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# Oversight, Transparency & Administration Subcommittee

March 13, 2017  
1:00 PM – 6:00 PM  
Morris Hall

## Meeting Packet

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Oversight, Transparency & Administration Subcommittee

**Start Date and Time:** Monday, March 13, 2017 01:00 pm  
**End Date and Time:** Monday, March 13, 2017 06:00 pm  
**Location:** Morris Hall (17 HOB)  
**Duration:** 5.00 hrs

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

HB 103 Public Records/Nonviable Birth Records by Cortes, B.  
CS/HB 239 Public Records/Protective Injunction Petitions by Civil Justice & Claims Subcommittee, Lee  
CS/HB 369 Pub. Rec./Prearrest Diversion Programs by Criminal Justice Subcommittee, Plakon  
HB 671 Reemployment Assistance Fraud by La Rosa  
HB 681 Unclaimed Funds Held by the Clerks of Court by Clemons  
HB 789 Procurement of Professional Services by Stone  
HJR 811 Membership of Cabinet; Election of Secretary of State by Harrell  
HB 1137 Use of State Funds by Edwards  
HB 1141 State Employment by Yarborough

**Workshop on the following:**

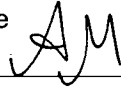
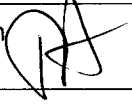
HB 143 Firefighters by Fitzenhagen, Willhite Firefighter Presumption

**NOTICE FINALIZED on 03/09/2017 4:08PM by Larson.Lisa**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 103 Public Records/Nonviable Birth Records  
**SPONSOR(S):** Cortes  
**TIED BILLS:** CS/HB 101 **IDEN./SIM. BILLS:** SB 674

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	13 Y, 0 N	Siples	McElroy
2) Oversight, Transparency & Administration Subcommittee		Moore 	Harrington 
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

CS/HB 101 authorizes the Department of Health (DOH) to issue a certificate of nonviable birth upon the request of an authorized parent. A nonviable birth is a pregnancy that unintentionally and spontaneously results in a fetal demise before a gestation period of 20 completed weeks, more commonly known as a miscarriage.

The bill, which is linked with CS/HB 101, creates a public record exemption for certain information that may be collected when issuing a certificate of nonviable birth. Specifically, the bill provides that the cause of death, parentage, marital status, and medical information included in nonviable birth records are confidential and exempt from public disclosure.

The bill provides for repeal of the exemption on October 2, 2022, 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 an indeterminate negative fiscal impact on DOH.

The bill will become effective on the same date that CS/HB 101 or similar legislation takes effect.

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record 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 and Open Meetings Requirements**

The Florida Constitution provides that the public has the right to access government records and meetings. The public may 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 of persons acting on their behalf.<sup>1</sup> The public also has a right to have notice of and access to meetings of any collegial public body of the executive branch of state government or of any local government.<sup>2</sup> The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.<sup>3</sup>

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act<sup>4</sup> guarantees every person's right to inspect and copy any state or local government public record.<sup>5</sup> The Sunshine Law<sup>6</sup> requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be noticed and open to the public.<sup>7</sup>

The Legislature, however, may create an exemption to public record or open meetings requirements.<sup>8</sup> An exemption must specifically state the public necessity justifying the exemption<sup>9</sup> and must be tailored to accomplish the stated purpose of the law.<sup>10</sup> There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act and also confidential.

##### Exempt Records

If a record is exempt, the specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., s. 286.011, F.S., or article I, section 24 of the Florida Constitution. If records are only exempt from the Public Records Act and not confidential, the exemption does not

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

<sup>2</sup> FLA. CONST., art. I, s. 24(b).

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

<sup>4</sup> Chapter 119, F.S.

<sup>5</sup> Section 119.011(12), F.S., defines "public record" as 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. Section 119.011(2), F.S. defines "agency" as 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 Public Records Act does not apply to legislative or judicial records, *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), however, the Legislature's records are public pursuant to section 11.0431, F.S.

<sup>6</sup> Section 286.011, F.S.

<sup>7</sup> Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

<sup>8</sup> FLA. CONST., art. I, s. 24(c).

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

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

prohibit the showing of such information, but simply exempts them from the mandatory disclosure requirements in s. 119.07(1)(a), F.S.<sup>11</sup>

### Confidential Records

The term "confidential" is not defined in the Public Records Act; however, it is used in Article I, s. 24 of the Florida Constitution, which provides that every person has the right to inspect or copy any public record, except with respect to records exempted or specifically made confidential by the Constitution. If information is made confidential in the statutes, the information is not subject to inspection by the public and may be released only to those persons and entities designated in the statute.<sup>12</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public record or open meetings exemptions.<sup>13</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>14</sup>

The OGSR provides that a public record or open meeting exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>15</sup> An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;
- It protects sensitive personal information, the release of which would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt; or
- It protects trade or business secrets.<sup>16</sup>

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.<sup>17</sup>

The OGSR also requires specific questions to be considered during the review process.<sup>18</sup> In examining an exemption, the OGSR asks the Legislature to question the purpose and necessity of reenacting the exemption. If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>19</sup> If the exemption is reenacted without

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<sup>11</sup> See, *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991), rev. denied, 589 So. 2d 289 (Fla. 1991), in which the court observed that pursuant to s. 119.07(3)(d), F.S., [now s. 119.071(2)(c), F.S.] "active criminal investigative information" was exempt from the requirement that public records be made available for public inspection. However, as stated by the court, "the exemption does not prohibit the showing of such information." *Id.* at 686.

