assistance to the commission.

The commission consists of five voting members who must be confirmed by the Senate and who are appointed in the following manner:

- The Governor appoints one voting member;
- The Chief Financial Officer appoints one voting member;
- The President of the Senate appoints one voting member;
- The Speaker of the House of Representatives appoints one voting member; and
- The Florida Association for Community Action, Inc. appoints one voting member.

Because the commission is an advisory body, members do not need to be confirmed by the Senate.

In addition, the Governor may appoint any number of nonvoting members to the commission who may concurrently hold public office with his or her term of service. Members of the commission must be Florida residents.

Commission members are appointed for four-year terms; however, it is unclear if the four-year term applies to all members or voting members only. Members may be reappointed for successive terms. A vacancy is filled for the remainder of the unexpired term in the same manner as the original appointment. The bill does not provide for staggered terms.

Members of the commission serve without compensation, but voting members are entitled to reimbursement for per diem and travel expenses.

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<sup>12</sup> Section 20.052(1), F.S.

<sup>13</sup> Section 20.052(2), F.S.

<sup>14</sup> Section 20.052(4), F.S.

<sup>15</sup> Section 20.052(5)(a), F.S.



The commission must annually elect a chair, who must be a voting member, and a vice chair. It is unclear whether the vice chair has to be a voting member of the commission.

The commission must meet at least twice each year at the call of the chair or at the request of a majority of the commission's total voting membership. A majority of the total voting membership constitutes a quorum, and the affirmative vote of a majority of a quorum is necessary to take official action.

The commission must conduct a study and develop strategies to address the causes of poverty in Florida, and to solicit the participation of counties in the study. A county that wishes to participate must submit an application to the commission that outlines current issues relating to poverty in that county. The commission must develop procedures to approve or deny applications for participation. The bill does not indicate why a county would be denied participation.

The bill authorizes the commission to:

- Procure information and assistance from the state or any political subdivision, municipality, public officer, or governmental department or agency thereof;
- Contract for the necessary goods and services; and
- Apply for and accept funds, grants, gifts, and services from any local government, state government, or the Federal Government, or an agency thereof, or any other public or private source for the purpose of defraying clerical and administrative costs as may be necessary to carry out its duties.

It is unclear why an advisory body would contract for goods and services. Such authority appears to extend beyond an advisory capacity.

By January 15 of each year, the bill requires the commission to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that provides an accounting of its activities and recommendations for legislative, administrative, and regulatory reforms to facilitate efforts in mitigating the existence of poverty in Florida.

**B. SECTION DIRECTORY:**

Section 1 creates an unnumbered section of law establishing the Florida Commission on Poverty.

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:

The bill authorizes voting members of the commission to receive per diem and travel expenses in accordance with s. 112.061, F.S.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes the commission to accept funds, grants, gifts, and services from any private source for the purpose of defraying clerical and administrative costs.

D. FISCAL COMMENTS:

None.

### 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 an 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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Chapter 20, F.S., defines the term "commission" to mean a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor, and *exercising limited quasi-legislative or quasi-judicial powers or both*, independently of the head of the department or the Governor.<sup>16</sup> Chapter 20, F.S., defines the term "council" to mean an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.<sup>17</sup>

The bill establishes the Florida Commission on Poverty within the Department of Economic Opportunity. The Florida Commission on Poverty is established as an advisory board. As such, it is recommended that the bill be amended to refer to the advisory body as a council instead of a commission.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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<sup>16</sup> Section 20.03(10), F.S.

<sup>17</sup> Section 20.03(7), F.S.

1                   A bill to be entitled  
 2           An act relating to the Florida Commission on Poverty;  
 3           creating the commission within the Department of  
 4           Economic Opportunity; specifying the membership of the  
 5           commission and the duration of members' terms;  
 6           authorizing reimbursement for per diem and travel  
 7           expenses; prescribing the powers and duties of the  
 8           commission; requiring the commission to annually  
 9           submit a report to the Governor and the Legislature;  
 10          providing an effective date.

11  
 12   Be It Enacted by the Legislature of the State of Florida:

13  
 14           Section 1. Florida Commission on Poverty.-

15           (1) The Florida Commission on Poverty is established and  
 16 assigned to the Department of Economic Opportunity. The  
 17 commission shall serve as an advisory board to the Governor and  
 18 Cabinet, the Legislature, and appropriate state agencies and  
 19 entities on matters relating to poverty.

20           (2) The commission shall consist of one voting member  
 21 appointed by the Governor, one voting member appointed by the  
 22 Chief Financial Officer, one voting member appointed by the  
 23 President of the Senate, one voting member appointed by the  
 24 Speaker of the House of Representatives, and one voting member  
 25 from the Florida Association for Community Action, Inc. All  
 26 appointees must be confirmed by the Senate. The Governor may

27 additionally appoint any number of nonvoting members who may  
 28 concurrently hold public office with his or her term of service.

29 Members of the commission must be residents of this state.

30 (3) Members of the commission shall be appointed for 4-  
 31 year terms and may be reappointed for successive terms. A  
 32 vacancy shall be filled for the remainder of the unexpired term  
 33 in the same manner as the original appointment.

34 (4) The commission shall meet at least twice each year at  
 35 the call of the chair or at the request of a majority of its  
 36 total voting membership. A majority of the total voting  
 37 membership constitutes a quorum, and the affirmative vote of a  
 38 majority of a quorum is necessary to take official action.

39 (5) Members of the commission shall serve without  
 40 compensation, but voting members are entitled to reimbursement  
 41 for per diem and travel expenses in accordance with s. 112.061,  
 42 Florida Statutes.

43 (6) The commission shall:

44 (a) Annually elect a chair, who must be a voting member of  
 45 the commission, and a vice chair.

46 (b) Conduct a study and develop strategies to address the  
 47 causes of poverty in the state.

48 (c) Solicit the participation of counties in the study. A  
 49 county that wishes to participate must submit an application to  
 50 the commission that outlines current issues relating to poverty  
 51 in that county. The commission shall develop procedures to  
 52 approve or deny applications for participation.

53           (7) The commission may:  
 54           (a) Procure information and assistance from the state or  
 55 any political subdivision, municipality, public officer, or  
 56 governmental department or agency thereof.  
 57           (b) Contract for necessary goods and services.  
 58           (c) Apply for and accept funds, grants, gifts, and  
 59 services from any local government, state government, or the  
 60 Federal Government, or an agency thereof, or any other public or  
 61 private source for the purpose of defraying clerical and  
 62 administrative costs as may be necessary to carry out its duties  
 63 under this section.  
 64           (8) By January 15 of each year, the commission shall  
 65 submit an annual report to the Governor, the President of the  
 66 Senate, and the Speaker of the House of Representatives  
 67 containing an accounting of its activities and recommendations  
 68 for legislative, administrative, and regulatory reforms to  
 69 facilitate efforts in mitigating the existence of poverty in  
 70 this state.  
 71           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 Williams, A. offered the following:  
 4

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
 7 Section 1. Florida Council on Poverty.-

8 (1) ESTABLISHMENT OF THE COUNCIL.-The Florida Council on  
 9 Poverty is established and assigned to the Department of  
 10 Economic Opportunity as an advisory council as defined in s.  
 11 20.03, Florida Statutes. The council shall be administratively  
 12 housed within the Department of Economic Opportunity.

(2) COUNCIL MEMBERSHIP.-

14 (a) The council shall consist of five members who shall be  
 15 residents of this state. The members shall be appointed as  
 16 follows:



Amendment No.

17       1. The Governor shall appoint two members, one of whom  
18 must be from the Florida Association for Community Action, Inc.

19       2. The Chief Financial Officer shall appoint one member.

20       3. The President of the Senate shall appoint one member.

21       4. The Speaker of the House of Representatives shall  
22 appoint one member.

23       (b) Members of the council shall serve 4-year terms. For  
24 purposes of ensuring staggered terms, the council members  
25 appointed by the Governor and the Chief Financial Officer shall  
26 be appointed to 4-year terms beginning on January 1 of the year  
27 of appointment, and the council members appointed by the  
28 President of the Senate and the Speaker of the House of  
29 Representatives shall be appointed to 2-year terms beginning on  
30 January 1 of the year of appointment. After the initial  
31 appointments, all appointees shall be appointed to 4-year terms.

32       (c) A vacancy shall be filled for the remainder of the  
33 unexpired term in the same manner as the original appointment.

34       (3) MEETINGS; ORGANIZATION.—

35       (a) The first meeting of the council shall be held no  
36 later than August 1, 2016. Thereafter, the council shall meet at  
37 least twice each year. Meetings may be held via teleconference  
38 or other electronic means.

39       (b) Members of the council shall annually elect from its  
40 membership a chair of the council and one member to serve as  
41 vice chair. The council shall meet at the call of the chair or  
42 at such times as may be prescribed by the council.



Amendment No.

43       (c) Three members of the council constitute a quorum, and  
44 a meeting may not be held unless a quorum is present. The  
45 affirmative vote of a majority of the members of the council  
46 present is necessary for any official action by the council.

47       (d) Members of the council shall serve without  
48 compensation but may be reimbursed for per diem and travel  
49 expenses in accordance with s. 112.061, Florida Statutes.

50       (4) SCOPE OF ACTIVITIES—The council shall:

51       (a) Conduct a review of policies and programs that work to  
52 move people out of poverty.

53       (b) Develop strategies to address the causes of poverty in  
54 the state.

55       (c) Develop recommendations to reduce the percentage of  
56 people living in poverty in the state.

57       (d) Study the academic outcomes for children in poverty  
58 and develop recommendation on how to improve such outcomes.

59       (5) REPORT.—Beginning January 15, 2018, and each January  
60 15 thereafter, the council shall submit an annual report to the  
61 Governor, the President of the Senate, and the Speaker of the  
62 House of Representatives containing an accounting of its  
63 activities and recommendations for legislative, administrative,  
64 and regulatory reforms to facilitate efforts in mitigating the  
65 existence of poverty in this state.

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

67  
68       -----





Amendment No.

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T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:

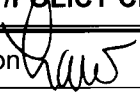
A bill to be entitled

An act relating to the Florida Council on Poverty; establishing the council within the Department of Economic Opportunity; specifying the membership of the council and the duration of members' terms; providing for organization of the council; authorizing reimbursement for per diem and travel expenses; prescribing the scope of the council's activities; requiring the council to annually submit a report to the Governor and the Legislature; providing an effective date.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 425 State-leased Space  
**SPONSOR(S):** Trumbull and others  
**TIED BILLS:** IDEN./SIM. BILLS: SB 374

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Toliver LT	Williamson 
2) Government Operations Appropriations Subcommittee			
3) State Affairs Committee			

**SUMMARY ANALYSIS**

The Department of Management Services (DMS) manages and operates the Florida Facilities Pool and provides oversight in the leasing of privately owned space. The DMS Facilities Program, also called the Division of Real Estate Development and Management, is responsible for the overall management of the Florida Facilities Pool, as well as other facilities and structures DMS has been given the responsibility to manage. With certain exceptions, a state agency may not lease a building or any part thereof unless prior approval of the lease conditions and the need for the lease is obtained from DMS.

Current law requires DMS to adopt a rule that states “[t]he lessee has the right to terminate this lease, without penalty, if a state-owned building becomes available to the lessee for occupancy and the lessee has given 6 months’ advance written notice to the lessor by certified mail, return receipt requested.”

The bill removes the requirement that DMS adopt the termination provision by rule. It also provides that the act does not impair or restrict the terms and conditions of a lease agreement entered into by a state agency pursuant to s. 255.249, F.S., before July 1, 2016.

The bill has an indeterminate, but likely negative, fiscal impact on the DMS Supervision Trust Fund. See the Fiscal Comments section for further discussion.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

###### Department of Management Services Leasing Authority

Chapter 255, F.S., provides the statutory authority for the Department of Management Services (DMS) to manage and operate the Florida Facilities Pool and specifies the oversight role DMS has in the leasing of privately owned space. The DMS Facilities Program, also called the Division of Real Estate Development and Management, is responsible for the overall management of the Florida Facilities Pool, as well as other facilities and structures DMS has been given the responsibility to manage.<sup>1</sup> Except as provided in ss. 255.249<sup>2</sup> and 255.2501,<sup>3</sup> F.S., a state agency may not lease a building or any part thereof unless prior approval of the lease conditions and the need for the lease is obtained from DMS.<sup>4</sup>

DMS has authority to approve leases of greater than 5,000 square feet that cover more than 12 consecutive months, if such a lease is, in the judgment of the DMS, in the best interests of the state.<sup>5</sup> Except as provided for emergency space needs,<sup>6</sup> no state agency may enter into a lease as lessee for the use of 5,000 square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive solicitations.<sup>7</sup>

Section 255.249(9)(b), F.S., requires DMS to adopt rules to provide procedures for:

- Soliciting and accepting competitive solicitations for leased space of 5,000 square feet or more in privately owned buildings;
- Evaluating the proposals received;
- Exempting from competitive solicitations requirements any lease for the provision of care and living space for persons or emergency space needs as provided in s. 255.25(10), F.S.; and
- Securing at least three documented quotes for a lease that is not required to be competitively solicited.

For the lease of less than 5,000 square feet of space, including space leased for nominal or no consideration, a state agency must notify DMS at least 90 days before the execution of the lease.<sup>8</sup> DMS must review the lease and determine whether suitable space is available in a state-owned or state-leased building located in the same geographic region.<sup>9</sup> If space is not available, DMS must

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<sup>1</sup> See DMS Division of Real Estate Development and Management, available at [http://www.dms.myflorida.com/business\\_operations/real\\_estate\\_development\\_and\\_management](http://www.dms.myflorida.com/business_operations/real_estate_development_and_management) (last visited on Jan. 23, 2016).

<sup>2</sup> Section 255.249(5), F.S., allows DMS to direct a state agency to occupy, or relocate to, space in any state-owned office building, including all state-owned space identified in the Florida State-Owned Lands and Record Information System managed by the Department of Environmental Protection.

<sup>3</sup> Section 255.2501(1), F.S., provides that, “[e]xcept when specifically authorized by the Appropriations Act, no executive agency, department, public officer or employee shall enter any contract on behalf of the state, the term of which contract is more than 5 years, including any and all renewal periods and including any and all leases which constitute a series of leases, for the lease, lease-purchase, sale-leaseback, purchase, or rental of any office space, building, real property and improvements thereto, or any other fixed capital outlay project, any of which is or is to be financed with local government obligations of any type.”

<sup>4</sup> Section 255.25(2), F.S.

<sup>5</sup> Section 255.25(3)(b), F.S.

<sup>6</sup> Section 255.25(10), F.S., authorizes DMS to approve emergency acquisition of space without competitive bids if existing state-owned or state-leased space is destroyed or rendered uninhabitable by an act of God, fire, malicious destruction, structural failure, or by legal action, if the chief administrator of the state agency or designated representative certifies that no other agency-controlled space is available to meet this emergency need, but in no case may the lease for such space exceed 11 months.

<sup>7</sup> Section 255.25(3)(a), F.S.

<sup>8</sup> Section 255.25(2)(a), F.S.

<sup>9</sup> *Id.*

determine whether the proposed lease is in the best interests of the state.<sup>10</sup> If DMS determines that the lease is not in the best interests of the state, it must provide written notification of such finding to the agency proposing the lease, the Governor, the President of the Senate, and the Speaker of the House of Representatives.<sup>11</sup>

Section 255.249(9)(j), F.S., requires DMS to adopt rules for a lease of less than 5,000 square feet and provides criteria for the rules.

Section 255.249(11), F.S., authorizes DMS to contract for real estate consulting or tenant brokerage services to assist with carrying out its responsibilities relating to the strategic leasing plan.<sup>12</sup>

### State Lease Agreements

Section 255.249(6), F.S., requires DMS to develop and implement a strategic leasing plan that must forecast space needs for all state agencies and identify opportunities for reducing costs through consolidation, relocation, reconfiguration, capital investment, and the renovation, building, or acquisition of state-owned space. The Bureau of Leasing within the Division of Real Estate Development and Management administers public and private leasing and ensures that leases are in the best interests of the state.<sup>13</sup>

Section 255.2502, F.S., prohibits an executive branch department or agency, public officer, or employee from entering into any contract on behalf of the state that binds the state or its executive agencies to the lease, rental, lease-purchase, purchase, or sale-leaseback of office space, real property or improvements to real property for a period in excess of one fiscal year unless the following statement is included in the contract: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature." Any contract not containing the required contingency statement is null and void.

Section 255.249(9)(e), F.S., requires DMS to adopt rules providing acceptable terms and conditions for inclusion in lease agreements. At a minimum, such terms and conditions must include the following clauses, which may not be amended, supplemented, or waived:

- "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."
- "The lessee has the right to terminate this lease, without penalty, if a state-owned building becomes available to the lessee for occupancy and the lessee has given 6 months' advance written notice to the lessor by certified mail, return receipt requested."

To comply with this requirement, DMS has adopted Rule 60H-1.003, F.A.C., which sets out the form of the lease agreement and includes the required termination clause.

Section 255.2503, F.S., prohibits an executive agency or department from entering into any lease on behalf of the state that requires the state agency to refrain from making legislative budget or fixed capital outlay requests for alternative space other than that in the lease agreement.<sup>14</sup> Any contract containing such a term is null and void.

Unless specifically authorized by law, no agency or branch of state government can contract to spend, or enter into any agreement to spend, any moneys in excess of the amount appropriated to such agency or branch.<sup>15</sup> Any such contract or agreement is null and void.<sup>16</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *See also s. 255.25(3)(h), F.S.*

<sup>13</sup> *See* DMS Division of Real Estate Development and Management, available at

[http://www.dms.myflorida.com/business\\_operations/real\\_estate\\_development\\_and\\_management](http://www.dms.myflorida.com/business_operations/real_estate_development_and_management) (last visited on Jan. 23, 2016).

<sup>14</sup> This section does not apply to any facility financed under the Florida Building and Facilities Act.

<sup>15</sup> Section 216.311(1), F.S.

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

### Inventory of State-owned Real Property

Section 216.0153, F.S., requires the Department of Environmental Protection (DEP) to create, administer, and maintain a comprehensive system for all state lands and real property leased, owned, rented, and otherwise occupied or maintained by any state agency, by the judicial branch, and by any water management district. The comprehensive state-owned real property system must contain a database that includes an accurate inventory of all real property that is leased, owned, rented, occupied, or managed by the state, the judicial branch, or the water management districts.<sup>17</sup> The Division of State Lands within DEP is the custodian of the real property information and is accountable for its accuracy.<sup>18</sup>

### State-owned and Leased Real Property Statistics

The State of Florida owns 20,199 facilities, including facilities owned by state agencies, the Florida College System, the State University System of Florida, and water management districts.<sup>19</sup> DMS manages 109 facilities in the Florida Facilities Pool, and five federal surplus property facilities.<sup>20</sup> DMS also contracts for seven private correctional facilities and 11 Division of Telecommunications equipment buildings.<sup>21</sup>

According to the DMS 2015 Master Leasing Report,<sup>22</sup> the state leases approximately 13.5 million square feet with an annual rent of \$228 million, of which 6.4 million square feet is in 794 private sector leases, with an annual rent of \$125 million.<sup>23</sup>

### **Effect of the Bill**

The bill removes the requirement that DMS adopt a rule requiring each lease agreement entered into by the state to contain a clause allowing a lessee state agency to terminate a lease without penalty when a state-owned building becomes available for occupancy and the lessee has provided 6 months' advanced written notice to the lessor by certified mail, return receipt requested. The bill provides that the act does not impair or restrict the terms and conditions of a lease agreement entered into by a state agency pursuant to s. 255.249, F.S., before July 1, 2016.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 255.249(9)(e), F.S., relating to DMS; responsibility; department rules.

Section 2 provides for applicability of the act.

Section 3 provides an effective date of July 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

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<sup>17</sup> Section 216.0153(1)(a), F.S.

<sup>18</sup> Section 216.0153(1)(b), F.S.

<sup>19</sup> DMS Master Leasing Report 2015, available at

[http://www.dms.myflorida.com/content/download/118552/650855/2015\\_Master\\_Leasing\\_reportpdf.pdf](http://www.dms.myflorida.com/content/download/118552/650855/2015_Master_Leasing_reportpdf.pdf) (last visited on Jan. 23, 2016).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

2. Expenditures:  
See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
None.
2. Expenditures:  
None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Indeterminate. According to owners of private property leased to the state, inclusion of the clause in lease agreements makes the state a "high risk tenant" instead of a "credit tenant." According to the owners, landlords face difficulty in refinancing due to their high risk tenants.<sup>24</sup>

**D. FISCAL COMMENTS:**

The bill has an indeterminate, but likely negative, fiscal impact on the DMS Supervision Trust Fund. The state may lose a portion of its flexibility to terminate private property lease agreements when state-owned property becomes available, resulting in the state losing its ability to move from more costly rates.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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:  
None.

**B. RULE-MAKING AUTHORITY:**

The bill removes the requirement that DMS adopt a rule requiring any lease agreement entered into by a state agency to contain a clause allowing the state agency to terminate the lease agreement if a state-owned property becomes available to the state agency and the state agency gives six months' advance written notice of termination.

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<sup>24</sup> Document provided by the stakeholders entitled "High Risk Tenant clause is bad for the State and its landlords," (on file with the Government Operations Subcommittee).

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Department of Management Services

DMS provided the following lease information as of June 30, 2015:<sup>25</sup>

<b>Lease Type</b>	<b>Lease Count</b>	<b>Square Footage</b>	<b>Percent of Total Lease Space</b>	<b>Annual Rent</b>
<b>Government</b>	324	961,828	7%	\$4,448,295.35
<b>Private</b>	794	6,466,501	48%	\$125,176,825.89
<b>Public</b>	302	6,070,907	45%	\$99,032,316.70
<b>Grand Total</b>	1,420	13,499,236	100%	\$228,657,437.94

In addition, DMS stated, "some agencies are in private leases that are not fully utilized. The clause in s. 255.249, F.S., allows agencies to move/realign to underutilize state-owned space to reduce costs."<sup>26</sup>

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

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<sup>25</sup> 2016 Agency Legislative Bill Analysis of SB 374 by DMS, Oct. 20, 2015, at 2 (on file with the Government Operations Subcommittee). SB 374 is the identical Senate companion to HB 425.

<sup>26</sup> *Id.*



1 A bill to be entitled  
 2 An act relating to state-leased space; amending s.  
 3 255.249, F.S.; revising requirements for Department of  
 4 Management Services rules relating to terms and  
 5 conditions included in lease agreements in which the  
 6 state is the lessee; providing for applicability;  
 7 providing an effective date.

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

10  
 11 Section 1. Paragraph (e) of subsection (9) of section  
 12 255.249, Florida Statutes, is amended to read:

13 255.249 Department of Management Services; responsibility;  
 14 department rules.-

15 (9) The department shall adopt rules providing:

16 (e) Acceptable terms and conditions for inclusion in lease  
 17 agreements. At a minimum, the ~~such~~ terms and conditions must  
 18 include the statement required by s. 255.2502 ~~following clauses,~~  
 19 which may not be amended, supplemented, or waived.±

20 ~~1. As provided in s. 255.2502, "The State of Florida's~~  
 21 ~~performance and obligation to pay under this contract is~~  
 22 ~~contingent upon an annual appropriation by the Legislature."~~

23 ~~2. "The lessee has the right to terminate this lease,~~  
 24 ~~without penalty, if a state-owned building becomes available to~~  
 25 ~~the lessee for occupancy and the lessee has given 6 months'~~  
 26 ~~advance written notice to the lessor by certified mail, return~~

HB 425

2016

27 | ~~receipt requested."~~

28 |       Section 2. This act does not impair or restrict the terms  
29 | and conditions of a lease agreement entered into by a state  
30 | agency pursuant to s. 255.249, Florida Statutes, before July 1,  
31 | 2016.

32 |       Section 3. This act shall take effect July 1, 2016.

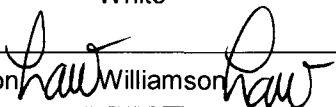


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 475 Public Records/Identity of a Witness to a Felony

**SPONSOR(S):** Criminal Justice Subcommittee; Narain and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1314

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Clark	White
2) Government Operations Subcommittee		Williamson	 Williamson
3) Judiciary Committee			

### SUMMARY ANALYSIS

Current law, in part, provides public records exemptions for information identifying certain parties involved in the investigation of a crime. Such parties include confidential informants or confidential sources, a victim of a child abuse offense, and a victim of any sexual offense. Currently, there is no public records exemption for the identity of a witness to a felony.

The bill creates a public records exemption for the personal identifying information of a witness to a felony. The information is confidential and exempt for two years after the date on which the felony is observed by the witness. The bill authorizes the release of the confidential and exempt information only to a criminal justice agency or governmental entity for use in the performance of official duties.

The bill repeals the exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments section.

The bill provides an effective date of July 1, 2016.

**Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill creates a public records exemption for personal identifying information of a witness to a felony; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Public Records**

##### Florida Constitution

Article I, s. 24(a) of the Florida 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.

The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, s. 24(a) of the Florida Constitution provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to meet its public purpose.<sup>1</sup>

##### Florida Statutes

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act<sup>2</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>3</sup> However, the exemption may be no broader than is 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;
- 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; or
- Protect trade or business secrets.<sup>4</sup>

The Open Government Sunset Review Act requires the automatic repeal of a public records exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>5</sup>

##### **Public Record Exemption for Certain Investigation Information**

Currently, s. 119.071(2), F.S., in relevant part, provides public records exemptions for various types of personal information of specified parties involved in the investigation of a crime. Information exempt from public records requirements includes information revealing the identity of a confidential informant or a confidential source,<sup>6</sup> information revealing the identity of a victim of a child abuse offense,<sup>7</sup> and information revealing the identity of a victim of any sexual offense.<sup>8</sup>

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<sup>1</sup> FLA. CONST. art. I, s. 24(c).

<sup>2</sup> s. 119.15, F.S.

<sup>3</sup> s. 119.15(6)(b), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> s. 119.15(3), F.S.

<sup>6</sup> s. 119.071(2)(f), F.S.

<sup>7</sup> s. 119.071(2)(h)1.a., F.S.

<sup>8</sup> s. 119.071(2)(h)1.b., F.S.

### **Witness to a Crime**

News articles have recently reported on several homicides that occurred in 2015 in the Tampa area that remain unsolved.<sup>9</sup> The victim of one of the unsolved murders was Edward Harris, a 14-year-old boy who was murdered in a park.<sup>10</sup> A spokeswoman for the Tampa Police Department stated that between October 2014 and April 2015 Mr. Harris was the witness to multiple crimes that resulted in arrests.<sup>11</sup> Mr. Harris's family has made statements indicating they believe he was murdered as a result of talking to police.<sup>12</sup> Detectives within the Hillsborough County area have been quoted in the media as stating witnesses to crimes refuse to come forward, often out of fear of retaliation and for their safety.<sup>13</sup>

Currently, there is no public record exemption for the personal identifying information of a witness to a crime.

### **Effect of the Bill**

The bill creates s. 119.071(2)(m), F.S., to provide that personal identifying information of a witness to a felony is confidential and exempt<sup>14</sup> from s. 119.07(1), F.S., and article I, s. 24(a) of the Florida Constitution for two years after the date on which the felony is observed by the witness. The confidential and exempt information may be disclosed only to a criminal justice agency or governmental entity for use in the performance of official duties.

The public necessity statement specifies that the Legislature finds that personal identifying information of a witness to a felony should be made confidential and exempt to encourage "[c]omplete cooperation and truthful testimony of witnesses" because "[t]he judicial system cannot function without the participation of witnesses."

The bill repeals the exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.<sup>15</sup>

## **B. SECTION DIRECTORY:**

Section 1. Creates s. 119.071(2)(m), F.S., relating to general exemptions from inspection or copying of public records.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date of July 1, 2016.

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<sup>9</sup> Dan Sullivan, *Federal officials increase rewards, offer protection, to solve four unsolved Tampa murders*, TAMPA BAY TIMES, (Oct. 29, 2012), <http://www.tampabay.com/news/publicsafety/crime/federal-officials-increase-rewards-offer-protection-to-solve-four-unsolved/2251784> (last visited Jan. 14, 2016); Sue Carlton, *Solutions to street violence elusive amid anti-snitching culture*, TAMPA BAY TIMES, (June 2, 2015), <http://www.tampabay.com/news/publicsafety/crime/carlton-no-snitching-no-answers/2232047> (last visited Jan. 14, 2016).

<sup>10</sup> Stephanie Slifer, *Dad believes son was killed in Tampa drive-by shooting for talking to cops*, CBS NEWS, (June 2, 2015), <http://www.cbsnews.com/news/dad-believes-son-was-killed-in-tampa-drive-by-shooting-for-talking-to-cops/> (last visited Jan. 14, 2016).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Keith Morelli, *Tampa lawmaker's bill would keep felony witnesses secret*, TAMPA TRIBUNE, (Nov. 2, 2015), <http://www.tbo.com/news/breaking-news/tampa-lawmakers-bill-would-keep-felony-witnesses-secret-20151102/> (last visited Jan. 15, 2016).

<sup>14</sup> There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *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 (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 2004); and *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, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See 85-62 Fla. Op. Att'y Gen. (1985).

<sup>15</sup> FLA. CONST. art. I, s. 24(c).

## 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:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public records exemption. In addition, agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

## 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:

##### Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill creates a public records exemption; therefore, it requires a two-thirds vote for final passage.

##### Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The bill creates a public records exemption; therefore, it includes a public necessity statement.

### Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption that does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

#### B. RULE-MAKING AUTHORITY:

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

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Other Comments: Discovery

An exemption from public records requirements does not render a document automatically privileged for purposes of discovery under the Florida Rules of Civil Procedure or in administrative proceedings.<sup>16</sup>

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 19, 2015, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by removing the provision providing that the exemption applies to each witness until the conclusion of the prosecution of the felony or expiration of the statute of limitations period for the felony and by adding a provision that provides the exemption applies for a period of two years after the date on which the felony is observed by the witness. In addition, the committee substitute clarifies that the personal identifying information may be disclosed only to a criminal justice agency or governmental entity for use in the performance of official duties.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

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<sup>16</sup> See *Dep't. of Highway Safety and Motor Vehicles v. Kropff*, 445 So. 2d 1068, 1069 (Fla. 3d DCA 1984) (“Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not coextensive in scope.”); *B.B. v. Dep't. of Children and Family Servs.*, 731 So. 2d 30, 34 (Fla. 4th DCA 1999) (holding that the statutory exemption for active criminal investigative information did not “override the discovery authorized by the Rules of Juvenile Procedure.”).



1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 119.071, F.S.; providing an exemption from public  
 4 records requirements for personal identifying  
 5 information of a witness to a felony for a specified  
 6 period; authorizing specified entities to receive the  
 7 information; providing for future legislative review  
 8 and repeal of the exemption; providing a statement of  
 9 public necessity; providing an effective date.

10  
 11 Be It Enacted by the Legislature of the State of Florida:

12  
 13 Section 1. Paragraph (m) is added to subsection (2) of  
 14 section 119.071, Florida Statutes, to read:

15 119.071 General exemptions from inspection or copying of  
 16 public records.—

17 (2) AGENCY INVESTIGATIONS.—

18 (m)1. Notwithstanding any other provision of this  
 19 subsection, the personal identifying information of a witness to  
 20 a felony is confidential and exempt from s. 119.07(1) and s.  
 21 24(a), Art. I of the State Constitution for 2 years after the  
 22 date on which the felony is observed by the witness. The  
 23 personal identifying information may be disclosed only to a  
 24 criminal justice agency or governmental entity for use in the  
 25 performance of official duties.

26 2. This paragraph is subject to the Open Government Sunset

27 Review Act in accordance with s. 119.15 and shall stand repealed  
 28 on October 2, 2021, unless reviewed and saved from repeal  
 29 through reenactment by the Legislature.

30 Section 2. The Legislature finds that it is a public  
 31 necessity that personal identifying information of a witness to  
 32 a felony be made confidential and exempt from s. 119.07(1),  
 33 Florida Statutes, and s. 24(a), Article I of the State  
 34 Constitution for 2 years after the date on which the felony is  
 35 observed by the witness. The judicial system cannot function  
 36 without the participation of witnesses. Complete cooperation and  
 37 truthful testimony of witnesses is essential to the  
 38 determination of the facts of a case. The public disclosure of  
 39 personal identifying information of a witness to a felony could  
 40 have an undesirable chilling effect on witnesses stepping  
 41 forward and providing their accounts of felonies. A witness to a  
 42 felony may be unwilling to cooperate fully with law enforcement  
 43 officers if the witness knows his or her personal identifying  
 44 information can be made publicly available. A witness may be  
 45 less likely to call a law enforcement officer and report a crime  
 46 if his or her personal identifying information is made available  
 47 in connection with the felony that is being reported or under  
 48 investigation. The Legislature further finds that a witness  
 49 could become the subject of intimidation tactics or threats by  
 50 the perpetrator of the felony if the witness's personal  
 51 identifying information is publicly available. For these  
 52 reasons, the Legislature finds that it is a public necessity

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53 | that the personal identifying information of a witness to a  
54 | felony be made confidential and exempt from public record  
55 | requirements.

56 |       Section 3. 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 Narain offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (m) is added to subsection (2) of  
8 section 119.071, Florida Statutes, to read:

9 119.071 General exemptions from inspection or copying of  
10 public records.-

11 (2) AGENCY INVESTIGATIONS.-

12 (m)1. Notwithstanding any other provision of this  
 13 subsection, the personal identifying information of a witness to  
 14 a murder, as described in s. 782.04, is confidential and exempt  
 15 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
 16 for 2 years after the date on which the murder is observed by  
 17 the witness. The personal identifying information may be



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18 disclosed only to a criminal justice agency or governmental  
19 entity for use in the performance of its official duties and  
20 responsibilities.

21 2. This paragraph is subject to the Open Government Sunset  
22 Review Act in accordance with s. 119.15 and shall stand repealed  
23 on October 2, 2021, unless reviewed and saved from repeal  
24 through reenactment by the Legislature.

25 Section 2. Paragraph (k) is added to subsection (1) of  
26 section 119.0714, Florida Statutes, to read:

27 119.0714 Court files; court records; official records.-

28 (1) COURT FILES.-Nothing in this chapter shall be  
29 construed to exempt from s. 119.07(1) a public record that was  
30 made a part of a court file and that is not specifically closed  
31 by order of court, except:

32 (k) Personal identifying information of a witness to a  
33 murder as provided in s. 119.071(2)(m).

34 Section 3. The Legislature finds that it is a public  
35 necessity that personal identifying information of a witness to  
36 a murder, as described in s. 782.04, Florida Statutes, be made  
37 confidential and exempt from s. 119.07(1), Florida Statutes, and  
38 s. 24(a), Article I of the State Constitution for 2 years after  
39 the date on which the murder is observed by the witness. The  
40 judicial system cannot function without the participation of  
41 witnesses. Complete cooperation and truthful testimony of  
42 witnesses is essential to the determination of the facts of a  
43 case. The public disclosure of personal identifying information



Amendment No.

44 of a witness to a murder could have an undesirable chilling  
45 effect on witnesses stepping forward and providing their  
46 eyewitness accounts. A witness to a murder may be unwilling to  
47 cooperate fully with law enforcement officers if the witness  
48 knows his or her personal identifying information can be made  
49 publicly available. A witness may be less likely to call a law  
50 enforcement officer and report a crime if his or her personal  
51 identifying information is made available in connection with the  
52 murder that is being reported or under investigation. The  
53 Legislature further finds that a witness could become the  
54 subject of intimidation tactics or threats by the perpetrator of  
55 the murder if the witness's personal identifying information is  
56 publicly available. For these reasons, the Legislature finds  
57 that it is a public necessity that the personal identifying  
58 information of a witness to a murder, as described in s. 782.04,  
59 Florida Statutes, be made confidential and exempt from public  
60 record requirements.

61 Section 4. This act shall take effect July 1, 2016.

62  
63 -----  
64 **T I T L E A M E N D M E N T**

65 Remove everything before the enacting clause and insert:

66 A bill to be entitled

67 An act relating to public records; amending s. 119.071, F.S.;  
68 providing an exemption from public records requirements for  
69 personal identifying information of a witness to a murder for a



COMMITTEE/SUBCOMMITTEE AMENDMENT

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70 | specified period; authorizing specified entities to receive the  
71 | information; providing for future legislative review and repeal  
72 | of the exemption; amending s. 119.0714, F.S.; providing that the  
73 | public record exemption applies to personal identifying  
74 | information of a witness to a murder that is made part of a  
75 | court file; providing a statement of public necessity; providing  
76 | an effective date.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 513 Florida Holocaust Memorial  
**SPONSOR(S):** Moskowitz and others  
**TIED BILLS:**           **IDEN./SIM. BILLS:** HB 405, SB 716

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

### SUMMARY ANALYSIS

There are numerous Holocaust memorials, monuments, and museums worldwide, of which at least five are located in Florida.

The bill establishes the Florida Holocaust Memorial on the premises of the Capitol Complex. The Department of Management Services is required to construct, place, and administer the memorial after considering recommendations from the Florida Historical Commission and coordinating with the Division of Historical Resources within the Department of State regarding the memorial's design and placement.

The bill may have an indeterminate fiscal impact on the Department of Management Services. It does not appear to have a fiscal impact on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Holocaust Memorials and Museums in Florida

The Holocaust was a genocide in which approximately six million Jews were killed by the Nazi regime and its collaborators during World War II.

There are numerous memorials, monuments, and museums worldwide, of which at least five are located in Florida. The Florida memorials and museums include:

- A memorial on the Temple B’Nai Israel property in Clearwater;<sup>1</sup>
- The Florida Holocaust Museum in St. Petersburg;<sup>2</sup>
- The Holocaust Memorial Resource and Education Center of Florida in Maitland;<sup>3</sup>
- A memorial in Miami Beach;<sup>4</sup> and
- The Holocaust Museum and Education Center of Southwest Florida in Naples.<sup>5</sup>

##### Capitol Center

The Capitol Center<sup>6</sup> is under the general control, custodianship, and supervision of the Department of Management Services (DMS).<sup>7</sup> This also includes the management, maintenance, and upkeep of both the grounds and buildings.<sup>8</sup> DMS may provide for the establishment of parks, drives, walkways, and parkways on the grounds of the Capitol Center.<sup>9</sup> This responsibility has historically included assistance in establishing and maintaining public memorials throughout the Capitol Center, including project management oversight of the design and construction of memorials.<sup>10</sup>

##### Capitol Complex Monuments

Section 281.01, F.S., defines the term “Capitol Complex” as:

[T]hat portion of Tallahassee, Leon County, Florida, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the Pepper Building, the Holland Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street. The term shall also include the State Capital Circle Office Complex located in Leon County, Florida.

<sup>1</sup> Holocaust Memorial in Clearwater, Florida, available at [http://www.waymarking.com/waymarks/WM7JP0\\_Holocaust\\_Memorial\\_Clearwater\\_FL](http://www.waymarking.com/waymarks/WM7JP0_Holocaust_Memorial_Clearwater_FL) (last visited Jan. 23, 2016).

<sup>2</sup> Florida Holocaust Museum, Florida Holocaust Museum History, available at <https://www.flholocaustmuseum.org/about/fhm-history/> (last visited Jan. 8, 2016).

<sup>3</sup> Holocaust Memorial Resource & Education Center of Florida, About Us, available at [http://www.holocaustedu.org/about\\_us](http://www.holocaustedu.org/about_us) (last visited Jan. 9, 2016).

<sup>4</sup> The Holocaust Memorial Miami Beach, History of the Holocaust Memorial, available at <http://holocaustmemorialmiamibeach.org/about/history/> (last visited Jan. 8, 2016).

<sup>5</sup> The Holocaust Museum & Education Center of Southwest Florida, Our Mission, available at <http://www.holocaustmuseumsfwl.org/our-mission/> (last visited Jan. 8, 2016).

<sup>6</sup> Section 272.12(1), F.S., describes the Capitol Center as the Tallahassee area bounded by Martin Luther King, Jr. Boulevard, College Avenue, Franklin Boulevard, East Jefferson Street, and the Seaboard Coastline Railway right-of-way.

<sup>7</sup> Section 272.03(1), F.S.

<sup>8</sup> Section 272.09, F.S.

<sup>9</sup> Section 272.07, F.S.

<sup>10</sup> Department of Management Services, HB 731 Analysis (Feb. 19, 2014) (copy on file with the Government Operations Subcommittee).