<sup>12</sup> *WFTV, Inc. v. School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), rev. denied, 892 So. 2d 1015 (Fla. 2004). See also, 04-09 Fla Op. Att'y Gen. (2004) and 86-97 Fla Op. Att'y Gen. (1986).

<sup>13</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System. Section 119.15(2), F.S.

<sup>14</sup> Section 119.15(3), F.S.

<sup>15</sup> Section 119.15(6)(b), F.S.

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

<sup>17</sup> *Id.*

<sup>18</sup> Section 119.15(6)(a), F.S. The questions are: What specific records or meetings are affected by the exemption? Whom does the exemption uniquely affect, as opposed to the public? What is the identifiable public purpose or goal of the exemption? Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how? Is the record or meeting protected by another exemption? Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>19</sup> FLA. CONST., art. I, s. 24(c).

substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will retain their exempt status unless provided for by law.<sup>20</sup>

## **Vital Records**

The Bureau of Vital Records (bureau), which is housed within the Department of Health (DOH), is statutorily required to develop and maintain a uniform and efficient system of registering, compiling, storing, and preserving all vital records<sup>21</sup> in this state.<sup>22</sup> Under current law, the following records compiled by the bureau are confidential and exempt from public inspection:

- All birth records, except for those over 100 years old that are not sealed pursuant to a court order;<sup>23</sup>
- Information relating to cause of death in all death and fetal death records;<sup>24</sup> and
- The parentage, marital status, and medical information of fetal death records.<sup>25</sup>

Although these records are exempt from public inspection, the records may be made available for health research purposes, as approved by DOH.

## **Certificates of Nonviable Birth**

CS/HB 101 authorizes the bureau to issue a certificate of nonviable birth upon the request of a parent who experiences an unintentional, spontaneous fetal demise before a gestation period of 20 completed weeks, more commonly known as a miscarriage.

## **Effect of Proposed Changes**

The bill creates a public record exemption for certain information that may be collected to issue a certificate of nonviable birth. Specifically, the bill adds nonviable birth records to the existing exemption for death and fetal death records. Therefore, information collected regarding the cause of death, parentage, marital status, and medical information related to a nonviable birth will be confidential and exempt from public record requirements.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2022, unless saved from repeal through reenactment by the Legislature.

The bill provides a public necessity statement as required by the State Constitution, which states that the exemption is necessary to protect the privacy rights of an individual undergoing a nonviable birth and such exemptions currently exist for death and fetal death records. The public necessity statement also provides that public disclosure of such information may discourage such an individual from seeking medical care from a licensed health care practitioner or health care facility.

The bill takes effect on the same date that CS/HB 101 or similar legislation takes effect, if such legislation is adopted in the same legislative session.

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<sup>20</sup> Section 119.15(7), F.S.

<sup>21</sup> A vital record is defined as certificates or reports of birth, death, fetal death, marriage, dissolution of marriage, certain name changes, and data related thereto. Section 382.002(17), F.S.

<sup>22</sup> Section 382.003, F.S.

<sup>23</sup> Section 382.025(1), F.S. *See also*, ss. 382.013 and 382.017, F.S., which involve specific situations in which a new birth certificate may be issued and the original birth certificate remains confidential and exempt from public inspection.

<sup>24</sup> Section 382.008(6), F.S. However, pursuant to s. 382.025(2)(b), F.S., all portions of a death certificate cease to be exempt from the provisions of s. 119.07(1), F.S., 50 years after the date of death.

<sup>25</sup> *Id.*

B. SECTION DIRECTORY:

**Section 1:** Amends s. 382.008, relating to death and fetal death registration.

**Section 2:** Provides a public necessity statement.

**Section 3:** Provides a contingent effective date.

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

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may create an insignificant, negative impact on DOH for costs associated with training staff on a new public record exemption. The costs, however, would be absorbed, as part of the day-to-day responsibilities of DOH.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

**Vote Requirement**

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



### **Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates 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 bill creates a public record exemption for certain information contained in and related to nonviable birth records, which 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:**

None.

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

None.

1                                   A bill to be entitled  
 2           An act relating to public records; amending s.  
 3           382.008, F.S.; providing that certain information  
 4           included in nonviable birth records is confidential  
 5           and exempt from public records requirements; providing  
 6           for future legislative review and repeal of the  
 7           exemption; providing a statement of public necessity;  
 8           providing a contingent effective date.

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

11  
 12           Section 1. Subsection (6) of section 382.008, Florida  
 13   Statutes, is amended to read:

14           382.008   Death, ~~and fetal death,~~ and nonviable birth  
 15   registration.—

16           (6) (a)   The original certificate of death, ~~or fetal death,~~  
 17   or nonviable birth shall contain all the information required by  
 18   the department for legal, social, and health research purposes.  
 19   All information relating to cause of death in all death, ~~and~~  
 20   fetal death, and nonviable birth records and the parentage,  
 21   marital status, and medical information included in all fetal  
 22   death and nonviable birth records of this state are confidential  
 23   and exempt from the provisions of s. 119.07(1), except for  
 24   health research purposes as approved by the department; nor may  
 25   copies of the same be issued except as provided in s. 382.025.

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

26        (b) This subsection is subject to the Open Government  
 27 Review Act in accordance with s. 119.15, and shall stand  
 28 repealed on October 2, 2022, unless reviewed and saved from  
 29 repeal through reenactment by the Legislature.