A monument<sup>11</sup> may not be constructed or placed on the premises of the Capitol Complex unless authorized by general law and unless the design and placement of the monument is approved by DMS after considering the recommendations of the Florida Historical Commission.<sup>12</sup> DMS must coordinate with the Division of Historical Resources of the Department of State regarding a monument's design and placement.<sup>13</sup> DMS, in consultation with the Florida Historical Commission, must set aside an area of the Capitol Complex to be dedicated as a memorial garden for the placement of authorized monuments.<sup>14</sup>

#### Division of Historical Resources

The Division of Historical Resources, which is established within the Department of State,<sup>15</sup> in part, is responsible for:

- Developing a comprehensive statewide historic preservation plan.
- Directing and conducting a comprehensive statewide survey of historic resources and maintaining an inventory of such resources.
- Ensuring that historic resources are taken into consideration at all levels of planning and development.
- Providing public information, education, and technical assistance relating to historic preservation programs.<sup>16</sup>

#### Florida Historical Commission

The Florida Historical Commission (Commission) was established to enhance public participation and involvement in the preservation and protection of the state's historic and archaeological sites and properties.<sup>17</sup> The Commission is created within the Department of State and is tasked with advising and assisting the Division of Historical Resources in carrying out its programs, duties and responsibilities.<sup>18</sup>

The Commission is composed of 11 members. Seven members of the Commission are appointed by the Governor in consultation with the Secretary of State, two by the President of the Senate, and two by the Speaker of the House of Representatives.<sup>19</sup> The Commission must include:

- A licensed architect with expertise in historic preservation and architectural history;
- A professional historian in the field of American history;
- A professional architectural historian;
- An archaeologist specializing in the field of prehistory;
- An archaeologist specializing in the historic period; and
- Representatives of the public with demonstrated interest in the preservation of Florida's historical and archaeological heritage.<sup>20</sup>

The Commission must provide assistance, advice, and recommendations to the Division of Historical Resources.<sup>21</sup> Section 267.0612(9), F.S., also requires the Commission to provide recommendations to DMS on the design and placement of monuments authorized by general law to be placed on the premises of the Capitol Complex pursuant to s. 265.111, F.S.

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<sup>11</sup> Section 265.111(1), F.S., defines the term "monument" to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of significant person or event in Florida history. The term does not include any "Official Florida Historical Marker" as defined in s. 267.021, F.S.

<sup>12</sup> Section 265.111(2), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Section 265.111(3), F.S.

<sup>15</sup> Section 20.10(2)(b), F.S.

<sup>16</sup> *See* s. 267.031(5), F.S.

<sup>17</sup> Chapter 2001-199, L.O.F.; codified as s. 267.0612, F.S.

<sup>18</sup> Section 267.0612, F.S.

<sup>19</sup> Section 267.0612(1)(a)1., F.S.

<sup>20</sup> *Id.*

<sup>21</sup> *See* s. 267.0612(6), F.S.

## **Effect of the Bill**

The bill establishes the Florida Holocaust Memorial on the premises of the Capitol Complex, but not including the State Capital Circle Office Complex. The bill directs DMS to administer the memorial and to construct and place the Florida Holocaust Memorial after it has considered the recommendations of the Florida Historical Commission and coordinated with the Division of Historical Resources regarding the memorial's design and placement.

### **B. SECTION DIRECTORY:**

Section 1 creates s. 265.005, F.S., establishing the Florida Holocaust Memorial.

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:**

There is an indeterminate cost to DMS for the creation and placement of the memorial, because the bill does not include an appropriation.

### **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. The bill does not appear to affect county or municipal governments.

#### **2. Other:**

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

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A bill to be entitled  
 An act relating to the Florida Holocaust Memorial;  
 creating s. 265.005, F.S.; providing legislative  
 intent; establishing the Florida Holocaust Memorial;  
 providing for administration by the Department of  
 Management Services; prohibiting the department from  
 constructing and placing the memorial until certain  
 conditions are met; providing an effective date.

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

Section 1. Section 265.005, Florida Statutes, is created  
 to read:

265.005 Florida Holocaust Memorial.-

(1) It is the intent of the Legislature to recognize and  
 commemorate the millions of people, including six million Jews,  
 murdered by the Nazis and their collaborators before and during  
 World War II in Europe and to honor the survivors of the  
 Holocaust through the establishment of the Florida Holocaust  
 Memorial.

(2) There is established the Florida Holocaust Memorial.

(a) The memorial is administered by the Department of  
 Management Services.

(b) The Department of Management Services shall set aside  
 an appropriate public area for the memorial on the premises of  
 the Capitol Complex, as defined in s. 281.01, but not including

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2016

27 | the State Capital Circle Office Complex. The department shall  
28 | construct and place the Florida Holocaust Memorial after it has  
29 | considered the recommendations of the Florida Historical  
30 | Commission as required pursuant to ss. 265.111 and 267.0612(9)  
31 | and coordinated with the Division of Historical Resources of the  
32 | Department of State regarding the memorial's design and  
33 | placement.

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





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 533 Arthur G. Dozier School for Boys  
**SPONSOR(S):** Narain and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 708

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

### SUMMARY ANALYSIS

The Arthur G. Dozier School for Boys (Dozier School or school) was a reform school located in the panhandle town of Marianna that was operated by the state from January 1, 1900, to June 30, 2011. In recent years, men have come forward to tell stories of repeated physical abuse they were subjected to by staff members as a form of discipline. These men believe there may have been fellow students who died from the abuse and were buried at the school's cemetery.

In 2012, researchers from the University of South Florida began an investigation to determine the location of missing children buried at the school in order to excavate and repatriate the remains to their families. In January 2016, the researchers issued a report of their findings. The researchers analyzed historical records and determined that nearly 100 boys aged 6 to 18 died at the school between 1900 and 1973. During the investigation, the researchers excavated 55 graves and discovered 51 sets of human remains on the school grounds, only 13 of which were located in the school's cemetery. The researchers made 7 positive identifications and 14 presumptive identifications of the remains they discovered.

The bill directs the Department of State (DOS) to preserve historical resources, records, archives, and artifacts; to create and maintain a memorial to victims; and to continue research into events at Dozier School and development of evidence of abuse that may have taken place there.

The bill also directs DOS to pay \$5,000 to the family of each child buried at Dozier School for the purpose of reintering the bodies of the children in a cemetery of each family's choice. DOS must identify and locate eligible families within six months after the effective date of the bill and must provide the burial funding to eligible families no later than December 31, 2017.

For fiscal year 2016-17, the bill appropriates \$1.5 million from the General Revenue Fund to implement the bill's requirements. The bill does not appear to have a fiscal impact on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Arthur G. Dozier School for Boys

The Arthur G. Dozier School for Boys (Dozier School or school) was a reform school located in the panhandle town of Marianna that was operated by the state from January 1, 1900, to June 30, 2011. The school was created by the Florida Legislature in 1897 to provide a place “where young offenders against the laws of our state might be separated from older more vicious associates.”<sup>1</sup> Children were initially committed to the school for criminal offenses, but the law was later amended to identify minor offenses, such as “incurability,” “truancy,” or “dependency” as reasons for a child to be sent there.<sup>2</sup> In the 1900s, hundreds of boys were sent to the school.

In recent years, men have come forward to tell stories of repeated physical abuse they were subjected to by staff members as a form of discipline.<sup>3</sup> These men believe there may have been fellow students who died from the abuse and were buried at the school’s cemetery.<sup>4</sup> As a result of these allegations, in 2008, former Governor Charlie Crist directed the Florida Department of Law Enforcement (FDLE) to investigate 32 unmarked graves located on property surrounding Dozier School. FDLE reviewed and analyzed public records and official documents and identified 31 individuals who were purportedly buried at the school’s cemetery.<sup>5</sup> FDLE was also directed to determine whether any crimes were committed, and if so, the perpetrators of those crimes.<sup>6</sup> FDLE interviewed former students and former school staff, but concluded it could not find enough evidence to support the accusations.<sup>7</sup>

In 2012, researchers from the University of South Florida began an investigation to determine the location of missing children buried at the school in order to excavate and repatriate the remains to their families.<sup>8</sup> In January 2016, the researchers issued a report of their findings. The researchers analyzed historical records and determined that nearly 100 boys aged 6 to 18 died at the school between 1900 and 1973.<sup>9</sup> During the investigation, the researchers excavated 55 graves and discovered 51 sets of human remains on the school grounds, only 13 of which were located in the school’s cemetery.<sup>10</sup> The researchers made 7 positive identifications and 14 presumptive identifications of the remains they discovered.<sup>11</sup>

##### Department of State

The Department of State (DOS) has a variety of responsibilities, including collecting and preserving official state records and historically significant records, promoting arts and culture in the state, and facilitating cultural development and services in the state. The Division of Historical Resources, which is

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<sup>1</sup> FDLE Office of Executive Investigations, *Arthur G. Dozier School for Boys Abuse Investigation*, Case No. EI-04-0005 (Jan. 29, 2010), available at <http://thewhitehouseboys.com/abuserreport.pdf> [hereinafter FDLE Abuse Report].

<sup>2</sup> Erin Kimmerle, E. Christian Wells, & Antoinette Jackson, Florida Institute for Forensic Anthropology & Applied Sciences, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, January 2016, available at <http://news.usf.edu/article/articlefiles/7173-usf-final-dozier-summary-2016.pdf>.

<sup>3</sup> FDLE Office of Executive Investigations, *Arthur G. Dozier School for Boys: Marianna, Florida*, Case No. EI-73-8455 (May 14, 2009), p.1, available at <http://www.tampabay.com/specials/2009/reports/marianna/Dozier-summary.pdf>.

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Id.* at 18.

<sup>6</sup> FDLE Abuse Report, *supra* note 1, at 1.

<sup>7</sup> *See id.* at 13.

<sup>8</sup> Kimmerle, *supra* note 2, at 12.

<sup>9</sup> *Id.* at 14.

<sup>10</sup> *Id.* at 12.

<sup>11</sup> *Id.*

administratively housed within DOS, is responsible for preserving and promoting Florida's historical, archaeological, and folk culture resources.

**Effect of Proposed Changes**

The bill directs DOS to preserve historical resources, records, archives, and artifacts; to create and maintain a memorial to victims; and to continue research into events at Dozier School and development of evidence of abuse that may have taken place there.

The bill also directs DOS to pay \$5,000 to the family of each child buried at Dozier School for the purpose of reintering the bodies of the children in a cemetery of each family's choice. DOS must identify and locate eligible families within six months after the effective date of the bill and must provide the burial funding to eligible families no later than December 31, 2017. However, the bill does not specify a process by which the funds will be provided to the families.

For fiscal year 2016-17, the bill appropriates \$1.5 million from the General Revenue Fund to implement the bill's requirements.

**B. SECTION DIRECTORY:**

Section 1 creates an unnumbered section of law relating to the duties of DOS with respect to Dozier School.

Section 2 creates an unnumbered section of law relating to compensation for families with children buried at Dozier School.

Section 3 provides an appropriation.

Section 4 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 an impact on state government revenues.

2. Expenditures:

The bill appropriates \$1.5 million from the General Revenue Fund to DOS for the purpose of providing funds to the families of children buried at Dozier School so the bodies may be reinterred.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill does not appear to have an impact on local government expenditures.

**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. The bill does not appear to affect county or municipal governments.

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 the Arthur G. Dozier School for  
 3           Boys; directing the Department of State to preserve  
 4           historical resources, records, archives, and  
 5           artifacts, to create and maintain a memorial to  
 6           victims, and to continue research into events that  
 7           occurred and development of evidence of abuse at the  
 8           school; authorizing payments to families of children  
 9           buried at the school for specified purposes; providing  
 10          an appropriation; providing for the carryforward and  
 11          use of unexpended appropriations; providing an  
 12          effective date.

13  
 14          WHEREAS, the Arthur G. Dozier School for Boys operated from  
 15          1900 until its closing in 2011 by the state after allegations of  
 16          abuse were confirmed by separate investigations by the  
 17          Department of Law Enforcement in 2010 and the Civil Rights  
 18          Division of the United States Department of Justice in 2011, and

19          WHEREAS, official records indicated that 32 graves at the  
 20          facility had been dug between 1914 and 1952, and

21          WHEREAS, a University of South Florida forensic  
 22          investigation found that there were no records of where those  
 23          who died there are buried, and that a second cemetery is likely  
 24          to exist, and

25 WHEREAS, exhumations of bodies began in August 2013, and  
 26 the excavations yielded remains of 55 bodies, which is almost  
 27 twice the number official records had indicated, and

28 WHEREAS, one of the bodies exhumed during the forensic  
 29 investigation was that of a child who the Arthur G. Dozier  
 30 School for Boys had reported missing since 1940, and

31 WHEREAS, representatives of children formerly held at the  
 32 Arthur G. Dozier School for Boys have estimated that there could  
 33 be 100 more bodies buried on the school grounds, and

34 WHEREAS, the families of many children whose bodies have  
 35 been exhumed lack the resources to properly reinter those  
 36 children near their own families, and

37 WHEREAS, the State of Florida recognizes an equitable  
 38 obligation to help the families of children formerly buried at  
 39 the Arthur G. Dozier School for Boys to reinter the bodies of  
 40 those children, NOW, THEREFORE,

41  
 42 Be It Enacted by the Legislature of the State of Florida:

43  
 44 Section 1. The Department of State is directed to preserve  
 45 historical resources, records, archives, and artifacts, to  
 46 create and maintain a memorial to victims, and to continue  
 47 research into events at the Arthur G. Dozier School for Boys and  
 48 development of evidence of abuse that may have taken place  
 49 there.

50 Section 2. The Department of State is authorized and

51 directed to pay \$5,000 to the family of each child buried at the  
 52 Arthur G. Dozier School for Boys for the purpose of reintering  
 53 the bodies of said children in a cemetery of each family's  
 54 choice. The Department of State shall identify and locate  
 55 eligible families within 6 months after the effective date of  
 56 this act and shall provide the burial funding to the eligible  
 57 families no later than December 31, 2017.

58 Section 3. For fiscal year 2016-2017, \$1.5 million is  
 59 appropriated from the General Revenue Fund to implement this  
 60 act. Funds appropriated to the Department of State that are not  
 61 used by the department during fiscal year 2016-2017 shall be  
 62 carried forward by the department for the purpose of reintering  
 63 the bodies of children as provided in this act until the period  
 64 for locating eligible families under this act has expired.

65 Section 4. This act shall take effect upon becoming a law.



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 Narain offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. (1) Any historical resource, record, archive,  
8 or artifact and any human remains that are recovered from the  
9 Arthur G. Dozier School for Boys must be transferred to the  
10 Department of State. The department shall retain and preserve  
11 such historical resources, records, archives, and artifacts.

12 (2) The Department of State shall reimburse the next of  
13 kin or pay directly to the provider up to \$7,500 for funeral,  
14 reinterment, and grave marker expenses for each child whose body  
15 was buried and exhumed at the Dozier School. The department  
16 shall identify and locate eligible next of kin of such children  
17 by December 31, 2017.





Amendment No.

18 (a) To receive reimbursement, the next of kin must submit  
19 to the department receipts for or documentation of expenses.  
20 Reimbursement shall be made pursuant to s. 215.422.

21 (b) If expenses are to be paid directly to the provider,  
22 the funeral home or other similar entity shall submit an invoice  
23 to the department for the cost of the child's funeral,  
24 reinterment, and grave marker expenses. Payment shall be made  
25 pursuant to s. 215.422.

26 (c) A charitable donation made toward funeral,  
27 reinterment, and grave marker expenses is not eligible for  
28 reimbursement.

29 (3) By February 1, 2018, the Department of State shall  
30 report to the Legislature on the status of payments and  
31 reimbursements required by this act.

32 (4) (a) A task force, as defined in s. 20.03, is  
33 established adjunct to the Department of State to make  
34 recommendations to the department regarding the creation and  
35 maintenance of a memorial and the location of a site for the  
36 reinterment of unidentified or unclaimed remains.

37 (b) Task force members shall be appointed by the secretary  
38 of the Department of State and shall serve without compensation,  
39 but are entitled to reimbursement for per diem and travel  
40 expenses in accordance with s. 112.061.

41 (c) The recommendations of the task force must be  
42 submitted to the Department of State by October 1, 2016, at  
43 which time the task force is abolished.



Amendment No.

44       (5) The department may adopt rules necessary to administer  
45 this section.

46       Section 2. For the 2016-2017 fiscal year, the sum of  
47 \$500,000 in nonrecurring funds is appropriated from the General  
48 Revenue Fund to the Department of State for the purpose of  
49 implementing this act. The unexpended balance of such funds  
50 shall revert immediately on July 1, 2017, and is appropriated  
51 for the 2017-2018 fiscal year for the same purpose.

52       Section 3. This act shall take effect upon becoming law.

53  
54       -----

**T I T L E   A M E N D M E N T**

56       Remove everything before the enacting clause and insert:  
57       An act relating to the Arthur G. Dozier School for Boys;  
58       directing the Department of State to preserve historical  
59       resources, records, archives, and artifacts; directing the  
60       department to reimburse the next of kin of children whose  
61       bodies are buried and exhumed at the Dozier School or to  
62       pay directly to a provider for the costs associated with  
63       funeral services, reinterment, and grave marker expenses;  
64       providing a process for reimbursement by the department;  
65       providing that a charitable donation made toward funeral,  
66       reinterment, and grave marker expenses is not eligible for  
67       reimbursement; establishing a task force to make  
68       recommendations regarding a memorial and a location of a  
69       site for the reinterment of unidentified or unclaimed



Amendment No.

70 remains; providing that members of the task force shall  
71 serve without compensation but are entitled certain per  
72 diem and travel expenses; requiring the task for to submit  
73 its recommendation to the department by a certain date, at  
74 which time the task force is abolished; authorizing the  
75 department to adopt rules; providing appropriations;  
76 providing an effective date.

77

78 WHEREAS, the Arthur G. Dozier School for Boys, or the  
79 Dozier School, operated from 1900 until it was closed in  
80 2011 after allegations of abuse were confirmed in separate  
81 investigations by the Department of Law Enforcement in 2010  
82 and the Civil Rights Division of the United States  
83 Department of Justice in 2011, and

84 WHEREAS, official records indicated that 31 graves had  
85 been dug at the facility between 1914 and 1952, and

86 WHEREAS, a forensic investigation by the University of  
87 South Florida found that there are no records of where  
88 children who died at the Dozier School are buried and that  
89 a second cemetery is likely to exist, and

90 WHEREAS, exhumations of bodies began in August 2013,  
91 and the excavations yielded 55 burial sites, 24 more than  
92 reported in official records, and

93 WHEREAS, one of the bodies exhumed during the forensic  
94 investigation was of a child reported missing since 1940,  
95 and



Amendment No.

96               WHEREAS, representatives of children formerly held at  
97               the Dozier School have estimated that there could be 100  
98               more bodies buried on the grounds of the school, and

99               WHEREAS, many families of children whose bodies have  
100              been exhumed lack the resources to properly reinter those  
101              children at a suitable location, and

102              WHEREAS, the State of Florida recognizes an obligation  
103              to help the families of children formerly buried at the  
104              Dozier School reinter the bodies of those children, NOW,  
105              THEREFORE,



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 587 Public Records/Agency Inspector General Personnel

**SPONSOR(S):** Powell

**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 752

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

### SUMMARY ANALYSIS

Current law establishes an Office of Inspector General (OIG) in each state agency to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government.

The bill creates a public record exemption for the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former employees of an agency's OIG or employees whose duties include conducting internal audits at any agency. It also creates a public record exemption for the names, home addresses, telephone numbers, social security numbers, dates of birth, photographs, and places of employment of the spouses and children of such employees. In addition, the names and locations of schools and day care facilities attended by the employees' children are exempt from public records requirements.

The bill provides for repeal of the exemption on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments section.

**Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Public Records

Article I, s. 24(a) of the State 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. The Legislature, however, may provide by general law for the exemption of records from the requirements of Art. I, s. 24(a). 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.<sup>1</sup>

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. Furthermore, the Open Government Sunset Review Act<sup>2</sup> 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.
- 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.
- Protects trade or business secrets.<sup>3</sup>

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.<sup>4</sup>

##### Exemptions for Agency Personnel Identification and Location Information

Current law provides public record exemptions for personal identification and location information of certain current or former agency personnel and their spouses and children.<sup>5</sup> Categories of personnel covered by these exemptions include, but are not limited to, law enforcement officers, justices and judges, code enforcement officers, investigators or inspectors of the Department of Business and Professional Regulation, and county tax collectors.

Although the types of exempt information vary, the following information is exempt<sup>6</sup> from public records requirements for all personnel listed above:

- Home addresses and telephone numbers<sup>7</sup> of the named personnel;

<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 119.15(3), F.S.

<sup>5</sup> See s. 119.071(4)(d), F.S.

<sup>6</sup> There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *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 (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 2004); and *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, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See 85-62 Fla. Op. Att'y Gen. (1985).

- Home addresses, telephone numbers, and places of employment of the spouses and their children; and
- Names and locations of schools and day care facilities attended by their children.

If exempt information is held by an agency that is not the employer of the protected personnel, he or she must submit a written request to the non-employing agency to maintain the public record exemption.<sup>8</sup>

Currently, personal identification and location information of personnel employed in an agency's office of inspector general or those whose duties include conducting internal audits is not exempt from public disclosure.

### Inspectors General

Authorized under s. 20.055, F.S., an Office of Inspector General (OIG) is established in each state agency<sup>9</sup> to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Section 14.32, F.S., creates the Office of the Chief Inspector General (CIG) within the Executive Office of the Governor. The CIG monitors the activities of the agency inspectors general under the Governor's jurisdiction.

Each agency OIG is responsible for the following:

- Advising in the development of performance measures, standards, and procedures for the evaluation of state agency programs;
- Assessing the reliability and validity of information provided by the agency on performance measures and standards;
- Reviewing the actions taken by the agency to improve agency performance, and making recommendations, if necessary;
- Supervising and coordinating audits, investigations, and reviews relating to the programs and operations of the state agency;
- Conducting, supervising, or coordinating other activities carried out or financed by the agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;
- Providing central coordination of efforts to identify and remedy waste, abuse, and deficiencies to the agency head,<sup>10</sup> or the CIG for agencies under the jurisdiction of the Governor; recommending corrective action concerning fraud, abuses, and deficiencies; and reporting on the progress made in implementing corrective action;
- Coordinating agency-specific audit activities between the Auditor General, federal auditors, and other governmental bodies to avoid duplication;
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact;
- Ensuring that an appropriate balance is maintained between audit, investigative, and other accountability activities; and

---

<sup>7</sup> The term "telephone numbers" includes home, personal cellular, and personal pager telephone numbers, and telephone numbers associated with personal communications devices. *See* s. 119.071(4)(d)1., F.S.

<sup>8</sup> Section 119.071(4)(d)3., F.S.

<sup>9</sup> Section 20.055(1)(d), F.S., defines "state agency" as each department created pursuant to chapter 20, F.S., and also includes the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Agency for State Technology, the Office of Early Learning, and the state courts system.

<sup>10</sup> Section 20.055(1)(a), F.S., defines "agency head" as the Governor, a Cabinet officer, a secretary as defined in s. 20.03(5), F.S., or an executive director as defined in s. 20.03(6), F.S. It also includes the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, the executive director of the Office of Early Learning, and the Chief Justice of the State Supreme Court.



- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.<sup>11</sup>

### **Effect of Proposed Changes**

The bill amends s. 119.071, F.S., to exempt from public records requirements the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former employees of an agency's OIG or employees whose duties include conducting internal audits at any agency. The bill also exempts from public records requirements the names, home addresses, telephone numbers, social security numbers, dates of birth, photographs, and places of employment of the spouse and children of such employees. In addition, the names and locations of schools and day care facilities attended by the employees' children are exempt.

The bill requires the employee to have made a reasonable effort to protect such information from being accessible through means available to the public in order for the information to be protected under the exemption.

The bill provides a public necessity statement as required by the State Constitution, specifying that it is a public necessity to protect the identifying and location information for these employees and their families because they may become targets for revenge perpetrated by people who have been investigated or audited.

The bill provides for repeal of the exemption on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2 provides a public necessity statement.

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 an impact on state government revenues.

##### **2. Expenditures:**

See Fiscal Comments.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

The bill does not appear to have an impact on local government revenues.

##### **2. Expenditures:**

See Fiscal Comments.

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<sup>11</sup> Section 20.055(2), F.S.  
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DATE: 1/22/2016

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to creation of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

### 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:

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 a new public record exemption; 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 a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The public necessity statement provided in the bill provides a basis for protecting the information of employees who perform investigations, audits or other actions such as scrutinizing businesses or professional practices. The public necessity statement appears to support an exemption for only those employees who perform those duties. The public record exemption, however, covers all employees of an agency's OIG, even those employees who do not have investigative duties or contact with the public. As such, the exemption appears to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Social Security Numbers

The bill creates a public record exemption for the social security numbers of current or former employees of an agency's OIG or employees whose duties include conducting internal audits at any agency. The social security numbers for such employees' spouses and children are also exempt. However, these exemptions may be duplicative as social security numbers of current and former agency employees are already confidential and exempt pursuant to s. 119.071(4)(a)1., F.S., and any

social security number held by an agency is confidential and exempt pursuant to s. 119.071(5)(a)5., F.S.

Other Comments: Photographs of the Spouse and Children

The bill creates a public record exemption for photographs of spouses and children of current or former employees of an agency's OIG or employees whose duties include conducting internal audits at any agency. It is unclear whether these photographs are collected by agencies.

**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 an exemption from public  
 4           records requirements for certain identifying and  
 5           location information of current or former personnel of  
 6           an agency's office of inspector general and those  
 7           whose duties include conducting internal audits, and  
 8           the spouses and children thereof; providing for future  
 9           legislative review and repeal of the exemption;  
 10          providing a statement of public necessity; providing  
 11          an effective date.

12

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

14

15           Section 1. Paragraph (d) of subsection (4) of section  
 16          119.071, Florida Statutes, is amended to read:

17           119.071 General exemptions from inspection or copying of  
 18          public records.—

19           (4) AGENCY PERSONNEL INFORMATION.—

20           (d)1. For purposes of this paragraph, the term "telephone  
 21          numbers" includes home telephone numbers, personal cellular  
 22          telephone numbers, personal pager telephone numbers, and  
 23          telephone numbers associated with personal communications  
 24          devices.

25           2.a.(I) The home addresses, telephone numbers, social  
 26          security numbers, dates of birth, and photographs of active or

27 former sworn or civilian law enforcement personnel, including  
 28 correctional and correctional probation officers, personnel of  
 29 the Department of Children and Families whose duties include the  
 30 investigation of abuse, neglect, exploitation, fraud, theft, or  
 31 other criminal activities, personnel of the Department of Health  
 32 whose duties are to support the investigation of child abuse or  
 33 neglect, and personnel of the Department of Revenue or local  
 34 governments whose responsibilities include revenue collection  
 35 and enforcement or child support enforcement; the home  
 36 addresses, telephone numbers, social security numbers,  
 37 photographs, dates of birth, and places of employment of the  
 38 spouses and children of such personnel; and the names and  
 39 locations of schools and day care facilities attended by the  
 40 children of such personnel are exempt from s. 119.07(1).

41 (II) The names of the spouses and children of active or  
 42 former sworn or civilian law enforcement personnel and the other  
 43 specified agency personnel identified in sub-sub-subparagraph  
 44 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the  
 45 State Constitution.

46 (III) Sub-sub-subparagraph (II) is subject to the Open  
 47 Government Sunset Review Act in accordance with s. 119.15, and  
 48 shall stand repealed on October 2, 2018, unless reviewed and  
 49 saved from repeal through reenactment by the Legislature.

50 b. The home addresses, telephone numbers, dates of birth,  
 51 and photographs of firefighters certified in compliance with s.  
 52 633.408; the home addresses, telephone numbers, photographs,

53 | dates of birth, and places of employment of the spouses and  
 54 | children of such firefighters; and the names and locations of  
 55 | schools and day care facilities attended by the children of such  
 56 | firefighters are exempt from s. 119.07(1).

57 |       c. The home addresses, dates of birth, and telephone  
 58 | numbers of current or former justices of the Supreme Court,  
 59 | district court of appeal judges, circuit court judges, and  
 60 | county court judges; the home addresses, telephone numbers,  
 61 | dates of birth, and places of employment of the spouses and  
 62 | children of current or former justices and judges; and the names  
 63 | and locations of schools and day care facilities attended by the  
 64 | children of current or former justices and judges are exempt  
 65 | from s. 119.07(1).

66 |       d.(I) The home addresses, telephone numbers, social  
 67 | security numbers, dates of birth, and photographs of current or  
 68 | former state attorneys, assistant state attorneys, statewide  
 69 | prosecutors, or assistant statewide prosecutors; the home  
 70 | addresses, telephone numbers, social security numbers,  
 71 | photographs, dates of birth, and places of employment of the  
 72 | spouses and children of current or former state attorneys,  
 73 | assistant state attorneys, statewide prosecutors, or assistant  
 74 | statewide prosecutors; and the names and locations of schools  
 75 | and day care facilities attended by the children of current or  
 76 | former state attorneys, assistant state attorneys, statewide  
 77 | prosecutors, or assistant statewide prosecutors are exempt from  
 78 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

79 (II) The names of the spouses and children of current or  
 80 former state attorneys, assistant state attorneys, statewide  
 81 prosecutors, or assistant statewide prosecutors are exempt from  
 82 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

83 (III) Sub-sub-subparagraph (II) is subject to the Open  
 84 Government Sunset Review Act in accordance with s. 119.15, and  
 85 shall stand repealed on October 2, 2018, unless reviewed and  
 86 saved from repeal through reenactment by the Legislature.

87 e. The home addresses, dates of birth, and telephone  
 88 numbers of general magistrates, special magistrates, judges of  
 89 compensation claims, administrative law judges of the Division  
 90 of Administrative Hearings, and child support enforcement  
 91 hearing officers; the home addresses, telephone numbers, dates  
 92 of birth, and places of employment of the spouses and children  
 93 of general magistrates, special magistrates, judges of  
 94 compensation claims, administrative law judges of the Division  
 95 of Administrative Hearings, and child support enforcement  
 96 hearing officers; and the names and locations of schools and day  
 97 care facilities attended by the children of general magistrates,  
 98 special magistrates, judges of compensation claims,  
 99 administrative law judges of the Division of Administrative  
 100 Hearings, and child support enforcement hearing officers are  
 101 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 102 Constitution if the general magistrate, special magistrate,  
 103 judge of compensation claims, administrative law judge of the  
 104 Division of Administrative Hearings, or child support hearing

105 officer provides a written statement that the general  
 106 magistrate, special magistrate, judge of compensation claims,  
 107 administrative law judge of the Division of Administrative  
 108 Hearings, or child support hearing officer has made reasonable  
 109 efforts to protect such information from being accessible  
 110 through other means available to the public.

111 f. The home addresses, telephone numbers, dates of birth,  
 112 and photographs of current or former human resource, labor  
 113 relations, or employee relations directors, assistant directors,  
 114 managers, or assistant managers of any local government agency  
 115 or water management district whose duties include hiring and  
 116 firing employees, labor contract negotiation, administration, or  
 117 other personnel-related duties; the names, home addresses,  
 118 telephone numbers, dates of birth, and places of employment of  
 119 the spouses and children of such personnel; and the names and  
 120 locations of schools and day care facilities attended by the  
 121 children of such personnel are exempt from s. 119.07(1) and s.  
 122 24(a), Art. I of the State Constitution.

123 g. The home addresses, telephone numbers, dates of birth,  
 124 and photographs of current or former code enforcement officers;  
 125 the names, home addresses, telephone numbers, dates of birth,  
 126 and places of employment of the spouses and children of such  
 127 personnel; and the names and locations of schools and day care  
 128 facilities attended by the children of such personnel are exempt  
 129 from s. 119.07(1) and s. 24(a), Art. I of the State  
 130 Constitution.



131 h. The home addresses, telephone numbers, places of  
 132 employment, dates of birth, and photographs of current or former  
 133 guardians ad litem, as defined in s. 39.820; the names, home  
 134 addresses, telephone numbers, dates of birth, and places of  
 135 employment of the spouses and children of such persons; and the  
 136 names and locations of schools and day care facilities attended  
 137 by the children of such persons are exempt from s. 119.07(1) and  
 138 s. 24(a), Art. I of the State Constitution, if the guardian ad  
 139 litem provides a written statement that the guardian ad litem  
 140 has made reasonable efforts to protect such information from  
 141 being accessible through other means available to the public.

142 i. The home addresses, telephone numbers, dates of birth,  
 143 and photographs of current or former juvenile probation  
 144 officers, juvenile probation supervisors, detention  
 145 superintendents, assistant detention superintendents, juvenile  
 146 justice detention officers I and II, juvenile justice detention  
 147 officer supervisors, juvenile justice residential officers,  
 148 juvenile justice residential officer supervisors I and II,  
 149 juvenile justice counselors, juvenile justice counselor  
 150 supervisors, human services counselor administrators, senior  
 151 human services counselor administrators, rehabilitation  
 152 therapists, and social services counselors of the Department of  
 153 Juvenile Justice; the names, home addresses, telephone numbers,  
 154 dates of birth, and places of employment of spouses and children  
 155 of such personnel; and the names and locations of schools and  
 156 day care facilities attended by the children of such personnel

157 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 158 Constitution.

159 j.(I) The home addresses, telephone numbers, dates of  
 160 birth, and photographs of current or former public defenders,  
 161 assistant public defenders, criminal conflict and civil regional  
 162 counsel, and assistant criminal conflict and civil regional  
 163 counsel; the home addresses, telephone numbers, dates of birth,  
 164 and places of employment of the spouses and children of such  
 165 defenders or counsel; and the names and locations of schools and  
 166 day care facilities attended by the children of such defenders  
 167 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
 168 the State Constitution.

169 (II) The names of the spouses and children of the  
 170 specified agency personnel identified in sub-sub-subparagraph  
 171 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the  
 172 State Constitution. This sub-sub-subparagraph is subject to the  
 173 Open Government Sunset Review Act in accordance with s. 119.15  
 174 and shall stand repealed on October 2, 2019, unless reviewed and  
 175 saved from repeal through reenactment by the Legislature.

176 k. The home addresses, telephone numbers, and photographs  
 177 of current or former investigators or inspectors of the  
 178 Department of Business and Professional Regulation; the names,  
 179 home addresses, telephone numbers, and places of employment of  
 180 the spouses and children of such current or former investigators  
 181 and inspectors; and the names and locations of schools and day  
 182 care facilities attended by the children of such current or

183 former investigators and inspectors are exempt from s. 119.07(1)  
 184 and s. 24(a), Art. I of the State Constitution if the  
 185 investigator or inspector has made reasonable efforts to protect  
 186 such information from being accessible through other means  
 187 available to the public. This sub-subparagraph is subject to the  
 188 Open Government Sunset Review Act in accordance with s. 119.15  
 189 and shall stand repealed on October 2, 2017, unless reviewed and  
 190 saved from repeal through reenactment by the Legislature.

191 1. The home addresses and telephone numbers of county tax  
 192 collectors; the names, home addresses, telephone numbers, and  
 193 places of employment of the spouses and children of such tax  
 194 collectors; and the names and locations of schools and day care  
 195 facilities attended by the children of such tax collectors are  
 196 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 197 Constitution if the county tax collector has made reasonable  
 198 efforts to protect such information from being accessible  
 199 through other means available to the public. This sub-  
 200 subparagraph is subject to the Open Government Sunset Review Act  
 201 in accordance with s. 119.15 and shall stand repealed on October  
 202 2, 2017, unless reviewed and saved from repeal through  
 203 reenactment by the Legislature.

204 m. The home addresses, telephone numbers, dates of birth,  
 205 and photographs of current or former personnel of the Department  
 206 of Health whose duties include, or result in, the determination  
 207 or adjudication of eligibility for social security disability  
 208 benefits, the investigation or prosecution of complaints filed

209 against health care practitioners, or the inspection of health  
 210 care practitioners or health care facilities licensed by the  
 211 Department of Health; the names, home addresses, telephone  
 212 numbers, dates of birth, and places of employment of the spouses  
 213 and children of such personnel; and the names and locations of  
 214 schools and day care facilities attended by the children of such  
 215 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
 216 the State Constitution if the personnel have made reasonable  
 217 efforts to protect such information from being accessible  
 218 through other means available to the public. This sub-  
 219 subparagraph is subject to the Open Government Sunset Review Act  
 220 in accordance with s. 119.15 and shall stand repealed on October  
 221 2, 2019, unless reviewed and saved from repeal through  
 222 reenactment by the Legislature.

223 n. The home addresses, telephone numbers, dates of birth,  
 224 and photographs of current or former impaired practitioner  
 225 consultants who are retained by an agency or current or former  
 226 employees of an impaired practitioner consultant whose duties  
 227 result in a determination of a person's skill and safety to  
 228 practice a licensed profession; the names, home addresses,  
 229 telephone numbers, dates of birth, and places of employment of  
 230 the spouses and children of such consultants or their employees;  
 231 and the names and locations of schools and day care facilities  
 232 attended by the children of such consultants or employees are  
 233 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 234 Constitution if a consultant or employee has made reasonable

235 | efforts to protect such information from being accessible  
 236 | through other means available to the public. This sub-  
 237 | subparagraph is subject to the Open Government Sunset Review Act  
 238 | in accordance with s. 119.15 and shall stand repealed on October  
 239 | 2, 2020, unless reviewed and saved from repeal through  
 240 | reenactment by the Legislature.

241 |       o. The home addresses, telephone numbers, social security  
 242 | numbers, dates of birth, and photographs of current or former  
 243 | personnel employed in an agency's office of inspector general or  
 244 | those whose duties include conducting internal audits; the  
 245 | names, home addresses, telephone numbers, social security  
 246 | numbers, dates of birth, photographs, and places of employment  
 247 | of spouses and children of such personnel; and the names and  
 248 | locations of schools and day care facilities attended by the  
 249 | children of such personnel are exempt from s. 119.07(1) and s.  
 250 | 24(a), Art. I of the State Constitution if the personnel have  
 251 | made reasonable efforts to protect such information from being  
 252 | accessible through other means available to the public. This  
 253 | sub-subparagraph is subject to the Open Government Sunset Review  
 254 | Act in accordance with s. 119.15 and shall stand repealed on  
 255 | October 2, 2021, unless reviewed and saved from repeal through  
 256 | reenactment by the Legislature.

257 |       3. An agency that is the custodian of the information  
 258 | specified in subparagraph 2. and that is not the employer of the  
 259 | officer, employee, justice, judge, or other person specified in  
 260 | subparagraph 2. shall maintain the exempt status of that

261 information only if the officer, employee, justice, judge, other  
 262 person, or employing agency of the designated employee submits a  
 263 written request for maintenance of the exemption to the  
 264 custodial agency.

265 4. The exemptions in this paragraph apply to information  
 266 held by an agency before, on, or after the effective date of the  
 267 exemption.

268 5. Except as otherwise expressly provided in this  
 269 paragraph, this paragraph is subject to the Open Government  
 270 Sunset Review Act in accordance with s. 119.15, and shall stand  
 271 repealed on October 2, 2017, unless reviewed and saved from  
 272 repeal through reenactment by the Legislature.

273 Section 2. (1) The Legislature finds that it is a public  
 274 necessity that the following identifying and location  
 275 information be exempt from public records requirements if  
 276 current or former personnel employed in an agency's office of  
 277 inspector general, or those whose duties include conducting  
 278 internal audits, have made reasonable efforts to protect such  
 279 information from being accessible through other means available  
 280 to the public:

281 (a) The home addresses, telephone numbers, social security  
 282 numbers, dates of birth, and photographs of current or former  
 283 personnel employed in an agency's office of inspector general or  
 284 those whose duties include conducting internal audits;

285 (b) The names, home addresses, telephone numbers, social  
 286 security numbers, dates of birth, photographs, and places of

287 employment of spouses and children of such personnel; and  
288 (c) The names and locations of schools and day care  
289 facilities attended by the children of such personnel.  
290 (2) The Legislature finds that the release of such  
291 identifying and location information might place these current  
292 or former personnel of an agency's office of inspector general  
293 or other personnel whose duties include conducting internal  
294 audits and their family members in danger of physical and  
295 emotional harm from disgruntled individuals who may react  
296 inappropriately to investigations, audits, and other actions  
297 carried out by such personnel, or to scrutiny of their business  
298 or professional practices. As a result, such personnel and their  
299 family members may become targets for acts of revenge by those  
300 who are investigated or audited. The risk continues after such  
301 personnel leave employment as a disgruntled individual may wait  
302 to commit an act of revenge until the employment of such  
303 personnel ends. The Legislature further finds that the harm that  
304 may result from the release of such personal identifying and  
305 location information outweighs any public benefit that may be  
306 derived from the disclosure of the information.

307 Section 3. This act shall take effect upon becoming a law.



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 Powell offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 241-298 and insert:

7 o. The home addresses, telephone numbers, dates of birth,  
 8 and photographs of current or former personnel employed in an  
 9 agency's office of inspector general or internal audit  
 10 department whose duties include auditing or investigating waste,  
 11 fraud, abuse, theft, exploitation, or other activities that  
 12 could lead to criminal prosecution or administrative discipline;  
 13 the names, home addresses, telephone numbers, dates of birth,  
 14 and places of employment of spouses and children of such  
 15 personnel; and the names and locations of schools and day care  
 16 facilities attended by the children of such personnel are exempt  
 17 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution





Amendment No.

18 if the personnel have made reasonable efforts to protect such  
19 information from being accessible through other means available  
20 to the public. This sub-subparagraph is subject to the Open  
21 Government Sunset Review Act in accordance with s. 119.15 and  
22 shall stand repealed on October 2, 2021, unless reviewed and  
23 saved from repeal through reenactment by the Legislature.

24 3. An agency that is the custodian of the information  
25 specified in subparagraph 2. and that is not the employer of the  
26 officer, employee, justice, judge, or other person specified in  
27 subparagraph 2. shall maintain the exempt status of that  
28 information only if the officer, employee, justice, judge, other  
29 person, or employing agency of the designated employee submits a  
30 written request for maintenance of the exemption to the  
31 custodial agency.

32 4. The exemptions in this paragraph apply to information  
33 held by an agency before, on, or after the effective date of the  
34 exemption.

35 5. Except as otherwise expressly provided in this  
36 paragraph, this paragraph is subject to the Open Government  
37 Sunset Review Act in accordance with s. 119.15, and shall stand  
38 repealed on October 2, 2017, unless reviewed and saved from  
39 repeal through reenactment by the Legislature.

40 Section 2. (1) The Legislature finds that it is a public  
41 necessity that the following identifying and location  
42 information be exempt from s. 119.07(1), Florida Statutes, and  
43 s. 24(a), Art. I of the State Constitution, if the personnel



Amendment No.

44 have made reasonable efforts to protect such information from  
45 being accessible through other means available to the public:

46 (a) The home addresses, telephone numbers, dates of birth,  
47 and photographs of current or former personnel employed in an  
48 agency's office of inspector general or internal audit  
49 department whose duties include auditing or investigating waste,  
50 fraud, abuse, theft, exploitation, or other activities that  
51 could lead to criminal prosecution or administrative discipline;

52 (b) The names, home addresses, telephone numbers, dates of  
53 birth, and places of employment of spouses and children of such  
54 personnel; and

55 (c) The names and locations of schools and day care  
56 facilities attended by the children of such personnel.

57 (2) The Legislature finds that the release of such  
58 identifying and location information might place such personnel  
59 and their family members in danger of physical and emotional  
60 harm from disgruntled individuals who may react inappropriately  
61 to investigations, audits, and other actions carried out by such  
62 personnel, or to scrutiny of their businesses or professional  
63 practices. Internal audits can lead to termination, wage  
64 garnishment, and criminal prosecution. Disturbed members of the  
65 public have threatened such personnel and performed Internet  
66 searches of them. Because of threats made against internal  
67 auditing personnel, agencies have had to institute security  
68 measures such as posting pictures of individuals who have made



Amendment No.

69 threats against the personnel, placing security cameras, and  
70 calling law enforcement. As a result, such personnel and their

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72 -----

73

**T I T L E   A M E N D M E N T**

74

Remove lines 5-7 and insert:

75

location information of current or former personnel employed in

76

an agency's office of inspector general or internal audit

77

department whose duties include auditing or investigating waste,

78

fraud, abuse, theft, exploitation, or other activities that

79

could lead to criminal prosecution or administrative discipline,

80

and



## 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>AM</i>	Williamson <i>haw</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.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0593.GVOPS

DATE: 1/19/2016

## 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.<sup>1</sup> 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.<sup>2</sup> The collection agency may utilize any collection methods provided by law. The statute of limitations for an unpaid financial disclosure fine is 20 years.<sup>3</sup>

###### *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

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<sup>1</sup> Section 112.31455(1), F.S.

<sup>2</sup> Section 112.31455(3), F.S.

<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> The Legislature also applied certain standards of conduct to the Florida Development Finance Corporation.<sup>6</sup>

#### *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.,<sup>7</sup> that term is extended to a period of 10 years after termination of the service.

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<sup>4</sup> Part III, Chapter 112, Florida Statutes.

<sup>5</sup> Section 8, Ch. 2014-183, L.O.F.

<sup>6</sup> Section 9, Ch. 2014-183, L.O.F.

<sup>7</sup> 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.

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(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.<sup>8</sup> 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 jury<sup>9</sup> 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.<sup>10</sup>

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.

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<sup>8</sup> 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.

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

<sup>10</sup> 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.<sup>11</sup>

### *Doctrine of Mens Rea and Scienter*

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

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.<sup>15</sup> 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.<sup>16</sup>

### *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.<sup>17</sup> 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.<sup>18</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> BLACK’S LAW DICTIONARY 1137 (4th Rev. 1968).

<sup>13</sup> *Id.* at 1512.

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

<sup>15</sup> *See* Interim Report, *supra* note 11, at 24.

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

<sup>17</sup> 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.

<sup>18</sup> 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,<sup>19</sup> commercial bribe receiving,<sup>20</sup> and commercial bribery.<sup>21</sup> In *Roque v. State*, the Florida Supreme Court held that s. 838.15, F.S., the commercial bribe receiving law, was unconstitutionally vague.<sup>22</sup> 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.<sup>23</sup>

#### *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 felony<sup>24</sup> 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.<sup>25</sup>

#### *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.

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<sup>19</sup> Section 838.12, F.S.

<sup>20</sup> Section 838.15, F.S.

<sup>21</sup> Section 838.16, F.S.

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

<sup>23</sup> See Interim Report *supra* note 11, at 34.

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

<sup>25</sup> 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.<sup>26</sup>

### 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,<sup>27</sup> statutorily-created direct-support organizations,<sup>28</sup> 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,<sup>29</sup> municipalities,<sup>30</sup> and special districts<sup>31</sup> 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

<sup>26</sup> See *supra* note 19.

<sup>27</sup> 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.

<sup>28</sup> 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.

<sup>29</sup> Section 129.03, F.S.

<sup>30</sup> Section 166.241, F.S.

<sup>31</sup> Section 189.016(4), F.S.

amendment to a budget must be posted to the website within five days of adoption.<sup>32</sup> 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.<sup>33</sup>

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

<sup>33</sup> 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.<sup>34</sup>

### *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

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.<sup>35</sup>

#### *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

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.<sup>36</sup>

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.



### *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),<sup>37</sup> 218.32(1),<sup>38</sup> 218.38,<sup>39</sup> or 218.503(3),<sup>40</sup> 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,<sup>41</sup> 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.

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

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

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

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

<sup>41</sup> 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.<sup>42</sup>

#### *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.

## 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.<sup>43</sup> 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.<sup>44</sup>

### *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.<sup>45</sup>

### *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.

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<sup>43</sup> Section 218.39(1), F.S.

<sup>44</sup> Section 11.40(2), F.S.

<sup>45</sup> 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.<sup>46</sup>

The Auditor General must conduct an operational audit of the Florida Virtual School, including Florida Virtual School Global.<sup>47</sup> 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,

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<sup>46</sup> Section 1002.37(6), F.S.

<sup>47</sup> 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.<sup>48</sup>

##### *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

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<sup>48</sup> Section 1010.30(2), F.S.  
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DATE: 1/19/2016

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.”<sup>49</sup>

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.

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 à  
 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.



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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 Metz offered the following:

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
7 Section 1. This act may be cited as the "Florida Anti-  
8 Corruption Act of 2016."

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

11 11.40 Legislative Auditing Committee.—

12 (2) Following notification by the Auditor General, the  
13 Department of Financial Services, ~~or~~ the Division of Bond  
14 Finance of the State Board of Administration, the Governor or  
15 his or her designee, or the Commissioner of Education or his or  
16 her designee of the failure of a local governmental entity,  
17 district school board, charter school, or charter technical



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18 career center to comply with the applicable provisions within s.  
19 11.45(5)-(7), s. 218.32(1), s. 218.38, or s. 218.503(3), the  
20 Legislative Auditing Committee may schedule a hearing to  
21 determine if the entity should be subject to further state  
22 action. If the committee determines that the entity should be  
23 subject to further state action, the committee shall:

24 (a) In the case of a local governmental entity or district  
25 school board, direct the Department of Revenue and the  
26 Department of Financial Services to withhold any funds not  
27 pledged for bond debt service satisfaction which are payable to  
28 such entity until the entity complies with the law. The  
29 committee shall specify the date that such action must ~~shall~~  
30 begin, and the directive must be received by the Department of  
31 Revenue and the Department of Financial Services 30 days before  
32 the date of the distribution mandated by law. The Department of  
33 Revenue and the Department of Financial Services may implement  
34 ~~the provisions of~~ this paragraph.

35 (b) In the case of a special district created by:

36 1. A special act, notify the President of the Senate, the  
37 Speaker of the House of Representatives, the standing committees  
38 of the Senate and the House of Representatives charged with  
39 special district oversight as determined by the presiding  
40 officers of each respective chamber, the legislators who  
41 represent a portion of the geographical jurisdiction of the  
42 special district pursuant to s. 189.034(2), and the Department  
43 of Economic Opportunity that the special district has failed to



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44 comply with the law. Upon receipt of notification, the  
45 Department of Economic Opportunity shall proceed pursuant to s.  
46 189.062 or s. 189.067. If the special district remains in  
47 noncompliance after the process set forth in s. 189.034(3), or  
48 if a public hearing is not held, the Legislative Auditing  
49 Committee may request the department to proceed pursuant to s.  
50 189.067(3).

51 2. A local ordinance, notify the chair or equivalent of  
52 the local general-purpose government pursuant to s. 189.035(2)  
53 and the Department of Economic Opportunity that the special  
54 district has failed to comply with the law. Upon receipt of  
55 notification, the department shall proceed pursuant to s.  
56 189.062 or s. 189.067. If the special district remains in  
57 noncompliance after the process set forth in s. 189.034(3), or  
58 if a public hearing is not held, the Legislative Auditing  
59 Committee may request the department to proceed pursuant to s.  
60 189.067(3).

61 3. Any manner other than a special act or local ordinance,  
62 notify the Department of Economic Opportunity that the special  
63 district has failed to comply with the law. Upon receipt of  
64 notification, the department shall proceed pursuant to s.  
65 189.062 or s. 189.067(3).

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

69 Section 3. Subsection (1), paragraph (j) of subsection





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70 (2), paragraph (u) of subsection (3), and paragraph (i) of  
71 subsection (7) of section 11.45, Florida Statutes, are amended,  
72 and paragraph (x) is added to subsection (3) of that section, to  
73 read:

74 11.45 Definitions; duties; authorities; reports; rules.—

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

76 (a) "Abuse" means behavior that is deficient or improper  
77 when compared with behavior that a prudent person would consider  
78 a reasonable and necessary operational practice given the facts  
79 and circumstances. The term includes the misuse of authority or  
80 position for personal gain.

81 (b) (a) "Audit" means a financial audit, operational audit,  
82 or performance audit.

83 (c) (b) "County agency" means a board of county  
84 commissioners or other legislative and governing body of a  
85 county, however styled, including that of a consolidated or  
86 metropolitan government, a clerk of the circuit court, a  
87 separate or ex officio clerk of the county court, a sheriff, a  
88 property appraiser, a tax collector, a supervisor of elections,  
89 or any other officer in whom any portion of the fiscal duties of  
90 a body or officer expressly stated in this paragraph are the  
91 above are under law separately placed by law.

92 (d) (e) "Financial audit" means an examination of financial  
93 statements in order to express an opinion on the fairness with  
94 which they are presented in conformity with generally accepted  
95 accounting principles and an examination to determine whether



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96 operations are properly conducted in accordance with legal and  
97 regulatory requirements. Financial audits must be conducted in  
98 accordance with auditing standards generally accepted in the  
99 United States and government auditing standards as adopted by  
100 the Board of Accountancy. When applicable, the scope of  
101 financial audits must ~~shall~~ encompass the additional activities  
102 necessary to establish compliance with the Single Audit Act  
103 Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other  
104 applicable federal law.

105 (e) "Fraud" means obtaining something of value through  
106 willful misrepresentation, including, but not limited to, the  
107 intentional misstatements or omissions of amounts or disclosures  
108 in financial statements to deceive users of financial  
109 statements, theft of an entity's assets, bribery, or the use of  
110 one's position for personal enrichment through the deliberate  
111 misuse or misapplication of an organization's resources.

112 (f)-(d) "Governmental entity" means a state agency, a  
113 county agency, or any other entity, however styled, that  
114 independently exercises any type of state or local governmental  
115 function.

116 (g)-(e) "Local governmental entity" means a county agency,  
117 municipality, tourist development council, county tourism  
118 promotion agency, or special district as defined in s. 189.012.  
119 The term, ~~but~~ does not include any housing authority established  
120 under chapter 421.

121 (h)-(f) "Management letter" means a statement of the



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122 auditor's comments and recommendations.

123 ~~(i)(g)~~ "Operational audit" means an audit whose purpose is  
124 to evaluate management's performance in establishing and  
125 maintaining internal controls, including controls designed to  
126 prevent and detect fraud, waste, and abuse, and in administering  
127 assigned responsibilities in accordance with applicable laws,  
128 administrative rules, contracts, grant agreements, and other  
129 guidelines. Operational audits must be conducted in accordance  
130 with government auditing standards. Such audits examine internal  
131 controls that are designed and placed in operation to promote  
132 and encourage the achievement of management's control objectives  
133 in the categories of compliance, economic and efficient  
134 operations, reliability of financial records and reports, and  
135 safeguarding of assets, and identify weaknesses in those  
136 internal controls.

137 ~~(j)(h)~~ "Performance audit" means an examination of a  
138 program, activity, or function of a governmental entity,  
139 conducted in accordance with applicable government auditing  
140 standards or auditing and evaluation standards of other  
141 appropriate authoritative bodies. The term includes an  
142 examination of issues related to:

- 143 1. Economy, efficiency, or effectiveness of the program.
- 144 2. Structure or design of the program to accomplish its  
145 goals and objectives.
- 146 3. Adequacy of the program to meet the needs identified by  
147 the Legislature or governing body.



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148 4. Alternative methods of providing program services or  
149 products.

150 5. Goals, objectives, and performance measures used by the  
151 agency to monitor and report program accomplishments.

152 6. The accuracy or adequacy of public documents, reports,  
153 or requests prepared under the program by state agencies.

154 7. Compliance of the program with appropriate policies,  
155 rules, or laws.

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

158 (k)~~(i)~~ "Political subdivision" means a separate agency or  
159 unit of local government created or established by law and  
160 includes; but is not limited to, the following and the officers  
161 thereof: authority, board, branch, bureau, city, commission,  
162 consolidated government, county, department, district,  
163 institution, metropolitan government, municipality, office,  
164 officer, public corporation, town, or village.

165 (l)~~(j)~~ "State agency" means a separate agency or unit of  
166 state government created or established by law and includes, but  
167 is not limited to, the following and the officers thereof:  
168 authority, board, branch, bureau, commission, department,  
169 division, institution, office, officer, or public corporation,  
170 as the case may be, except any such agency or unit within the  
171 legislative branch of state government other than the Florida  
172 Public Service Commission.

173 (m) "Waste" means the act of using or expending resources



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174 unreasonably, carelessly, extravagantly, or for no useful  
175 purpose.

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

177 (j) Conduct audits of local governmental entities when  
178 determined to be necessary by the Auditor General, when directed  
179 by the Legislative Auditing Committee, or when otherwise  
180 required by law. No later than 18 months after the release of  
181 the audit report, the Auditor General shall perform such  
182 appropriate followup procedures as he or she deems necessary to  
183 determine the audited entity's progress in addressing the  
184 findings and recommendations contained within the Auditor  
185 General's previous report. The Auditor General shall notify each  
186 member of the audited entity's governing body and the  
187 Legislative Auditing Committee of the results of his or her  
188 determination. For purposes of this paragraph, local  
189 governmental entities do not include water management districts.

190  
191 The Auditor General shall perform his or her duties  
192 independently but under the general policies established by the  
193 Legislative Auditing Committee. This subsection does not limit  
194 the Auditor General's discretionary authority to conduct other  
195 audits or engagements of governmental entities as authorized in  
196 subsection (3).

197 (3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The  
198 Auditor General may, pursuant to his or her own authority, or at  
199 the direction of the Legislative Auditing Committee, conduct



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200 audits or other engagements as determined appropriate by the  
201 Auditor General of:

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

203 (x) Tourist development councils and county tourism  
204 promotion agencies.

205 (7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

206 (i) The Auditor General shall annually transmit by July  
207 15, to the President of the Senate, the Speaker of the House of  
208 Representatives, and the Department of Financial Services, a  
209 list of all school districts, charter schools, charter technical  
210 career centers, Florida College System institutions, state  
211 universities, and local governmental entities ~~water management~~  
212 ~~districts~~ that have failed to comply with the transparency  
213 requirements as identified in the audit reports reviewed  
214 pursuant to paragraph (b) and those conducted pursuant to  
215 subsection (2).

216 Section 4. Section 20.602, Florida Statutes, is created to  
217 read:

218 20.602 Standards of conduct; officers and board members of  
219 Department of Economic Opportunity corporate entities.—

220 (1) The following officers and board members are subject  
221 to ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and  
222 112.3143(2):

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

224 1. Any corporation created under chapter 288;

225 2. Space Florida;



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

228 4. The Florida Housing Finance Corporation; or

229 5. Any other corporation created by the Department of  
230 Economic Opportunity in accordance with its powers and duties  
231 under s. 20.60.

232 (b) Officers and members of the board of directors of a  
233 corporate parent or subsidiary corporation of a corporation  
234 described in paragraph (a).

235 (c) Officers and members of the board of directors of a  
236 corporation created to carry out the missions of a corporation  
237 described in paragraph (a).

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

241 (2) For purposes of applying ss. 112.313(1)-(8), (10),  
242 (12), and (15); 112.3135; and 112.3143(2) to activities of the  
243 officers and members of the board of directors specified in  
244 subsection (1), those persons shall be considered public  
245 officers or employees and the corporation shall be considered  
246 their agency.

247 (3) For a period of 2 years after retirement from or  
248 termination of service, or for a period of 10 years if removed  
249 or terminated for cause or for misconduct, as defined in s.  
250 443.036(29), an officer or a member of the board of directors  
251 specified in subsection (1) may not represent another person or



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252 entity for compensation before:

253 (a) His or her corporation;

254 (b) A division, a subsidiary, or the board of directors of  
255 a corporation created to carry out the mission of his or her  
256 corporation; or

257 (c) A corporation with which the corporation is required  
258 by law to contract to carry out its missions.

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

263 Section 5. Paragraph (d) of subsection (2) of section  
264 28.35, Florida Statutes, is amended to read:

265 28.35 Florida Clerks of Court Operations Corporation.—

266 (2) The duties of the corporation shall include the  
267 following:

268 (d) Developing and certifying a uniform system of workload  
269 measures and applicable workload standards for court-related  
270 functions as developed by the corporation and clerk workload  
271 performance in meeting the workload performance standards. These  
272 workload measures and workload performance standards shall be  
273 designed to facilitate an objective determination of the  
274 performance of each clerk in accordance with minimum standards  
275 for fiscal management, operational efficiency, and effective  
276 collection of fines, fees, service charges, and court costs. The  
277 corporation shall develop the workload measures and workload





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278 performance standards in consultation with the Legislature. When  
279 the corporation finds a clerk has not met the workload  
280 performance standards, the corporation shall identify the nature  
281 of each deficiency and any corrective action recommended and  
282 taken by the affected clerk of the court. For quarterly periods  
283 ending on the last day of March, June, September, and December  
284 of each year, the corporation shall notify the Legislature of  
285 any clerk not meeting workload performance standards and provide  
286 a copy of any corrective action plans. Such notifications shall  
287 be submitted no later than 45 days after the end of the  
288 preceding quarterly period. As used in this subsection, the  
289 term:

290 1. "Workload measures" means the measurement of the  
291 activities and frequency of the work required for the clerk to  
292 adequately perform the court-related duties of the office as  
293 defined by the membership of the Florida Clerks of Court  
294 Operations Corporation.

295 2. "Workload performance standards" means the standards  
296 developed to measure the timeliness and effectiveness of the  
297 activities that are accomplished by the clerk in the performance  
298 of the court-related duties of the office as defined by the  
299 membership of the Florida Clerks of Court Operations  
300 Corporation.

301 Section 6. Present subsections (6) and (7) of section  
302 43.16, Florida Statutes, are redesignated as subsections (7) and



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303 (8), respectively, and a new subsection (6) is added to that  
304 section, to read:

305 43.16 Justice Administrative Commission; membership,  
306 powers and duties.—

307 (6) The commission, each state attorney, each public  
308 defender, the criminal conflict and civil regional counsel, the  
309 capital collateral regional counsel, and the Guardian Ad Litem  
310 Program shall establish and maintain internal controls designed  
311 to:

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

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

315 (c) Support economical and efficient operations.

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

317 (e) Safeguard assets.

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

320 112.313 Standards of conduct for public officers,  
321 employees of agencies, and local government attorneys.—

322 (7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—

323 (a) A ~~No~~ public officer or employee of an agency may not  
324 ~~shall~~ have or hold any employment or contractual relationship  
325 with any business entity or any agency that ~~which~~ is subject to  
326 the regulation of, or is doing business with, an agency of which  
327 he or she is an officer or employee, excluding those  
328 organizations and their officers who, when acting in their



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329 official capacity, enter into or negotiate a collective  
330 bargaining contract with the state or any municipality, county,  
331 or other political subdivision of the state; and ~~nor shall~~ an  
332 officer or employee of an agency may not have or hold any  
333 employment or contractual relationship that will create a  
334 continuing or frequently recurring conflict between his or her  
335 private interests and the performance of his or her public  
336 duties or that would impede the full and faithful discharge of  
337 his or her public duties. For purposes of this subsection, if a  
338 public officer or employee of an agency holds a controlling  
339 interest in a business entity or is an officer, a director, or a  
340 member who manages such an entity, contractual relationships  
341 held by the business entity are deemed to be held by the public  
342 officer or employee.

343 1. When the agency referred to is a ~~that certain kind of~~  
344 special tax district created by general or special law and is  
345 limited specifically to constructing, maintaining, managing, and  
346 financing improvements in the land area over which the agency  
347 has jurisdiction, or when the agency has been organized pursuant  
348 to chapter 298, ~~then~~ employment with, or entering into a  
349 contractual relationship with, such a business entity by a  
350 public officer or employee of such an agency is ~~shall~~ not be  
351 prohibited by this subsection or ~~be~~ deemed a conflict per se.  
352 However, conduct by such officer or employee that is prohibited  
353 by, or otherwise frustrates the intent of, this section must



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354 shall be deemed a conflict of interest in violation of the  
355 standards of conduct set forth by this section.

356 2. When the agency referred to is a legislative body and  
357 the regulatory power over the business entity resides in another  
358 agency, or when the regulatory power that ~~which~~ the legislative  
359 body exercises over the business entity or agency is strictly  
360 through the enactment of laws or ordinances, ~~then~~ employment or  
361 a contractual relationship with such a business entity by a  
362 public officer or employee of a legislative body is ~~shall~~ not ~~be~~  
363 prohibited by this subsection or ~~be~~ deemed a conflict.

364 (b) This subsection does ~~shall~~ not prohibit a public  
365 officer or employee from practicing in a particular profession  
366 or occupation when such practice by persons holding such public  
367 office or employment is required or permitted by law or  
368 ordinance.

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

371 112.3144 Full and public disclosure of financial  
372 interests.-

373 (1) In addition to officers specified in s. 8, Art. II of  
374 the State Constitution or other state law, all elected municipal  
375 officers who receive compensation are required to file a full  
376 and public disclosure of their financial interests. An officer  
377 who is required by ~~s. 8, Art. II of the State Constitution~~ to  
378 file a full and public disclosure of ~~his or her~~ financial  
379 interests for any calendar or fiscal year shall file that



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380 disclosure with the ~~Florida~~ Commission on Ethics. ~~Additionally,~~  
381 ~~beginning January 1, 2015,~~ An officer who is required to  
382 complete annual ethics training pursuant to s. 112.3142 must  
383 certify on his or her full and public disclosure of financial  
384 interests that he or she has completed the required training.

385 (2) A person who is required, ~~pursuant to s. 8, Art. II of~~  
386 ~~the State Constitution,~~ to file a full and public disclosure of  
387 financial interests and who has filed a full and public  
388 disclosure of financial interests for any calendar or fiscal  
389 year ~~is shall~~ not be required to file a statement of financial  
390 interests pursuant to s. 112.3145(2) and (3) for the same year  
391 or for any part thereof notwithstanding any requirement of this  
392 part. If an incumbent in an elective office has filed the full  
393 and public disclosure of financial interests to qualify for  
394 election to the same office or if a candidate for office holds  
395 another office subject to the annual filing requirement, the  
396 qualifying officer shall forward an electronic copy of the full  
397 and public disclosure of financial interests to the commission  
398 no later than July 1. The electronic copy of the full and public  
399 disclosure of financial interests satisfies the annual  
400 disclosure requirement of this section. A candidate who does not  
401 qualify until after the annual full and public disclosure of  
402 financial interests has been filed pursuant to this section  
403 shall file a copy of his or her disclosure with the officer  
404 before whom he or she qualifies.



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

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

410 112.31455 Collection methods for unpaid automatic fines  
411 for failure to timely file disclosure of financial interests.—

412 (1) Before referring any unpaid fine accrued pursuant to  
413 s. 112.3144(5) or s. 112.3145(7) to the Department of Financial  
414 Services, the commission shall attempt to determine whether the  
415 individual owing such a fine is a current public officer or  
416 current public employee. If so, the commission may notify the  
417 Chief Financial Officer or the governing body of the appropriate  
418 county, municipality, school district, or special district of  
419 the total amount of any fine owed to the commission by such  
420 individual.

421 (a) After receipt and verification of the notice from the  
422 commission, the Chief Financial Officer or the governing body of  
423 the county, municipality, school district, or special district  
424 shall begin withholding the lesser of 10 percent or the maximum  
425 amount allowed under federal law from any salary-related  
426 payment. The withheld payments shall be remitted to the  
427 commission until the fine is satisfied.

428 (b) The Chief Financial Officer or the governing body of  
429 the county, municipality, school district, or special district  
430 may retain an amount of each withheld payment, as provided in s.



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431 77.0305, to cover the administrative costs incurred under this  
432 section.

433 Section 11. Paragraph (c) of subsection (3) of section  
434 129.03, Florida Statutes, is amended to read:

435 129.03 Preparation and adoption of budget.—

436 (3) The county budget officer, after tentatively  
437 ascertaining the proposed fiscal policies of the board for the  
438 next fiscal year, shall prepare and present to the board a  
439 tentative budget for the next fiscal year for each of the funds  
440 provided in this chapter, including all estimated receipts,  
441 taxes to be levied, and balances expected to be brought forward  
442 and all estimated expenditures, reserves, and balances to be  
443 carried over at the end of the year.

444 (c) The board shall hold public hearings to adopt  
445 tentative and final budgets pursuant to s. 200.065. The hearings  
446 shall be primarily for the purpose of hearing requests and  
447 complaints from the public regarding the budgets and the  
448 proposed tax levies and for explaining the budget and any  
449 proposed or adopted amendments. The tentative budget must be  
450 posted on the county's official website at least 2 days before  
451 the public hearing to consider such budget and must remain on  
452 the website for at least 45 days. The final budget must be  
453 posted on the website within 30 days after adoption and must  
454 remain on the website for at least 2 years. The tentative  
455 budgets, adopted tentative budgets, and final budgets shall be  
456 filed in the office of the county auditor as a public record.

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

460 Section 12. Paragraph (f) of subsection (2) of section  
461 129.06, Florida Statutes, is amended to read:

462 129.06 Execution and amendment of budget.—

463 (2) The board at any time within a fiscal year may amend a  
464 budget for that year, and may within the first 60 days of a  
465 fiscal year amend the budget for the prior fiscal year, as  
466 follows:

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

472 1. The public hearing must be advertised at least 2 days,  
473 but not more than 5 days, before the date of the hearing. The  
474 advertisement must appear in a newspaper of paid general  
475 circulation and must identify the name of the taxing authority,  
476 the date, place, and time of the hearing, and the purpose of the  
477 hearing. The advertisement must also identify each budgetary  
478 fund to be amended, the source of the funds, the use of the  
479 funds, and the total amount of each fund's appropriations.

480 2. If the board amends the budget pursuant to this  
481 paragraph, the adopted amendment must be posted on the county's





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482 official website within 5 days after adoption and must remain on  
483 the website for at least 2 years.

484 Section 13. Subsections (3) and (5) of section 166.241,  
485 Florida Statutes, are amended to read:

486 166.241 Fiscal years, budgets, and budget amendments.—

487 (3) The tentative budget must be posted on the  
488 municipality's official website at least 2 days before the  
489 budget hearing, held pursuant to s. 200.065 or other law, to  
490 consider such budget, and must remain on the website for at  
491 least 45 days. The final adopted budget must be posted on the  
492 municipality's official website within 30 days after adoption  
493 and must remain on the website for at least 2 years. If the  
494 municipality does not operate an official website, the  
495 municipality must, within a reasonable period of time as  
496 established by the county or counties in which the municipality  
497 is located, transmit the tentative budget and final budget to  
498 the manager or administrator of such county or counties who  
499 shall post the budgets on the county's website.

500 (5) If the governing body of a municipality amends the  
501 budget pursuant to paragraph (4)(c), the adopted amendment must  
502 be posted on the official website of the municipality within 5  
503 days after adoption and must remain on the website for at least  
504 2 years. If the municipality does not operate an official  
505 website, the municipality must, within a reasonable period of  
506 time as established by the county or counties in which the  
507 municipality is located, transmit the adopted amendment to the



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508 manager or administrator of such county or counties who shall  
509 post the adopted amendment on the county's website.

510 Section 14. Subsections (4) and (7) of section 189.016,  
511 Florida Statutes, are amended to read:

512 189.016 Reports; budgets; audits.-

513 (4) The tentative budget must be posted on the special  
514 district's official website at least 2 days before the budget  
515 hearing, held pursuant to s. 200.065 or other law, to consider  
516 such budget, and must remain on the website for at least 45  
517 days. The final adopted budget must be posted on the special  
518 district's official website within 30 days after adoption and  
519 must remain on the website for at least 2 years. If the special  
520 district does not operate an official website, the special  
521 district must, within a reasonable period of time as established  
522 by the local general-purpose government or governments in which  
523 the special district is located or the local governing authority  
524 to which the district is dependent, transmit the tentative  
525 budget or final budget to the manager or administrator of the  
526 local general-purpose government or the local governing  
527 authority. The manager or administrator shall post the tentative  
528 budget or final budget on the website of the local general-  
529 purpose government or governing authority. This subsection and  
530 subsection (3) do not apply to water management districts as  
531 defined in s. 373.019.

532 (7) If the governing body of a special district amends the  
533 budget pursuant to paragraph (6)(c), the adopted amendment must



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534 be posted on the official website of the special district within  
535 5 days after adoption and must remain on the website for at  
536 least 2 years. If the special district does not operate an  
537 official website, the special district must, within a reasonable  
538 period of time as established by the local general-purpose  
539 government or governments in which the special district is  
540 located or the local governing authority to which the district  
541 is dependent, transmit the adopted amendment to the manager or  
542 administrator of the local general-purpose government or  
543 governing authority. The manager or administrator shall post the  
544 adopted amendment on the website of the local general-purpose  
545 government or governing authority.

546 Section 15. Present subsections (1) through (5) of section  
547 215.425, Florida Statutes, are renumbered as subsections (2)  
548 through (6), respectively, present subsection (2) and paragraph  
549 (a) of present subsection (4) of that section are amended, and a  
550 new subsection (1) and subsections (7) through (13) are added to  
551 that section, to read:

552 215.425 Extra compensation claims prohibited; bonuses;  
553 severance pay.-

554 (1) As used in this section, the term "public funds" means  
555 any taxes, tuition, grants, fines, fees, or other charges or any  
556 other type of revenue collected by the state or any county,  
557 municipality, special district, school district, Florida College  
558 System institution, state university, or other separate unit of  
559 government created pursuant to law, including any office,



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560 department, agency, division, subdivision, political  
561 subdivision, board, bureau, or commission of such entities.

562 (3) ~~(2)~~ Notwithstanding subsection (2), if the payment and  
563 receipt does not otherwise violate part III of chapter 112, the  
564 following funds may be used to provide extra compensation or  
565 severance pay in excess of the amount specified in subparagraph  
566 (5) (a) 1.:

567 (a) Revenues received by state universities through or  
568 from faculty practice plans; health services support  
569 organizations; hospitals with which state universities are  
570 affiliated; direct-support organizations; or federal, auxiliary,  
571 or private sources, except for tuition.

572 (b) Revenues received by Florida College System  
573 institutions through or from faculty practice plans; health  
574 services support organizations; direct-support organizations; or  
575 federal, auxiliary, or private sources, except for tuition.

576 (c) Revenues that are received by a hospital licensed  
577 under chapter 395 which has entered into a Medicaid provider  
578 contract and that:

579 1. Are not derived from the levy of an ad valorem tax;

580 2. Are not derived from patient services paid through the  
581 Medicaid or Medicare program;

582 3. Are derived from patient services pursuant to contracts  
583 with private insurers or private managed care entities; or

584 4. Are not appropriated by the Legislature or by any  
585 county, municipality, special district, school district, Florida



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586 College System institution, state university, or other separate  
587 unit of government created pursuant to law, including any  
588 office, department, agency, division, subdivision, political  
589 subdivision, board, bureau, commission, authority, or  
590 institution of such entities, except for revenues otherwise  
591 authorized to be used pursuant to subparagraphs 2. and 3. This  
592 section does not apply to:

593 ~~(a) a bonus or severance pay that is paid wholly from~~  
594 ~~nontax revenues and nonstate appropriated funds, the payment and~~  
595 ~~receipt of which does not otherwise violate part III of chapter~~  
596 ~~112, and which is paid to an officer, agent, employee, or~~  
597 ~~contractor of a public hospital that is operated by a county or~~  
598 ~~a special district; or~~

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

601 (e) Revenues or fees received by a seaport or airport from  
602 sources other than through the levy of a tax, or funds  
603 appropriated by any county or municipality or the Legislature.

604 ~~(5)(a)(4)(a)~~ On or after July 1, 2011, A unit of  
605 government, on or after July 1, 2011, or a state university, on  
606 or after July 1, 2012, that is a party to enters into a contract  
607 or employment agreement, or renewal or renegotiation of an  
608 existing contract or employment agreement, that contains a  
609 provision for severance pay with an officer, agent, employee, or  
610 contractor must include the following provisions in the  
611 contract:



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612 1. A requirement that severance pay paid from public funds  
613 provided may not exceed an amount greater than 20 weeks of  
614 compensation.

615 2. A prohibition of provision of severance pay paid from  
616 public funds when the officer, agent, employee, or contractor  
617 has been fired for misconduct, as defined in s. 443.036(29), by  
618 the unit of government.

619 (7) Upon discovery or notification that a unit of  
620 government has provided prohibited compensation to any officer,  
621 agent, employee, or contractor in violation of this section,  
622 such unit of government shall investigate and take all necessary  
623 action to recover the prohibited compensation.

624 (a) If the violation was unintentional, the unit of  
625 government shall recover the prohibited compensation from the  
626 individual receiving the prohibited compensation through normal  
627 recovery methods for overpayments.

628 (b) If the violation was willful, the unit of government  
629 shall recover the prohibited compensation from either the  
630 individual receiving the prohibited compensation or the  
631 individual or individuals responsible for approving the  
632 prohibited compensation. Each individual determined to have  
633 willfully violated this section is jointly and severally liable  
634 for repayment of the prohibited compensation.

635 (8) A person who willfully violates this section commits a  
636 misdeemeanor of the first degree, punishable as provided in s.  
637 775.082 or s. 775.083.



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638           (9) An officer who exercises the powers and duties of a  
639 state or county officer and willfully violates this section is  
640 subject to the Governor's power under s. 7(a), Art. IV of the  
641 State Constitution. An officer who exercises powers and duties  
642 other than those of a state or county officer and willfully  
643 violates this section is subject to the suspension and removal  
644 procedures under s. 112.51.

645           (10) (a) A person who reports a violation of this section  
646 is eligible for a reward of at least \$500, or the lesser of 10  
647 percent of the funds recovered or \$10,000 per incident of a  
648 prohibited compensation payment recovered by the unit of  
649 government, depending upon the extent to which the person  
650 substantially contributed to the discovery, notification, and  
651 recovery of such prohibited payment.

652           (b) In the event that the recovery of the prohibited  
653 compensation is based primarily on disclosures of specific  
654 information, other than information provided by such person,  
655 relating to allegations or transactions in a criminal, civil, or  
656 administrative hearing; in a legislative, administrative,  
657 inspector general, or other government report; in an auditor  
658 general report, hearing, audit, or investigation; or from the  
659 news media, such person is not eligible for a reward, or for an  
660 award of a portion of the proceeds or payment of attorney fees  
661 and costs pursuant to s. 68.085.

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



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664 approval, or receipt of the prohibited compensation or is  
665 convicted of criminal conduct arising from his or her role in  
666 the authorization, approval, or receipt of the prohibited  
667 compensation, such person is not eligible for a reward, or for  
668 an award of a portion of the proceeds or payment of attorney  
669 fees and costs pursuant to s. 68.085.

670 (11) An employee who is discharged, demoted, suspended,  
671 threatened, harassed, or in any manner discriminated against in  
672 the terms and conditions of employment by his or her employer  
673 because of lawful acts done by the employee on behalf of the  
674 employee or others in furtherance of an action under this  
675 section, including investigation for initiation of, testimony  
676 for, or assistance in an action filed or to be filed under this  
677 section, has a cause of action under s. 112.3187.

678 (12) If the unit of government fails to recover prohibited  
679 compensation for a willful violation of this section upon  
680 discovery and notification of such prohibited payment within 90  
681 days, a cause of action may be brought to:

682 (a) Recover state funds in accordance with ss. 68.082 and  
683 68.083.

684 (b) Recover other funds by the Department of Legal Affairs  
685 using the procedures set forth in ss. 68.082 and 68.083, except  
686 that venue shall lie in the circuit court of the county in which  
687 the unit of government is located.

688 (c) Recover other funds by a person using the procedures  
689 set forth in ss. 68.082 and 68.083, except that venue shall lie





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690 in the circuit court of the county in which the unit of  
691 government is located.

692 (13) Subsections (7)-(12) apply prospectively to contracts  
693 or employment agreements, or the renewal or renegotiation of an  
694 existing contract or employment agreement, effective on or after  
695 October 1, 2016.

696 Section 16. Section 215.86, Florida Statutes, is amended  
697 to read:

698 215.86 Management systems and controls.—Each state agency  
699 and the judicial branch as defined in s. 216.011 shall establish  
700 and maintain management systems and internal controls designed  
701 to:

702 (1) Prevent and detect fraud, waste, and abuse. ~~that~~

703 (2) Promote and encourage compliance with applicable laws,  
704 rules, contracts, grant agreements, and best practices.†

705 (3) Support economical and ~~economie~~, efficient, and  
706 effective operations.†

707 (4) Ensure reliability of financial records and reports.†

708 (5) Safeguard and ~~safeguarding of~~ assets. Accounting  
709 systems and procedures shall be designed to fulfill the  
710 requirements of generally accepted accounting principles.

711 Section 17. Paragraph (a) of subsection (2) of section  
712 215.97, Florida Statutes, is amended to read:

713 215.97 Florida Single Audit Act.—

714 (2) Definitions; as used in this section, the term:



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715 (a) "Audit threshold" means the threshold amount used to  
716 determine when a state single audit or project-specific audit of  
717 a nonstate entity shall be conducted in accordance with this  
718 section. Each nonstate entity that expends a total amount of  
719 state financial assistance equal to or in excess of \$750,000  
720 ~~\$500,000~~ in any fiscal year of such nonstate entity shall be  
721 required to have a state single audit, or a project-specific  
722 audit, for such fiscal year in accordance with the requirements  
723 of this section. ~~Every 2 years the Auditor General, After~~  
724 consulting with the Executive Office of the Governor, the  
725 Department of Financial Services, and all state awarding  
726 agencies, the Auditor General shall periodically review the  
727 threshold amount for requiring audits under this section and may  
728 recommend any appropriate statutory change to revise the  
729 threshold amount in the annual report submitted pursuant to s.  
730 11.45(7)(h) to the Legislature may adjust such threshold amount  
731 ~~consistent with the purposes of this section.~~

732 Section 18. Subsection (11) of section 215.985, Florida  
733 Statutes, is amended to read:

734 215.985 Transparency in government spending.-

735 (11) Each water management district shall provide a  
736 monthly financial statement in the form and manner prescribed by  
737 the Department of Financial Services to the district's its  
738 governing board and make such monthly financial statement  
739 available for public access on its website.



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740 Section 19. Paragraph (d) of subsection (1) and subsection  
741 (2) of section 218.32, Florida Statutes, are amended to read:

742 218.32 Annual financial reports; local governmental  
743 entities.—

744 (1)

745 (d) Each local governmental entity that is required to  
746 provide for an audit under s. 218.39(1) must submit a copy of  
747 the audit report and annual financial report to the department  
748 within 45 days after the completion of the audit report but no  
749 later than 9 months after the end of the fiscal year. In  
750 conducting an audit of a local governmental entity pursuant to  
751 s. 218.39, an independent certified public accountant shall  
752 determine whether the entity's annual financial report is in  
753 agreement with the audited financial statements. The  
754 accountant's audit report must be supported by the same level of  
755 detail as required for the annual financial report. If the  
756 accountant's audit report is not in agreement with the annual  
757 financial report, the accountant shall specify and explain the  
758 significant differences that exist between the annual financial  
759 report and the audit report.