30        Section 2. The Legislature finds that it is a public  
 31 necessity that information relating to the cause of death,  
 32 parentage, marital status, and medical information included in  
 33 nonviable birth records be held confidential and exempt from s.  
 34 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State  
 35 Constitution to protect the privacy rights of an individual  
 36 undergoing a nonviable birth. Currently, death and fetal death  
 37 records containing such information are confidential and exempt  
 38 from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the  
 39 State Constitution. The Legislature further finds that the  
 40 public disclosure of such information may discourage such an  
 41 individual from seeking medical care from a licensed health care  
 42 practitioner or health care facility.

43        Section 3. This act shall take effect on the same date  
 44 that HB 101 or similar legislation takes effect, if such  
 45 legislation is adopted in the same legislative session or an  
 46 extension thereof and becomes a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 239 Public Records/Protective Injunction Petitions  
**SPONSOR(S):** Civil Justice & Claims Subcommittee; Lee, Jr. and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1062

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	14 Y, 0 N, As CS	Bond	Bond
2) Oversight, Transparency & Administration Subcommittee		Grosso 	Harrington 
3) Judiciary Committee			

### SUMMARY ANALYSIS

An individual who believes that he or she is the victim of domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking may petition the court for an injunction for protection if certain requirements are met.

The bill exempts from public record requirements a petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking when the petition is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017. If such an injunction for protection was dismissed prior to July 1, 2017, the petition, and the contents thereof, are exempt only if the respondent requests.

The bill provides a public necessity statement as required by the Florida Constitution.

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

The effective date of the bill is July 1, 2017.

**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 certain court files related to a petition for an injunction against violence; 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 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 Art. 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>

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. Furthermore, 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 does not apply to an exemption that applies solely to the Legislature or the State Court System.<sup>5</sup>

##### Public Records and Court Proceedings and Files

Independent of constitutional and statutory provisions that require court files to be generally open to the public, the courts have found that "both civil and criminal court proceedings in Florida are public events" and that courts must "adhere to the well-established common law right of access to court proceedings and records."<sup>6</sup> A court may close a court file or a portion thereof on equitable grounds, but the ability to do so is limited. The Supreme Court has ruled that "closure of court proceedings or records should occur only when necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to

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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(2)(b), F.S.

<sup>6</sup> *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113, 116 (Fla. 1988)(ruling that court files in divorce cases are generally open despite the desire of the parties for privacy).

a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.”<sup>7</sup>

### Public Record Exemptions for Certain Court Records and Files

Currently, s. 119.0714(1), F.S., provides public record exemptions for various types of personal information contained in court files. Information currently exempt from public record requirements includes records prepared by an agency attorney,<sup>8</sup> various law enforcement confidential records,<sup>9</sup> social security numbers,<sup>10</sup> and bank account numbers.<sup>11</sup>

### Injunctions for Protection against Specified Acts of Violence

#### *Domestic Violence*

Any person who is the victim of domestic violence or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection against domestic violence.<sup>12</sup> Section 741.28, F.S., defines the term “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.<sup>13</sup>

Upon the filing of the petition, the court must set a hearing at the earliest possible time.<sup>14</sup> If it appears to the court that an immediate and present danger of domestic violence exists when the petition is filed, the court may grant a temporary injunction ex parte.<sup>15</sup> The court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, and providing the petitioner a temporary parenting plan.<sup>16</sup> The only evidence admissible in the ex parte hearing is verified pleadings or affidavits, unless the respondent appears at the hearing or has received reasonable notice of the hearing.<sup>17</sup> Temporary injunctions are only effective for a fixed period that cannot exceed 15 days.<sup>18</sup>

The hearing on the petition must be set for a date on or before the date when the temporary injunction expires. The court may grant a continuance of the hearing for good cause, which may include obtaining service of process. A temporary injunction must be extended, if necessary, during any period of continuance.<sup>19</sup>

At the hearing, specified injunctive relief may be granted if the court finds that the petitioner is:

- The victim of domestic violence; or

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<sup>7</sup> Id. at 118.

<sup>8</sup> s. 119.0714(1)(a), F.S.

<sup>9</sup> ss. 119.0714(1)(c) through 119.0714(1)(h), F.S.

<sup>10</sup> s. 119.0714(1)(i), F.S.

<sup>11</sup> s. 119.0714(1)(j), F.S.

<sup>12</sup> s. 741.30(1), F.S.; see also [flcourts.org](https://www.flcourts.org), *Instructions for Florida Supreme Court Approved Family Law Form 12.980(a) Petition for Injunction for Protection Against Domestic Violence (11/15)*, available online at: <https://www.flcourts.org/core/fileparse.php/293/urlt/980a.pdf>.

<sup>13</sup> s. 741.30(3), F.S.

<sup>14</sup> s. 741.30(4), F.S.

<sup>15</sup> s. 741.30(5)(a), F.S.

<sup>16</sup> s. 741.30(5), F.S.

<sup>17</sup> s. 741.30(5)(b), F.S.

<sup>18</sup> s. 741.30(5)(c), F.S.

<sup>19</sup> s. 741.30(5)(c), F.S.

- Has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.<sup>20</sup>

If the petition is insufficient, the court must dismiss the petition. Importantly, where the petition is dismissed as insufficient, the respondent is not notified of the petition. Alternatively, the court may dismiss the petition at the hearing.