760 (2) The department shall annually by December 1 file a  
761 verified report with the Governor, the Legislature, the Auditor  
762 General, and the Special District Accountability Program of the  
763 Department of Economic Opportunity showing the revenues, both  
764 locally derived and derived from intergovernmental transfers,  
765 and the expenditures of each local governmental entity, regional



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766 planning council, local government finance commission, and  
767 municipal power corporation that is required to submit an annual  
768 financial report. In preparing the verified report, the  
769 department may request additional information from the local  
770 governmental entity. The information requested must be provided  
771 to the department within 45 days after the request. If the local  
772 governmental entity does not comply with the request, the  
773 department shall notify the Legislative Auditing Committee,  
774 which may take action pursuant to s. 11.40(2). The report must  
775 include, but is not limited to:

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

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

784 Section 20. Present subsection (3) of section 218.33,  
785 Florida Statutes, is redesignated as subsection (4), and a new  
786 subsection (3) is added to that section, to read:

787 218.33 Local governmental entities; establishment of  
788 uniform fiscal years and accounting practices and procedures.—

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

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



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

794 (c) Support economical and efficient operations.

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

796 (e) Safeguard assets.

797 Section 21. Present subsections (8) through (12) of  
798 section 218.39, Florida Statutes, are redesignated as  
799 subsections (9) through (13), respectively, and a new subsection  
800 (8) is added to that section, to read:

801 218.39 Annual financial audit reports.—

802 (8) If the audit report includes a recommendation that was  
803 included in the preceding financial audit report but remains  
804 unaddressed, the governing body of the audited entity, within 60  
805 days after the delivery of the audit report to the governing  
806 body, shall indicate during a regularly scheduled public meeting  
807 whether it intends to take corrective action, the intended  
808 corrective action, and the timeframe for the corrective action.  
809 If the governing body indicates that it does not intend to take  
810 corrective action, it shall explain its decision at the public  
811 meeting.

812 Section 22. Subsection (2) of section 218.391, Florida  
813 Statutes, is amended, and subsection (9) is added to that  
814 section, to read:

815 218.391 Auditor selection procedures.—

816 (2) The governing body of a ~~charter~~ county, municipality,  
817 special district, district school board, charter school, or



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818 charter technical career center shall establish an audit  
819 committee.

820 (a) The audit committee for a county ~~Each noncharter~~  
821 ~~county shall establish an audit committee that~~, at a minimum,  
822 shall consist of each of the county officers elected pursuant to  
823 the county charter or s. 1(d), Art. VIII of the State  
824 Constitution, or their respective designees ~~a designee~~, and one  
825 member of the board of county commissioners or its designee.

826 (b) The audit committee for a municipality, special  
827 district, district school board, charter school, or charter  
828 technical career center shall consist of at least three members.  
829 One member of the audit committee must be a member of the  
830 governing body of an entity specified in this paragraph, who  
831 shall also serve as the chair of the committee.

832 (c) An employee, chief executive officer, or chief  
833 financial officer of the county, municipality, special district,  
834 district school board, charter school, or charter technical  
835 career center may not serve as a member of an audit committee  
836 established under this subsection.

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



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843           (9) An audit report submitted pursuant to s. 218.39 must  
844 include an affidavit executed by the chair of the audit  
845 committee affirming that the committee complied with the  
846 requirements of subsections (3)-(6) in selecting an auditor. If  
847 the Auditor General determines that an entity failed to comply  
848 with the requirements of subsections (3)-(6) in selecting an  
849 auditor, the entity shall select a replacement auditor in  
850 accordance with this section to conduct audits for subsequent  
851 fiscal years if the original audit was performed under a  
852 multiyear contract. If the replacement of an auditor would  
853 preclude the entity from timely completing the annual financial  
854 audit required by s. 218.39, the entity shall replace an auditor  
855 in accordance with this section for the subsequent annual  
856 financial audit. A multiyear contract between an entity or an  
857 auditor may not prohibit or restrict an entity from complying  
858 with this subsection.

859           Section 23. Subsection (2) of section 286.0114, Florida  
860 Statutes, is amended to read:

861           286.0114 Public meetings; reasonable opportunity to be  
862 heard; attorney fees.—

863           (2) Members of the public shall be given a reasonable  
864 opportunity to be heard on a proposition before a board or  
865 commission. The opportunity to be heard need not occur at the  
866 same meeting at which the board or commission takes official  
867 action on the proposition if the opportunity occurs at a meeting  
868 that is during the decisionmaking process and is within



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869 reasonable proximity in time before the meeting at which the  
870 board or commission takes the official action. A board or  
871 commission may not require a member of the public to provide an  
872 advance written copy of his or her testimony or comments as a  
873 precondition of being given the opportunity to be heard at a  
874 meeting. This section does not prohibit a board or commission  
875 from maintaining orderly conduct or proper decorum in a public  
876 meeting. The opportunity to be heard is subject to rules or  
877 policies adopted by the board or commission, as provided in  
878 subsection (4).

879 Section 24. Paragraph (b) of subsection (2) of section  
880 288.92, Florida Statutes, is amended to read:

881 288.92 Divisions of Enterprise Florida, Inc.-

882 (2)

883 (b)1. The following officers and board members are subject  
884 to ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and  
885 112.3143(2):

886 a. Officers and members of the board of directors of the  
887 divisions of Enterprise Florida, Inc.

888 b. Officers and members of the board of directors of  
889 subsidiaries of Enterprise Florida, Inc.

890 c. Officers and members of the board of directors of  
891 corporations created to carry out the missions of Enterprise  
892 Florida, Inc.





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893 d. Officers and members of the board of directors of  
894 corporations with which a division is required by law to  
895 contract to carry out its missions.

896 2. For a period of 2 years after retirement from or  
897 termination of service to a division, or for a period of 10  
898 years if removed or terminated for cause or for misconduct, as  
899 defined in s. 443.036(29), the officers and board members  
900 specified in subparagraph 1. may not represent another person or  
901 entity for compensation before:

902 a. Enterprise Florida, Inc.;

903 b. A division, a subsidiary, or the board of directors of  
904 corporations created to carry out the missions of Enterprise  
905 Florida, Inc.; or

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

908 ~~3.2-~~ For purposes of applying ss. 112.313(1)-(8), (10),  
909 (12), and (15); 112.3135; and 112.3143(2) to activities of the  
910 officers and members of the board of directors specified in  
911 subparagraph 1., those persons shall be considered public  
912 officers or employees and the corporation shall be considered  
913 their agency.

914 ~~4.3-~~ It is not a violation of s. 112.3143(2) or (4) for  
915 the officers or members of the board of directors of the Florida  
916 Tourism Industry Marketing Corporation to:



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917 a. Vote on the 4-year marketing plan required under s.  
918 288.923 or vote on any individual component of or amendment to  
919 the plan.

920 b. Participate in the establishment or calculation of  
921 payments related to the private match requirements of s.  
922 288.904(3). The officer or member must file an annual disclosure  
923 describing the nature of his or her interests or the interests  
924 of his or her principals, including corporate parents and  
925 subsidiaries of his or her principal, in the private match  
926 requirements. This annual disclosure requirement satisfies the  
927 disclosure requirement of s. 112.3143(4). This disclosure must  
928 be placed either on the Florida Tourism Industry Marketing  
929 Corporation's website or included in the minutes of each meeting  
930 of the Florida Tourism Industry Marketing Corporation's board of  
931 directors at which the private match requirements are discussed  
932 or voted upon.

933 Section 25. Paragraph (a) of subsection (3) of section  
934 288.9604, Florida Statutes, is amended to read:

935 288.9604 Creation of the authority.—

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

941 2. Directors are subject to ss. 112.313(1)-(8), (10),  
942 (12), and (15); 112.3135; and 112.3143(2). For purposes of



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943 applying ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and  
944 112.3143(2) to activities of directors, directors shall be  
945 considered public officers and the corporation shall be  
946 considered their agency.

947 3. A director of the corporation may not represent another  
948 person or entity for compensation before the corporation for a  
949 period of 2 years following his or her service on the board of  
950 directors.

951 Section 26. Paragraph (e) of subsection (4), paragraph (d)  
952 of subsection (5), and paragraph (d) of subsection (6) of  
953 section 373.536, Florida Statutes, are amended to read:

954 373.536 District budget and hearing thereon.—

955 (4) BUDGET CONTROLS; FINANCIAL INFORMATION.—

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

961 (5) TENTATIVE BUDGET CONTENTS AND SUBMISSION; REVIEW AND  
962 APPROVAL.—

963 (d) Each district shall, by August 1 of each year, submit  
964 for review a tentative budget and a description of any  
965 significant changes from the preliminary budget submitted to the  
966 Legislature pursuant to s. 373.535 to the Governor, the  
967 President of the Senate, the Speaker of the House of  
968 Representatives, the chairs of all legislative committees and



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969 subcommittees having substantive or fiscal jurisdiction over  
970 water management districts, as determined by the President of  
971 the Senate or the Speaker of the House of Representatives, as  
972 applicable, the secretary of the department, and the governing  
973 body of each county in which the district has jurisdiction or  
974 derives any funds for the operations of the district. The  
975 tentative budget must be posted on the district's official  
976 website at least 2 days before budget hearings held pursuant to  
977 s. 200.065 or other law and must remain on the website for at  
978 least 45 days.

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

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

984 Section 27. Subsection (7) of section 838.014, Florida  
985 Statutes, is renumbered as subsection (8), present subsections  
986 (4) and (6) are amended, and a new subsection (6) is added to  
987 that section, to read:

988 838.014 Definitions.—As used in this chapter, the term:

989 (4) "Governmental entity" means an agency or entity of the  
990 state, a county, municipality, or special district or any other  
991 public entity created or authorized by law ~~"Corruptly" or "with~~  
992 ~~corrupt intent" means acting knowingly and dishonestly for a~~  
993 ~~wrongful purpose.~~



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994           (6) "Public contractor" means, for purposes of ss. 838.022  
995 and 838.22 only:

996           (a) Any person, as defined in s. 1.01(3), who has entered  
997 into a contract with a governmental entity; or

998           (b) Any officer or employee of a person, as defined in s.  
999 1.01(3), who has entered into a contract with a governmental  
1000 entity.

1001           (7)-(6) "Public servant" means:

1002           (a) Any officer or employee of a governmental state,  
1003 county, municipal, or special district agency or entity, +  
1004 including

1005           (b) any executive, legislative, or judicial branch officer  
1006 or employee;

1007           (b)-(e) Any person, except a witness, who acts as a general  
1008 or special magistrate, receiver, auditor, arbitrator, umpire,  
1009 referee, consultant, or hearing officer while performing a  
1010 governmental function; or

1011           (c)-(d) A candidate for election or appointment to any of  
1012 the officer positions listed in this subsection, or an  
1013 individual who has been elected to, but has yet to officially  
1014 assume the responsibilities of, public office.

1015           Section 28. Subsection (1) of section 838.015, Florida  
1016 Statutes, is amended to read:

1017           838.015 Bribery.—

1018           (1) "Bribery" means ~~corruptly~~ to knowingly and  
1019 intentionally give, offer, or promise to any public servant, or,



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1020 if a public servant, ~~corruptly~~ to knowingly and intentionally  
1021 request, solicit, accept, or agree to accept for himself or  
1022 herself or another, any pecuniary or other benefit not  
1023 authorized by law with an intent or purpose to influence the  
1024 performance of any act or omission which the person believes to  
1025 be, or the public servant represents as being, within the  
1026 official discretion of a public servant, in violation of a  
1027 public duty, or in performance of a public duty.

1028 Section 29. Subsections (1) and (2) of section 838.016,  
1029 Florida Statutes, are amended to read:

1030 838.016 Unlawful compensation or reward for official  
1031 behavior.—

1032 (1) It is unlawful for any person ~~corruptly~~ to knowingly  
1033 and intentionally give, offer, or promise to any public servant,  
1034 or, if a public servant, ~~corruptly~~ to knowingly and  
1035 intentionally request, solicit, accept, or agree to accept, any  
1036 pecuniary or other benefit not authorized by law, for the past,  
1037 present, or future performance, nonperformance, or violation of  
1038 any act or omission which the person believes to have been, or  
1039 the public servant represents as having been, either within the  
1040 official discretion of the public servant, in violation of a  
1041 public duty, or in performance of a public duty. This section  
1042 does not ~~Nothing herein shall be construed to preclude a public~~  
1043 servant from accepting rewards for services performed in  
1044 apprehending any criminal.



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1045 (2) It is unlawful for any person ~~corruptly~~ to knowingly  
1046 and intentionally give, offer, or promise to any public servant,  
1047 or, if a public servant, ~~corruptly~~ to knowingly and  
1048 intentionally request, solicit, accept, or agree to accept, any  
1049 pecuniary or other benefit not authorized by law for the past,  
1050 present, or future exertion of any influence upon or with any  
1051 other public servant regarding any act or omission which the  
1052 person believes to have been, or which is represented to him or  
1053 her as having been, either within the official discretion of the  
1054 other public servant, in violation of a public duty, or in  
1055 performance of a public duty.

1056 Section 30. Subsection (1) of section 838.022, Florida  
1057 Statutes, is amended, and subsection (2) of that section is  
1058 republished, to read:

1059 838.022 Official misconduct.—

1060 (1) It is unlawful for a public servant or public  
1061 contractor, ~~with corrupt intent~~ to knowingly and intentionally  
1062 obtain a benefit for any person or to cause unlawful harm to  
1063 another, by ~~to~~:

1064 (a) Falsifying ~~Falsify~~, or causing ~~cause~~ another person to  
1065 falsify, any official record or official document;

1066 (b) Concealing, covering up, destroying, mutilating, or  
1067 altering ~~Conceal, cover up, destroy, mutilate, or alter~~ any  
1068 official record or official document, except as authorized by  
1069 law or contract, or causing ~~cause~~ another person to perform such  
1070 an act; or



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1071 (c) Obstructing, delaying, or preventing ~~Obstruct, delay,~~  
1072 ~~or prevent~~ the communication of information relating to the  
1073 commission of a felony that directly involves or affects the  
1074 government ~~public agency or public~~ entity served by the public  
1075 servant or public contractor.

1076 (2) For the purposes of this section:

1077 (a) The term "public servant" does not include a candidate  
1078 who does not otherwise qualify as a public servant.

1079 (b) An official record or official document includes only  
1080 public records.

1081 Section 31. Section 838.22, Florida Statutes, is amended  
1082 to read:

1083 838.22 Bid tampering.—

1084 (1) It is unlawful for a public servant or a public  
1085 contractor who has contracted with a governmental entity to  
1086 assist in a competitive procurement, ~~with corrupt intent to~~  
1087 knowingly and intentionally influence or attempt to influence  
1088 the competitive solicitation bidding process undertaken by any  
1089 governmental state, county, municipal, or special district  
1090 agency, or any other public entity, for the procurement of  
1091 commodities or services, by ~~to~~:

1092 (a) Disclosing, except as authorized by law, Disclose  
1093 material information concerning a vendor's response, any  
1094 evaluation results, ~~bid~~ or other aspects of the competitive  
1095 solicitation bidding process when such information is not  
1096 publicly disclosed.





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1097 (b) Altering or amending ~~Alter or amend~~ a submitted  
1098 response bid, documents or other materials supporting a  
1099 submitted response bid, or any evaluation bid results relating  
1100 to the competitive solicitation for the purpose of intentionally  
1101 providing a competitive advantage to any person who submits a  
1102 response bid.

1103 (2) It is unlawful for a public servant or a public  
1104 contractor who has contracted with a governmental entity to  
1105 assist in a competitive procurement, ~~with corrupt intent~~ to  
1106 knowingly and intentionally obtain a benefit for any person or  
1107 to cause unlawful harm to another, ~~to circumvent~~ by  
1108 circumventing a competitive solicitation bidding process  
1109 required by law or rule through the use of ~~by using~~ a sole-  
1110 source contract for commodities or services.

1111 (3) It is unlawful for any person to knowingly agree,  
1112 conspire, combine, or confederate, directly or indirectly, with  
1113 a public servant or a public contractor who has contracted with  
1114 a governmental entity to assist in a competitive procurement to  
1115 violate subsection (1) or subsection (2).

1116 (4) It is unlawful for any person to knowingly enter into  
1117 a contract for commodities or services which was secured by a  
1118 public servant or a public contractor who has contracted with a  
1119 governmental entity to assist in a competitive procurement  
1120 acting in violation of subsection (1) or subsection (2).



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1121 (5) Any person who violates this section commits a felony  
1122 of the second degree, punishable as provided in s. 775.082, s.  
1123 775.083, or s. 775.084.

1124 Section 32. Section 838.24, Florida Statutes, is created  
1125 to read:

1126 838.24 Attorney Fees.—Public servants and public  
1127 contractors prosecuted for a violation under this act may  
1128 recover attorney fees in the same manner as provided by common  
1129 law for public officers and employees with respect to the  
1130 enforcement of public corruption laws.

1131 Section 33. Paragraph (1) of subsection (12) of section  
1132 1001.42, Florida Statutes, is amended to read:

1133 1001.42 Powers and duties of district school board.—The  
1134 district school board, acting as a board, shall exercise all  
1135 powers and perform all duties listed below:

1136 (12) FINANCE.—Take steps to assure students adequate  
1137 educational facilities through the financial procedure  
1138 authorized in chapters 1010 and 1011 and as prescribed below:

1139 (1) *Internal auditor.*—May employ an internal auditor to  
1140 perform ongoing financial verification of the financial records  
1141 of the school district and such other audits and reviews as the  
1142 district school board directs for the purpose of determining:

1143 1. The adequacy of internal controls designed to prevent  
1144 and detect fraud, waste, and abuse.



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1145        2. Compliance with applicable laws, rules, contracts,  
1146 grant agreements, district school board-approved policies, and  
1147 best practices.

1148        3. The efficiency of operations.

1149        4. The reliability of financial records and reports.

1150        5. The safeguarding of assets.

1151

1152 The internal auditor shall report directly to the district  
1153 school board or its designee.

1154        Section 34. Paragraph (j) of subsection (9) of section  
1155 1002.33, Florida Statutes, is amended to read:

1156        1002.33 Charter schools.—

1157        (9) CHARTER SCHOOL REQUIREMENTS.—

1158        (j) The governing body of the charter school shall be  
1159 responsible for:

1160        1. Establishing and maintaining internal controls designed  
1161 to:

1162        a. Prevent and detect fraud, waste, and abuse.

1163        b. Promote and encourage compliance with applicable laws,  
1164 rules, contracts, grant agreements, and best practices.

1165        c. Support economical and efficient operations.

1166        d. Ensure reliability of financial records and reports.

1167        e. Safeguard assets.

1168        ~~2.1.~~ Ensuring that the charter school has retained the  
1169 services of a certified public accountant or auditor for the



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1170 annual financial audit, pursuant to s. 1002.345(2), who shall  
1171 submit the report to the governing body.

1172 ~~3.2.~~ Reviewing and approving the audit report, including  
1173 audit findings and recommendations for the financial recovery  
1174 plan.

1175 ~~4.a.3-a.~~ Performing the duties in s. 1002.345, including  
1176 monitoring a corrective action plan.

1177 b. Monitoring a financial recovery plan in order to ensure  
1178 compliance.

1179 ~~5.4.~~ Participating in governance training approved by the  
1180 department which must include government in the sunshine,  
1181 conflicts of interest, ethics, and financial responsibility.

1182 Section 35. Present subsections (6) through (10) of  
1183 section 1002.37, Florida Statutes, are redesignated as  
1184 subsections (7) through (11), respectively, a new subsection (6)  
1185 is added to that section, and present subsections (6) and (11)  
1186 of that section are amended, to read:

1187 1002.37 The Florida Virtual School.—

1188 (6) The Florida Virtual School shall have an annual  
1189 financial audit of its accounts and records conducted by an  
1190 independent auditor who is a certified public accountant  
1191 licensed under chapter 473. The independent auditor shall  
1192 conduct the audit in accordance with rules adopted by the  
1193 Auditor General pursuant to s. 11.45 and, upon completion of the  
1194 audit, shall prepare an audit report in accordance with such  
1195 rules. The audit report must include a written statement of the



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1196 board of trustees describing corrective action to be taken in  
1197 response to each of the recommendations of the independent  
1198 auditor included in the audit report. The independent auditor  
1199 shall submit the audit report to the board of trustees and the  
1200 Auditor General no later than 9 months after the end of the  
1201 preceding fiscal year.

1202 (7)-(6) The board of trustees shall annually submit to the  
1203 Governor, the Legislature, the Commissioner of Education, and  
1204 the State Board of Education the audit report prepared pursuant  
1205 to subsection (6) and a complete and detailed report setting  
1206 forth:

1207 (a) The operations and accomplishments of the Florida  
1208 Virtual School within the state and those occurring outside the  
1209 state as Florida Virtual School Global.

1210 (b) The marketing and operational plan for the Florida  
1211 Virtual School and Florida Virtual School Global, including  
1212 recommendations regarding methods for improving the delivery of  
1213 education through the Internet and other distance learning  
1214 technology.

1215 (c) The assets and liabilities of the Florida Virtual  
1216 School and Florida Virtual School Global at the end of the  
1217 fiscal year.

1218 ~~(d) A copy of an annual financial audit of the accounts~~  
1219 ~~and records of the Florida Virtual School and Florida Virtual~~  
1220 ~~School Global, conducted by an independent certified public~~



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1221 ~~accountant and performed in accordance with rules adopted by the~~  
1222 ~~Auditor General.~~

1223       ~~(e)~~ Recommendations regarding the unit cost of providing  
1224 services to students through the Florida Virtual School and  
1225 Florida Virtual School Global. In order to most effectively  
1226 develop public policy regarding any future funding of the  
1227 Florida Virtual School, it is imperative that the cost of the  
1228 program is accurately identified. The identified cost of the  
1229 program must be based on reliable data.

1230       ~~(e)~~~~(f)~~ Recommendations regarding an accountability  
1231 mechanism to assess the effectiveness of the services provided  
1232 by the Florida Virtual School and Florida Virtual School Global.

1233       ~~(11)~~ ~~The Auditor General shall conduct an operational~~  
1234 ~~audit of the Florida Virtual School, including Florida Virtual~~  
1235 ~~School Global. The scope of the audit shall include, but not be~~  
1236 ~~limited to, the administration of responsibilities relating to~~  
1237 ~~personnel, procurement and contracting, revenue production,~~  
1238 ~~school funds, including internal funds, student enrollment~~  
1239 ~~records, franchise agreements, information technology~~  
1240 ~~utilization, assets, and security, performance measures and~~  
1241 ~~standards, and accountability. The final report on the audit~~  
1242 ~~shall be submitted to the President of the Senate and the~~  
1243 ~~Speaker of the House of Representatives no later than January~~  
1244 ~~31, 2014.~~

1245       Section 36. Subsection (5) is added to section 1010.01,  
1246 Florida Statutes, to read:



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1247 1010.01 Uniform records and accounts.—  
1248 (5) Each school district, Florida College System  
1249 institution, and state university shall establish and maintain  
1250 internal controls designed to:  
1251 (a) Prevent and detect fraud, waste, and abuse.  
1252 (b) Promote and encourage compliance with applicable laws,  
1253 rules, contracts, grant agreements, and best practices.  
1254 (c) Support economical and efficient operations.  
1255 (d) Ensure reliability of financial records and reports.  
1256 (e) Safeguard assets.  
1257 Section 37. Subsection (2) of section 1010.30, Florida  
1258 Statutes, is amended to read:  
1259 1010.30 Audits required.—  
1260 (2) If a school district, Florida College System  
1261 institution, or university audit report includes a  
1262 recommendation that was included in the preceding financial  
1263 audit report but remains unaddressed, ~~an audit contains a~~  
1264 ~~significant finding,~~ the district school board, the Florida  
1265 College System institution board of trustees, or the university  
1266 board of trustees, within 60 days after the delivery of the  
1267 audit report to the school district, Florida College System  
1268 institution, or university, shall indicate ~~conduct an audit~~  
1269 ~~overview~~ during a regularly scheduled public meeting whether it  
1270 intends to take corrective action, the intended corrective  
1271 action, and the timeframe for the corrective action. If the  
1272 district school board, Florida College System institution board

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1273 of trustees, or university board of trustees indicates that it  
1274 does not intend to take corrective action, it shall explain its  
1275 decision at the public meeting.

1276 Section 38. Subsection (2) of section 68.082, Florida  
1277 Statutes, is amended to read:

1278 68.082 False claims against the state; definitions;  
1279 liability.-

1280 (2) Any person who:

1281 (a) Knowingly presents or causes to be presented a false  
1282 or fraudulent claim for payment or approval;

1283 (b) Knowingly authorizes, approves, or receives payment of  
1284 prohibited compensation in violation of s. 215.425;

1285 (c)~~(b)~~ Knowingly makes, uses, or causes to be made or used  
1286 a false record or statement material to a false or fraudulent  
1287 claim;

1288 (d)~~(e)~~ Conspires to commit a violation of this subsection;

1289 (e)~~(d)~~ Has possession, custody, or control of property or  
1290 money used or to be used by the state and knowingly delivers or  
1291 causes to be delivered less than all of that money or property;

1292 (f)~~(e)~~ Is authorized to make or deliver a document  
1293 certifying receipt of property used or to be used by the state  
1294 and, intending to defraud the state, makes or delivers the  
1295 receipt without knowing that the information on the receipt is  
1296 true;

1297 (g)~~(f)~~ Knowingly buys or receives, as a pledge of an  
1298 obligation or a debt, public property from an officer or





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1299 employee of the state who may not sell or pledge the property;  
1300 or

1301 ~~(g)~~ (h) Knowingly makes, uses, or causes to be made or used  
1302 a false record or statement material to an obligation to pay or  
1303 transmit money or property to the state, or knowingly conceals  
1304 or knowingly and improperly avoids or decreases an obligation to  
1305 pay or transmit money or property to the state

1306

1307 is liable to the state for a civil penalty of not less than  
1308 \$5,500 and not more than \$11,000 and for treble the amount of  
1309 damages the state sustains because of the act of that person.

1310 Section 39. Subsection (1) of section 68.083, Florida  
1311 Statutes, is amended to read:

1312 68.083 Civil actions for false claims.—

1313 (1) The department may diligently investigate a violation  
1314 under s. 68.082. If the department finds that a person has  
1315 violated or is violating s. 68.082, the department may bring a  
1316 civil action under the Florida False Claims Act against the  
1317 person. The Department of Financial Services may bring a civil  
1318 action under this section if the action arises from an  
1319 investigation by that department and the Department of Legal  
1320 Affairs has not filed an action under this act. For a violation  
1321 of s. 68.082 regarding prohibited compensation paid from state  
1322 funds, the Department of Financial Services may bring a civil  
1323 action under this section if the action arises from an  
1324 investigation by that department concerning a violation of s.



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1325 215.425 by the state and the Department of Legal Affairs has not  
1326 filed an action under this act.

1327 Section 40. Subsection (5) of section 99.061, Florida  
1328 Statutes, is amended to read:

1329 99.061 Method of qualifying for nomination or election to  
1330 federal, state, county, or district office.—

1331 (5) At the time of qualifying for office, each candidate  
1332 for an elected municipal office for which compensation is  
1333 provided or a constitutional office shall file a full and public  
1334 disclosure of financial interests pursuant to s. 8, Art. II of  
1335 the State Constitution, which must be verified under oath or  
1336 affirmation pursuant to s. 92.525(1)(a), and a candidate for any  
1337 other office, ~~including local elective office,~~ shall file a  
1338 statement of financial interests pursuant to s. 112.3145.

1339 Section 41. Subsection (3) of section 218.503, Florida  
1340 Statutes, is amended to read:

1341 218.503 Determination of financial emergency.—

1342 (3) Upon notification that one or more of the conditions  
1343 in subsection (1) have occurred or will occur if action is not  
1344 taken to assist the local governmental entity or district school  
1345 board, the Governor or his or her designee shall contact the  
1346 local governmental entity or the Commissioner of Education or  
1347 his or her designee shall contact the district school board, as  
1348 appropriate, to determine what actions have been taken by the  
1349 local governmental entity or the district school board to  
1350 resolve or prevent the condition. The information requested must



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1351 be provided within 45 days after the date of the request. If the  
1352 local governmental entity or the district school board does not  
1353 comply with the request, the Governor or his or her designee or  
1354 the Commissioner of Education or his or her designee shall  
1355 notify ~~the members~~ of the Legislative Auditing Committee, which  
1356 ~~we~~ may take action pursuant to s. 11.40(2) ~~s. 11.40~~. The  
1357 Governor or the Commissioner of Education, as appropriate, shall  
1358 determine whether the local governmental entity or the district  
1359 school board needs state assistance to resolve or prevent the  
1360 condition. If state assistance is needed, the local governmental  
1361 entity or district school board is considered to be in a state  
1362 of financial emergency. The Governor or the Commissioner of  
1363 Education, as appropriate, has the authority to implement  
1364 measures as set forth in ss. 218.50-218.504 to assist the local  
1365 governmental entity or district school board in resolving the  
1366 financial emergency. Such measures may include, but are not  
1367 limited to:

1368 (a) Requiring approval of the local governmental entity's  
1369 budget by the Governor or approval of the district school  
1370 board's budget by the Commissioner of Education.

1371 (b) Authorizing a state loan to a local governmental  
1372 entity and providing for repayment of same.

1373 (c) Prohibiting a local governmental entity or district  
1374 school board from issuing bonds, notes, certificates of  
1375 indebtedness, or any other form of debt until such time as it is  
1376 no longer subject to this section.



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1377 (d) Making such inspections and reviews of records,  
1378 information, reports, and assets of the local governmental  
1379 entity or district school board as are needed. The appropriate  
1380 local officials shall cooperate in such inspections and reviews.

1381 (e) Consulting with officials and auditors of the local  
1382 governmental entity or the district school board and the  
1383 appropriate state officials regarding any steps necessary to  
1384 bring the books of account, accounting systems, financial  
1385 procedures, and reports into compliance with state requirements.

1386 (f) Providing technical assistance to the local  
1387 governmental entity or the district school board.

1388 (g)1. Establishing a financial emergency board to oversee  
1389 the activities of the local governmental entity or the district  
1390 school board. If a financial emergency board is established for  
1391 a local governmental entity, the Governor shall appoint board  
1392 members and select a chair. If a financial emergency board is  
1393 established for a district school board, the State Board of  
1394 Education shall appoint board members and select a chair. The  
1395 financial emergency board shall adopt such rules as are  
1396 necessary for conducting board business. The board may:

1397 a. Make such reviews of records, reports, and assets of  
1398 the local governmental entity or the district school board as  
1399 are needed.

1400 b. Consult with officials and auditors of the local  
1401 governmental entity or the district school board and the  
1402 appropriate state officials regarding any steps necessary to



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1403 bring the books of account, accounting systems, financial  
1404 procedures, and reports of the local governmental entity or the  
1405 district school board into compliance with state requirements.

1406 c. Review the operations, management, efficiency,  
1407 productivity, and financing of functions and operations of the  
1408 local governmental entity or the district school board.

1409 d. Consult with other governmental entities for the  
1410 consolidation of all administrative direction and support  
1411 services, including, but not limited to, services for asset  
1412 sales, economic and community development, building inspections,  
1413 parks and recreation, facilities management, engineering and  
1414 construction, insurance coverage, risk management, planning and  
1415 zoning, information systems, fleet management, and purchasing.

1416 2. The recommendations and reports made by the financial  
1417 emergency board must be submitted to the Governor for local  
1418 governmental entities or to the Commissioner of Education and  
1419 the State Board of Education for district school boards for  
1420 appropriate action.

1421 . (h) Requiring and approving a plan, to be prepared by  
1422 officials of the local governmental entity or the district  
1423 school board in consultation with the appropriate state  
1424 officials, prescribing actions that will cause the local  
1425 governmental entity or district school board to no longer be  
1426 subject to this section. The plan must include, but need not be  
1427 limited to:



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1428 1. Provision for payment in full of obligations outlined  
1429 in subsection (1), designated as priority items, which are  
1430 currently due or will come due.

1431 2. Establishment of priority budgeting or zero-based  
1432 budgeting in order to eliminate items that are not affordable.

1433 3. The prohibition of a level of operations which can be  
1434 sustained only with nonrecurring revenues.

1435 4. Provisions implementing the consolidation, sourcing, or  
1436 discontinuance of all administrative direction and support  
1437 services, including, but not limited to, services for asset  
1438 sales, economic and community development, building inspections,  
1439 parks and recreation, facilities management, engineering and  
1440 construction, insurance coverage, risk management, planning and  
1441 zoning, information systems, fleet management, and purchasing.

1442 Section 42. Subsection (2) of section 1002.455, Florida  
1443 Statutes, is amended to read:

1444 1002.455 Student eligibility for K-12 virtual  
1445 instruction.-

1446 (2) A student is eligible to participate in virtual  
1447 instruction if:

1448 (a) The student spent the prior school year in attendance  
1449 at a public school in the state and was enrolled and reported by  
1450 the school district for funding during October and February for  
1451 purposes of the Florida Education Finance Program surveys;

1452 (b) The student is a dependent child of a member of the  
1453 United States Armed Forces who was transferred within the last



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1454 12 months to this state from another state or from a foreign  
1455 country pursuant to a permanent change of station order;

1456 (c) The student was enrolled during the prior school year  
1457 in a virtual instruction program under s. 1002.45 or a full-time  
1458 Florida Virtual School program under s. 1002.37(9)(a) ~~s.~~  
1459 ~~1002.37(8)(a)~~;

1460 (d) The student has a sibling who is currently enrolled in  
1461 a virtual instruction program and the sibling was enrolled in  
1462 that program at the end of the prior school year;

1463 (e) The student is eligible to enter kindergarten or first  
1464 grade; or

1465 (f) The student is eligible to enter grades 2 through 5  
1466 and is enrolled full-time in a school district virtual  
1467 instruction program, virtual charter school, or the Florida  
1468 Virtual School.

1469 Section 43. For the purpose of incorporating the amendment  
1470 made by this act to section 838.022, Florida Statutes, in a  
1471 reference thereto, paragraph (a) of subsection (2) of section  
1472 112.534, Florida Statutes, is reenacted to read:

1473 112.534 Failure to comply; official misconduct.—

1474 (2)(a) All the provisions of s. 838.022 shall apply to  
1475 this part.

1476 Section 44. For the purpose of incorporating the amendment  
1477 made by this act to section 838.022, Florida Statutes, in a  
1478 reference thereto, paragraph (d) of subsection (4) of section  
1479 117.01, Florida Statutes, is reenacted to read:

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1480 117.01 Appointment, application, suspension, revocation,  
1481 application fee, bond, and oath.—

1482 (4) The Governor may suspend a notary public for any of  
1483 the grounds provided in s. 7, Art. IV of the State Constitution.  
1484 Grounds constituting malfeasance, misfeasance, or neglect of  
1485 duty include, but are not limited to, the following:

1486 (d) Official misconduct as defined in s. 838.022.

1487 Section 45. For the purpose of incorporating the amendment  
1488 made by this act to section 838.014, Florida Statutes, in a  
1489 reference thereto, subsection (11) of section 817.568, Florida  
1490 Statutes, is reenacted to read:

1491 817.568 Criminal use of personal identification  
1492 information.—

1493 (11) A person who willfully and without authorization  
1494 fraudulently uses personal identification information concerning  
1495 an individual who is 60 years of age or older; a disabled adult  
1496 as defined in s. 825.101; a public servant as defined in s.  
1497 838.014; a veteran as defined in s. 1.01; a first responder as  
1498 defined in s. 125.01045; an individual who is employed by the  
1499 State of Florida; or an individual who is employed by the  
1500 Federal Government without first obtaining the consent of that  
1501 individual commits a felony of the second degree, punishable as  
1502 provided in s. 775.082, s. 775.083, or s. 775.084.

1503 Section 46. For the purpose of incorporating the amendment  
1504 made by this act to sections 838.015, 838.016, and 838.22,  
1505 Florida Statutes, in references thereto, paragraph (g) of

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1506 subsection (3) of section 921.0022, Florida Statutes, is  
1507 reenacted to read:

1508 921.0022 Criminal Punishment Code; offense severity  
1509 ranking chart.-

1510 (3) OFFENSE SEVERITY RANKING CHART

1511 (g) LEVEL 7

1512

Florida Statute	Felony Degree	Description
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.

1513

1514

1515

1516

327.35(3)(c)2. 3rd Vessel BUI resulting in serious



Amendment No.

bodily injury.

1517

402.319(2) 2nd Misrepresentation and  
negligence or intentional act  
resulting in great bodily harm,  
permanent disfiguration,  
permanent disability, or death.

1518

409.920 3rd Medicaid provider fraud;  
(2)(b)1.a. \$10,000 or less.

1519

409.920 2nd Medicaid provider fraud; more  
(2)(b)1.b. than \$10,000, but less than  
\$50,000.

1520

456.065(2) 3rd Practicing a health care  
profession without a license.

1521

456.065(2) 2nd Practicing a health care  
profession without a license  
which results in serious bodily  
injury.

1522

458.327(1) 3rd Practicing medicine without a  
license.

1523



## Amendment No.

1524	459.013(1)	3rd	Practicing osteopathic medicine without a license.
1525	460.411(1)	3rd	Practicing chiropractic medicine without a license.
1526	461.012(1)	3rd	Practicing podiatric medicine without a license.
1527	462.17	3rd	Practicing naturopathy without a license.
1528	463.015(1)	3rd	Practicing optometry without a license.
1529	464.016(1)	3rd	Practicing nursing without a license.
1530	465.015(2)	3rd	Practicing pharmacy without a license.
1531	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
	467.201	3rd	Practicing midwifery without a license.



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1532	468.366	3rd	Delivering respiratory care services without a license.
1533	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
1534	483.901(9)	3rd	Practicing medical physics without a license.
1535	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
1536	484.053	3rd	Dispensing hearing aids without a license.
1537	494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
1538	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding



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\$300 but less than \$20,000 by a  
money services business.

1539

560.125(5) (a) 3rd Money services business by  
unauthorized person, currency  
or payment instruments  
exceeding \$300 but less than  
\$20,000.

1540

655.50(10) (b)1. 3rd Failure to report financial  
transactions exceeding \$300 but  
less than \$20,000 by financial  
institution.

1541

775.21(10) (a) 3rd Sexual predator; failure to  
register; failure to renew  
driver license or  
identification card; other  
registration violations.

1542

775.21(10) (b) 3rd Sexual predator working where  
children regularly congregate.

1543

775.21(10) (g) 3rd Failure to report or providing  
false information about a  
sexual predator; harbor or



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conceal a sexual predator.

1544

782.051(3)

2nd

Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.

1545

782.07(1)

2nd

Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).

1546

782.071

2nd

Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).

1547

782.072

2nd

Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).

1548

784.045(1)(a)1.

2nd

Aggravated battery; intentionally causing great



Amendment No.

			bodily harm or disfigurement.
1549			
	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
1550			
	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
1551			
	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
1552			
	784.048(7)	3rd	Aggravated stalking; violation of court order.
1553			
	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
1554			
	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
1555			
	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
1556			
	784.081(1)	1st	Aggravated battery on specified official or employee.



## COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 593 (2016)

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1557	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
1558	784.083(1)	1st	Aggravated battery on code inspector.
1559	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
1560	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
1561	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
1562	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
1563			

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1564	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
1565	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
1566	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
1567	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
1568	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial

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authority to a victim younger  
than 18 years of age.

1569

796.05(1) 1st Live on earnings of a  
prostitute; 2nd offense.

1570

796.05(1) 1st Live on earnings of a  
prostitute; 3rd and subsequent  
offense.

1571

800.04(5)(c)1. 2nd Lewd or lascivious molestation;  
victim younger than 12 years of  
age; offender younger than 18  
years of age.

1572

800.04(5)(c)2. 2nd Lewd or lascivious molestation;  
victim 12 years of age or older  
but younger than 16 years of  
age; offender 18 years of age  
or older.

1573

800.04(5)(e) 1st Lewd or lascivious molestation;  
victim 12 years of age or older  
but younger than 16 years;  
offender 18 years or older;  
prior conviction for specified



## Amendment No.

sex offense.

1574

806.01(2) 2nd Maliciously damage structure by  
fire or explosive.

1575

810.02(3)(a) 2nd Burglary of occupied dwelling;  
unarmed; no assault or battery.

1576

810.02(3)(b) 2nd Burglary of unoccupied  
dwelling; unarmed; no assault  
or battery.

1577

810.02(3)(d) 2nd Burglary of occupied  
conveyance; unarmed; no assault  
or battery.

1578

810.02(3)(e) 2nd Burglary of authorized  
emergency vehicle.

1579

812.014(2)(a)1. 1st Property stolen, valued at  
\$100,000 or more or a  
semitrailer deployed by a law  
enforcement officer; property  
stolen while causing other  
property damage; 1st degree  
grand theft.



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1580

812.014(2)(b)2.           2nd    Property stolen, cargo valued  
at less than \$50,000, grand  
theft in 2nd degree.

1581

812.014(2)(b)3.           2nd    Property stolen, emergency  
medical equipment; 2nd degree  
grand theft.

1582

812.014(2)(b)4.           2nd    Property stolen, law  
enforcement equipment from  
authorized emergency vehicle.

1583

812.0145(2)(a)           1st    Theft from person 65 years of  
age or older; \$50,000 or more.

1584

812.019(2)               1st    Stolen property; initiates,  
organizes, plans, etc., the  
theft of property and traffics  
in stolen property.

1585

812.131(2)(a)           2nd    Robbery by sudden snatching.

1586

812.133(2)(b)           1st    Carjacking; no firearm, deadly  
weapon, or other weapon.

1587



## COMMITTEE/SUBCOMMITTEE AMENDMENT

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1588	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
1589	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
1590	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
1591	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
1592	817.2341(2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
1593	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
	825.102(3)(b)	2nd	Neglecting an elderly person or

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disabled adult causing great  
bodily harm, disability, or  
disfigurement.

1594

825.103(3)(b) 2nd Exploiting an elderly person or  
disabled adult and property is  
valued at \$10,000 or more, but  
less than \$50,000.

1595

827.03(2)(b) 2nd Neglect of a child causing  
great bodily harm, disability,  
or disfigurement.

1596

827.04(3) 3rd Impregnation of a child under  
16 years of age by person 21  
years of age or older.

1597

837.05(2) 3rd Giving false information about  
alleged capital felony to a law  
enforcement officer.

1598

838.015 2nd Bribery.

1599

838.016 2nd Unlawful compensation or reward  
for official behavior.

1600



## COMMITTEE/SUBCOMMITTEE AMENDMENT

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1601	838.021(3)(a)	2nd	Unlawful harm to a public servant.
1602	838.22	2nd	Bid tampering.
1603	843.0855(2)	3rd	Impersonation of a public officer or employee.
1604	843.0855(3)	3rd	Unlawful simulation of legal process.
1605	843.0855(4)	3rd	Intimidation of a public officer or employee.
1606	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
1607	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
1608	872.06	2nd	Abuse of a dead human body.
	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or

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subsequent offense.

1609

874.10 1st,PBL Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.

1610

893.13(1)(c)1. 1st Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

1611

893.13(1)(e)1. 1st Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or





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a specified business site.

1612

893.13(4)(a) 1st Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).

1613

893.135(1)(a)1. 1st Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.

1614

893.135(1)(b)1.a. 1st Trafficking in cocaine, more than 28 grams, less than 200 grams.

1615

893.135(1)(c)1.a. 1st Trafficking in illegal drugs, more than 4 grams, less than 14 grams.

1616

893.135(1)(c)2.a. 1st Trafficking in hydrocodone, 14 grams or more, less than 28 grams.

1617

893.135(1)(c)2.b. 1st Trafficking in hydrocodone, 28 grams or more, less than 50 grams.



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1618	893.135(1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
1619	893.135(1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
1620	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
1621	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
1622	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
1623	893.135(1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
1624	893.135(1)(h)1.a.	1st	Trafficking in gamma-



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hydroxybutyric acid (GHB), 1  
kilogram or more, less than 5  
kilograms.

1625

893.135(1)(j)1.a. 1st Trafficking in 1,4-Butanediol,  
1 kilogram or more, less than 5  
kilograms.

1626

893.135(1)(k)2.a. 1st Trafficking in Phenethylamines,  
10 grams or more, less than 200  
grams.

1627

893.1351(2) 2nd Possession of place for  
trafficking in or manufacturing  
of controlled substance.

1628

896.101(5)(a) 3rd Money laundering, financial  
transactions exceeding \$300 but  
less than \$20,000.

1629

896.104(4)(a)1. 3rd Structuring transactions to  
evade reporting or registration  
requirements, financial  
transactions exceeding \$300 but  
less than \$20,000.

1630

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1631	943.0435(4) (c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
1632	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
1633	943.0435(9) (a)	3rd	Sexual offender; failure to comply with reporting requirements.
1634	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1635	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
	944.607(9)	3rd	Sexual offender; failure to



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			comply with reporting requirements.
1636	944.607(10) (a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
1637	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1638	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
1639	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
1640	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

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1641

985.4815(13) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

1642

1643 Section 47. For the purpose of incorporating the amendment
1644 made by this act to section 838.022, Florida Statutes, in a
1645 reference thereto, paragraph (d) of subsection (3) of section
1646 921.0022, Florida Statutes, is reenacted to read:

1647 921.0022 Criminal Punishment Code; offense severity
1648 ranking chart.-

1649 (3) OFFENSE SEVERITY RANKING CHART

1650 (d) LEVEL 4

1651

Florida Felony
Statute Degree Description

1652

316.1935(3)(a) 2nd Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.

1653



## COMMITTEE/SUBCOMMITTEE AMENDMENT

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1654	499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.
1655	499.0051(2)	3rd	Failure to authenticate pedigree papers.
1656	499.0051(6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
1657	517.07(1)	3rd	Failure to register securities.
1658	517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
1659	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
1660	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
1661	784.075	3rd	Battery on detention or commitment facility staff.
	784.078	3rd	Battery of facility employee by

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throwing, tossing, or expelling  
certain fluids or materials.

1662

784.08(2)(c) 3rd Battery on a person 65 years of  
age or older.

1663

784.081(3) 3rd Battery on specified official  
or employee.

1664

784.082(3) 3rd Battery by detained person on  
visitor or other detainee.

1665

784.083(3) 3rd Battery on code inspector.

1666

784.085 3rd Battery of child by throwing,  
tossing, projecting, or  
expelling certain fluids or  
materials.

1667

787.03(1) 3rd Interference with custody;  
wrongly takes minor from  
appointed guardian.

1668

787.04(2) 3rd Take, entice, or remove child  
beyond state limits with  
criminal intent pending custody





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proceedings.

1669

787.04(3) 3rd Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.

1670

787.07 3rd Human smuggling.

1671

790.115(1) 3rd Exhibiting firearm or weapon within 1,000 feet of a school.

1672

790.115(2)(b) 3rd Possessing electric weapon or device, destructive device, or other weapon on school property.

1673

790.115(2)(c) 3rd Possessing firearm on school property.

1674

800.04(7)(c) 3rd Lewd or lascivious exhibition; offender less than 18 years.

1675

810.02(4)(a) 3rd Burglary, or attempted burglary, of an unoccupied



## COMMITTEE/SUBCOMMITTEE AMENDMENT

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structure; unarmed; no assault  
or battery.

1676

810.02(4)(b) 3rd Burglary, or attempted  
burglary, of an unoccupied  
conveyance; unarmed; no assault  
or battery.

1677

810.06 3rd Burglary; possession of tools.

1678

810.08(2)(c) 3rd Trespass on property, armed  
with firearm or dangerous  
weapon.

1679

812.014(2)(c)3. 3rd Grand theft, 3rd degree \$10,000  
or more but less than \$20,000.

1680

812.014(2)(c)4.- 3rd Grand theft, 3rd degree, a  
10. will, firearm, motor vehicle,  
livestock, etc.

1681

812.0195(2) 3rd Dealing in stolen property by  
use of the Internet; property  
stolen \$300 or more.

1682

817.563(1) 3rd Sell or deliver substance other

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than controlled substance  
agreed upon, excluding s.  
893.03(5) drugs.

1683

817.568(2)(a) 3rd Fraudulent use of personal  
identification information.

1684

817.625(2)(a) 3rd Fraudulent use of scanning  
device or reencoder.

1685

828.125(1) 2nd Kill, maim, or cause great  
bodily harm or permanent  
breeding disability to any  
registered horse or cattle.

1686

837.02(1) 3rd Perjury in official  
proceedings.

1687

837.021(1) 3rd Make contradictory statements  
in official proceedings.

1688

838.022 3rd Official misconduct.

1689

839.13(2)(a) 3rd Falsifying records of an  
individual in the care and  
custody of a state agency.



## COMMITTEE/SUBCOMMITTEE AMENDMENT

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1690	839.13 (2) (c)	3rd	Falsifying records of the Department of Children and Families.
1691	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
1692	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
1693	843.15 (1) (a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
1694	847.0135 (5) (c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
1695	874.05 (1) (a)	3rd	Encouraging or recruiting another to join a criminal gang.
1696			

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## Amendment No.

1697 893.13(2)(a)1. 2nd Purchase of cocaine (or other  
s. 893.03(1)(a), (b), or (d),  
1698 (2)(a), (2)(b), or (2)(c)4.  
drugs).

914.14(2) 3rd Witnesses accepting bribes.

1699 914.22(1) 3rd Force, threaten, etc., witness,  
victim, or informant.

1700 914.23(2) 3rd Retaliation against a witness,  
victim, or informant, no bodily  
injury.

1701 918.12 3rd Tampering with jurors.

1702 934.215 3rd Use of two-way communications  
device to facilitate commission  
of a crime.

1703 Section 48. The Legislature finds that a proper and  
1704 legitimate state purpose is served when internal controls are  
1705 established to prevent and detect fraud, waste, and abuse and to  
1706 safeguard and account for government funds and property.  
1707 Therefore, the Legislature determines and declares that this act  
1708 fulfills an important state interest.



Amendment No.

1709 Section 49. This act shall take effect October 1, 2016.

1710

1711 -----

1712

T I T L E A M E N D M E N T

1713

Remove everything before the enacting clause and insert:

1714

A bill to be entitled

1715

An act relating to government accountability; providing a short

1716

title; amending s. 11.40, F.S.; specifying that the Governor,

1717

the Commissioner of Education, or the designee of the Governor

1718

or of the Commissioner of Education may notify the Legislative

1719

Auditing Committee of an entity's failure to comply with certain

1720

auditing and financial reporting requirements; amending s.

1721

11.45, F.S.; defining the terms "abuse," "fraud," and "waste";

1722

revising the definition of the term "local governmental entity";

1723

excluding water management districts from certain audit

1724

requirements; removing a cross-reference; authorizing the

1725

Auditor General to conduct audits of tourist development

1726

councils and county tourism promotion agencies; revising

1727

reporting requirements applicable to the Auditor General;

1728

creating s. 20.602, F.S.; specifying the applicability of

1729

certain provisions of the Code of Ethics for Public Officers and

1730

Employees to officers and board members of corporate entities

1731

associated with the Department of Economic Opportunity;

1732

prohibiting such officers and board members from representing a

1733

person or an entity for compensation before certain bodies for a

1734

specified timeframe; providing for construction; amending s.



Amendment No.

1735 28.35, F.S.; revising reporting requirements applicable to the  
1736 Florida Clerks of Court Operations Corporation; amending s.  
1737 43.16, F.S.; revising the responsibilities of the Justice  
1738 Administrative Commission, each state attorney, each public  
1739 defender, a criminal conflict and civil regional counsel, a  
1740 capital collateral regional counsel, and the Guardian Ad Litem  
1741 Program, to include the establishment and maintenance of certain  
1742 internal controls; amending s. 112.313, F.S.; specifying that  
1743 prohibitions on conflicting employment or contractual  
1744 relationships for public officers or employees of an agency  
1745 apply to contractual relationships held by certain business  
1746 entities; making technical changes; amending s. 112.3144, F.S.;  
1747 requiring elected municipal officers who receive compensation to  
1748 file a full and public disclosure of financial interests, rather  
1749 than a statement of financial interests; providing for  
1750 applicability; amending s. 112.31455, F.S.; revising provisions  
1751 governing collection methods for unpaid automatic fines for  
1752 failure to timely file disclosure of financial interests to  
1753 include school districts; amending ss. 129.03, 129.06, 166.241,  
1754 and 189.016, F.S.; requiring counties, municipalities, and  
1755 special districts to maintain certain budget documents on the  
1756 entities' websites for a specified period; amending s. 215.425,  
1757 F.S.; defining the term "public funds"; revising exceptions to  
1758 the prohibition on extra compensation claims; requiring certain  
1759 contracts to which a unit of government or state university is a  
1760 party during a specified period to contain certain prohibitions

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Amendment No.

1761 on severance pay; requiring a unit of government to investigate  
1762 and take necessary action to recover prohibited compensation;  
1763 specifying methods of recovery for unintentional and willful  
1764 violations; providing a penalty; specifying applicability of  
1765 procedures regarding suspension and removal of an officer who  
1766 commits a willful violation; establishing eligibility criteria  
1767 and amounts for rewards; specifying circumstances under which an  
1768 employee has a cause of action under the Whistle-blower's Act;  
1769 establishing causes of action if a unit of government fails to  
1770 recover prohibited compensation within a certain timeframe;  
1771 providing for applicability; amending s. 215.86, F.S.; revising  
1772 the purposes for which management systems and internal controls  
1773 must be established and maintained by each state agency and the  
1774 judicial branch; amending s. 215.97, F.S.; revising the  
1775 definition of the term "audit threshold"; amending s. 215.985,  
1776 F.S.; revising the requirements for a monthly financial  
1777 statement provided by a water management district; amending s.  
1778 218.32, F.S.; revising the requirements of the annual financial  
1779 audit report of a local governmental entity; authorizing the  
1780 Department of Financial Services to request additional  
1781 information from a local governmental entity; requiring a local  
1782 governmental entity to respond to such requests within a  
1783 specified timeframe; requiring the department to notify the  
1784 Legislative Auditing Committee of noncompliance; amending s.  
1785 218.33, F.S.; requiring local governmental entities to establish  
1786 and maintain internal controls to achieve specified purposes;

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Amendment No.

1787 amending s. 218.39, F.S.; requiring an audited entity to respond  
1788 to audit recommendations under specified circumstances; amending  
1789 s. 218.391, F.S.; revising the composition of an audit  
1790 committee; prohibiting an audit committee member from being an  
1791 employee, chief executive officer, or chief financial officer of  
1792 the respective governmental entity; requiring the chair of an  
1793 audit committee to sign and execute an affidavit affirming  
1794 compliance with auditor selection procedures; prescribing  
1795 procedures in the event of noncompliance with auditor selection  
1796 procedures; amending s. 286.0114, F.S.; prohibiting a board or  
1797 commission from requiring an advance copy of testimony or  
1798 comments from a member of the public as a precondition to be  
1799 given the opportunity to be heard at a public meeting; amending  
1800 s. 288.92, F.S.; prohibiting specified officers and board  
1801 members of Enterprise Florida, Inc., from representing a person  
1802 or entity for compensation before Enterprise Florida, Inc., and  
1803 associated entities thereof, for a specified timeframe; amending  
1804 s. 288.9604, F.S.; prohibiting a director of the Florida  
1805 Development Finance Corporation from representing a person or  
1806 entity for compensation before the corporation for a specified  
1807 timeframe; amending s. 373.536, F.S.; deleting obsolete  
1808 language; requiring water management districts to maintain  
1809 certain budget documents on the districts' websites for a  
1810 specified period; amending s. 838.014, F.S.; revising and  
1811 providing definitions; amending s. 838.015, F.S.; revising the  
1812 definition of the term "bribery"; revising requirements for

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Amendment No.

1813 prosecution; amending s. 838.016, F.S.; revising the prohibition  
1814 against unlawful compensation or reward for official behavior to  
1815 conform to changes made by the act; amending s. 838.022, F.S.;  
1816 revising the prohibition against official misconduct to conform  
1817 to changes made by the act; revising applicability of the  
1818 offense to include public contractors; amending s. 838.22, F.S.;  
1819 revising the prohibition against bid tampering to conform to  
1820 changes made by the act; revising applicability of the offense  
1821 to include specified public contractors; creating s. 838.24,  
1822 F.S.; authorizing the award of attorney fees to public servants  
1823 and public contractors under certain conditions; amending s.  
1824 1001.42, F.S.; authorizing additional internal audits as  
1825 directed by the district school board; amending s. 1002.33,  
1826 F.S.; revising the responsibilities of the governing board of a  
1827 charter school to include the establishment and maintenance of  
1828 internal controls; amending s. 1002.37, F.S.; requiring  
1829 completion of an annual financial audit of the Florida Virtual  
1830 School; specifying audit requirements; requiring an audit report  
1831 to be submitted to the board of trustees of the Florida Virtual  
1832 School and the Auditor General; removing obsolete provisions;  
1833 amending s. 1010.01, F.S.; requiring each school district,  
1834 Florida College System institution, and state university to  
1835 establish and maintain certain internal controls; amending s.  
1836 1010.30, F.S.; requiring a district school board, Florida  
1837 College System institution board of trustees, or university  
1838 board of trustees to respond to audit recommendations under

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## Amendment No.

1839 certain circumstances; amending ss. 68.082 and 68.083, F.S.;  
1840 conforming provisions and cross-references to changes made by  
1841 the act; amending s. 99.061, F.S.; requiring candidates for  
1842 elected municipal office for which compensation is provided to  
1843 file a full and public disclosure of financial interests;  
1844 amending ss. 218.503 and 1002.455, F.S.; conforming provisions  
1845 and cross-references to changes made by the act; reenacting s.  
1846 112.534(2)(a), F.S., relating to official misconduct, s.  
1847 117.01(4)(d), F.S., relating to appointment, application,  
1848 suspension, revocation, application fee, bond, and oath, and s.  
1849 921.0022(3)(d), F.S., relating to the Criminal Punishment Code  
1850 offense severity ranking chart, to incorporate amendments made  
1851 by the act to s. 838.022, F.S., in references thereto;  
1852 reenacting s. 817.568(11), F.S., relating to criminal use of  
1853 personal identification information, to incorporate the  
1854 amendment made by the act to s. 838.014, F.S., in a reference  
1855 thereto; reenacting s. 921.0022(3)(g), F.S., relating to the  
1856 Criminal Punishment Code offense severity ranking chart, to  
1857 incorporate the amendments made by the act to ss. 838.015,  
1858 838.016, and 838.22, F.S., in references thereto; declaring that  
1859 the act fulfills an important state interest; providing an  
1860 effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 643 Pub. Rec./Department of Agriculture and Consumer Services

**SPONSOR(S):** Trumbull

**TIED BILLS:** HB 641 **IDEN./SIM. BILLS:** SB 754

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 1 N	Butler	Anstead
2) Government Operations Subcommittee		Williamson <i>raw</i>	Williamson <i>raw</i>
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (Department) collaborates with state and federal investigative agencies when pursuing remedies for administrative and civil investigations, most specifically as it relates to the Department's regulation of charitable organizations. Many charitable organizations operate both inside and outside of Florida.

Florida's public records laws do not allow the Department to keep information received from other state or federal agencies, such as the Federal Trade Commission (FTC) or Internal Revenue Service (IRS) confidential and exempt from public record laws. Because of this, the Department is unable to participate in data sharing with several state and federal agencies.

This bill, which is contingent upon the passage of House Bill 641, creates a public record exemption for criminal or civil intelligence or investigative information or any other information held by the Department as part of a joint or multi-agency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency when the information shared is confidential or exempt under the laws or regulations of that state or federal agency.

However, the public records exemption does not apply to information held by the Department as part of an independent examination or investigation conducted by the Department.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the Department.

**Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Public Records Laws

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.<sup>1</sup> One hundred years later, Floridians adopted an amendment to the Florida Constitution that raised the statutory right of access to public records to a constitutional level.<sup>2</sup> Article I, section 24 of the Florida Constitution provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the Florida Constitution, the Public Records Act,<sup>3</sup> which pre-dates the Florida Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.<sup>4</sup> Section 119.07(1)(a), F.S., provides that every person who has custody of a public record must permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public records" is broadly defined 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."<sup>5</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

---

<sup>1</sup> s. 1390, 1391 F.S. (Rev. 1892).

<sup>2</sup> FLA. CONST. art. I, s. 24.

<sup>3</sup> ch. 119, F.S.

<sup>4</sup> The word "agency" is defined in s. 119.011(2), F.S., 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 this chapter, 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." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution.

<sup>5</sup> s. 119.011(12), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>7</sup> *Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla. 1979).

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in statute.<sup>8</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>9</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>10</sup> Exemptions must be created by general law, must specifically state the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the law.<sup>11</sup> A bill enacting an exemption<sup>12</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>13</sup>

### Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)<sup>14</sup> provides for the systematic review, through a five-year cycle ending October 2 of the fifth year following enactment, of an exemption from public records requirements.<sup>15</sup>

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.<sup>16</sup> An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of the individual under this provision is exempted.
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>17</sup>

### The Department of Agriculture and Consumer Services

The mission of the Department is to safeguard the public and support Florida's agricultural economy by:

- Ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs;

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<sup>8</sup> 85-62 Fla. Op. Att'y Gen. (1985).

<sup>9</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).

<sup>10</sup> FLA. CONST. art. I, s. 24.

<sup>11</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So.2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So.2d 567, 569 (Fla. 1999).

<sup>12</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>13</sup> FLA. CONST. art. I, s. 24.

<sup>14</sup> s. 119.15, F.S.

<sup>15</sup> s. 119.15(3), F.S.

<sup>16</sup> s. 119.15(6)(b), F.S.

<sup>17</sup> *Id.*

- Protecting consumers from unfair and deceptive business practices and providing consumer information;
- Assisting Florida's farmers and agricultural industries with the production and promotion of agricultural products; and
- Conserving and protecting the state's agricultural and natural resources by reducing wildfires, promoting environmentally safe agricultural practices, and managing public lands.

The Department investigates and regulates several professions in the State of Florida. The Department's oversight and regulation of charitable organizations was significantly expanded in 2014.<sup>18</sup> The Department is particularly interested in the state and federal resources available to assist with the enforcement and regulation of these entities.

These resources are unavailable to the Department currently because Florida's public records laws do not allow the Department to keep information private when received from another state or federal agency, such as the FTC or the IRS. Due to the Department's inability to agree to maintain the confidentiality of such investigative data, the Department is unable to participate in data sharing with several state and federal agencies.

It would be of significant assistance to the Department to be able to receive data from other state and federal agencies. The FTC operates a Consumer Sentinel database that is protected from public record disclosure and can only be provided to a state agency that agrees not to disseminate the information. This database contains information on subjects related to:

- Identity Theft.
- Do-Not-Call Registry violations.
- Computers, the Internet, and Online Auctions.
- Telemarketing Scams.
- Advance-fee Loans and Credit Scams.
- Immigration Services.
- Sweepstakes, Lotteries, and Prizes.
- Business Opportunities and Work-at-Home Schemes.
- Health and Weight Loss Products.
- Debt Collection, Credit Reports, and Financial Matters.

Similarly, the IRS would be willing to share certain information, on a case by case basis, if the Department could agree that such information would not be disseminated. The IRS has access to tax filing information that would be very valuable to the Department when investigating whether an organization is observing, especially a charitable organization, Florida's laws.

### **Effect of the Bill**

The bill, which is contingent upon the passage of House Bill 641, creates a public records exemption for criminal or civil intelligence or investigative information or any other information held by the Department as part of a joint or multi-agency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency when the information that is shared is confidential or exempt under the laws or regulations of that state or federal agency. The Department may obtain, use, and release the information in accordance with the conditions imposed by the joint or multi-agency agreement.

The public records exemption does not apply to information held by the Department as part of an independent examination or investigation conducted by the Department.



The Department may release the confidential and exempt information in the furtherance of its official duties and responsibilities, or to another governmental agency in the furtherance of its official duties and responsibilities.

The bill provides that the section is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

**B. SECTION DIRECTORY:**

**Section 1** creates s. 570.077, F.S., relating to confidentiality of intelligence or investigative information.

**Section 2** provides a public necessity statement.

**Section 3** provides an effective date that is contingent upon the passage of HB 641 or similar legislation.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill may create a minimal fiscal impact on the Department because staff responsible for complying with public records requests could require training related to the creation of the public records exemption. In addition, the Department could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the Department.

**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 Florida 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 a public records exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public records exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for information held by the Department as part of a joint or multiagency examination or investigation. The exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Department of Agriculture and Consumer Services

According to the Department, adopting this public records exemption will increase efficiency in investigations by saving time on developing leads, and increasing witness and victim data. Further, the Department believes that it will be able to field consumer complaints more efficiently.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1                                   A bill to be entitled  
 2           An act relating to public records; creating s.  
 3           570.077, F.S.; providing an exemption from public  
 4           records requirements for criminal or civil  
 5           intelligence or investigative information or any other  
 6           information held by the Department of Agriculture and  
 7           Consumer Services as part of an examination or  
 8           investigation with another state or federal  
 9           regulatory, administrative, or criminal justice  
 10          agency; providing exceptions to the exemption;  
 11          providing applicability; providing for future  
 12          legislative review and repeal of the exemption;  
 13          providing a statement of public necessity; providing a  
 14          contingent effective date.

15  
 16 Be It Enacted by the Legislature of the State of Florida:

17  
 18           Section 1. Section 570.077, Florida Statutes, is created  
 19 to read:

20           570.077 Confidentiality of intelligence or investigative  
 21 information.-

22           (1) Criminal or civil intelligence or investigative  
 23 information or any other information held by the department as  
 24 part of a joint or multiagency examination or investigation with  
 25 another state or federal regulatory, administrative, or criminal  
 26 justice agency which is confidential or exempt under the laws or

27 regulations of that state or federal agency is confidential and  
 28 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 29 Constitution. The department may obtain, use, and release the  
 30 information in accordance with the conditions imposed by the  
 31 joint or multiagency agreement.

32 (2) The department may release information that is made  
 33 confidential and exempt under subsection (1):

34 (a) In the furtherance of its official duties and  
 35 responsibilities.

36 (b) To another governmental agency in the furtherance of  
 37 its official duties and responsibilities.

38 (3) The public records exemption provided in subsection  
 39 (1) does not apply to information held by the department as part  
 40 of an independent examination or investigation conducted by the  
 41 department.

42 (4) This section is subject to the Open Government Sunset  
 43 Review Act in accordance with s. 119.15 and shall stand repealed  
 44 on October 2, 2021, unless reviewed and saved from repeal  
 45 through reenactment by the Legislature.

46 Section 2. The Legislature finds that it is a public  
 47 necessity that criminal or civil intelligence or investigative  
 48 information or any other information held by the Department of  
 49 Agriculture and Consumer Services as part of a joint or  
 50 multiagency examination or investigation with another state or  
 51 federal regulatory, administrative, or criminal justice agency  
 52 which is confidential or exempt under the laws or regulations of

53 | that state or federal agency be made confidential and exempt  
 54 | from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of  
 55 | the State Constitution. Without the exemption, the department  
 56 | will be unable to obtain information that could assist it in  
 57 | pursuing violations of law under its jurisdiction. With this  
 58 | exemption, the department should increase efficiency of  
 59 | investigations by saving time on developing investigative leads,  
 60 | witness data, and victim data. Furthermore, the exemption is  
 61 | necessary to enable the department to participate in joint or  
 62 | multiagency investigations and examinations. Without the  
 63 | exemption, the department would continue to be excluded from  
 64 | information due to the inability to maintain investigative  
 65 | confidentiality. Without the sharing and coordination of  
 66 | information, governmental agencies may be required to conduct  
 67 | duplicative independent investigations or examinations in order  
 68 | to meet their regulatory responsibilities. With this exemption,  
 69 | the department will strengthen relationships with other state  
 70 | and federal agencies, allowing them to become more efficient by  
 71 | sharing critical investigative data.

72 |       Section 3. This act shall take effect upon becoming a law  
 73 | if HB 641 or similar legislation is adopted in the same  
 74 | legislative session or an extension thereof and becomes a law.



**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** HB 911 City of Delray Beach, Palm Beach County  
**SPONSOR(S):** Hager  
**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	8 Y, 0 N	Darden	Miller
2) Government Operations Subcommittee		Toliver <i>LT</i>	Williamson <i>haw</i>
3) Local & Federal Affairs Committee			

**SUMMARY ANALYSIS**

The civil service code for the City of Delray Beach was created by a special act of the Legislature in 1949. The civil service code currently applies to all regular employees of the city, except assistant city managers, department heads, and police majors. The code also does not apply to employees covered by a collective bargaining agreement or by an expired collective bargaining agreement subject to renegotiation, unless the collective bargaining agreement specifies the code shall apply.

The bill repeals ch. 49-25784, Laws of Fla., creating a civil service code for the City of Delray Beach, and subsequent special acts amending the civil service code. The current civil service code is included in the city's code of ordinances and repealing the act provides flexibility for the city to make changes pursuant to its home-rule authority.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides for a referendum to be held in conjunction with a general election in the City of Delray Beach. The bill takes effect only upon approval by a majority of qualified electors in the City of Delray Beach, except that the provision providing for the referendum shall take effect upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Delray Beach Civil Service Code

The civil service code for the City of Delray Beach was created by a special act of the Legislature in 1949.<sup>1</sup> The provisions cover all full-time permanent employees of the city, except assistant city managers, department heads, and police majors.<sup>2</sup> Employees covered by a collective bargaining agreement with the city, or covered by an expired collective bargaining agreement subject to renegotiation, are also excluded unless the agreement specifies the code applies.<sup>3</sup>

The Civil Service Board (CSB) implements the provisions of the code. The CSB consists of five members.<sup>4</sup> The city commission selects three members.<sup>5</sup> These members may not be employed by the city in any capacity and must come from different occupational fields.<sup>6</sup> Members selected by the city commission serve a two-year term.<sup>7</sup> City employees elect two members.<sup>8</sup> City employee members cannot work in the same department and are elected annually.<sup>9</sup> Each department is limited to a single candidate for the CSB, with a departmental primary-type election to be held in the event multiple candidates from a department declare their intention to run.<sup>10</sup> The CSB contains two alternate members, one selected by the city commission and one elected by city employees.<sup>11</sup> The alternate members must meet the same eligibility criteria as regular members of the CSB.<sup>12</sup>

The conditions of city employment are established by rules and regulations adopted by the city manager.<sup>13</sup> These rules include employee duties, hours of work, discipline, control, conduct, and direction.<sup>14</sup> The CSB may make recommendations concerning enforcement of the rules to the city manager.<sup>15</sup> If the rules and regulations adopted by the city manager require an examination for filling a position, the CSB is responsible for administering the examination and maintaining a list of candidates based on the results.<sup>16</sup>

The number of positions in each city department and the classification of those positions are controlled by the city commission.<sup>17</sup> In the event the number of positions or classifications is reduced, employees are retained according to seniority.<sup>18</sup> Employees in an eliminated position in a higher classification position may choose to be "bump[ed] back" to a lower classification position, receiving the pay for the

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<sup>1</sup> Ch. 49-25784, Laws of Fla., as amended. Codified as Title 3, ch. 35, s. 35.001-35.014, Delray Beach Code of Ordinances.

<sup>2</sup> S. 35.002(A), Delray Beach Code of Ordinances.

<sup>3</sup> *Id.*

<sup>4</sup> Section 35.003(A)(1), Delray Beach Code of Ordinances.

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

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Section 35.003(A)(2), Delray Beach Code of Ordinances.

<sup>11</sup> Section 35.003(A)(1), Delray Beach Code of Ordinances.

<sup>12</sup> *Id.*

<sup>13</sup> Section 35.004, Delray Beach Code of Ordinances.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Section 35.005, Delray Beach Code of Ordinances.

<sup>17</sup> Section 35.007(A), Delray Beach Code of Ordinances.

<sup>18</sup> Section 35.007(B), Delray Beach Code of Ordinances.



lower position.<sup>19</sup> Employees may also be placed on inactive status for up to one year, during which they retain seniority in event of reemployment by the city.<sup>20</sup> If no position is available, the city manager may appoint the employee to another position, if the employee meets the qualifications for that position and received a satisfactory performance review in the previous year.<sup>21</sup>

To terminate an employee, the city manager must serve a written statement or notice of discharge to the employee.<sup>22</sup> The notice must contain the reason the employee is being terminated, along with specific facts that would enable the employee to make an explanation.<sup>23</sup> The city manager must file the statement, along with any explanation provided by the employee, with the CSB before the discharge may take effect.<sup>24</sup>

If an employee has been discharged, demoted, or suspended without pay for more than seven days, the employee may file an appeal with the CSB.<sup>25</sup> The employee may not appeal non-disciplinary actions, as determined by the city manager.<sup>26</sup> The appeal must be filed within ten days of employee receiving notice and a hearing must be held.<sup>27</sup>

- For discharge: within 90 days, but no sooner than 60 days
- For demotion or suspension: within 30 days.

A hearing may be postponed by mutual consent of the city, the CSB, and the employee.<sup>28</sup> In a discharge hearing, the CSB functions like a jury with counsel selected by the CSB as the judge.<sup>29</sup> This method may also be used for a demotion or suspension hearing if the city commission consents and either the CSB acting alone, or the CSB and the employee jointly, request it.<sup>30</sup> If this method is not used, the CSB may request the city commission to appoint and retain a qualified attorney to provide legal advice to the CSB.<sup>31</sup> The attorney is selected by a drawing consisting of four candidates, two selected by the city manager and two selected by the CSB.<sup>32</sup> If either party fails to submit two names, the drawing is held from the remaining entries submitted.<sup>33</sup> The code does not specify who serves as judge for demotion or suspension hearings, but grants many of the powers of a judge to the chairperson of the CSB during such a hearing.<sup>34</sup> If the CSB disapproves of the discharge, demotion, or suspension and reinstates the employee, the CSB may also grant the employee any pay lost due to the discharge, demotion, or suspension.<sup>35</sup>

The city manager may discipline an employee by suspending the employee for up to 30 days without pay.<sup>36</sup> The city manager may not circumvent this requirement by successive suspensions.<sup>37</sup> If an employee has been charged with a crime, the city manager may suspend the employee until the case

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<sup>19</sup> *Id.*

<sup>20</sup> Section 35.007(C), Delray Beach Code of Ordinances.

<sup>21</sup> Section 35.013, Delray Beach Code of Ordinances.

<sup>22</sup> Section 35.008, Delray Beach Code of Ordinances.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Section 35.009(A), Delray Beach Code of Ordinances.

<sup>26</sup> Section 35.009 (B), Delray Beach Code of Ordinances. The code gives termination for failure to have or maintain job qualifications and requirements as an example of a non-disciplinary action.

<sup>27</sup> Section 35.009(A), Delray Beach Code of Ordinances.

<sup>28</sup> *Id.*

<sup>29</sup> Section 35.009(B)(7), Delray Beach Code of Ordinances.

<sup>30</sup> Section 35.009(B)(2), Delray Beach Code of Ordinances.

<sup>31</sup> Section 35.009(B)(3), Delray Beach Code of Ordinances.

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

<sup>33</sup> Section 35.009(B)(5), Delray Beach Code of Ordinances.

<sup>34</sup> See s. 35.009(B)(11), Delray Beach Code of Ordinances (chairperson may swear witnesses and issue subpoenas).

<sup>35</sup> Section 35.012(B), Delray Beach Code of Ordinances.

<sup>36</sup> Section 35.012(A), Delray Beach Code of Ordinances.

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

is resolved, even if the suspension is for longer than 30 days.<sup>38</sup> If the employee is found guilty, the city manager may dismiss the employee, but if the employee is acquitted or cleared of the charges, the city manager is required to restore the employee's previous position with full compensation for the suspension period.<sup>39</sup>

### Civil Service Codes

The Florida Constitution requires a civil service system for state employees and authorizes the creation of civil service systems and boards for employees of counties, municipalities, and districts.<sup>40</sup> While this language appears to limit the creation of a civil service code for municipal employees to the Legislature, the Florida Supreme Court has upheld municipal ordinances creating a civil service system as a valid exercise of municipal home-rule authority under art. VIII, s. 2(b) of the Florida Constitution<sup>41</sup> and the Legislature has implicitly adopted this interpretation.<sup>42</sup>

While municipalities are granted broad home-rule powers by the Florida Constitution, subject to general law, changes to any special act or municipal charter that would affect any rights of municipal employees are subject to approval by referendum.<sup>43</sup>

### Effect of Proposed Changes

The bill repeals ch. 49-25784, Laws of Fla., and subsequent special acts creating and amending the civil service code for the City of Delray Beach. The current civil service code has been incorporated into the city charter by reference<sup>44</sup> and codified in the city's code of ordinances.<sup>45</sup> The city possesses the power, pursuant to its charter, to adopt a civil service code to the extent the code does not conflict with general law.

#### B. SECTION DIRECTORY:

Section 1: Repeals ch. 97-324, 86-428, 83-397, 80-496, 79-447, 67-1284, and 25784 (1949), Laws of Fla.

Section 2: Provides that the bill shall take effect upon approval by a majority of qualified electors in the City of Delray Beach voting in a referendum held in conjunction with a general election, except that this section takes effect upon the bill becoming a law.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN?

WHERE?

B. REFERENDUM(S) REQUIRED? Yes  No

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Art. III, s. 14, Fla. Const.

<sup>41</sup> *City of Casselberry v. Orange County Police Benev. Ass'n*, 482 So. 2d 336, 339 (Fla. 1986).

<sup>42</sup> See s. 447.601, F.S. (stating public employee provisions of ch. 447 are not intended to repeal, amend, or modify any ordinance creating a civil service system for public employees, except where those ordinances are in conflict).

<sup>43</sup> Section 166.021(4), F.S.

<sup>44</sup> See Art. I, s. 1.03, Delray Beach Charter (stating special acts pertaining to the jurisdiction and exercise of municipal powers of the city are considered amendments to the charter and shall be incorporated as such).

<sup>45</sup> Title 3, ch. 35, Delray Beach Code of Ordinances.

IF YES, WHEN? In conjunction with a general election held in the City of Delray Beach.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides for a referendum to be held in conjunction with a "general election" in the City of Delray Beach. Section 97.021(15), F.S., defines the term "general election" to mean an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law.

A letter from the city attorney suggested that the city intended to hold the referendum on March 15, 2016, during the Presidential Preference Primary,<sup>46</sup> which was confirmed by the city attorney in a subsequent telephone conversation.<sup>47</sup>

Section 166.031, F.S., requires a charter amendment referendum to be held during a general election held within the municipality or at a special election called for the purpose of approving the amendment.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>46</sup> Letter from Noel Pfeffer, City Attorney for the City of Delray Beach, to Rep. Magar, dated Sept. 29, 2015, available at [http://www.pbcgov.com/legislativeaffairs/pdf/2015/LB\\_City\\_of\\_Delray\\_Beach\\_Local\\_Bill\\_Package.pdf](http://www.pbcgov.com/legislativeaffairs/pdf/2015/LB_City_of_Delray_Beach_Local_Bill_Package.pdf).

<sup>47</sup> Telephone conversation with Noel Pfeffer, City Attorney for the City of Delray Beach, on January 21, 2016 at 1:49 PM.

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A bill to be entitled  
An act relating to the City of Delray Beach, Palm  
Beach County; repealing chapters 97-324, 86-428, 83-  
397, 80-496, 79-447, 67-1284, and 25784 (1949), Laws  
of Florida; repealing the civil service act for the  
city; requiring a referendum; providing an effective  
date.

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

Section 1. Chapters 97-324, 86-428, 83-397, 80-496, 79-  
447, 67-1284, and 25784, 1949, Laws of Florida, are repealed.

Section 2. This act shall take effect only upon its  
approval by a majority vote of those qualified electors of the  
City of Delray Beach voting in a referendum to be held in  
conjunction with a general election, except that this section  
shall take effect upon this act becoming a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1033 Information Technology Security  
**SPONSOR(S):** Artilles  
**TIED BILLS:** HB 1035, HB 1037 **IDEN./SIM. BILLS:** SB 7050

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Toliver <i>LT</i>	Williamson <i>[Signature]</i>
2) Government Operations Appropriations Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

The Agency for State Technology (AST) is administratively housed within the Department of Management Services. The executive director of AST, who serves as the state's chief information officer, is appointed by the governor and confirmed by the Senate. Current law establishes positions within AST and establishes the agency's duties and responsibilities.

The bill authorizes AST to impose upon each state agency a service charge equal to 10 percent of each information technology (IT) project over which it performs project oversight for that state agency.

For purposes of the IT Security Act, the bill reassigns duties from the AST at large to the Chief Information Security Officer (CISO) for AST. It requires the CISO to establish standards and processes consistent with best practices for both IT security and cybersecurity. It also requires the CISO to develop and publish guidelines and processes for an IT security framework for use by state agencies. In part, the guidelines and processes must address completing risk assessments administered by a third party, establishing a computer security incident response team (team), and establishing an IT incident reporting process.

The bill requires the information security manager of each state agency to establish a team to respond to a suspected computer security incident. It also requires each agency head to conduct a risk assessment administered by a third party, subject to annual appropriation, by July 31, 2017; conduct IT security training; ensure that certain personnel understand their roles and responsibilities; develop notification procedures for reporting IT security incidents and breaches; improve organization response activities; and provide training on cybersecurity threats, trends, and best practices.

The bill requires the Technology Advisory Council (Council) within AST to have at least one member who is a cybersecurity expert. The bill also requires the Council to coordinate with the Florida Center for Cybersecurity to recommend opportunities for establishing science, technology, engineering, and mathematics (STEM) training programs, and to consult with the State Board of Education on the adoption of a unified plan to improve K-20 STEM education.

The bill requires certain entities to notify AST if such entities experience a security breach affecting at least 500 people in Florida.