### *Repeat, Dating, and Sexual Violence*

Section 784.046, F.S., governs the issuance of injunctions against repeat violence, dating violence, and sexual violence. This statute largely parallels the provisions and procedures discussed above regarding domestic violence injunctions. The forms of violence are described as follows:

- Section 784.046(1)(b), F.S., defines the term “repeat violence” to mean two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner’s immediate family member. Section 784.046(1)(a), F.S., defines the term “violence” to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.
- Section 784.046(1)(d), F.S., defines the term “dating violence” to mean violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. The existence of such a relationship is determined by considering the following factors:
  - A dating relationship must have existed within the past six months;
  - The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
  - The persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship.
- Section 784.046(1)(c), F.S., defines the term “sexual violence” to mean any one incident of: sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or any other forcible felony wherein a sexual act is committed or attempted. For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

### *Stalking and Cyberstalking*

Section 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This statute largely parallels the provisions and procedures discussed above regarding domestic violence injunctions. The terms stalking and cyberstalking are not defined in s. 784.0485, F.S.

### **Effect of the Bill**

The bill creates s. 119.0714(1)(k), F.S., to provide that a petition, and the contents of the petition, for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, or is dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or any reason having to do with the sufficiency of the petition itself without an injunction being issued after July 1, 2017, is exempt<sup>21</sup> from s. 119.07(1), F.S., and art. I, s. 24(a) of the Florida Constitution.

<sup>20</sup> s. 741.30(6)(a), F.S.

<sup>21</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



As to injunctions dismissed prior to July 1, 2017, the bill exempts from public record the petition upon request by the respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of the court. The clerk may not charge a fee for removal.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that it is a public necessity to protect certain dismissed injunctions, and the contents of such injunctions, because the existence of such a petition and of the unverified allegations contained in such a petition could be defamatory to an individual, cause unwarranted damage to the reputation of such individual, and that correction of the public record by the removal of such a petition is the sole means of protecting the reputation of an individual named in such a petition.

**B. SECTION DIRECTORY:**

Section 1 amends s. 119.0714, F.S., regarding court files, court records, and official records.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2017.

**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:

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

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

The bill does not appear to have a direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

The bill could have a minimal fiscal impact on court clerks because staff responsible for complying with public records requests may require training related to the creation of the public record exemption. In addition, clerks 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 clerks.

### 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 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 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 and Breadth of Exemption

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 record exemption; therefore, it includes a public necessity statement. Article I, s. 24(c) of the Florida Constitution also requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law.

#### 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

On February 16, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made style and grammar changes, and removed a reference to the Open Government Sunset Review Act.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 369 Pub. Rec./Prearrest Diversion Programs  
**SPONSOR(S):** Criminal Justice Subcommittee, Plakon  
**TIED BILLS:** CS/HB 367 **IDEN./SIM. BILLS:** SB 450

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Hall	White
2) Oversight, Transparency & Administration Subcommittee		Grosso	Harrington
3) Judiciary Committee			

### SUMMARY ANALYSIS

CS/HB 367 (2017), which is tied to this bill, creates s. 901.40, F.S., to encourage local communities and public or private educational institutions to implement prearrest diversion programs. CS/HB 367 provides a framework for a model Adult Civil Citation Program that allows a law enforcement officer, at the officer's sole discretion, to issue a civil citation or similar prearrest diversion program notice to an adult who commits a qualifying misdemeanor offense and satisfies other requirements. The program provides a participating adult with intervention and behavior services while requiring community service hours and restitution. If the adult successfully completes the prearrest diversion program, an arrest record may not be associated with the offense. Under current law, there is no public record exemption for the records associated with a civil citation or similar prearrest diversion program.

This bill creates a public record exemption for the personal identifying information of an adult who participates in a civil citation or similar prearrest diversion program.

The bill provides a statement of public necessity as required by the Florida Constitution.

The bill provides that it shall take effect on the same date that CS/HB 367 or similar legislation takes effect.

The bill may have a minimal fiscal impact on the state and local governments. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

**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 the personal identifying information of an adult who participates in a civil citation or similar prearrest diversion program, and therefore requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

###### Public Records, Generally

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>

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>

###### Adult Criminal History Records

A criminal history record includes the disposition of an arrest, whether it results in a conviction, acquittal, or dismissal of the charges before trial.<sup>6</sup> Generally, Florida law allows dissemination of criminal justice information<sup>7</sup> to the public. Section 943.053, F.S., provides that an adult's criminal history information<sup>8</sup> is available to criminal justice agencies for criminal justice purposes free of charge,

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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> Florida Department of Law Enforcement, *Seal and Expunge Frequently Asked Questions*, [http://www.fdle.state.fl.us/cms/Seal-and-Expunge-Process/Frequently-Asked-Questions.aspx#Charges\\_dropped\\_dismissed](http://www.fdle.state.fl.us/cms/Seal-and-Expunge-Process/Frequently-Asked-Questions.aspx#Charges_dropped_dismissed) (last visited Feb. 5, 2017).

<sup>7</sup> "Criminal Justice Information" means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information." s. 943.045(12), F.S.