For Fiscal Year (FY) 2016-2017, the bill appropriates the sum of \$12 million from the General Revenue Fund to AST to implement the bill. For FY 2016-2017, the bill also appropriates \$650,000 in nonrecurring funds and \$50,000 in recurring funds from the General Revenue Fund to AST to conduct training exercises in coordination with the Florida National Guard.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Agency for State Technology

In 2014, the Legislature created the Agency for State Technology (AST) within the Department of Management Services (DMS).<sup>1</sup> The executive director of AST, who serves as the state's chief information officer, is appointed by the governor and confirmed by the Senate.<sup>2</sup> The following positions are established within AST, all of whom are appointed by the executive director:

- Deputy executive director, who serves as the deputy chief information officer.<sup>3</sup>
- Chief planning officer and six strategic planning coordinators.<sup>4</sup>
- Chief operations officer.<sup>5</sup>
- Chief information security officer.<sup>6</sup>
- Chief technology officer.<sup>7</sup>

AST's duties and responsibilities include:

- Developing and publishing information technology (IT) policy for management of the state's IT resources.
- Establishing and publishing IT architecture standards.
- Establishing project management and oversight standards for use by state agencies when implementing IT projects.
- Performing project oversight on all state agency IT projects with a total project cost of \$10 million or more that are funded in the General Appropriations Act or any other law.
- Performing project oversight on any cabinet agency IT project with a total project cost of \$25 million or more and that impacts one or more agencies.
- Providing operational management and oversight of the state data center.
- Recommending additional consolidations of agency data centers or computing facilities into the state data center.
- Identifying opportunities for standardization and consolidation of IT services that support business functions and operations that are common across state agencies.
- Establishing, in collaboration with DMS, best practices for the procurement of IT products in order to reduce costs, increase productivity, or improve services.
- Participating with DMS in evaluating, conducting, and negotiating competitive solicitations for state term contracts for IT commodities, consultant services, or staff augmentation contractual services.
- Developing standards for IT reports and updates for use by state agencies.
- Assisting state agencies, upon request, in developing IT related legislative budget requests.
- Conducting annual assessments of state agencies to determine their compliance with all IT standards and guidelines developed and published by AST.<sup>8</sup>

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<sup>1</sup> AST is administratively housed within DMS. It is a separate budget program and is not subject to control, supervision, or direction by DMS.

<sup>2</sup> Section 20.61(1)(a), F.S.

<sup>3</sup> Section 20.61(2)(a), F.S.

<sup>4</sup> Section 20.61(2)(b), F.S., requires one coordinator to be assigned to each of the following major program areas: health and human services, education, government operations, criminal and civil justice, agriculture and natural resources, and transportation and economic development.

<sup>5</sup> Section 20.61(2)(c), F.S.

<sup>6</sup> Section 20.61(2)(d), F.S.

<sup>7</sup> Section 20.61(2)(e), F.S.

<sup>8</sup> Section 282.0051, F.S.

### Technology Advisory Council

The Legislature established the Technology Advisory Council (Council) within AST.<sup>9</sup> The Council is comprised of seven members: four members appointed by the Governor, two of whom must be from the private sector; the President of the Senate and Speaker of the House of Representatives each appoint one member; and the Cabinet members jointly appoint one member.<sup>10</sup> The Council considers and makes recommendations to the executive director of AST on matters pertaining to enterprise IT policies, standards, services and architecture.<sup>11</sup> The executive director must consult with the Council with regard to executing AST's duties and responsibilities that relate to statewide IT strategic planning and policy.<sup>12</sup>

It is unclear whether a meeting of the Council has convened since its creation.

### Information Technology Security Act

The Information Technology Security Act<sup>13</sup> provides that AST is responsible for establishing standards and processes consistent with generally accepted best practices for IT security and adopting rules that safeguard an agency's data, information, and IT resources to ensure availability, confidentiality, and integrity.<sup>14</sup> In addition, AST must:

- Develop, and annually update, a statewide IT security strategic plan;
- Develop and publish an IT security framework for state agencies;<sup>15</sup>
- Collaborate with the Cybercrime Office of the Florida Department of Law Enforcement in providing training for state agency information security managers; and
- Annually review the strategic and operational IT security plans of executive branch agencies.<sup>16</sup>

The IT Security Act requires the heads of state agencies to designate an information security manager to administer the IT security program of the state agency.<sup>17</sup> In part, the heads of state agencies are also required to annually submit to AST the state agency's strategic and operational IT security plans; conduct, and update every three years, a comprehensive risk assessment<sup>18</sup> to determine the security threats to the data, information, and IT resources of the state agency; develop, and periodically update, written internal policies and procedures; and ensure that periodic internal audits and evaluations<sup>19</sup> of the agency's IT security program for the data, information, and IT resources of the state agency are conducted.<sup>20</sup>

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<sup>9</sup> Section 20.61(3), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 20.61(3)(a), F.S.

<sup>12</sup> Section 20.61(3)(b), F.S.

<sup>13</sup> Section 282.318, F.S.

<sup>14</sup> Section 282.318(3), F.S.

<sup>15</sup> The term "state agency" is defined to mean any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities. Section 282.0041(23), F.S.

<sup>16</sup> Section 282.318(3), F.S.

<sup>17</sup> Section 282.318(4)(a), F.S.

<sup>18</sup> The risk assessment is confidential and exempt from s. 119.07(1), F.S., except that such information shall be available to the Auditor General, the Agency for State Technology, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General. Section 282.318(4)(c), F.S.

<sup>19</sup> The results of such audits and evaluations are confidential and exempt from s. 119.07(1), F.S., except that such information must be made available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Agency for State Technology, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General. Section 282.318(4)(f), F.S.

<sup>20</sup> Section 282.318(4), F.S.



### Cybercrime Office within the Florida Department of Law Enforcement

In 2011, the Cybercrime Office (Office) was established within the Florida Department of Law Enforcement (FDLE)<sup>21</sup> when the Department of Legal Affairs' Cybercrime Office was transferred to FDLE.<sup>22</sup> The Office is tasked with:

- Investigating violations of state law pertaining to the sexual exploitation of children, which are facilitated by or connected to the use of any device capable of storing electronic data.<sup>23</sup>
- Monitoring state IT resources and providing analysis on IT security, threats, and breaches.<sup>24</sup>
- Investigating violations of state law pertaining to IT security incidents<sup>25</sup> and assisting in incident response and recovery.<sup>26</sup>
- Providing security awareness training and information to state agency employees concerning cybersecurity, online sexual exploitation of children, and security risks, and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by AST.<sup>27</sup>
- Consulting with AST in the adoption of rules relating to the IT security provisions in s. 282.318, F.S.<sup>28</sup>

The Office may collaborate with state agencies to provide IT security awareness training to state agency employees.<sup>29</sup> State agencies are required to report IT security incidents and breaches to the Office.<sup>30</sup>

### Florida Center for Cybersecurity

In 2014, the Legislature created the Florida Center for Cybersecurity (Center) within the University of South Florida.<sup>31</sup> The goals of the Center are to:

- Position Florida as the national leader in cybersecurity and its related workforce through education, research, and community engagement.
- Assist in the creation of jobs in the state's cybersecurity industry and enhance the existing cybersecurity workforce.
- Act as a cooperative facilitator for state business and higher education communities to share cybersecurity knowledge, resources, and training.
- Seek out partnerships with major military installations to assist, when possible, in homeland cybersecurity defense initiatives.
- Attract cybersecurity companies to the state with an emphasis on defense, finance, health care, transportation, and utility sectors.<sup>32</sup>

### Notice of Data Security Breach

In 2014, the Legislature passed the Florida Information Protection Act of 2014.<sup>33</sup> The act requires specified entities to notify the Department of Legal Affairs (DLA) of data security breaches. Specifically,

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<sup>21</sup> Section 943.0415, F.S.

<sup>22</sup> FDLE document entitled Florida Department of Law Enforcement Cybercrime Office (on file with the Government Operations Subcommittee).

<sup>23</sup> Section 943.0415(1), F.S.

<sup>24</sup> Section 943.0415(2), F.S.

<sup>25</sup> The term "incident" is defined to mean a violation or imminent threat of violation, whether such violation is accidental or deliberate, of IT security policies, acceptable use policies, or standard security practices. An imminent threat of violation refers to a situation in which the state agency has a factual basis for believing that a specific incident is about to occur. Section 282.0041(10), F.S.

<sup>26</sup> Section 943.0415(3), F.S.

<sup>27</sup> Section 943.0415(4), F.S.

<sup>28</sup> Section 931.0415(5), F.S.

<sup>29</sup> Section 282.318(4)(h), F.S.

<sup>30</sup> Section 282.318(4)(d), F.S.

<sup>31</sup> Section 1004.444(1), F.S.

<sup>32</sup> Section 1004.444(2), F.S.

<sup>33</sup> Chapter 2014-189, L.O.F.

a covered entity<sup>34</sup> must provide notice to DLA of any breach in security<sup>35</sup> affecting 500 or more individuals in the state.<sup>36</sup> The covered entity must provide notice within 30 days after the determination of a breach or reason to believe a breach has occurred, and the notice must include:

- A synopsis of the events surrounding the breach;
- The number of individuals in Florida who were or potentially have been affected by the breach;
- Any services being offered by the covered entity to individuals, without charge, and how to use such services;
- A copy of the notice sent to the individuals affected; and
- The name, address, telephone number, and e-mail address of an employee of the covered entity from whom additional information may be obtained about the breach.<sup>37</sup>

If the covered entity is the judicial branch, the Executive Office of the Governor, the Department of Financial Services, or the Department of Agriculture and Consumer Services, the agency may post the information on its agency-maintained website rather than providing written notice to DLA.<sup>38</sup>

#### Unified State Plan for Science, Technology, Engineering, and Mathematics (STEM)

The State Board of Education, in consultation with the Board of Governors and the Department of Economic Opportunity, is required to adopt a unified state plan to improve K-20 STEM education and prepare students for high-skill, high-wage, and high-demand employment in STEM and STEM-related fields.<sup>39</sup>

### **Effect of the Bill**

#### Agency for State Technology

The bill authorizes AST to impose upon each state agency a service charge equal to 10 percent of each IT project over which it performs project oversight for that state agency. The bill directs the service charges to be deposited into the State Technology Security Incident Trust Fund. It is unclear why the service charge is necessary because AST currently has positions funded from General Revenue to perform oversight of state agency IT projects.

#### Information Technology Security Act

For purposes of the IT Security Act, the bill provides for the reassignment of duties from AST at large to the chief information security officer (CISO) for AST. It requires the CISO to establish standards and processes consistent with best practices for both IT security and cybersecurity.

The bill also creates additional responsibilities for the CISO. It requires the CISO to develop and publish guidelines and processes for an IT security framework for use by state agencies for:

- Completing risk assessments administered by a third party and submitting completed assessments to AST. However, this requirement appears unnecessary because it is already provided in current law with the one difference being that the new requirement relies upon a third party to conduct the assessment. As such, the need for an additional assessment is unclear.

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<sup>34</sup> The term “covered entity” is defined to mean a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. For purposes of the notice requirements, the term includes a governmental entity. Section 501.171(1)(b), F.S.

<sup>35</sup> The term “breach of security” or “breach” is defined to mean unauthorized access of data in electronic form containing personal information. Good faith access of personal information by an employee or agent of the covered entity does not constitute a breach of security, provided that the information is not used for a purpose unrelated to the business or subject to further unauthorized use.

Section 501.171(1)(a), F.S.

<sup>36</sup> Section 501.171(3), F.S.

<sup>37</sup> Section 501.171(3)(b), F.S.

<sup>38</sup> Section 501.171(3)(e), F.S.

<sup>39</sup> Section 1001.03(17), F.S.

- Establishing a computer security incident response team to respond to suspected IT security incidents. It requires an agency's computer security incident response team to convene immediately upon notice of a suspected security incident and to determine the appropriate response. Currently, FDLE has a computer incident response team (CIRT) that is on call 24-hours-a-day, 7-days-a-week to respond to critical cyber incidents in Florida and to perform other similar functions.<sup>40</sup>
- Establishing an IT incident reporting process that must include a procedure for notification of AST and the Office. The bill requires the notification procedure to provide for tiered reporting timeframes, with incidents of critical impact reported immediately, incidents of high impact reported within four hours, and incidents of low impact reported within five business days.
- Incorporating lessons learned through detection and response activities into agency incident response plans.
- Providing all agency employees with IT security and cybersecurity awareness education and training within 30 days after commencing employment. However, this appears duplicative of the training AST currently provides in collaboration with the Office.
- Providing training, in collaboration with the Office, that includes cybersecurity threats, trends, and best practices for computer security response team members at least annually.
- Developing and establishing a cutting-edge internship or work-study program in STEM that will produce a more skilled cybersecurity workforce in the state. The program must be a collaborative effort involving negotiations between AST, relevant AST partners, and the Center. This requirement appears duplicative of the responsibilities currently assigned to the Center.

The bill requires the information security manager of each state agency to establish a computer security incident response team (team) to respond to a suspected computer security incident. Members of a team must convene immediately upon notice of a suspected security incident and determine the appropriate response, which includes taking action to prevent expansion or recurrence of an incident, mitigating the effects of an incident, and eradicating an incident. Newly identified risks must be mitigated or documented as an accepted risk by the team members. This responsibility appears similar to those currently performed by FDLE.

The bill requires each agency head to submit its risk assessments, audits, or investigations conducted pursuant to the IT Security Act to AST immediately upon request. Current law already requires agency heads to provide such information to AST. Thus, this requirement appears duplicative.

Additionally, the bill requires each agency to:

- Conduct a risk assessment, subject to annual appropriation, by July 31, 2017, that must be administered by a third party as directed by the CISO. Additional risk assessments must be conducted periodically.
- Conduct IT security training that specifically includes cybersecurity training within 30 days of an employee commencing employment.
- Ensure that privileged users, third party stakeholders, senior executives, and physical and information security personnel understand their roles and responsibilities.
- Develop notification procedures for reporting IT security incidents and breaches.
- Improve organizational response activities by incorporating lessons learned from current and previous detection and response activities into response plans.
- Provide training on cybersecurity threats, trends, and best practices to computer security incident response team members in collaboration with the Office,

#### Technology Advisory Council, Florida Center for Cybersecurity, and STEM

The bill requires that at least one member of the Council be a cybersecurity expert.

<sup>40</sup> FDLE document entitled Florida Computer Crime Center, Florida Infrastructure Protection Center (on file with the Government Operations Subcommittee).

The bill requires the Council to coordinate with the Center to identify and recommend opportunities for establishing cutting-edge educational and training programs in STEM for students, consistent with the unified state plan, for the purpose of increasing the cybersecurity workforce in the state, and to prepare cybersecurity professionals to possess a wide range of expertise. This requirement appears duplicative of the responsibilities currently assigned to the Center. It also requires the Center to coordinate with the Council on the following goals:

- Positioning Florida as the national leader in cybersecurity and its related workforce through education, research, and community engagement.
- Assisting in the creation of jobs in the state's cybersecurity industry and enhancing the existing cybersecurity workforce.
- Acting as a cooperative facilitator for state business and higher education communities to share cybersecurity knowledge, resources, and training.

The bill requires the State Board of Education to consult with the Council in the adoption of a unified state plan to improve K-20 STEM education.

#### Data Security Breach

The bill requires certain covered entities to provide notice to AST as well as DLA of any security breach affecting 500 or more individuals. It is unclear why AST would be provided with security breach notices impacting the private sector or local government entities since AST does not have oversight over either.

In addition, the bill revises the current notice standard with a scaled approach requiring the incidents of critical impact to be reported immediately, incidents of high impact to be reported within four hours, and incidents of low impact to be reported within five business days.

#### B. SECTION DIRECTORY:

Section 1 amends s. 20.61, F.S., relating to AST.

Section 2 amends s. 282.0051, F.S., relating to AST; powers, duties, and functions.

Section 3 amends s. 282.318, F.S., relating to security of data and information technology.

Section 4 amends s. 501.171, F.S., relating to security of confidential personal information.

Section 5 amends s. 1001.03, F.S., relating to specific powers of State Board of Education.

Section 6 amends s. 1004.444, F.S., relating to Florida Center for Cybersecurity.

Sections 7 and 8 provide appropriations.

Section 9 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:

For Fiscal Year (FY) 2016-2017, the bill appropriates \$650,000 in nonrecurring funds and \$50,000 in recurring funds from the General Revenue Fund to AST to conduct training exercises in coordination with the Florida National Guard. For FY 2016-2017, the bill also appropriates the sum of \$12 million from the General Revenue Fund to AST for the purpose of implementing the act.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Firms providing third party risk assessments to state agencies will see an increase in revenues.

**D. FISCAL COMMENTS:**

The bill authorizes AST to impose a service charge equal to 10 percent of each state agency IT project over which it performs project oversight. The service charges collected are deposited in the State Technology Security Incident Trust Fund, which is created by HB 1035.

The bill could have a fiscal impact on state agencies associated with the creation of computer security incident response teams, and the requirement that state agencies have a third party conduct risk assessments.

**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:**

None.

**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 information technology security;  
 3                    amending s. 20.61, F.S.; revising the membership of  
 4                    the Technology Advisory Council to include a  
 5                    cybersecurity expert; requiring the council to  
 6                    recommend STEM training opportunities; amending s.  
 7                    282.0051, F.S.; authorizing the Agency for State  
 8                    Technology to impose service charges upon state  
 9                    agencies for information technology projects; amending  
 10                    s. 282.318, F.S.; reassigning certain duties of the  
 11                    Agency for State Technology to the chief information  
 12                    security officer; providing for administration of a  
 13                    third party risk assessment; providing for the  
 14                    establishment of computer security incident response  
 15                    teams within state agencies; providing for  
 16                    continuously updated agency incident response plans;  
 17                    providing for information technology security and  
 18                    cybersecurity awareness training; providing for the  
 19                    establishment of a collaborative STEM program for  
 20                    cybersecurity workforce development; establishing  
 21                    computer security incident response team  
 22                    responsibilities; requiring a third party risk  
 23                    assessment; establishing notification procedures and  
 24                    reporting timelines for an information technology  
 25                    security incident or breach; amending s. 501.171,  
 26                    F.S.; requiring specified entities to notify the

27 agency of data security breaches; amending s. 1001.03,  
 28 F.S.; revising entities directed to adopt a unified  
 29 state plan for K-20 STEM education to include the  
 30 Technology Advisory Council; amending s. 1004.444,  
 31 F.S.; requiring the Florida Center for Cybersecurity  
 32 to coordinate with the Technology Advisory Council;  
 33 providing appropriations; providing an effective date.  
 34

35 Be It Enacted by the Legislature of the State of Florida:  
 36

37 Section 1. Subsection (3) of section 20.61, Florida  
 38 Statutes, is amended to read:

39 20.61 Agency for State Technology.—The Agency for State  
 40 Technology is created within the Department of Management  
 41 Services. The agency is a separate budget program and is not  
 42 subject to control, supervision, or direction by the Department  
 43 of Management Services, including, but not limited to,  
 44 purchasing, transactions involving real or personal property,  
 45 personnel, or budgetary matters.

46 (3) The Technology Advisory Council, consisting of seven  
 47 members, is established within the Agency for State Technology  
 48 and shall be maintained pursuant to s. 20.052. At least one  
 49 member must be a cybersecurity expert. Four members ~~of the~~  
 50 ~~council~~ shall be appointed by the Governor, two of whom must be  
 51 from the private sector. The President of the Senate and the  
 52 Speaker of the House of Representatives shall each appoint one

53 member ~~of the council~~. The Attorney General, the Commissioner of  
 54 Agriculture and Consumer Services, and the Chief Financial  
 55 Officer shall jointly appoint one member by agreement of a  
 56 majority of these officers. Upon initial establishment of the  
 57 council, two of the Governor's appointments shall be for 2-year  
 58 terms. Thereafter, all appointments shall be for 4-year terms.

59 (a) The council shall consider and make recommendations to  
 60 the executive director on such matters as enterprise information  
 61 technology policies, standards, services, and architecture. The  
 62 council may also identify and recommend opportunities for the  
 63 establishment of public-private partnerships when considering  
 64 technology infrastructure and services in order to accelerate  
 65 project delivery and provide a source of new or increased  
 66 project funding.

67 (b) The executive director shall consult with the council  
 68 with regard to executing the duties and responsibilities of the  
 69 agency related to statewide information technology strategic  
 70 planning and policy.

71 (c) The council shall coordinate with the Florida Center  
 72 for Cybersecurity to identify and recommend opportunities for  
 73 establishing cutting-edge educational and training programs in  
 74 science, technology, engineering, and mathematics (STEM) for  
 75 students, consistent with the unified state plan adopted  
 76 pursuant to s. 1001.03(17); increasing the cybersecurity  
 77 workforce in the state; and preparing cybersecurity  
 78 professionals to possess a wide range of expertise.



79           ~~(d)(e)~~ The council shall be governed by the Code of Ethics  
 80 for Public Officers and Employees as set forth in part III of  
 81 chapter 112, and each member must file a statement of financial  
 82 interests pursuant to s. 112.3145.

83           Section 2. Subsection (18) of section 282.0051, Florida  
 84 Statutes, is renumbered as subsection (19), and a new subsection  
 85 (18) is added to that section to read:

86           282.0051 Agency for State Technology; powers, duties, and  
 87 functions.—The Agency for State Technology shall have the  
 88 following powers, duties, and functions:

89           (18) Impose upon each state agency a service charge equal  
 90 to 10 percent of each information technology project over which  
 91 the Agency for State Technology performs project oversight for  
 92 the state agency. The service charges shall be deposited into  
 93 the State Technology Security Incident Trust Fund.

94           Section 3. Section 282.318, Florida Statutes, is amended  
 95 to read:

96           282.318 Security of data and information technology.—

97           (1) This section may be cited as the "Information  
 98 Technology Security Act."

99           (2) As used in this section, the term "state agency" has  
 100 the same meaning as provided in s. 282.0041, except that the  
 101 term includes the Department of Legal Affairs, the Department of  
 102 Agriculture and Consumer Services, and the Department of  
 103 Financial Services.

104           (3) The chief information security officer of the Agency

105 for State Technology is responsible for establishing standards  
 106 and processes consistent with generally accepted best practices  
 107 for information technology security and cybersecurity and  
 108 adopting rules that safeguard an agency's data, information, and  
 109 information technology resources to ensure availability,  
 110 confidentiality, and integrity and to mitigate risks. The chief  
 111 information security officer ~~agency~~ shall also:

112 (a) Develop, and annually update by February 1, a  
 113 statewide information technology security strategic plan that  
 114 includes security goals and objectives for the strategic issues  
 115 of information technology security policy, risk management,  
 116 training, incident management, and disaster recovery planning.

117 (b) Develop and publish for use by state agencies an  
 118 information technology security framework that, at a minimum,  
 119 includes guidelines and processes for:

120 1. Establishing asset management procedures to ensure that  
 121 an agency's information technology resources are identified and  
 122 managed consistent with their relative importance to the  
 123 agency's business objectives.

124 2. Using a standard risk assessment methodology that  
 125 includes the identification of an agency's priorities,  
 126 constraints, risk tolerances, and assumptions necessary to  
 127 support operational risk decisions.

128 3. Completing comprehensive risk assessments and  
 129 information technology security audits and submitting completed  
 130 assessments and audits to the Agency for State Technology.

131 4. Completing risk assessments administered by a third  
 132 party and submitting completed assessments to the Agency for  
 133 State Technology.

134 5.4. Identifying protection procedures to manage the  
 135 protection of an agency's information, data, and information  
 136 technology resources.

137 6.5. Establishing procedures for accessing information and  
 138 data to ensure the confidentiality, integrity, and availability  
 139 of such information and data.

140 7.6. Detecting threats through proactive monitoring of  
 141 events, continuous security monitoring, and defined detection  
 142 processes.

143 8.7. Establishing a computer security incident response  
 144 team to respond to suspected ~~Responding to~~ information  
 145 technology security incidents, including breaches of personal  
 146 information containing confidential or exempt data. An agency's  
 147 computer security incident response team must convene  
 148 immediately upon notice of a suspected security incident and  
 149 shall determine the appropriate response.

150 9.8. Recovering information and data in response to an  
 151 information technology security incident. The recovery may  
 152 include recommended improvements to the agency processes,  
 153 policies, or guidelines.

154 10. Establishing an information technology security  
 155 incident reporting process, which must include a procedure for  
 156 notification of the Agency for State Technology and the

157 Cybercrime Office of the Department of Law Enforcement. The  
 158 notification procedure must provide for tiered reporting  
 159 timeframes, with incidents of critical impact reported  
 160 immediately, incidents of high impact reported within 4 hours,  
 161 and incidents of low impact reported within 5 business days.

162 11. Incorporating lessons learned through detection and  
 163 response activities into agency incident response plans to  
 164 continuously improve organizational response activities.

165 12.9. Developing agency strategic and operational  
 166 information technology security plans required pursuant to this  
 167 section.

168 13.10. Establishing the managerial, operational, and  
 169 technical safeguards for protecting state government data and  
 170 information technology resources that align with the state  
 171 agency risk management strategy and that protect the  
 172 confidentiality, integrity, and availability of information and  
 173 data.

174 14. Providing all agency employees with information  
 175 technology security and cybersecurity awareness education and  
 176 training within 30 days after commencing employment.

177 (c) Assist state agencies in complying with this section.

178 (d) In collaboration with the Cybercrime Office of the  
 179 Department of Law Enforcement, provide training that must  
 180 include training on cybersecurity threats, trends, and best  
 181 practices for state agency information security managers and  
 182 computer security incident response team members at least

183 annually.

184 (e) Annually review the strategic and operational  
185 information technology security plans of executive branch  
186 agencies.

187 (f) Develop and establish a cutting-edge internship or  
188 work-study program in science, technology, engineering, and  
189 mathematics (STEM) that will produce a more skilled  
190 cybersecurity workforce in the state. The program must be a  
191 collaborative effort involving negotiations between the Agency  
192 for State Technology, relevant Agency for State Technology  
193 partners, and the Florida Center for Cybersecurity.

194 (4) Each state agency head shall, at a minimum:

195 (a) Designate an information security manager to  
196 administer the information technology security program of the  
197 state agency. This designation must be provided annually in  
198 writing to the Agency for State Technology by January 1. A state  
199 agency's information security manager, for purposes of these  
200 information security duties, shall report directly to the agency  
201 head.

202 1. The information security manager shall establish a  
203 computer security incident response team to respond to a  
204 suspected computer security incident.

205 2. Computer security incident response team members shall  
206 convene immediately upon notice of a suspected security  
207 incident.

208 3. Computer security incident response team members shall

209 determine the appropriate response for a suspected computer  
 210 security incident. An appropriate response includes taking  
 211 action to prevent expansion or recurrence of an incident,  
 212 mitigate the effects of an incident, and eradicate an incident.  
 213 Newly identified risks must be mitigated or documented as an  
 214 accepted risk by computer security incident response team  
 215 members.

216 (b) Submit to the Agency for State Technology annually by  
 217 July 31, the state agency's strategic and operational  
 218 information technology security plans developed pursuant to  
 219 rules and guidelines established by the Agency for State  
 220 Technology.

221 1. The state agency strategic information technology  
 222 security plan must cover a 3-year period and, at a minimum,  
 223 define security goals, intermediate objectives, and projected  
 224 agency costs for the strategic issues of agency information  
 225 security policy, risk management, security training, security  
 226 incident response, and disaster recovery. The plan must be based  
 227 on the statewide information technology security strategic plan  
 228 created by the Agency for State Technology and include  
 229 performance metrics that can be objectively measured to reflect  
 230 the status of the state agency's progress in meeting security  
 231 goals and objectives identified in the agency's strategic  
 232 information security plan.

233 2. The state agency operational information technology  
 234 security plan must include a progress report that objectively

235 measures progress made towards the prior operational information  
236 technology security plan and a project plan that includes  
237 activities, timelines, and deliverables for security objectives  
238 that the state agency will implement during the current fiscal  
239 year.

240 (c) Conduct, and update every 3 years, a comprehensive  
241 risk assessment to determine the security threats to the data,  
242 information, and information technology resources of the agency.  
243 The risk assessment must comply with the risk assessment  
244 methodology developed by the Agency for State Technology and is  
245 confidential and exempt from s. 119.07(1), except that such  
246 information shall be available to the Auditor General, the  
247 Agency for State Technology, the Cybercrime Office of the  
248 Department of Law Enforcement, and, for state agencies under the  
249 jurisdiction of the Governor, the Chief Inspector General. The  
250 agency must submit the risk assessment to the Agency for State  
251 Technology immediately upon request.

252 (d) Subject to annual legislative appropriation, conduct a  
253 risk assessment that must be administered by a third party as  
254 directed by the chief information security officer of the Agency  
255 for State Technology. An initial risk assessment must be  
256 completed by July 31, 2017. Additional risk assessments shall be  
257 completed periodically as directed by the chief information  
258 security officer of the Agency for State Technology. The agency  
259 must submit the risk assessment to the Agency for State  
260 Technology immediately upon request.

261        (e)~~(d)~~ Develop, and periodically update, written internal  
 262 policies and procedures, which include procedures for reporting  
 263 information technology security incidents and breaches to the  
 264 Cybercrime Office of the Department of Law Enforcement and the  
 265 Agency for State Technology. Procedures for reporting  
 266 information technology security incidents and breaches must  
 267 include notification procedures and reporting timeframes. Such  
 268 policies and procedures must be consistent with the rules,  
 269 guidelines, and processes established by the Agency for State  
 270 Technology to ensure the security of the data, information, and  
 271 information technology resources of the agency. The internal  
 272 policies and procedures that, if disclosed, could facilitate the  
 273 unauthorized modification, disclosure, or destruction of data or  
 274 information technology resources are confidential information  
 275 and exempt from s. 119.07(1), except that such information shall  
 276 be available to the Auditor General, the Cybercrime Office of  
 277 the Department of Law Enforcement, the Agency for State  
 278 Technology, and, for state agencies under the jurisdiction of  
 279 the Governor, the Chief Inspector General.

280        (f)~~(e)~~ Implement managerial, operational, and technical  
 281 safeguards established by the Agency for State Technology to  
 282 address identified risks to the data, information, and  
 283 information technology resources of the agency.

284        (g)~~(f)~~ Ensure that periodic internal audits and  
 285 evaluations of the agency's information technology security  
 286 program for the data, information, and information technology



287 resources of the agency are conducted. The results of such  
 288 audits and evaluations are confidential information and exempt  
 289 from s. 119.07(1), except that such information shall be  
 290 available to the Auditor General, the Cybercrime Office of the  
 291 Department of Law Enforcement, the Agency for State Technology,  
 292 and, for agencies under the jurisdiction of the Governor, the  
 293 Chief Inspector General. The agency must submit the results of  
 294 such audits and evaluations to the Agency for State Technology  
 295 immediately upon request.

296 (h)~~(g)~~ Include appropriate information technology security  
 297 requirements in the written specifications for the solicitation  
 298 of information technology and information technology resources  
 299 and services, which are consistent with the rules and guidelines  
 300 established by the Agency for State Technology in collaboration  
 301 with the Department of Management Services.

302 (i)~~(h)~~ Provide information technology security and  
 303 cybersecurity awareness training to all state agency employees  
 304 in the first 30 days after commencing employment concerning  
 305 information technology security risks and the responsibility of  
 306 employees to comply with policies, standards, guidelines, and  
 307 operating procedures adopted by the state agency to attain an  
 308 appropriate level of cyber literacy and reduce those risks. The  
 309 training may be provided in collaboration with the Cybercrime  
 310 Office of the Department of Law Enforcement. Agencies shall  
 311 ensure that privileged users, third party stakeholders, senior  
 312 executives, and physical and information security personnel

313 understand their roles and responsibilities.

314 (j) In collaboration with the Cybercrime Office of the  
 315 Department of Law Enforcement, provide training on cybersecurity  
 316 threats, trends, and best practices to computer security  
 317 incident response team members at least annually.

318 (k)(i) Develop a process for detecting, reporting, and  
 319 responding to threats, breaches, or information technology  
 320 security incidents that are consistent with the security rules,  
 321 guidelines, and processes established by the Agency for State  
 322 Technology.

323 1. All information technology security incidents and  
 324 breaches must be reported to the Agency for State Technology.  
 325 Procedures for reporting information technology security  
 326 incidents and breaches must include notification procedures.

327 2. For information technology security breaches, state  
 328 agencies shall provide notice in accordance with s. 501.171.

329 (l) Improve organizational response activities by  
 330 incorporating lessons learned from current and previous  
 331 detection and response activities into response plans.

332 (5) The Agency for State Technology shall adopt rules  
 333 relating to information technology security and to administer  
 334 this section.

335 Section 4. Subsection (3) of section 501.171, Florida  
 336 Statutes, is amended to read:

337 501.171 Security of confidential personal information.—

338 (3) NOTICE ~~TO DEPARTMENT~~ OF SECURITY BREACH.—

339 (a) A covered entity shall provide notice to the  
 340 department and the Agency for State Technology of any breach of  
 341 security affecting 500 or more individuals in this state. Such  
 342 notice must be provided to the department and the Agency for  
 343 State Technology. Incidents of critical impact must be reported  
 344 immediately, incidents of high impact must be reported within 4  
 345 hours, and incidents of low impact must be reported within 5  
 346 business days ~~as expeditiously as practicable, but no later than~~  
 347 ~~30 days after the determination of the breach or reason to~~  
 348 ~~believe a breach occurred.~~ A covered entity may receive 15  
 349 additional days to provide notice as required in subsection (4)  
 350 if good cause for delay is provided in writing to the department  
 351 within 30 days after determination of the breach or reason to  
 352 believe a breach occurred.

- 353 (b) The written notice to the department must include:
- 354 1. A synopsis of the events surrounding the breach at the  
 355 time notice is provided.
  - 356 2. The number of individuals in this state who were or  
 357 potentially have been affected by the breach.
  - 358 3. Any services related to the breach being offered or  
 359 scheduled to be offered, without charge, by the covered entity  
 360 to individuals, and instructions as to how to use such services.
  - 361 4. A copy of the notice required under subsection (4) or  
 362 an explanation of the other actions taken pursuant to subsection  
 363 (4).
  - 364 5. The name, address, telephone number, and e-mail address

365 of the employee or agent of the covered entity from whom  
 366 additional information may be obtained about the breach.

367 (c) The covered entity must provide the following  
 368 information to the department upon its request:

369 1. A police report, incident report, or computer forensics  
 370 report.

371 2. A copy of the policies in place regarding breaches.

372 3. Steps that have been taken to rectify the breach.

373 (d) A covered entity may provide the department with  
 374 supplemental information regarding a breach at any time.

375 (e) For a covered entity that is the judicial branch, the  
 376 Executive Office of the Governor, the Department of Financial  
 377 Services, or the Department of Agriculture and Consumer  
 378 Services, in lieu of providing the written notice to the  
 379 department, the covered entity may post the information  
 380 described in subparagraphs (b)1.-4. on an agency-managed  
 381 website.

382 Section 5. Subsection (17) of section 1001.03, Florida  
 383 Statutes, is amended to read:

384 1001.03 Specific powers of State Board of Education.—

385 (17) UNIFIED STATE PLAN FOR SCIENCE, TECHNOLOGY,  
 386 ENGINEERING, AND MATHEMATICS (STEM).—The State Board of  
 387 Education, in consultation with the Board of Governors, the  
 388 Technology Advisory Council, and the Department of Economic  
 389 Opportunity, shall adopt a unified state plan to improve K-20  
 390 STEM education and prepare students for high-skill, high-wage,

391 and high-demand employment in STEM and STEM-related fields.

392 Section 6. Section 1004.444, Florida Statutes, is amended  
 393 to read:

394 1004.444 Florida Center for Cybersecurity.-

395 (1) The Florida Center for Cybersecurity is established  
 396 within the University of South Florida.

397 (2) The goals of the center are to:

398 (a) Position Florida as the national leader in  
 399 cybersecurity and its related workforce through education,  
 400 research, and community engagement. The center shall coordinate  
 401 with the Technology Advisory Council in pursuit of this goal.

402 (b) Assist in the creation of jobs in the state's  
 403 cybersecurity industry and enhance the existing cybersecurity  
 404 workforce. The center shall coordinate with the Technology  
 405 Advisory Council in pursuit of this goal.

406 (c) Act as a cooperative facilitator for state business  
 407 and higher education communities to share cybersecurity  
 408 knowledge, resources, and training. The center shall coordinate  
 409 with the Technology Advisory Council in pursuit of this goal.

410 (d) Seek out partnerships with major military  
 411 installations to assist, when possible, in homeland  
 412 cybersecurity defense initiatives.

413 (e) Attract cybersecurity companies to the state with an  
 414 emphasis on defense, finance, health care, transportation, and  
 415 utility sectors.

416 Section 7. For the 2016-2017 fiscal year, the sums of

417 | \$650,000 in nonrecurring funds and \$50,000 in recurring funds  
418 | are appropriated from the General Revenue Fund to the Agency for  
419 | State Technology to conduct training exercises in coordination  
420 | with the Florida National Guard.

421 |       Section 8. For the 2016-2017 fiscal year, the sum of \$12  
422 | million is appropriated from the General Revenue Fund to the  
423 | Agency for State Technology for the purpose of implementing this  
424 | act.

425 |       Section 9. 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 Articles offered the following:  
4

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
7 Section 1. Subsection (3) of section 20.61, Florida  
8 Statutes, is amended to read:

9 20.61 Agency for State Technology.—The Agency for State  
10 Technology is created within the Department of Management  
11 Services. The agency is a separate budget program and is not  
12 subject to control, supervision, or direction by the Department  
13 of Management Services, including, but not limited to,  
14 purchasing, transactions involving real or personal property,  
15 personnel, or budgetary matters.

16 (3) The Technology Advisory Council, consisting of seven  
17 members, is established within the Agency for State Technology



Amendment No.

18 and shall be maintained pursuant to s. 20.052. At least one  
19 member must be a cybersecurity expert. Four members ~~of the~~  
20 ~~council~~ shall be appointed by the Governor, two of whom must be  
21 from the private sector. The President of the Senate and the  
22 Speaker of the House of Representatives shall each appoint one  
23 member ~~of the council~~. The Attorney General, the Commissioner of  
24 Agriculture and Consumer Services, and the Chief Financial  
25 Officer shall jointly appoint one member by agreement of a  
26 majority of these officers. Upon initial establishment of the  
27 council, two of the Governor's appointments shall be for 2-year  
28 terms. Thereafter, all appointments shall be for 4-year terms.

29 (a) The council shall consider and make recommendations to  
30 the executive director on such matters as enterprise information  
31 technology policies, standards, services, and architecture. The  
32 council may also identify and recommend opportunities for the  
33 establishment of public-private partnerships when considering  
34 technology infrastructure and services in order to accelerate  
35 project delivery and provide a source of new or increased  
36 project funding.

37 (b) The executive director shall consult with the council  
38 with regard to executing the duties and responsibilities of the  
39 agency related to statewide information technology strategic  
40 planning and policy.

41 (c) The council shall be governed by the Code of Ethics  
42 for Public Officers and Employees as set forth in part III of





Amendment No.

43 chapter 112, and each member must file a statement of financial  
44 interests pursuant to s. 112.3145.

45 Section 2. Section 282.318, Florida Statutes, is amended  
46 to read:

47 282.318 Security of data and information technology.—

48 (1) This section may be cited as the "Information  
49 Technology Security Act."

50 (2) As used in this section, the term "state agency" has  
51 the same meaning as provided in s. 282.0041, except that the  
52 term includes the Department of Legal Affairs, the Department of  
53 Agriculture and Consumer Services, and the Department of  
54 Financial Services.

55 (3) The Agency for State Technology is responsible for  
56 establishing standards and processes consistent with generally  
57 accepted best practices for information technology security and  
58 cybersecurity and adopting rules that safeguard an agency's  
59 data, information, and information technology resources to  
60 ensure availability, confidentiality, and integrity and to  
61 mitigate risks. The agency shall also:

62 (a) Develop, and annually update by February 1, a  
63 statewide information technology security strategic plan that  
64 includes security goals and objectives for the strategic issues  
65 of information technology security policy, risk management,  
66 training, incident management, and disaster recovery planning.



Amendment No.

67 (b) Develop and publish for use by state agencies an  
68 information technology security framework that, at a minimum,  
69 includes guidelines and processes for:

70 1. Establishing asset management procedures to ensure that  
71 an agency's information technology resources are identified and  
72 managed consistent with their relative importance to the  
73 agency's business objectives.

74 2. Using a standard risk assessment methodology that  
75 includes the identification of an agency's priorities,  
76 constraints, risk tolerances, and assumptions necessary to  
77 support operational risk decisions.

78 3. Completing comprehensive risk assessments and  
79 information technology security audits and submitting completed  
80 assessments and audits to the Agency for State Technology.

81 4. Completing risk assessments administered by a third  
82 party and submitting completed assessments to the Agency for  
83 State Technology.

84 5.4. Identifying protection procedures to manage the  
85 protection of an agency's information, data, and information  
86 technology resources.

87 6.5. Establishing procedures for accessing information and  
88 data to ensure the confidentiality, integrity, and availability  
89 of such information and data.