<sup>8</sup> "Criminal history information" means "information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the

and to persons in the private sector upon payment of a fee.<sup>9</sup> Adults seeking to prevent such disclosure may obtain a court order making criminal history records confidential and exempt from the provisions of s. 119.07(1), F.S., and article I, s. 24(a) of the Florida Constitution by petitioning for:

- Court-ordered sealing;<sup>10</sup> or
- Court-ordered expunction.<sup>11</sup>

### Effect of a Criminal History Record

Research estimates that as many as one in three adults in the United States have a criminal record.<sup>12</sup> The Federal Bureau of Investigation maintains a database of records compiled when a suspected offender is arrested and fingerprinted by local, state, or federal law enforcement agencies.<sup>13</sup> Private consumer reporting agencies offer background reports for sale to employers, but often times utilize databases that may include outdated court records.<sup>14</sup> Consequently, any contact with the criminal justice system, including arrests that do not lead to conviction, can have long-lasting effects on a person's employment, housing, education and other opportunities.<sup>15</sup>

### Sealing of Criminal History Records

To be eligible for the sealing of a criminal history record, an applicant must petition the court providing a sworn statement attesting that he or she:

- Has never been adjudicated guilty of a criminal offense or comparable ordinance violation;
- Has not been adjudicated guilty for any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains;
- Has never had a prior sealing or expunction of criminal history record; and
- Is otherwise eligible and does not have any other petition to seal or expunge pending before any court.<sup>16</sup>

If a criminal history record is ordered sealed by the court, it is confidential and exempt from the provisions of s. 119.07(1), F.S., and article I, s. 24(a) of the Florida Constitution, and available only to:

- The person who is the subject of the record, or their attorney;
- Criminal justice agencies for criminal justice purposes;<sup>17</sup>
- Judges; and
- Certain entities for licensing, access authorization, and employment purposes.<sup>18</sup>

An order sealing a criminal history record does not require the record be destroyed and criminal justice agencies may continue to maintain the record. An adult, whose criminal history record has been sealed, may lawfully deny or fail to acknowledge the arrest covered by the sealed record, except in certain specific instances.<sup>19</sup>

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diposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.” s. 943.045(5), F.S.

<sup>9</sup> s. 943.053(3)(a), F.S.

<sup>10</sup> s. 943.059, F.S.

<sup>11</sup> s. 943.0585, F.S.

<sup>12</sup> Matthew Friedman, Brennan Center for Justice at New York University School of Law, *Just Facts: As Many Americans Have Criminal Records As College Diplomas*, <https://www.brennancenter.org/blog/just-facts-many-americans-have-criminal-records-college-diplomas> (last visited Feb. 6, 2017).

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

<sup>14</sup> The result being that even some expunged arrests are reported to employers. Brendan Lynch, Talk Poverty, *Never Convicted, but Held Back by a Criminal Record*, <https://talkpoverty.org/2014/12/09/held-back-by-a-criminal-record/> (last visited Feb. 6, 2017).

<sup>15</sup> Justice Center, The Council of State Governments, *Clean Slate Clearinghouse*, <https://csgjusticecenter.org/cleanslate> (last visited Feb. 6, 2017).

<sup>16</sup> s. 943.059, F.S.

<sup>17</sup> Such purposes include conducting criminal history background check for firearms purchases and transfers. s. 943.059(4), F.S.

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

<sup>19</sup> The subject of the record may not deny the existence of the sealed record when they are seeking employment with a criminal justice agency; a defendant in a criminal prosecution; concurrently or subsequently petitions for either expunction or sealing; seeking admission to the Florida Bar; seeking certain employment or professional licenses; seeking appointment as a guardian; subject to a

### Expunction of Criminal History Records

To be eligible for expunction, an applicant must petition the court providing a sworn statement that he or she:

- Has never been adjudicated guilty of a criminal offense or comparable ordinance violation;<sup>20</sup>
- Has not been adjudicated guilty for any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains;
- Has not received a prior sealing or expunction of a criminal history record;<sup>21</sup> and
- Is otherwise eligible and does not have any other petition to expunge or seal before any court.<sup>22</sup>

He or she must also obtain a written statement of the state attorney or statewide prosecutor indicating that a charging document was not issued in the case, or the case was dismissed or nolle prossed, and did not result in a trial.<sup>23</sup>

If a court orders expunction, the criminal history record must be physically destroyed by any criminal justice agency having custody of the record, except that it must be retained by Florida Department of Law Enforcement (FDLE).<sup>24</sup> The record retained by FDLE is confidential and exempt from the provisions of s. 119.07(1), F.S., and article I, s. 24(a) of the Florida Constitution, and is not available to any person or entity without a court order.<sup>25</sup> When a criminal history record has been expunged, the subject of the record may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except in certain specified circumstances.<sup>26</sup>

### Prearrest Diversion Programs

CS/HB 367 (2017), which is tied to this bill, creates s. 901.40, F.S., to encourage local communities and public or private educational institutions to implement prearrest diversion programs. CS/HB 367 provides a framework for a model Adult Civil Citation Program (ACCP) that allows a law enforcement officer, at the officer's sole discretion, to issue a civil citation or similar prearrest diversion program notice to an adult who:

- Commits a qualifying misdemeanor offense (as determined by the program);
- Does not contest that he or she committed the offense; and
- Has not previously been arrested or previously received an adult civil citation or similar notice, unless the terms of the program allow otherwise.

The ACCP provides an adult with appropriate assessment, intervention, education, and behavioral health care services, while requiring the individual to complete community service hours and pay restitution. If the adult successfully completes the ACCP, an arrest record may not be associated with the offense.

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background check when attempting to purchase a firearm; or seeking a license to carry a concealed weapon or firearm. s. 943.059(4)(a), F.S.

<sup>20</sup> A pardon does not have the effect of erasing guilt so that a conviction is treated as though it never occurred. A pardoned individual cannot satisfy the requirements for a certificate of eligibility for an expunction. *R.J.L. v. State*, 887 So. 2d 1268, 1281 (Fla. 2004).

<sup>21</sup> Unless expunction is sought of a criminal history record that was previously sealed for 10 years and the record is now otherwise eligible for expunction. s. 943.0585(1)(b)3., F.S.

<sup>22</sup> s. 943.0585(1), F.S.

<sup>23</sup> s. 943.0585(2), F.S.

<sup>24</sup> s. 943.0585(4), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> A person may not deny the existence of the expunged record when they are seeking employment with a criminal justice agency; a defendant in a criminal prosecution; concurrently or subsequently petitions for either expunction or sealing; seeking admission to the Florida Bar; seeking certain employment or professional licenses; or seeking appointment as a guardian. The existence of the expunged record is confidential, except that FDLE must disclose the record of expunction to these entities for their respective licensing, access authorization, or licensure decisions. s. 943.0585(4), F.S.

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### Pre-Arrest Diversion Program Records

Due to the prearrest nature of such programs, records held by a civil citation or similar prearrest diversion program are created before any arrest occurs and, thus, do not become part of the criminal history record system. As such, there is no ability to seal or expunge a civil citation or prearrest diversion program record. Instead, such records are subject to public disclosure because there is no public records exemption applicable under current Florida law.

### **Effect of the Bill**

The bill amends s. 904.10, F.S., as created by CS/HB 367 (2017), to create a public record exemption related to adult civil citation and similar prearrest diversion programs. Under the exemption, the personal identifying information of an adult who participates in a civil citation or similar prearrest diversion program is exempt<sup>27</sup> from the requirements of s. 119.07(1), F.S., and article I, s. 24(a) of the Florida Constitution.

The bill repeals the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the Florida Constitution.<sup>28</sup> It specifies that the Legislature finds that “[t]he goal of such programs is to give a second chance to adults who commit misdemeanor offenses and allow them the opportunity to avoid having an arrest record.” As such, prearrest diversion program records must be exempt, as disclosure “would defeat the program’s goal of giving adults who commit misdemeanor offenses a means to avoid the negative consequences of an arrest and prosecution” and “disclosure might negatively impact the effectiveness of the program.”

The bill provides that it takes effect on the same date that CS/HB 367 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

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

Section 1. Amends s. 901.40, F.S., as created by CS/HB 367 (2017), to provide a public record exemption for the personal identifying information of an adult who participates in a civil citation or similar prearrest diversion program.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date for the same date that CS/HB 367 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

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

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

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

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<sup>27</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>28</sup> FLA. CONST. art. I, s. 24(c).



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 impact on agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public record 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 by existing resources, as they are part of the day-to-day responsibilities of agencies.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures 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:

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 newly 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, 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 record 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 record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a limited public record exemption for the personal identifying information of an adult who participates in a civil citation or similar prearrest diversion program which 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:**

This bill does not appear to create a need for rulemaking or require additional rulemaking authority.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 15, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS narrows the public records exemption so that it only applies to the personal identifying information of an individual participating in an ACCP.

This analysis is drafted to the CS as passed by the Criminal Justice Subcommittee

1                   A bill to be entitled  
 2           An act relating to public records; amending s. 901.40,  
 3           F.S.; providing that the personal identifying  
 4           information of an adult who participates in a civil  
 5           citation or similar prearrest diversion program is  
 6           exempt from public record requirements; providing for  
 7           future review and repeal of the exemption; providing a  
 8           statement of public necessity; providing a contingent  
 9           effective date.

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

12  
 13           Section 1. Subsection (6) is added to section 901.40,  
 14 Florida Statutes, as created by HB 367, 2017 Regular Session, to  
 15 read:

16           901.40 Prearrest diversion programs.—

17           (6) PUBLIC RECORDS EXEMPTION.—The personal identifying  
 18 information of an adult who participates in a civil citation or  
 19 similar prearrest diversion program, as encouraged by this  
 20 section, is exempt from s. 119.07(1), and s. 24(a), Art. I of  
 21 the State Constitution. This subsection is subject to the Open  
 22 Government Sunset Review Act in accordance with s. 119.15 and  
 23 shall stand repealed on October 2, 2022, unless reviewed and  
 24 saved from such repeal through reenactment by the Legislature.

25           Section 2. The Legislature finds that it is a public

26 necessity that the personal identifying information of an adult  
27 who participates in a civil citation or similar prearrest  
28 diversion program be exempt from s. 119.07(1), Florida Statutes,  
29 and s. 24(a), Article I of the State Constitution. The goal of  
30 such programs is to give a second chance to adults who commit  
31 misdemeanor offenses and allow them the opportunity to avoid  
32 having an arrest record. If the personal identifying information  
33 of such adults were not exempt from disclosure, it would defeat  
34 the program's goal of giving adults who commit misdemeanor  
35 offenses a means to avoid the negative consequences of an arrest  
36 and prosecution. If such information were able to be obtained by  
37 the public, the disclosure might negatively impact the  
38 effectiveness of the program. For these reasons, the Legislature  
39 finds that it is a public necessity that the personal  
40 identifying information of an adult who participates in a civil  
41 citation or similar prearrest diversion program be exempt from  
42 public records requirements.

43 Section 3. This act shall take effect on the same date  
44 that CS/HB 367 or similar legislation takes effect, if such  
45 legislation is adopted in the same legislative session or an  
46 extension thereof and becomes a law.