90 7.6. Detecting threats through proactive monitoring of  
91 events, continuous security monitoring, and defined detection  
92 processes.



Amendment No.

93        8.7. Establishing a computer security incident response  
94 team to respond to suspected ~~Responding to~~ information  
95 technology security incidents, including breaches of personal  
96 information containing confidential or exempt data. An agency's  
97 computer security incident response team must convene  
98 immediately upon notice of a suspected security incident and  
99 shall determine the appropriate response.

100        9.8. Recovering information and data in response to an  
101 information technology security incident. The recovery may  
102 include recommended improvements to the agency processes,  
103 policies, or guidelines.

104        10. Establishing an information technology security  
105 incident reporting process, which must include a procedure for  
106 notification of the Agency for State Technology and the  
107 Cybercrime Office of the Department of Law Enforcement. The  
108 notification procedure must provide for tiered reporting  
109 timeframes, with incidents of critical impact reported  
110 immediately, incidents of high impact reported within 4 hours,  
111 and incidents of low impact reported within 5 business days.

112        11. Incorporating lessons learned through detection and  
113 response activities into agency incident response plans to  
114 continuously improve organizational response activities.

115        12.9. Developing agency strategic and operational  
116 information technology security plans required pursuant to this  
117 section.



Amendment No.

118 13.10. Establishing the managerial, operational, and  
119 technical safeguards for protecting state government data and  
120 information technology resources that align with the state  
121 agency risk management strategy and that protect the  
122 confidentiality, integrity, and availability of information and  
123 data.

124 14. Providing all agency employees with information  
125 technology security and cybersecurity awareness education and  
126 training within 30 days after commencing employment.

127 (c) Assist state agencies in complying with this section.

128 (d) In collaboration with the Cybercrime Office of the  
129 Department of Law Enforcement, provide training that must  
130 include training on cybersecurity threats, trends, and best  
131 practices for state agency information security managers and  
132 computer security incident response team members at least  
133 annually.

134 (e) Annually review the strategic and operational  
135 information technology security plans of executive branch  
136 agencies.

137 (f) Develop and establish a cutting-edge internship or  
138 work-study program in science, technology, engineering, and  
139 mathematics (STEM) that will produce a more skilled  
140 cybersecurity workforce in the state. The program must be a  
141 collaborative effort involving negotiations between the Agency  
142 for State Technology, relevant Agency for State Technology  
143 partners, and the Florida Center for Cybersecurity.



Amendment No.

144 (4) Each state agency head shall, at a minimum:

145 (a) Designate an information security manager to  
146 administer the information technology security program of the  
147 state agency. This designation must be provided annually in  
148 writing to the Agency for State Technology by January 1. A state  
149 agency's information security manager, for purposes of these  
150 information security duties, shall report directly to the agency  
151 head.

152 1. The information security manager shall establish a  
153 computer security incident response team to respond to a  
154 suspected computer security incident.

155 2. Computer security incident response team members shall  
156 convene immediately upon notice of a suspected security  
157 incident.

158 3. Computer security incident response team members shall  
159 determine the appropriate response for a suspected computer  
160 security incident. An appropriate response includes taking  
161 action to prevent expansion or recurrence of an incident,  
162 mitigating the effects of an incident, and eradicating an  
163 incident. Newly identified risks must be mitigated or documented  
164 as an accepted risk by computer security incident response team  
165 members.

166 (b) Submit to the Agency for State Technology annually by  
167 July 31, the state agency's strategic and operational  
168 information technology security plans developed pursuant to



Amendment No.

169 rules and guidelines established by the Agency for State  
170 Technology.

171 1. The state agency strategic information technology  
172 security plan must cover a 3-year period and, at a minimum,  
173 define security goals, intermediate objectives, and projected  
174 agency costs for the strategic issues of agency information  
175 security policy, risk management, security training, security  
176 incident response, and disaster recovery. The plan must be based  
177 on the statewide information technology security strategic plan  
178 created by the Agency for State Technology and include  
179 performance metrics that can be objectively measured to reflect  
180 the status of the state agency's progress in meeting security  
181 goals and objectives identified in the agency's strategic  
182 information security plan.

183 2. The state agency operational information technology  
184 security plan must include a progress report that objectively  
185 measures progress made towards the prior operational information  
186 technology security plan and a project plan that includes  
187 activities, timelines, and deliverables for security objectives  
188 that the state agency will implement during the current fiscal  
189 year.

190 (c) Conduct, and update every 3 years, a comprehensive  
191 risk assessment to determine the security threats to the data,  
192 information, and information technology resources of the agency.  
193 The risk assessment must comply with the risk assessment  
194 methodology developed by the Agency for State Technology and is



Amendment No.

195 confidential and exempt from s. 119.07(1), except that such  
196 information shall be available to the Auditor General, the  
197 Agency for State Technology, the Cybercrime Office of the  
198 Department of Law Enforcement, and, for state agencies under the  
199 jurisdiction of the Governor, the Chief Inspector General.

200 (d) Conduct a risk assessment that must be administered by  
201 a third party and must be completed by July 31, 2017. Subject to  
202 legislative appropriation, additional risk assessments may be  
203 completed periodically.

204 (e) ~~(d)~~ Develop, and periodically update, written internal  
205 policies and procedures, which include procedures for reporting  
206 information technology security incidents and breaches to the  
207 Cybercrime Office of the Department of Law Enforcement and the  
208 Agency for State Technology. Procedures for reporting  
209 information technology security incidents and breaches must  
210 include notification procedures and reporting timeframes. Such  
211 policies and procedures must be consistent with the rules,  
212 guidelines, and processes established by the Agency for State  
213 Technology to ensure the security of the data, information, and  
214 information technology resources of the agency. The internal  
215 policies and procedures that, if disclosed, could facilitate the  
216 unauthorized modification, disclosure, or destruction of data or  
217 information technology resources are confidential information  
218 and exempt from s. 119.07(1), except that such information shall  
219 be available to the Auditor General, the Cybercrime Office of  
220 the Department of Law Enforcement, the Agency for State



Amendment No.

221 Technology, and, for state agencies under the jurisdiction of  
222 the Governor, the Chief Inspector General.

223 (f)~~(e)~~ Implement managerial, operational, and technical  
224 safeguards established by the Agency for State Technology to  
225 address identified risks to the data, information, and  
226 information technology resources of the agency.

227 (g)~~(f)~~ Ensure that periodic internal audits and  
228 evaluations of the agency's information technology security  
229 program for the data, information, and information technology  
230 resources of the agency are conducted. The results of such  
231 audits and evaluations are confidential information and exempt  
232 from s. 119.07(1), except that such information shall be  
233 available to the Auditor General, the Cybercrime Office of the  
234 Department of Law Enforcement, the Agency for State Technology,  
235 and, for agencies under the jurisdiction of the Governor, the  
236 Chief Inspector General.

237 (h)~~(g)~~ Include appropriate information technology security  
238 requirements in the written specifications for the solicitation  
239 of information technology and information technology resources  
240 and services, which are consistent with the rules and guidelines  
241 established by the Agency for State Technology in collaboration  
242 with the Department of Management Services.

243 (i)~~(h)~~ Provide information technology security and  
244 cybersecurity awareness training to all state agency employees  
245 in the first 30 days after commencing employment concerning  
246 information technology security risks and the responsibility of





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247 employees to comply with policies, standards, guidelines, and  
248 operating procedures adopted by the state agency to attain an  
249 appropriate level of cyber literacy and reduce those risks. The  
250 training may be provided in collaboration with the Cybercrime  
251 Office of the Department of Law Enforcement. Agencies shall  
252 ensure that privileged users, third party stakeholders, senior  
253 executives, and physical and information security personnel  
254 understand their roles and responsibilities.

255 (j)(i) Develop a process for detecting, reporting, and  
256 responding to threats, breaches, or information technology  
257 security incidents that are consistent with the security rules,  
258 guidelines, and processes established by the Agency for State  
259 Technology.

260 1. All information technology security incidents and  
261 breaches must be reported to the Agency for State Technology.  
262 Procedures for reporting information technology security  
263 incidents and breaches must include notification procedures.

264 2. For information technology security breaches, state  
265 agencies shall provide notice in accordance with s. 501.171.

266 (k) Improve organizational response activities by  
267 incorporating lessons learned from current and previous  
268 detection and response activities into response plans.

269 (5) The Agency for State Technology shall adopt rules  
270 relating to information technology security and to administer  
271 this section.



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272           Section 3. For the 2016-2017 fiscal year, the sums of  
 273 \$650,000 in nonrecurring funds and \$50,000 in recurring funds  
 274 are appropriated from the General Revenue Fund to the Agency for  
 275 State Technology to conduct training exercises in coordination  
 276 with the Florida National Guard.

277           Section 4. For the 2016-2017 fiscal year, the sum of \$12  
 278 million is appropriated from the General Revenue Fund to the  
 279 Agency for State Technology for the purpose of implementing this  
 280 act.

281           Section 5. This act shall take effect July 1, 2016.

282  
 283

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 T I T L E   A M E N D M E N T

Remove everything before the enacting clause and insert:

A bill to be entitled

287 An act relating to information technology security; amending s.  
 288 20.61, F.S.; revising the membership of the Technology Advisory  
 289 Council to include a cybersecurity expert; amending s. 282.318,  
 290 F.S.; revising the duties of the Agency for State Technology;  
 291 providing for administration of a third party risk assessment;  
 292 providing for the establishment of computer security incident  
 293 response teams within state agencies; providing for continuously  
 294 updated agency incident response plans; providing for  
 295 information technology security and cybersecurity awareness  
 296 training; providing for the establishment of a collaborative  
 297 STEM program for cybersecurity workforce development;



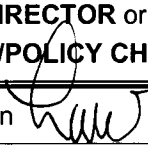
Amendment No.

298 | establishing computer security incident response team  
299 | responsibilities; requiring a third party risk assessment;  
300 | establishing notification procedures and reporting timelines for  
301 | an information technology security incident or breach; providing  
302 | appropriations; providing an effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1037 Pub. Rec./State Agency Information Technology Risk Assessments  
**SPONSOR(S):** Artiles  
**TIED BILLS:** HB 1033 **IDEN./SIM. BILLS:** CS/SB 624

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Toliver LT	Williamson 
2) State Affairs Committee			

### SUMMARY ANALYSIS

A risk assessment is a method of identifying security risks, determining the magnitude of such risks, and identifying areas needing safeguards. Currently, state agencies are required to conduct, and update, comprehensive risk assessments to determine the security threats to the data, information, and information technology resources of the agency.

HB 1033, which this bill is linked to for passage, requires the heads of state agencies to conduct a risk assessment administered by a third party.

This bill creates a public record exemption for third-party administered risk assessments. The bill requires the confidential and exempt risk assessments to be made available to the Auditor General, the Agency for State Technology, the Cybercrime Office of the Department of Law Enforcement, and, for those state agencies under the jurisdiction of the Governor, the Chief Inspector General.

The bill provides that the exemption repeals on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

**Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for third-party administered risk assessments; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

###### Public Records

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.<sup>1</sup> The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.<sup>2</sup> The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.<sup>3</sup> A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.<sup>4</sup>

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. Furthermore, the Open Government Sunset Review Act<sup>5</sup> provides that a public record 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:

- Allow the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protect personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protect trade or business secrets.<sup>6</sup>

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>7</sup>

###### Risk Assessments

A risk assessment is a method of identifying security risks, determining the magnitude of such risks, and identifying areas needing safeguards.<sup>8</sup> The Information Technology Security Act<sup>9</sup> requires the head of each state agency<sup>10</sup> to conduct a comprehensive risk assessment to determine the security threats to the data, information, and information technology<sup>11</sup> resources of the agency.<sup>12</sup> The heads of each

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(c).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Section 119.15, F.S.

<sup>6</sup> Section 119.15(6)(b), F.S.

<sup>7</sup> Section 119.15(3), F.S.

<sup>8</sup> Section 282.0041(18), F.S.

<sup>9</sup> Section 282.318, F.S., is known as the Information Technology Security Act.

<sup>10</sup> The term "state agency" is defined to mean any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities. As used in part I of ch. 282, F.S., except as otherwise specifically provided, the term does not include the Department of Legal Affairs, the Department of Agriculture and Consumer Services, or the Department of Financial Services. Section 282.0041(23), F.S.

<sup>11</sup> The term "information technology" is defined to mean equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form. Section 282.0041(11), F.S.

<sup>12</sup> Section 282.318(4)(c), F.S.

state agency are also required to update this risk assessment every three years.<sup>13</sup> The risk assessment must comply with risk assessment methodology developed by the Agency for State Technology (AST).<sup>14</sup>

Current law provides that the risk assessment is confidential and exempt<sup>15</sup> from public records requirements.<sup>16</sup> However, the confidential and exempt information must be made available to the Auditor General, AST, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.<sup>17</sup>

### HB 1033 (2016)

HB 1033 requires the heads of state agencies to undertake several new duties. One such duty is to conduct a risk assessment administered by a third party, subject to annual legislative appropriation. The first assessment is required to be completed by July 31, 2017. The Chief Information Security Officer of AST may direct that additional risk assessments, administered by a third party, be conducted. HB 1033 requires the risk assessment to be submitted to AST immediately upon request.

### **Effect of the Bill**

The bill creates a public record exemption for a state agency risk assessment administered by a third party. The confidential and exempt risk assessment must be made available to the Auditor General, AST, the Cybercrime Office of the Department of Law Enforcement, and, for those state agencies under the jurisdiction of the Governor, the Chief Inspector General.

The bill provides for repeal of the exemption on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a public necessity statement as required by the State Constitution. It provides that:

[S]tate agencies possess sensitive information that may be contained within a risk assessment. This sensitive information includes, but is not limited to, personal identifying information, such as social security numbers and addresses, and detailed information on human trafficking victims, sexual abuse victims, and refugees, which could cause great harm if released. Furthermore, it is imperative that the information regarding each agency's actual and potential security risks remain confidential so that criminals may not access that information for malicious purposes.

### **B. SECTION DIRECTORY:**

Section 1 amends s. 282.318, F.S., providing an exemption from public records requirements for a state agency risk assessment administered by a third party.

Section 2 provides a public necessity statement.

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> There is a difference between records the Legislature designates exempt from public records 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).

<sup>16</sup> Section 282.318(4)(c), F.S.

<sup>17</sup> *Id.*

Section 3 provides an effective date that is contingent upon the passage of HB 1033 or similar legislation.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The bill could have a minimal fiscal impact on state agencies because staff responsible for complying with public records requests may require training related to creation of the public record exemption. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of state agencies.

### 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, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.



Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for a state agency risk assessment performed by a third party because the release of the risk assessment could subject the agency to actual and potential security risks. Thus, the bill does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

On line 28, the bill provides that "such information" must be available to certain entities. The bill should reference "such risk assessments."

On line 52, the public necessity statement provides that the risk assessments should remain "confidential." The public necessity statement should reference that the risk assessments should remain "confidential and exempt from public records requirements."

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

1                   A bill to be entitled  
 2           An act relating to public records; amending s.  
 3           282.318, F.S.; providing an exemption from public  
 4           records requirements for state agency information  
 5           technology risk assessments; providing for legislative  
 6           review and repeal of the exemption; providing a  
 7           statement of public necessity; providing a contingent  
 8           effective date.

9  
 10 Be It Enacted by the Legislature of the State of Florida:

11  
 12           Section 1. Paragraph (d) of subsection (4) of section  
 13           282.318, Florida Statutes, as created by HB 1033, is amended to  
 14           read:

15           282.318 Security of data and information technology.—

16           (4) Each state agency head shall, at a minimum:

17           (d)1. Subject to annual legislative appropriation, conduct  
 18           a risk assessment that must be administered by a third party as  
 19           directed by the chief information security officer of the Agency  
 20           for State Technology. An initial risk assessment must be  
 21           completed by July 31, 2017. Additional risk assessments shall be  
 22           completed periodically as directed by the chief information  
 23           security officer of the Agency for State Technology. The agency  
 24           must submit the risk assessment to the Agency for State  
 25           Technology immediately upon request.

26           2. The risk assessment is confidential and exempt from s.

27 119.07(1) and s. 24(a), Art. I of the State Constitution, except  
 28 that such information shall be available to the Auditor General,  
 29 the Agency for State Technology, the Cybercrime Office of the  
 30 Department of Law Enforcement, and, for a state agency under  
 31 jurisdiction of the Governor, the Chief Inspector General. This  
 32 subparagraph is subject to the Open Government Sunset Review Act  
 33 in accordance with s. 119.15 and shall stand repealed on October  
 34 2, 2021, unless reviewed and saved from repeal through  
 35 reenactment by the Legislature.

36 Section 2. The Legislature finds that it is a public  
 37 necessity that an information technology risk assessment of a  
 38 state agency, as defined in s. 282.318(2), Florida Statutes, be  
 39 made confidential and exempt from s. 119.07(1), Florida  
 40 Statutes, and s. 24(a), Article I of the State Constitution.  
 41 These state agencies possess sensitive information that may be  
 42 contained within a risk assessment. This sensitive information  
 43 includes, but is not limited to, personal identifying  
 44 information, such as social security numbers and addresses, and  
 45 detailed information on human trafficking victims, sexual abuse  
 46 victims, and refugees, which could cause great harm if released.  
 47 Furthermore, it is imperative that the information regarding  
 48 each agency's actual and potential security risks remain  
 49 confidential so that criminals may not access that information  
 50 for malicious purposes. The Legislature therefore finds that it  
 51 is in the best interest of the public for the information  
 52 contained in risk assessments to remain confidential.

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53           Section 3. This act shall take effect on the same date  
54 that HB 1033 or similar legislation takes effect, if such  
55 legislation is adopted in the same legislative session or an  
56 extension thereof and becomes a law.



Amendment No. 1

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		

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1 Committee/Subcommittee hearing bill: Government Operations  
 2 Subcommittee

3 Representative Articles offered the following:

4

5 **Amendment**

6 Remove line 28 and insert:

7 that such risk assessments shall be available to the Auditor

8 General,



Amendment No. 2

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		

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1 Committee/Subcommittee hearing bill: Government Operations  
2 Subcommittee  
3 Representative Artiles offered the following:

4  
5 **Amendment**

6 Remove lines 51-52 and insert:  
7 is in the best interest of the public for an information  
8 technology risk assessment of a state agency to be made  
9 confidential and exempt from public records requirements.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1195 Technology  
**SPONSOR(S):** Grant  
**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 1430

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

### SUMMARY ANALYSIS

The Agency for State Technology (AST) is administratively housed within the Department of Management Services. The executive director of AST, who serves as the state's chief information officer, is appointed by the governor and confirmed by the Senate. Current law establishes positions within AST and establishes the agency's duties and responsibilities.

The bill establishes the position of chief data officer (CDO) within AST. The CDO must request and receive data from any state or local government entity, as needed, to establish the interoperability of public data. The CDO is required to comply with all state and federal privacy regulations for personally indefinable information.

The bill also establishes a data catalog. State and local government entities must provide AST with an indexed list that identifies all data points aggregated or stored within any computer system, platform, application, or database used by the entity. The bill specifies the type of information required for inclusion in the list. AST must create a standardized reporting format for the data submitted by state and local government entities and publish that data in the data catalog.

Currently, The Florida Election Code only allows voter interface devices to be used to aid persons with disabilities in the voting process.

The bill appears to expand the use of voter interface devices to all individuals instead of persons with disabilities only. It revises the definition of "marksense ballot" and "marking device" to include voter interface devices.

The bill may have a negative fiscal impact on state and local governments.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Agency for State Technology**

###### Background

In 2014, the Legislature created the Agency for State Technology (AST) within the Department of Management Services (DMS).<sup>1</sup> The executive director of AST, who serves as the state's chief information officer, is appointed by the governor and confirmed by the Senate.<sup>2</sup> The following positions are established within AST, all of whom are appointed by the executive director:

- Deputy executive director, who serves as the deputy chief information officer.<sup>3</sup>
- Chief planning officer and six strategic planning coordinators.<sup>4</sup>
- Chief operations officer.<sup>5</sup>
- Chief information security officer.<sup>6</sup>
- Chief technology officer.<sup>7</sup>

AST's duties and responsibilities include:

- Developing and publishing information technology (IT) policy for management of the state's IT resources.
- Establishing and publishing IT architecture standards.
- Establishing project management and oversight standards for use by state agencies when implementing IT projects.
- Performing project oversight on all state agency IT projects with a total project cost of \$10 million or more that are funded in the General Appropriations Act or any other law.
- Performing project oversight on any cabinet agency IT project with a total project cost of \$25 million or more and that impacts one or more agencies.
- Providing operational management and oversight of the state data center.
- Recommending additional consolidations of agency data centers or computing facilities into the state data center.
- Identifying opportunities for standardization and consolidation of IT services that support business functions and operations that are common across state agencies.
- Establishing, in collaboration with DMS, best practices for the procurement of IT products in order to reduce costs, increase productivity, or improve services.
- Participating with DMS in evaluating, conducting, and negotiating competitive solicitations for state term contracts for IT commodities, consultant services, or staff augmentation contractual services.
- Developing standards for IT reports and updates for use by state agencies.
- Assisting state agencies, upon request, in developing IT related legislative budget requests.
- Conducting annual assessments of state agencies to determine their compliance with all IT standards and guidelines developed and published by AST.<sup>8</sup>

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<sup>1</sup> AST is administratively housed within DMS. It is a separate budget program and is not subject to control, supervision, or direction by DMS. Section 20.61, F.S.

<sup>2</sup> Section 20.61(1)(a), F.S.

<sup>3</sup> Section 20.61(2)(a), F.S.

<sup>4</sup> Section 20.61(2)(b), F.S., requires one coordinator to be assigned to each of the following major program areas: health and human services, education, government operations, criminal and civil justice, agriculture and natural resources, and transportation and economic development.

<sup>5</sup> Section 20.61(2)(c), F.S.

<sup>6</sup> Section 20.61(2)(d), F.S.

<sup>7</sup> Section 20.61(2)(e), F.S.

<sup>8</sup> Section 282.0051, F.S.

Currently, AST does not have statutory authority for the oversight of the interoperability<sup>9</sup> of public data.<sup>10</sup>

#### Effect of the Bill

The bill establishes the position of chief data officer (CDO) within AST, who is appointed by the executive director. The CDO must request and receive data from any state or local government entity, as needed, to establish the interoperability of public data. The CDO is required to comply with all state and federal privacy regulations for personally identifiable information. It is unclear why the CDO is required to request information from local government entities since AST has no oversight authority of local government entities.

The bill creates s. 20.62, F.S., relating to data catalogs. It requires a state or local government entity to annually provide AST with an indexed list that identifies all types of data points aggregated or stored within any computer system, platform, application, or database used by that entity. The list does not need to include the publication of all data points or data sets; however, it must include the identification of all data fields or columns within any computer system, platform, application, or database used by the entity. AST must create a standardized reporting format for the submitted data and publish it in an indexed catalog. The list must identify:

- If the data is maintained as structured or discrete data.
- Any standards or terminology used to structure the data.
- The name of the system, platform, or application that collects, stores, publishes, or analyzes the data.
- Any integration or interface between any system, platform, or application used by the entity and any other system, platform, or application.
- Any existing or planned application programming interface used to publish data, the data contained in any such existing interface, and the data expected to be contained in any such planned interface.
- Any current methodologies or formats for transmitting data to a state or local government entity.
- Any data that, if contained within a published application program interface would increase the efficiency and operation of state government, or increase the public's ability to obtain data in an efficient, accurate, and less costly manner.

It is unclear why local governments are required to provide such information to AST since AST has no oversight authority over local government entities.

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<sup>9</sup> The term "interoperability" is defined to mean the ability of a system to work with or use the parts or equipment of another system. Merriam-Webster, available at <http://merriam-webster.com/dictionary/interoperability> (last visited Jan. 23, 2016).

<sup>10</sup> 2016 Agency Legislative Bill Analysis of HB 1195 by AST, January 20, 2016, at 2 (on file with the Government Operations Subcommittee).

## Voting Systems

### Background

The Florida Election Code<sup>11</sup> requires certain specifications for voting systems<sup>12</sup> and ballots.<sup>13</sup> The term “ballot” is divided into two sub-categories:

- “Marksense ballots” means that printed sheet of papers, used in conjunction with an electronic or electromechanical vote tabulation voting system, containing the names of candidates, or a statement of proposed constitutional amendments or other questions or propositions submitted to the electorate at any election, on which sheet of paper an elector casts his or her vote.<sup>14</sup>
- “Electronic or electromechanical devices” means a ballot that is voted by the process of electronically designating, including by touchscreen, or marking with a marking device<sup>15</sup> for tabulation by automatic tabulating equipment or data processing equipment.<sup>16</sup>

The Electronic Voting Systems Act (act)<sup>17</sup> was established “to authorize the use of electronic and electromechanical voting systems in which votes are registered electronically or are tabulated on automatic tabulating equipment or data processing equipment.”<sup>18</sup> The act requires all voting to be by marksense ballot utilizing a marking device for the purpose of designating ballot selections.<sup>19</sup> However, persons with disabilities may vote on a voter interface device that meets the voting system accessibility requirements for individuals with disabilities pursuant to the federal Help America Vote Act of 2002 and s. 101.56062, F.S.<sup>20</sup> The term “voter interface device” means any device that communicates voting instructions and ballot information to a voter and allows the voter to select and vote for candidates and issues.<sup>21</sup>

The Department of State must publicly examine all makes of electronic or electromechanical voting systems submitted to it and determine whether the systems comply with s. 101.5606, F.S., which establishes requirements for approval of systems.<sup>22</sup> Any person owning or interested in an electronic or electromechanical voting system may submit it to the department for examination.<sup>23</sup> Each certified voting system must include the capability to install accessible voter interface devices in the system configuration that will allow the system to meet certain minimum standards to aid persons with disabilities in the voting process.<sup>24</sup>

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<sup>11</sup> Chapters 97-106, F.S., are known as The Florida Election Code.

<sup>12</sup> The term “voting system” is defined to mean a method of casting and processing votes that functions wholly or partly by use of electromechanical or electronic apparatus or by use of marksense ballots and includes, but is not limited to, the procedures for casting and processing votes and the programs, operating manuals, supplies, printouts, and other software necessary for the system’s operation. Section 97.021(44), F.S.

<sup>13</sup> Section 101.015(1), F.S., sets the standards for voting systems. The Department of State is required to adopt rules establishing the minimum standards for hardware and software for electronic and electromechanical voting systems. Section 101.015(1), F.S.; *see also* Fla. Admin. Rule 1S-5.001. Sections 101.151 and 101.161, F.S., set the specifications for ballots. The Department of State is required to adopt rules prescribing a uniform primary and general election ballot for each certified voting system in accordance with The Florida Election Code. Section 101.151(9), F.S.; *see also* Fla. Admin. Rule 1S-2.032.

<sup>14</sup> Section 97.021(4)(a), F.S.

<sup>15</sup> The term “marking device” is defined to mean any approved device for marking a ballot with ink or other substance that will enable the ballot to be tabulated by means of automatic tabulating equipment. Section 101.5603(5), F.S.

<sup>16</sup> Section 97.021(4)(b), F.S.

<sup>17</sup> Sections 101.5601-101.5614, F.S., are cited as the “Electronic Voting Systems Act.”

<sup>18</sup> Section 101.5602, F.S.

<sup>19</sup> Section 101.56075(1), F.S.

<sup>20</sup> Section 101.56075(2), F.S.

<sup>21</sup> Section 97.021(40), F.S.

<sup>22</sup> Section 101.5605(1), F.S.

<sup>23</sup> Section 101.5605(2)(a), F.S.

<sup>24</sup> *See* s. 101.56062, F.S.

By 2020, all persons with disabilities must vote on a voter interface device that meets the voter accessibility requirements for individuals with disabilities under the Help America Vote Act of 2002 and s. 101.56062, F.S.<sup>25</sup>

Effect of the Bill

The bill appears to expand the use of voter interface devices to all individuals instead of persons with disabilities only.

The bill revises the definition of “marksense ballot” to include sheets of paper used indirectly to designate the elector’s ballot selections through the use of a voter interface device.

With respect to any voting system that uses a voter interface device, the bill provides that ss. 101.151, 101.161, 101.2512, 101.2515 101.252, 101.254, F.S., which relate to ballot layout, only apply to the display of candidates and issues on such device.

The bill amends the Electronic Voting Systems Act to include voter interface devices within the definition of “marking device.”

**B. SECTION DIRECTORY:**

Section 1 amends s. 20.61, F.S., relating to AST.

Section 2 creates s. 20.62, F.S., relating to a data catalog.

Section 3 amends s. 97.021, F.S., relating to definitions.

Section 4 amends s. 101.151, F.S., relating to specifications for ballots.

Section 5 amends s. 101.5603, F.S., relating to definitions relating to the Electronic Voting Systems Act.

Section 6 amends s. 101.56075, F.S., relating to voting methods.

Section 7 amends s. 282.0051, F.S., relating to AST; powers, duties, and functions.

Section 8 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:

The bill may have a negative fiscal impact on AST associated with the establishment of the position of chief data officer. In addition, there may be a negative fiscal impact on state agencies associated with the data reporting requirements in the bill.

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<sup>25</sup> Section 101.56075(3), F.S.  
STORAGE NAME: h1195.GVOPS.DOCX  
DATE: 1/24/2016

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

There may be a negative fiscal impact on local governments associated with the data reporting requirements in the bill.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Companies offering voter interface devices may see an increase in requests for such devices due to the authorized expansion of its use.

**D. FISCAL COMMENTS:**

None.

**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 local governments to gather, standardize, and submit certain data to AST for inclusion in the data catalog; however, an exemption may apply if the cost to local governments is insignificant. An exception does not apply because the bill does not articulate a finding of an important state interest.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The Agency for State Technology only has statutory oversight of state agencies in the executive branch of government and therefore might be unable to enforce the provisions of the bill requiring local government entities to submit data.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

1                                   A bill to be entitled  
 2           An act relating to technology; amending s. 20.61,  
 3           F.S.; establishing the chief data officer within the  
 4           Agency for State Technology; creating s. 20.62, F.S.;  
 5           requiring each state and local government entity to  
 6           annually provide an indexed list of certain data to  
 7           the agency; providing requirements for such list;  
 8           amending s. 97.021, F.S.; revising the definition of  
 9           the term "marksense ballots" for purposes of the  
 10          Florida Election Code; amending s. 101.151, F.S.;  
 11          providing applicability of specified requirements to  
 12          the display on a voter interface device; amending ss.  
 13          101.5603 and 101.56075, F.S.; conforming provisions to  
 14          changes made by the act; amending s. 282.0051, F.S.;  
 15          requiring the Agency for State Technology to create a  
 16          reporting format for certain data and publish such  
 17          data in an indexed catalog; providing an effective  
 18          date.

19  
 20 Be It Enacted by the Legislature of the State of Florida:

21  
 22           Section 1. Paragraph (f) is added to subsection (2) of  
 23           section 20.61, Florida Statutes, to read:

24           20.61 Agency for State Technology.—The Agency for State  
 25           Technology is created within the Department of Management  
 26           Services. The agency is a separate budget program and is not

27 subject to control, supervision, or direction by the Department  
 28 of Management Services, including, but not limited to,  
 29 purchasing, transactions involving real or personal property,  
 30 personnel, or budgetary matters.

31 (2) The following positions are established within the  
 32 agency, all of whom shall be appointed by the executive  
 33 director:

34 (f) Chief data officer, who shall request and receive  
 35 data, as needed to establish the interoperability of public  
 36 data, from any state or local government entity. The chief data  
 37 officer shall comply with all state and federal privacy  
 38 regulations for personally identifiable information.

39 Section 2. Section 20.62, Florida Statutes, is created to  
 40 read:

41 20.62 Data catalog.—A state or local government entity  
 42 must annually provide the Agency for State Technology with an  
 43 indexed list that identifies all types of data points aggregated  
 44 or stored within any computer system, platform, application, or  
 45 database used by the entity. The list need not include the  
 46 publication of all data points or data sets but must include the  
 47 identification of all data fields or columns within any computer  
 48 system, platform, application, or database used by the entity.

49 The list must identify:

50 (1) If the data is maintained as structured or discrete  
 51 data.

52 (2) Any standards or terminology used to structure the

53 | data.

54 |       (3) The name of the system, platform, or application that  
 55 | collects, stores, publishes, or analyzes the data.

56 |       (4) Any integration or interface between any system,  
 57 | platform, or application used by the entity and any other  
 58 | system, platform, or application.

59 |       (5) Any existing or planned application programming  
 60 | interface used to publish data, the data contained in any such  
 61 | existing interface, and the data expected to be contained in any  
 62 | such planned interface.

63 |       (6) Any current methodologies or formats for transmitting  
 64 | data to a state or local government entity.

65 |       (7) Any data that, if contained within a published  
 66 | application programming interface, would:

67 |           (a) Increase the efficiency and operation of state  
 68 | government; or

69 |           (b) Increase the public's ability to obtain data in an  
 70 | efficient, accurate, and less costly manner.

71 |       Section 3. Paragraph (a) of subsection (4) of section  
 72 | 97.021, Florida Statutes, is amended to read:

73 |       97.021 Definitions.—For the purposes of this code, except  
 74 | where the context clearly indicates otherwise, the term:

75 |           (4) "Ballot" or "official ballot" when used in reference  
 76 | to:

77 |           (a) "Marksense ballot ~~ballots~~" means that printed sheet of  
 78 | paper, used in conjunction with an electronic or



79 | electromechanical vote tabulation voting system, containing the  
 80 | names of candidates, or a statement of proposed constitutional  
 81 | amendments or other questions or propositions submitted to the  
 82 | electorate at any election, or the selections made by the  
 83 | elector of candidates or other questions or propositions at an  
 84 | election, on which sheet of paper an elector casts his or her  
 85 | vote either directly on the sheet of paper or indirectly through  
 86 | the use of a voter interface device used to designate the  
 87 | elector's ballot selections on the sheet of paper.

88 |       Section 4. Subsection (10) is added to section 101.151,  
 89 | Florida Statutes, to read:

90 |       101.151 Specifications for ballots.—

91 |       (10) With respect to any voting system that uses a voter  
 92 | interface device to designate the elector's ballot selections on  
 93 | a sheet of paper, the provisions of this section, s. 101.161,  
 94 | and ss. 101.2512-101.254 that prescribe the ballot layout apply  
 95 | only to the display of candidates and issues on the voter  
 96 | interface device.

97 |       Section 5. Subsection (5) of section 101.5603, Florida  
 98 | Statutes, is amended to read:

99 |       101.5603 Definitions relating to Electronic Voting Systems  
 100 | Act.—As used in this act, the term:

101 |       (5) "Marking device" means any approved device for marking  
 102 | a ballot with ink or other substance, including through a voter  
 103 | interface device, which will enable the ballot to be tabulated  
 104 | by means of automatic tabulating equipment.

105 Section 6. Subsection (1) of section 101.56075, Florida  
 106 Statutes, is amended to read:

107 101.56075 Voting methods.—

108 (1) Except as provided in subsection (2), all voting shall  
 109 be by marksense ballot using ~~utilizing~~ a marking device for the  
 110 purpose of designating ballot selections.

111 Section 7. Subsection (8) of section 282.0051, Florida  
 112 Statutes, is amended to read:

113 282.0051 Agency for State Technology; powers, duties, and  
 114 functions.—The Agency for State Technology shall have the  
 115 following powers, duties, and functions:

116 (8) (a) Develop standards for information technology  
 117 reports and updates, including, but not limited to, operational  
 118 work plans, project spend plans, and project status reports, for  
 119 use by state agencies.

120 (b) Create a standardized reporting format for data  
 121 submitted by state and local government entities and publish  
 122 such data in an indexed catalog pursuant to s. 20.62.

123 Section 8. 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 Grant offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
 7 Section 1. Paragraph (f) is added to subsection (2) of  
 8 section 20.61, Florida Statutes, to read:

9 20.61 Agency for State Technology.—The Agency for State  
 10 Technology is created within the Department of Management  
 11 Services. The agency is a separate budget program and is not  
 12 subject to control, supervision, or direction by the Department  
 13 of Management Services, including, but not limited to,  
 14 purchasing, transactions involving real or personal property,  
 15 personnel, or budgetary matters.



Amendment No.

16 (2) The following positions are established within the  
17 agency, all of whom shall be appointed by the executive  
18 director:

19 (f) Chief data officer.

20 Section 2. Effective January 1, 2017, paragraph (a) of  
21 subsection (4) of section 97.021, Florida Statutes, is amended  
22 to read:

23 97.021 Definitions.—For the purposes of this code, except  
24 where the context clearly indicates otherwise, the term:

25 (4) "Ballot" or "official ballot" when used in reference  
26 to:

27 (a) "Marksense ballot ballots" means that printed sheet of  
28 paper, used in conjunction with an electronic or  
29 electromechanical vote tabulation voting system, containing the  
30 names of candidates, or a statement of proposed constitutional  
31 amendments or other questions or propositions submitted to the  
32 electorate at any election, or the selections made by the  
33 elector of candidates or other questions or propositions at an  
34 election, on which sheet of paper an elector casts his or her  
35 vote either directly on the sheet of paper or indirectly through  
36 the use of a voter interface device used to designate the  
37 elector's ballot selections on the sheet of paper.

38 Section 3. Effective January 1, 2017, subsection (10) is  
39 added to section 101.151, Florida Statutes, to read:

40 101.151 Specifications for ballots.—



Amendment No.

41       (10) With respect to any voting system that uses a voter  
42 interface device to designate the elector's ballot selections on  
43 a sheet of paper, the provisions of this section, s. 101.161,  
44 and ss. 101.2512-101.254 that prescribe the ballot layout apply  
45 only to the display of candidates and issues on the voter  
46 interface device.

47       Section 4. Effective January 1, 2017, subsection (5) of  
48 section 101.5603, Florida Statutes, is amended to read:

49       101.5603 Definitions relating to Electronic Voting Systems  
50 Act.—As used in this act, the term:

51       (5) "Marking device" means any approved device for marking  
52 a ballot with ink or other substance, including through a voter  
53 interface device, which will enable the ballot to be tabulated  
54 by means of automatic tabulating equipment.

55       Section 5. Effective January 1, 2017, subsection (1) of  
56 section 101.56075, Florida Statutes, is amended to read:

57       101.56075 Voting methods.—

58       (1) Except as provided in subsection (2), all voting shall  
59 be by marksense ballot using ~~utilizing~~ a marking device for the  
60 purpose of designating ballot selections.

61       Section 6. Subsection (8) of section 282.0051, Florida  
62 Statutes, is amended to read:

63       282.0051 Agency for State Technology; powers, duties, and  
64 functions.—The Agency for State Technology shall have the  
65 following powers, duties, and functions:



Amendment No.

66 (8) (a) Develop standards for information technology  
67 reports and updates, including, but not limited to, operational  
68 work plans, project spend plans, and project status reports, for  
69 use by state agencies.

70 (b) Create a standardized reporting format for data  
71 submitted by state and local government entities and publish  
72 such data in the data catalog pursuant to s. 282.319.

73 Section 7. Section 282.319, Florida Statutes, is created  
74 to read:

75 282.319 Data catalog.-

76 (1) The Agency for State Technology shall create,  
77 administer, and maintain a data catalog.

78 (2) A state or local government entity must annually  
79 provide the Agency for State Technology with an indexed list  
80 that identifies all types of data points aggregated or stored  
81 within any computer system, platform, application, or database  
82 used by the entity. The list need not include the publication of  
83 all data points or data sets but must include the identification  
84 of all data fields or columns within any computer system,  
85 platform, application, or database used by the entity. The list  
86 must identify:

87 (a) If the data is maintained as structured or discrete  
88 data.

89 (b) Any standards or terminology used to structure the  
90 data.



Amendment No.

91 (c) The name of the system, platform, or application that  
92 collects, stores, publishes, or analyzes the data.

93 (d) Any integration or interface between any system,  
94 platform, or application used by the entity and any other  
95 system, platform, or application.

96 (e) Any existing or planned application programming  
97 interface used to publish data, the data contained in any such  
98 existing interface, and the data expected to be contained in any  
99 such planned interface.

100 (f) Any current methodologies or formats for transmitting  
101 data to a state or local government entity.

102 (g) Any data that, if contained within a published  
103 application programming interface, would:

104 1. Increase the efficiency and operation of state  
105 government; or

106 2. Increase the public's ability to obtain data in an  
107 efficient, accurate, and less costly manner

108 (3) The chief data officer of the Agency for State  
109 Technology shall request and receive data, as needed to  
110 establish the interoperability of public data, from any state or  
111 local government entity for the purposes of maintaining and  
112 updating the data catalog.

113 Section 8. Except as otherwise provided herein, this act  
114 shall take effect July 1, 2016.

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116 -----



Amendment No.