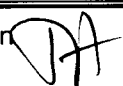


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 671 Reemployment Assistance Fraud

**SPONSOR(S):** La Rosa

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Whittaker	Harrington 
2) Transportation & Infrastructure Subcommittee			
3) Government Accountability Committee			

### SUMMARY ANALYSIS

Florida's unemployment insurance program was created by the Legislature in 1937, and rebranded as the "reemployment assistance" program in 2012. The Florida Department of Economic Opportunity (DEO) is responsible for administering Florida's reemployment assistance laws. The Department of Highway Safety and Motor Vehicles (DHSMV) holds motor vehicle records containing personal information about drivers and motor vehicle owners, including identification cards. A driver license issued by DHSMV must contain a color photograph and signature of the licensee. DHSMV must maintain a record of the digital image and signature of the licensee. Reproductions from the file are exempt from public record disclosure and may only be issued for specified purposes. Current law allows DHSMV to release the images and signatures to certain governmental entities; however, DEO is not listed as an entity that may receive the information.

The bill permits DHSMV to provide the image file and signature of licensees to DEO pursuant to an interagency agreement to facilitate the validation of reemployment assistance claims and the identification of fraudulent or false claims for benefits.

The bill appears to have a negative fiscal impact on the state and does not appear to have a fiscal impact on the local governments. See Fiscal Comments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

###### Reemployment Assistance

The Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own (as determined under state law) and who meet the requirements of state law.<sup>1</sup> The program is administered as a partnership of the federal government and the states.<sup>2</sup> States are permitted to set benefit eligibility requirements, the amount and duration of benefits and the state tax structure, as long as state law does not conflict with the Federal Unemployment Tax Act or the Social Security Act requirements.<sup>3</sup>

Florida's unemployment insurance program was created by the Legislature in 1937,<sup>4</sup> and rebranded as the "reemployment assistance" program in 2012.<sup>5</sup> The Florida Department of Economic Opportunity (DEO) is responsible for administering Florida's reemployment assistance laws, primarily through its Division of Workforce Services.

An unemployed individual must apply to DEO for benefits using Florida's Online Reemployment Assistance System. The application process requires the claimant to provide his or her social security number and a secondary form of identification.<sup>6</sup> In order to receive benefits, an applicant must also meet certain monetary and nonmonetary eligibility requirements.<sup>7</sup>

###### Fraudulent Claims

When an unemployed individual files a claim for reemployment assistance, DEO validates the claimant's identity based on daily cross matches with external entities obtained through interagency agreements.<sup>8</sup> To further validate the claimant's identity, a secondary cross match is conducted against the driver license records maintained by the Department of Highway Safety and Motor Vehicles (DHSMV).<sup>9</sup>

###### Motor Vehicle Records

DHSMV holds motor vehicle records containing personal information about drivers and motor vehicle owners. The term "motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by DHSMV.<sup>10</sup>

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<sup>1</sup> United States Department of Labor, Employment and Training Administration, *State Unemployment Insurance Benefits*, <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited March 9, 2017).

<sup>2</sup> There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia. Social Security Office of Retirement and Disability Policy, *Unemployment Insurance Program Description and Legislative History*, <https://www.ssa.gov/policy/docs/statcomps/supplement/2014/unemployment.html> (last visited March 9, 2017).

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

<sup>4</sup> Chapter 18402, L.O.F.

<sup>5</sup> Chapter 2012-30, L.O.F.

<sup>6</sup> Rule 73B-11.013(6), F.A.C.

<sup>7</sup> Section 443.091, F.S.

<sup>8</sup> 2016 DEO Agency Bill Analysis for HB 1017 (on file with the Oversight, Transparency & Administration Subcommittee).

<sup>9</sup> DEO has an agreement with DHSMV through an interagency agreement (Memorandum of Understanding), which allows them to obtain limited information agreed upon in the Memorandum of Understanding. 2017 DHSMV Bill Analysis for HB 671 (March 6, 2017) at p. 2 (on file with the Oversight, Transparency and Administration Subcommittee).

<sup>10</sup> Section 119.0712(2)(a), F.S.

### Digital Imaged Licenses

A driver license must contain, in pertinent part, a color photograph or digital image of the licensee and the signature of the licensee.<sup>11</sup> DHSMV must maintain a record of the digital image and signature of the licensee, together with other data required for identification and retrieval.<sup>12</sup>

### Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency<sup>13</sup> to provide access to public records.<sup>14</sup> Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records. As such, DHSMV is required to make all motor vehicle records available to the public unless the Legislature has enacted an exemption to protect the record.

### Public Record Exemptions for DHSMV Records

Section 119.0712(2), F.S., provides personal information, including highly restricted personal information as defined in the Driver's Privacy Protection Act (DPPA),<sup>15</sup> contained in a motor vehicle record is confidential pursuant to DPPA. Such information may be released only as authorized by DPPA; however, information received pursuant to that act may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.

DPPA is a federal statute requiring the states to restrict public access to state motor vehicle records. Although DPPA begins with a general prohibition against disclosure of personal information, 14 exceptions to the general prohibition follow.<sup>16</sup> In addition, states may adopt the permissible exceptions or may enact more restrictive measures than the DPPA requires. However, states may not allow more permissible access to motor vehicle records than the DPPA allows.