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T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to technology; amending s. 20.61, F.S.;  
establishing the chief data officer within the Agency for State  
Technology; amending s. 97.021, F.S.; revising the definition of  
the term "marksense ballots" for purposes of The Florida  
Election Code; amending s. 101.151, F.S.; providing  
applicability of specified requirements to the display on a  
voter interface device; amending ss. 101.5603 and 101.56075,  
F.S.; conforming provisions to changes made by the act; amending  
s. 282.0051, F.S.; requiring the Agency for State Technology to  
create a reporting format for certain data and publish such data  
in an indexed catalog; creating s. 282.318, F.S.; requiring each  
state and local government entity to annually provide an indexed  
list of certain data to the agency; providing requirements for  
such list; providing effective dates.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4049 Scrutinized Companies

**SPONSOR(S):** Combee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Moore <i>AM</i>	Williamson <i>W</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 and FRS Investment Plan, which represents 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 that may be invested in each type. Currently, the SBA may invest up to 35 percent of any of its funds in foreign corporate securities and obligations.

The Protecting Florida's Investment Act (PFIA) requires the SBA to identify and divest from assets in foreign companies doing business in Iran and Sudan. The PFIA requires the SBA to assemble and publish a list of "Scrutinized Companies" that have prohibited business operations in Sudan and Iran. Once placed on the list, the SBA and its investment managers are prohibited from acquiring those companies' securities and are required to divest those securities if the companies on the list do not cease the prohibited activities or take certain compensating actions involving petroleum or energy, oil or mineral extraction, power production, or military support activities.

The PFIA specifies that the SBA may no longer scrutinize companies with certain business operations in Iran, may no longer assemble the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and must cease engagement, investment prohibitions, and divestment with respect to those companies upon the occurrence of certain actions by Congress or the President.

The bill repeals a provision requiring the SBA to cease scrutinizing and divesting of companies with certain business operations in Iran upon the occurrence of Congress or the President affirmatively and unambiguously declaring, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that such mandatory divestment interferes with the conduct of United States foreign policy.

The bill does not appear to have a fiscal impact on the state or local governments.

## 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 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,<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

##### 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.<sup>4</sup>

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.

##### 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.<sup>5</sup> The four main categories of sanctions resulting from designations under these acts

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<sup>1</sup> 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.

<sup>2</sup> 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](https://www.sbafla.com/fsb/Portals/Internet/Reports/20151031_Trustees_Performance_Reportrev.pdf).

<sup>3</sup> *Id.*

<sup>4</sup> Section 215.444, F.S.

<sup>5</sup> U.S. Department of State, *State Sponsors of Terrorism*, <http://www.state.gov/j/ct/list/c14151.htm> (last visited Jan. 21, 2016).

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.<sup>6</sup>

The three countries currently designated by the U.S. Secretary of State as "State Sponsors of Terrorism" are Iran, Sudan, and Syria.<sup>7</sup>

### 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.

### Federal Divestment Laws

The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010<sup>8</sup> (CISADA) authorizes states to divest – within specified boundaries – from companies that invest in Iran. CISADA provides in pertinent part:

Authority to Divest—Notwithstanding any other provision of law, a State or local government may adopt and enforce measures that meet the requirements of subsection (d) to divest the assets of the State or local government from, or prohibit investment of the assets of the State or local government in, any person that the State or local government determines, using credible information available to the public, engages in investment activities in Iran described in subsection (c).

Section (c) of CISADA specifies that a person<sup>9</sup> engages in investment activities in Iran if the person:

- Has an investment of \$20,000,000 or more in the energy sector of Iran, including in a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
- Is a financial institution that extends \$20,000,000 or more in credit to another person, for 45 days or more, if that person will use the credit for investment in the energy sector of Iran.

CISADA specifies that the authorization for a state or local government to divest ends 30 days after the President certifies to Congress that the government of Iran no longer satisfies the requirements for designation as a state sponsor of terrorism and has ceased the pursuit, acquisition, and development of certain weapons.<sup>10</sup>

### Protecting Florida's Investment Act

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"<sup>11</sup> that have

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 22 U.S.C. ss. 8501-8551.

<sup>9</sup> The term "person" includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals. 1 U.S.C. s. 1.

<sup>10</sup> *See* 22 U.S.C. s. 8551(a).

<sup>11</sup> 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

prohibited business operations in Sudan or Iran. Once a company 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.

The PFIA specifies that the SBA may no longer scrutinize companies with certain business operations in Iran, may no longer assemble the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and must cease engagement, investment prohibitions, and divestment with respect to those companies upon the occurrence of any of the following:

- The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;
- The United States revokes all sanctions imposed against the government of Iran; or
- The Congress or President of the United States affirmatively and unambiguously declares, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment of companies with business operations in Iran interferes with the conduct of United States foreign policy.

### **Effect of Proposed Changes**

The bill repeals the provision requiring the SBA to cease scrutinizing and divesting of companies with certain business operations in Iran upon the occurrence of Congress or the President affirmatively and unambiguously declaring, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that such mandatory divestment interferes with the conduct of United States foreign policy.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 215.471, F.S., relating to divesture by the SBA; Sudan; Iran.

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

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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

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.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **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:

None.

### **B. RULE-MAKING AUTHORITY:**

None.

### **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 scrutinized companies; amending s.  
3           215.473, F.S.; revising the conditions under which the  
4           public fund may no longer scrutinize certain companies  
5           with activities in the Iran petroleum energy sector;  
6           providing an effective date.

7

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

9

10           Section 1. Paragraph (b) of subsection (5) of section  
11   215.473, Florida Statutes, is amended to read:

12           215.473   Divestiture by the State Board of Administration;  
13   Sudan; Iran.—

14           (5)   EXPIRATION.—This section expires upon the occurrence  
15   of all of the following:

16           (b)   If any of the following occur, the public fund shall  
17   no longer scrutinize companies according to subparagraph  
18   (1)(u)4. and shall no longer assemble the Scrutinized Companies  
19   with Activities in the Iran Petroleum Energy Sector List and  
20   shall cease engagement, investment prohibitions, and divestment.  
21   The public fund may reinvest in such companies if such companies  
22   do not satisfy the criteria for inclusion in the Scrutinized  
23   Companies with Activities in Sudan List:

24           1.   The Congress or President of the United States  
25   affirmatively and unambiguously states, by means including, but  
26   not limited to, legislation, executive order, or written

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27 certification from the President to Congress, that the  
 28 government of Iran has ceased to acquire weapons of mass  
 29 destruction and support international terrorism; or

30 2. The United States revokes all sanctions imposed against  
 31 the government of Iran, ~~or~~

32 ~~3. The Congress or President of the United States~~  
 33 ~~affirmatively and unambiguously declares, by means including,~~  
 34 ~~but not limited to, legislation, executive order, or written~~  
 35 ~~certification from the President to Congress, that mandatory~~  
 36 ~~divestment of the type provided for in this section interferes~~  
 37 ~~with the conduct of United States foreign policy.~~

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





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 4065 Duties of Legislative Auditing Committee  
**SPONSOR(S):** Raulerson  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1636

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Moore <i>AM</i>	Williamson <i>RAW</i>
2) Appropriations Committee			
3) Rules, Calendar & Ethics Committee			

**SUMMARY ANALYSIS**

The Legislative Auditing Committee (Committee) is a joint committee comprised of five members of the Florida House of Representatives and five members of the Florida Senate. Current law authorizes the Committee to investigate any matter within the scope of an audit, review, or examination either completed by or being conducted by the Auditor General or the Office of Program Policy Analysis and Government Accountability and, in connection with such investigation, to exercise subpoena powers.

The bill repeals the requirement for the Committee to conduct audits of quarterly compensation reports required for legislative and executive branch lobbying firms.

The bill repeals the requirement for the Auditor General to notify the Committee of any financial or operational audit report that indicates that a state university or Florida College System institution has failed to take full corrective action in response to a recommendation that was included in the two preceding financial or operational audit reports. The bill also repeals the Committee's responsibilities to investigate and refer such instances of noncompliance.

The bill repeals the Committee's responsibilities with respect to the Transparency Florida Act (Act), including the requirements that the Committee make recommendations regarding the websites required under the Act and prepare an annual report.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Legislative Auditing Committee

The Legislative Auditing Committee (Committee) is a joint committee comprised of five members of the Florida House of Representatives and five members of the Florida Senate. Section 11.40, F.S., authorizes the Committee to investigate any matter within the scope of an audit, review, or examination either completed by or being conducted by the Auditor General or the Office of Program Policy Analysis and Government Accountability and, in connection with such investigation, to exercise subpoena powers.

##### Lobbyist Compensation Reports

Each lobbying firm<sup>1</sup> that lobbies before the Legislature is required to file a compensation report with the Office of Legislative Services for any calendar quarter during any portion of which the firm's lobbyists were registered to represent a principal.<sup>2</sup> The report must include:

- The full name, business address, and telephone number of the lobbying firm;
- The name of each of the firm's lobbyists; and
- The total compensation provided or owed to the lobbying firm from all principals for the reporting period.

For each principal represented by one or more of the firm's lobbyists, the report must also include:

- The full name, business address, and telephone number of the principal; and
- The total compensation provided or owed to the firm for the reporting period.

The same reporting requirements exist for lobbying firms that lobby before the executive branch.<sup>3</sup> Such firms must file the compensation reports with the Commission on Ethics.

##### Audits of Lobbyist Compensation Reports

Current law requires the Committee to conduct audits of the quarterly compensation reports required for legislative and executive branch lobbying firms.<sup>4</sup> The Committee must select a random sample of three percent of all executive branch lobbying firms and three percent of all legislative branch lobbying firms to be audited.<sup>5</sup> The Committee is required to create and maintain a list of at least 10 independent contract auditors<sup>6</sup> to conduct the audits. Each lobbying firm selected for audit may designate one of the auditors from the approved list to conduct the firm's audit. If a selected lobbying firm fails to designate an auditor within 30 days of being notified by the Committee of its selection, the Committee must assign an auditor to perform that firm's audit.<sup>7</sup>

The Committee is required to establish guidelines to govern the random audits. The guidelines must ensure that the audits are conducted in a uniform manner and must be formulated to encourage

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<sup>1</sup> Section 11.045(1)(f), F.S., defines a "lobbying firm" to mean any business entity, including an individual contract lobbyist, which receives or becomes entitled to receive any compensation for the purpose of lobbying, where any partner, owner, officer, or employee of the business entity is a lobbyist.

<sup>2</sup> Section 11.045(3)(a)1., F.S.

<sup>3</sup> See s. 112.3215(5)(a), F.S.

<sup>4</sup> See s. 11.40(3), F.S.

<sup>5</sup> Section 11.40(3)(b), F.S.

<sup>6</sup> Section 11.40(3)(a), F.S., defines "independent contract auditor" to mean a state-licensed certified public accountant or firm with which a state-licensed certified public accountant is currently employed or associated who is actively engaged in the accounting profession.

<sup>7</sup> Section 11.40(3)(c), F.S.

compliance and detect violations of the legislative and executive lobbying compensation reporting requirements.<sup>8</sup>

An audit report must clearly identify any violations of law, deficiencies, or material misstatements discovered by the auditor.<sup>9</sup> The report must also clearly indicate whether a lobbying firm failed to give full, frank, and prompt cooperation and access to books, records, and associated backup documents as requested in writing by the auditor.<sup>10</sup> Upon completion, all audit reports of legislative lobbying firms must be delivered to the President of the Senate and the Speaker of the House of Representatives, and all audit reports of executive branch lobbying firms must be delivered to the Commission on Ethics.<sup>11</sup>

### Auditor General

The Auditor General is appointed by the Legislature to conduct audits of records and to perform related duties as prescribed by law.<sup>12</sup> Such duties include, but are not limited to:

- Conducting financial audits of state government, state universities, state colleges, and district school boards;
- Conducting operational and performance audits of accounts and records of state agencies, state universities, state colleges, district school boards, the Florida Clerks of Court Operations Corporation, water management districts, and the Florida School for the Deaf and the Blind;
- Conducting performance audits of local government financial reporting systems; and
- Conducting performance audits of the Department of Revenue's administration of the ad valorem tax laws.<sup>13</sup>

The Auditor General is required to notify the Committee of any financial or operational audit report that indicates that a district school board, state university, or Florida College System institution has failed to take full corrective action in response to a recommendation that was included in the two preceding financial or operational audit reports.<sup>14</sup> The Committee is authorized to direct the audited entity to provide a written statement explaining why full corrective action has not been taken or what corrective action is intended to be taken and when it will occur.<sup>15</sup> If the Committee determines that the audited entity has failed to take full corrective action for which there is no justifiable reason or has failed to comply with the Committee's requests, the Committee must refer the matter to the State Board of Education or the Board of Governors, as appropriate, to investigate the noncompliance.<sup>16</sup>

### Transparency Florida Act

The Transparency Florida Act (Act) requires specified governmental fiscal information to be made publicly available via website or management system.<sup>17</sup> The Act requires the Governor, in consultation with the appropriations committees of the House of Representatives and the Senate, to maintain a central website providing access to all other websites required by the Act. The law requires certain budget information, certain contract information, and minimum functionality standards to be readily available online.

Pursuant to the Act, the Committee is required to annually recommend to the President of the Senate and the Speaker of the House of Representatives:

- Additional information to be added to a website, such as whether to expand the scope of the information provided to include state universities, Florida College System institutions, school

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<sup>8</sup> Section 11.40(3)(h), F.S.

<sup>9</sup> Section 11.40(3)(e), F.S.

<sup>10</sup> Section 11.40(3)(f), F.S.

<sup>11</sup> Section 11.40(3)(i), F.S.

<sup>12</sup> See art. III, s. 2, Fla. Const., and s. 11.45(2)(a), F.S.

<sup>13</sup> See s. 11.45(2)(a), F.S.

<sup>14</sup> Section 11.45(7)(j), F.S.

<sup>15</sup> Section 11.45(7)(j)1., F.S.

<sup>16</sup> Section 11.45(7)(j)3., F.S.

<sup>17</sup> Section 215.985, F.S.

districts, charter schools, charter technical career centers, local government units, and other governmental entities.

- A schedule for adding information to the website by type of information and governmental entity, including timeframes and development entity.
- A format for collecting and displaying the additional information.<sup>18</sup>

The manager of each website required under the Act must submit to the Committee information related to the cost of creating and maintaining the website and the number of times the website has been accessed.<sup>19</sup> The Committee is required to coordinate with the Financial Management Information Board in developing recommendations for including information on the website.<sup>20</sup> Each year, the Committee must prepare a report detailing progress in establishing the single website and providing recommendations for enhancement of the content and format of the website and related policies and procedures. The report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1.<sup>21</sup>

### **Effect of Proposed Changes**

The bill repeals the requirement for the Committee to conduct audits of the quarterly compensation reports required for legislative and executive branch lobbying firms.

The bill repeals the requirement for the Auditor General to notify the Committee of any financial or operational audit report that indicates that a state university or Florida College System institution has failed to take full corrective action in response to a recommendation that was included in the two preceding financial or operational audit reports. The bill also repeals the Committee's responsibilities to investigate and refer such instances of noncompliance.

The bill repeals the Committee's responsibilities with respect to the Transparency Florida Act (Act), including the requirements that the Committee make recommendations regarding the websites required under the Act and prepare an annual report.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 11.40, F.S., relating to the Legislative Auditing Committee.

Section 2 amends s. 11.45, F.S., relating to the Auditor General.

Section 3 amends s. 215.985, F.S., relating to transparency in government spending.

Section 4 amends s. 1002.396, F.S., correcting a cross-reference.

Section 5 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 as a result of removing some of the Committee's responsibilities, including auditing lobbyist compensation reports, investigating state

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<sup>18</sup> Section 11.45(7), F.S.

<sup>19</sup> Section 11.45(8), F.S.

<sup>20</sup> Section 11.45(9), F.S.

<sup>21</sup> Section 11.45(13), F.S.

universities and Florida College System institutions for failure to take corrective action under certain circumstances, and making recommendations and issuing a report relating to the Transparency Florida Act.

2. Expenditures:

The bill does not appear to have an impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill does not appear to have an impact on local government expenditures.

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. The bill does not appear to affect county or municipal governments.

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 duties of the Legislative Auditing  
 3           Committee; amending s. 11.40, F.S.; repealing  
 4           provisions requiring compensation report audits of  
 5           legislative branch and executive branch lobbying firms  
 6           by independent contract auditors, specifying  
 7           procedures for selecting independent contract  
 8           auditors, and requiring audit reports to be provided  
 9           to specified legislative and executive entities;  
 10          amending s. 11.45, F.S.; removing a requirement that  
 11          the Auditor General notify the committee regarding  
 12          certain financial or operational audit reports of  
 13          state universities or Florida College System  
 14          institutions; removing duties of the committee  
 15          relating to state universities or Florida College  
 16          System institutions that have failed to take  
 17          corrective action based on such reports; amending s.  
 18          215.985, F.S.; repealing provisions requiring the  
 19          committee's input related to the website of the  
 20          Executive Office of the Governor; amending s.  
 21          1002.395, F.S.; correcting a cross-reference;  
 22          providing an effective date.

23  
 24   Be It Enacted by the Legislature of the State of Florida:

25  
 26          Section 1. Subsection (3) of section 11.40, Florida

27 Statutes, is amended to read:

28 11.40 Legislative Auditing Committee.—

29 ~~(3) (a) As used in this subsection, "independent contract~~  
 30 ~~auditor" means a state-licensed certified public accountant or~~  
 31 ~~firm with which a state-licensed certified public accountant is~~  
 32 ~~currently employed or associated who is actively engaged in the~~  
 33 ~~accounting profession.~~

34 ~~(b) Audits specified in this subsection cover the~~  
 35 ~~quarterly compensation reports for the previous calendar year~~  
 36 ~~for a random sample of 3 percent of all legislative branch~~  
 37 ~~lobbying firms and a random sample of 3 percent of all executive~~  
 38 ~~branch lobbying firms calculated using as the total number of~~  
 39 ~~such lobbying firms those filing a compensation report for the~~  
 40 ~~preceding calendar year. The committee shall provide for a~~  
 41 ~~system of random selection of the lobbying firms to be audited.~~

42 ~~(c) The committee shall create and maintain a list of not~~  
 43 ~~less than 10 independent contract auditors approved to conduct~~  
 44 ~~the required audits. Each lobbying firm selected for audit in~~  
 45 ~~the random audit process may designate one of the independent~~  
 46 ~~contract auditors from the committee's approved list. Upon~~  
 47 ~~failure for any reason of a lobbying firm selected in the random~~  
 48 ~~selection process to designate an independent contract auditor~~  
 49 ~~from the committee's list within 30 calendar days after being~~  
 50 ~~notified by the committee of its selection, the committee shall~~  
 51 ~~assign one of the available independent contract auditors from~~  
 52 ~~the approved list to perform the required audit. No independent~~



53 ~~contract auditor, whether designated by the lobbying firm or by~~  
 54 ~~the committee, may perform the audit of a lobbying firm where~~  
 55 ~~the auditor and lobbying firm have ever had a direct personal~~  
 56 ~~relationship or any professional accounting, auditing, tax~~  
 57 ~~advisory, or tax preparing relationship with each other. The~~  
 58 ~~committee shall obtain a written, sworn certification subject to~~  
 59 ~~s. 837.06, both from the randomly selected lobbying firm and~~  
 60 ~~from the proposed independent contract auditor, that no such~~  
 61 ~~relationship has ever existed.~~

62 ~~(d) Each independent contract auditor shall be engaged by~~  
 63 ~~and compensated solely by the state for the work performed in~~  
 64 ~~accomplishing an audit under this subsection.~~

65 ~~(e) Any violations of law, deficiencies, or material~~  
 66 ~~misstatements discovered and noted in an audit report shall be~~  
 67 ~~clearly identified in the audit report and be determined under~~  
 68 ~~the rules of either house of the Legislature or under the joint~~  
 69 ~~rules, as applicable.~~

70 ~~(f) If any lobbying firm fails to give full, frank, and~~  
 71 ~~prompt cooperation and access to books, records, and associated~~  
 72 ~~backup documents as requested in writing by the auditor, that~~  
 73 ~~failure shall be clearly noted by the independent contract~~  
 74 ~~auditor in the report of audit.~~

75 ~~(g) The committee shall establish procedures for the~~  
 76 ~~selection of independent contract auditors desiring to enter~~  
 77 ~~into audit contracts pursuant to this subsection. Such~~  
 78 ~~procedures shall include, but not be limited to, a rating system~~

79 ~~that takes into account pertinent information, including the~~  
 80 ~~independent contract auditor's fee proposals for participating~~  
 81 ~~in the process. All contracts under this subsection between an~~  
 82 ~~independent contract auditor and the Speaker of the House of~~  
 83 ~~Representatives and the President of the Senate shall be~~  
 84 ~~terminable by either party at any time upon written notice to~~  
 85 ~~the other, and such contracts may contain such other terms and~~  
 86 ~~conditions as the Speaker of the House of Representatives and~~  
 87 ~~the President of the Senate deem appropriate under the~~  
 88 ~~circumstances.~~

89 ~~(h) The committee shall adopt guidelines that govern~~  
 90 ~~random audits and field investigations conducted pursuant to~~  
 91 ~~this subsection. The guidelines shall ensure that similarly~~  
 92 ~~situated compensation reports are audited in a uniform manner.~~  
 93 ~~The guidelines shall also be formulated to encourage compliance~~  
 94 ~~and detect violations of the legislative and executive lobbying~~  
 95 ~~compensation reporting requirements in ss. 11.045 and 112.3215~~  
 96 ~~and to ensure that each audit is conducted with maximum~~  
 97 ~~efficiency in a cost effective manner. In adopting the~~  
 98 ~~guidelines, the committee shall consider relevant guidelines and~~  
 99 ~~standards of the American Institute of Certified Public~~  
 100 ~~Accountants to the extent that such guidelines and standards are~~  
 101 ~~applicable and consistent with the purposes set forth in this~~  
 102 ~~subsection.~~

103 ~~(i) All audit reports of legislative lobbying firms shall,~~  
 104 ~~upon completion by an independent contract auditor, be delivered~~

105 ~~to the President of the Senate and the Speaker of the House of~~  
 106 ~~Representatives for their respective review and handling. All~~  
 107 ~~audit reports of executive branch lobbyists, upon completion by~~  
 108 ~~an independent contract auditor, shall be delivered by the~~  
 109 ~~auditor to the Commission on Ethics.~~

110 Section 2. Paragraph (j) of subsection (7) of section  
 111 11.45, Florida Statutes, is amended to read:

112 11.45 Definitions; duties; authorities; reports; rules.-

113 (7) AUDITOR GENERAL REPORTING REQUIREMENTS.-

114 (j) The Auditor General shall notify the Legislative  
 115 Auditing Committee of any financial or operational audit report  
 116 prepared pursuant to this section which indicates that a  
 117 ~~district school board, state university, or Florida College~~  
 118 ~~System institution~~ has failed to take full corrective action in  
 119 response to a recommendation that was included in the two  
 120 preceding financial or operational audit reports.

121 1. The committee may direct the district school board ~~or~~  
 122 ~~the governing body of the state university or Florida College~~  
 123 ~~System institution~~ to provide a written statement to the  
 124 committee explaining why full corrective action has not been  
 125 taken or, if the district school board ~~governing body~~ intends to  
 126 take full corrective action, describing the corrective action to  
 127 be taken and when it will occur.

128 2. If the committee determines that the written statement  
 129 is not sufficient, the committee may require the chair of the  
 130 district school board ~~or the chair of the governing body of the~~

131 ~~state university or Florida College System institution,~~ or the  
 132 chair's designee, to appear before the committee.

133 3. If the committee determines that the district school  
 134 board, ~~state university, or Florida College System institution~~  
 135 has failed to take full corrective action for which there is no  
 136 justifiable reason or has failed to comply with committee  
 137 requests made pursuant to this section, the committee shall  
 138 refer the matter to the State Board of Education ~~or the Board of~~  
 139 ~~Governors, as appropriate,~~ to proceed in accordance with s.  
 140 1008.32 ~~or s. 1008.322,~~ respectively.

141 Section 3. Subsections (2), (7), (8), (9), and (13) of  
 142 section 215.985, Florida Statutes, are amended to read:

143 215.985 Transparency in government spending.—

144 (2) As used in this section, the term:

145 ~~(a) "Committee" means the Legislative Auditing Committee~~  
 146 ~~created in s. 11.40.~~

147 (a) ~~(b)~~ "Contract" means a written agreement or purchase  
 148 order issued for the purchase of goods or services or a written  
 149 agreement for the receipt of state or federal financial  
 150 assistance.

151 (b) ~~(e)~~ "Governmental entity" means a state, regional,  
 152 county, municipal, special district, or other political  
 153 subdivision whether executive, judicial, or legislative,  
 154 including, but not limited to, a department, division, bureau,  
 155 commission, authority, district, or agency thereof, or public  
 156 school, Florida College System institution, state university, or

157 associated board.

158 (c)~~(d)~~ "Website" means a site on the Internet which is  
 159 easily accessible to the public at no cost and does not require  
 160 the user to provide information.

161 ~~(7) By November 1, 2013, and annually thereafter, the~~  
 162 ~~committee shall recommend to the President of the Senate and the~~  
 163 ~~Speaker of the House of Representatives:~~

164 ~~(a) Additional information to be added to a website, such~~  
 165 ~~as whether to expand the scope of the information provided to~~  
 166 ~~include state universities, Florida College System institutions,~~  
 167 ~~school districts, charter schools, charter technical career~~  
 168 ~~centers, local government units, and other governmental~~  
 169 ~~entities.~~

170 ~~(b) A schedule for adding information to the website by~~  
 171 ~~type of information and governmental entity, including~~  
 172 ~~timeframes and development entity.~~

173 ~~(c) A format for collecting and displaying the additional~~  
 174 ~~information.~~

175 ~~(8) The manager of each website described in subsections~~  
 176 ~~(4), (5), and (6) shall submit to the committee information~~  
 177 ~~relating to the cost of creating and maintaining such website,~~  
 178 ~~and the number of times the website has been accessed.~~

179 ~~(9) The committee shall coordinate with the Financial~~  
 180 ~~Management Information Board in developing recommendations for~~  
 181 ~~including information on the website which is necessary to meet~~  
 182 ~~the requirements of s. 215.91(8).~~

183 ~~(13) The committee shall prepare an annual report~~  
 184 ~~detailing progress in establishing the single website and~~  
 185 ~~providing recommendations for enhancement of the content and~~  
 186 ~~format of the website and related policies and procedures. The~~  
 187 ~~report shall be submitted to the Governor, the President of the~~  
 188 ~~Senate, and the Speaker of the House of Representatives by~~  
 189 ~~November 1.~~

190 Section 4. Paragraph (d) of subsection (9) of section  
 191 1002.395, Florida Statutes, is amended to read:

192 1002.395 Florida Tax Credit Scholarship Program.—

193 (9) DEPARTMENT OF EDUCATION OBLIGATIONS.—The Department of  
 194 Education shall:

195 (d) Annually verify the eligibility of expenditures as  
 196 provided in paragraph (6)(d) using the audit required by  
 197 paragraph (6)(m) and s. 11.45(2)(j) ~~11.45(2)(k)~~.

198 Section 5. 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		

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1 Committee/Subcommittee hearing bill: Government Operations  
 2 Subcommittee  
 3 Representative Raulerson offered the following:

**Amendment (with title amendment)**

Remove lines 26-109

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

Remove lines 3-9 and insert:

Committee;





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 16-07 OGSR Florida Health Choices Program

**SPONSOR(S):** Government Operations Subcommittee

**TIED BILLS:** IDEN./SIM. BILLS: SB 7020

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

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Florida Health Choices Program (program) is a single, centralized market for the sale and purchase of various health care products including, but not limited to, health insurance plans, health maintenance organization plans, prepaid services, service contracts, and flexible spending accounts. The Florida Health Choices, Inc. (corporation), is a not-for-profit corporation responsible for administering the program.

Current law provides that the following information relating to the program is confidential and exempt from public record requirements:

- Personal identifying information of an enrollee or participant who has applied for or participates in the program;
- Client and customer lists of a buyer's representative held by the corporation; and
- Proprietary confidential business information held by the corporation.

Current law provides for retroactive application of the public record exemption. It also authorizes release of the confidential and exempt information in certain instances.

The bill reenacts the public record exemption, which will repeal on October 2, 2016, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>2</sup>

The Act 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.
- 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.
- Protects trade or business secrets.<sup>3</sup>

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>4</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>5</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Florida Health Choices Program

In 2008, the Legislature created the Florida Health Choices Program (program)<sup>6</sup> as a single, centralized market for the sale and purchase of various products that enable individuals to pay for health care.<sup>7</sup> The products include, but are not limited to, health insurance plans, health maintenance organization (HMO) plans, prepaid services, service contracts, and flexible spending accounts.<sup>8</sup> Policies sold as part of the program are not subject to the licensing requirements of the Florida Insurance Code<sup>9</sup> nor the mandated offerings or coverages established for HMOs.<sup>10</sup>

Participation in the program is voluntary and available to eligible employers, individuals, vendors, and health insurance agents.<sup>11</sup> Employers may enroll in the program provided they meet certain criteria<sup>12</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 24(c), Art. I, FLA. CONST.

<sup>5</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

<sup>6</sup> Chapter 2008-32, s.4, L.O.F.; *see also* s. 408.910, F.S.

<sup>7</sup> Section 408.910(3), F.S.

<sup>8</sup> Section 408.910(5), F.S.

<sup>9</sup> Chapters 624-632, 634, 635, 636, 641, 642, 648 and 651, F.S., constitute the Florida Insurance Code.

<sup>10</sup> Section 408.910(10), F.S.

<sup>11</sup> Section 408.910(4), F.S.

<sup>12</sup> Section 408.910(4)(c), F.S., provides that employers who choose to participate in the program may enroll by complying with certain procedures that must include, in part, submission of required information; compliance with federal tax requirements for the establishment of a cafeteria plan; identification of eligible employees; and arrangement for periodic payments.

and elect to make their employees eligible through the program.<sup>13</sup> Employees of enrolled employers, as well as other individuals who meet specified criteria, may participate in the program.<sup>14</sup> The following are eligible vendors who may sell certain services to program participants as provided in law:

- Insurers licensed under chapter 624, F.S.;
- HMOs licensed under part I of chapter 641, F.S.;
- Prepaid limited health service organizations;
- Discount medical plan organizations;
- Prepaid health clinic service providers licensed under part II of chapter 641, F.S.;
- Health care providers, including hospitals and other licensed health facilities, health care clinics, licensed health professionals, pharmacies, and other licensed health care providers;
- Provider organizations, including service networks, group practices, professional associations, and other incorporated organizations of providers; and
- Corporate entities providing specific health services in accordance with applicable law.<sup>15</sup>

#### Florida Health Choices, Inc.

Florida Health Choices, Inc., (corporation), which is a not-for-profit corporation, is established to administer the program.<sup>16</sup> In part, the corporation is required to:

- Determine eligibility of employers, vendors, individuals, and agents, and establish policies and procedures regarding participation.
- Establish procedures necessary for the operation of the program.
- Arrange for collection of contributions from participating employers and individuals.
- Arrange for payment of premiums and other appropriate disbursements based on the selections of products and services by the individual participants.
- Provide for the operation of a toll-free hotline to respond to requests for assistance.
- Provide for initial, open, and special enrollment periods.<sup>17</sup>

A 15-member board of directors (board) governs the corporation.<sup>18</sup> Board members are appointed for terms of up to three years and any member is eligible for reappointment.<sup>19</sup>

#### Public Record Exemption under Review

In 2011, the Legislature created a public record exemption for the program.<sup>20</sup>

Current law provides that personal identifying information of an enrollee or participant who has applied for or who participates in the program is confidential and exempt<sup>21</sup> from public record requirements.<sup>22</sup> The term “enrollee” means an employer who is eligible to enroll in the program,<sup>23</sup> and the term “participant” means an individual who is eligible to participate in the program.<sup>24</sup>

<sup>13</sup> Section 408.910(4)(a) and (e), F.S.

<sup>14</sup> Section 408.910(4)(b), F.S.

<sup>15</sup> Section 408.910(4)(d), F.S.

<sup>16</sup> Section 408.910(11), F.S.

<sup>17</sup> Section 408.910(11)(i), F.S.

<sup>18</sup> The board is composed of four members appointed by the Governor; four members appointed by the President of the Senate; four members appointed by the Speaker of the House of Representatives; and three ex officio, nonvoting members. Section 408.910(11)(a), F.S.

<sup>19</sup> Section 408.910(11)(b), F.S.

<sup>20</sup> Chapter 2011-197, s. 1, L.O.F.; codified as s. 408.910(14), F.S.

<sup>21</sup> There is a difference between records the Legislature designates exempt from public records 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).

<sup>22</sup> Section 408.910(14)(b)1., F.S.

<sup>23</sup> Section 408.910(14)(a)2., F.S.

<sup>24</sup> Section 408.910(14)(a)3., F.S.

Current law also provides that the following information held by the corporation is confidential and exempt from public record requirements:

- Client and customer lists of a buyer's representative;<sup>25</sup> and
- Proprietary confidential business information.<sup>26</sup>

The term "buyer's representative" means a participating insurance agent.<sup>27</sup> The term "proprietary confidential business information" means information, regardless of form or characteristics, that is owned or controlled by a vendor<sup>28</sup> requesting confidentiality under s. 408.910, F.S.; that is intended to be and is treated by the vendor as private in that the disclosure of the information would cause harm to the business operations of the vendor; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement providing that the information may be released to the public; and that is information concerning:

- Business plans.
- Internal auditing controls and reports of internal auditors.
- Reports of external auditors for privately held companies.
- Client and customer lists.
- Potentially patentable material.
- A trade secret as defined in the Uniform Trade Secrets Act.<sup>29, 30</sup>

The public record exemption is given retroactive application.<sup>31</sup>

Upon request, the confidential and exempt information must be released to:

- Another governmental entity in the performance of its official duties and responsibilities;
- Any person who has the written consent of the program applicant; and
- The Florida Kidcare Program for the purpose of administering that program.<sup>32</sup>

Further, the public record exemption does not prohibit a participant's legal guardian from obtaining confirmation of coverage, dates of coverage, the name of the participant's health plan, and the amount of premium being paid.<sup>33</sup>

Current law provides that a person who knowingly and willfully violates the provisions of the public record exemption commits a misdemeanor of the second degree,<sup>34</sup> which is punishable by a definite term of imprisonment not to exceed one year<sup>35</sup> and a fine not to exceed \$1,000.<sup>36</sup>

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<sup>25</sup> Section 408.910(14)(b)2., F.S.

<sup>26</sup> Section 408.910(14)(b)3., F.S.

<sup>27</sup> Section 408.910(14)(a)1., F.S.

<sup>28</sup> Section 408.910(14)(a)5., F.S., defines "vendor" to mean a participating insurer or other provider of services as described in s. 408.910(4)(d), F.S.

<sup>29</sup> Section 668.002(4), F.S., defines "trade secret" to mean 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.

<sup>30</sup> Section 408.910(14)(a)4., F.S.

<sup>31</sup> Section 408.910(14)(c), F.S. The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied as such. Access to public records is a substantive right. Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. See *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 784 So. 2d 438, 441 (Fla. 2001).

<sup>32</sup> Section 408.910(14)(d)1., F.S.

<sup>33</sup> Section 408.910(14)(d)2., F.S.

<sup>34</sup> Section 408.910(14)(e), F.S.

<sup>35</sup> Section 775.082(4)(a), F.S.

<sup>36</sup> Section 775.083(1)(d), F.S.

The 2011 public necessity statement for the public record exemption provides that:

If such information is not held confidential, the administration of the [Florida Health Choices Program] could be significantly impaired because businesses and individuals would be less inclined to apply, participate, or enroll in the program, thereby significantly decreasing the number of program participants or enrollees ... The disclosure of a vendor's proprietary confidential business information or a customer and client list of a program buyer's representative could cause injury in the marketplace by providing competitors with detailed insights into confidential business information, strategies, methodologies, plans, or client lists, thereby diminishing the advantage that the program vendor or program buyer's representative maintains over those that do not possess such information. Without these exemptions, private-sector vendors or buyer's representatives whose business records generally are not required to be open to the public might refrain from participating in the Florida Health Choices Program and not offer affordable, quality health insurance, health services, and benefits products through the program.<sup>37</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2016, unless reenacted by the Legislature.<sup>38</sup>

During the 2015 interim, subcommittee staff met with staff from the corporation as part of the Open Government Sunset Review process. Corporation staff indicated that the public record exemption is critical to its operation and that repealing the exemption would make participants and vendors less willing to engage in the Florida Health Choices Program. As such, the corporation recommended reenactment of the exemption without changes.

### **Effect of the Bill**

The bill removes the repeal date thereby reenacting the public record exemption for the following information:

- Personal identifying information of an enrollee or participant who has applied for or participates in the Florida Health Choices Program;
- Client and customer lists of a buyer's representative held by the corporation; and
- Proprietary confidential business information held by the corporation.

### **B. SECTION DIRECTORY:**

Section 1 amends s. 408.910, F.S., to save from repeal the public record exemption for the Florida Health Choices Program.

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

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

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<sup>37</sup> Chapter 2011-197, s.2, L.O.F.

<sup>38</sup> Section 408.910(14)(f), F.S

2. Expenditures:

None.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

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 a review under the Open Government  
 3           Sunset Review Act; amending s. 408.910, F.S., relating  
 4           to an exemption from public records requirements for  
 5           personal identifying information of an enrollee or  
 6           participant in the Florida Health Choices Program, for  
 7           client and customer lists of a buyer's representative  
 8           held by the Florida Health Choices, Inc., and for  
 9           proprietary confidential business information held by  
 10          the corporation; removing the scheduled repeal of the  
 11          exemption under the Open Government Sunset Review Act;  
 12          providing an effective date.

13  
 14   Be It Enacted by the Legislature of the State of Florida:

15  
 16           Section 1. Subsection (14) of section 408.910, Florida  
 17   Statutes, is amended to read:

18           408.910 Florida Health Choices Program.—

19           (14) EXEMPTION FROM PUBLIC RECORDS REQUIREMENTS.—

20           (a) *Definitions.*—For purposes of this subsection, the  
 21   term:

22           1. "Buyer's representative" means a participating  
 23   insurance agent as described in paragraph (4)(g).

24           2. "Enrollee" means an employer who is eligible to enroll  
 25   in the program pursuant to paragraph (4)(a).

26           3. "Participant" means an individual who is eligible to

27 participate in the program pursuant to paragraph (4) (b).

28 4. "Proprietary confidential business information" means  
 29 information, regardless of form or characteristics, that is  
 30 owned or controlled by a vendor requesting confidentiality under  
 31 this section; that is intended to be and is treated by the  
 32 vendor as private in that the disclosure of the information  
 33 would cause harm to the business operations of the vendor; that  
 34 has not been disclosed unless disclosed pursuant to a statutory  
 35 provision, an order of a court or administrative body, or a  
 36 private agreement providing that the information may be released  
 37 to the public; and that is information concerning:

- 38 a. Business plans.
- 39 b. Internal auditing controls and reports of internal  
 40 auditors.
- 41 c. Reports of external auditors for privately held  
 42 companies.
- 43 d. Client and customer lists.
- 44 e. Potentially patentable material.
- 45 f. A trade secret as defined in s. 688.002.

46 5. "Vendor" means a participating insurer or other  
 47 provider of services as described in paragraph (4) (d).

48 (b) *Public record exemptions.*—

49 1. Personal identifying information of an enrollee or  
 50 participant who has applied for or participates in the Florida  
 51 Health Choices Program is confidential and exempt from s.  
 52 119.07(1) and s. 24(a), Art. I of the State Constitution.



53           2. Client and customer lists of a buyer's representative  
 54 held by the corporation are confidential and exempt from s.  
 55 119.07(1) and s. 24(a), Art. I of the State Constitution.

56           3. Proprietary confidential business information held by  
 57 the corporation is confidential and exempt from s. 119.07(1) and  
 58 s. 24(a), Art. I of the State Constitution.

59           (c) *Retroactive application.*—The public record exemptions  
 60 provided for in paragraph (b) apply to information held by the  
 61 corporation before, on, or after the effective date of this  
 62 exemption.

63           (d) *Authorized release.*—

64           1. Upon request, information made confidential and exempt  
 65 pursuant to this subsection shall be disclosed to:

66           a. Another governmental entity in the performance of its  
 67 official duties and responsibilities.

68           b. Any person who has the written consent of the program  
 69 applicant.

70           c. The Florida Kidcare program for the purpose of  
 71 administering the program authorized in ss. 409.810-409.821.

72           2. Paragraph (b) does not prohibit a participant's legal  
 73 guardian from obtaining confirmation of coverage, dates of  
 74 coverage, the name of the participant's health plan, and the  
 75 amount of premium being paid.

76           (e) *Penalty.*—A person who knowingly and willfully violates  
 77 this subsection commits a misdemeanor of the second degree,  
 78 punishable as provided in s. 775.082 or s. 775.083.

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79           ~~(f) Review and repeal. This subsection is subject to the~~  
80 ~~Open Government Sunset Review Act in accordance with s. 119.15,~~  
81 ~~and shall stand repealed on October 2, 2016, unless reviewed and~~  
82 ~~saved from repeal through reenactment by the Legislature.~~

83           Section 2. This act shall take effect October 1, 2016.