Florida Statutes further restrict access to certain motor vehicle records in s. 322.142(4), F.S. The law provides that reproductions from the film negative or print file or record of the digital image and signature of the licensee are exempt from public records requirements. The law, however, provides for specific exceptions for specified purposes. Reproductions may be made:

- For DHSMV administrative purposes;
- For the issuance of duplicate licenses;
- In response to law enforcement agency requests;

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<sup>11</sup> Section 322.14 (1)(a) and (b), F.S.

<sup>12</sup> Section 322.142(4), F.S.

<sup>13</sup> Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any agency.

<sup>14</sup> Section 119.011(12), F.S., defines the term "public records" to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

<sup>15</sup> 18 U.S.C. s. 2721 *et seq.*; DPPA defines the term "personal information" as information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information. The term "highly restricted personal information" means an individual's photograph or image, social security number, and medical or disability information. Section 2725(3) and (4) of the DPPA.

<sup>16</sup> Section 2721(b)(1)-(14).



- To the Department of Business and Professional Regulation and the Department of Health pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses issued by the agencies;
- To the Department of State pursuant to an interagency agreement to facilitate determinations of eligibility of voter registration applicants and registered voters;
- To the Department of Revenue pursuant to an interagency agreement for use in establishing paternity and establishing, modifying, or enforcing support obligations;
- To the Department of Children and Families pursuant to an interagency agreement to conduct protective investigations and to verify identity and expedite the determination of eligibility for public assistance;
- To the Agency for Health Care Administration pursuant to an interagency agreement for the purpose of authorized agencies verifying photographs in the Care Provider Background Screening Clearinghouse and to prevent health care fraud;
- To the Department of Financial Services pursuant to an interagency agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed property claims, the identification of fraudulent or false claims, and the investigation of allegations of violations of the insurance code;
- To district medical examiners pursuant to an interagency agreement for the purpose of identifying a deceased individual, determining cause of death, and notifying next of kin; and
- To the following persons for the purpose of identifying a person as part of the official work of the court:
  - A justice or judge of this state;
  - An employee of the state courts system who works in a position that is designated in writing for access by the Chief Justice of the Supreme Court or a chief judge of a district or circuit court, or by his or her designee; or
  - A government employee who performs functions on behalf of the state courts system in a position that is designated in writing for access by the Chief Justice or a chief judge, or by his or her designee.

Although the law provides access to various governmental entities, DEO does not currently have access to DHSMV records that contain a driver's image or signature.

### **Effect of the Bill**

In order to facilitate the validation of reemployment assistance claims by DEO and to assist DEO in the identification of fraudulent or false claims for benefits, the bill authorizes DHSMV to disclose images and signatures of licensees to DEO pursuant to an interagency agreement.

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

Section 1. Amends s. 322.142, F.S., authorizing DHSMV to provide DEO with the image and signature of licensees.

Section 2. Provides and effective date of July 1, 2017.

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

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

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

In order for DEO to access DHSMVs record, DHSMV will need to alter its system programming. DHSMV estimates that it may take up to 315 hours for programming and implementation. DHSMV estimates that such programming and implementation may cost the department \$20,025.<sup>17</sup>

**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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<sup>17</sup> 2017 DHSMV Bill Analysis for HB 671, March 6, 2017 (on file with the Oversight, Transparency & Administration Subcommittee).

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A bill to be entitled

An act relating to reemployment assistance fraud;  
amending s. 322.142, F.S.; adding the Department of  
Economic Opportunity as an entity that may be issued  
reproductions from certain files or digital records  
for specified reasons; providing an effective date.

WHEREAS, the incidence of identity theft and resulting  
fraud has reached a crisis level, and

WHEREAS, identity theft is especially problematic in this  
state, which the Federal Trade Commission reports has the  
highest per capita rate of identity theft in the nation, and

WHEREAS, stolen identities are used to commit an ever-  
expanding range of fraud, including public assistance fraud, and

WHEREAS, identity theft and related fraud harm those whose  
identities are stolen, rob the social safety net of precious  
resources, impose unwarranted costs on taxpayers, and undermine  
public confidence in government, and

WHEREAS, the Department of Economic Opportunity's efforts  
to detect, prevent, and prosecute fraud have revealed that  
thousands of fraudulent claims for reemployment assistance are  
being filed, and

WHEREAS, the Department of Economic Opportunity has made  
prevention, detection, and prosecution of reemployment  
assistance fraud a top priority and has identified additional

26 resources and tools necessary to effectively combat fraud, NOW,  
 27 THEREFORE,

28  
 29 Be It Enacted by the Legislature of the State of Florida:

30  
 31 Section 1. Paragraphs (k), (l), and (m) of subsection (4)  
 32 of section 322.142, Florida Statutes, are redesignated as  
 33 paragraphs (l), (m), and (n), respectively, and a new paragraph  
 34 (k) is added to that subsection to read:

35 322.142 Color photographic or digital imaged licenses.-

36 (4) The department may maintain a film negative or print  
 37 file. The department shall maintain a record of the digital  
 38 image and signature of the licensees, together with other data  
 39 required by the department for identification and retrieval.  
 40 Reproductions from the file or digital record are exempt from  
 41 the provisions of s. 119.07(1) and may be made and issued only:


42 (k) To the Department of Economic Opportunity pursuant to  
 43 an interagency agreement to facilitate the validation of  
 44 reemployment assistance claims and the identification of  
 45 fraudulent or false reemployment assistance claims;

46 Section 2. This act shall take effect July 1, 2017.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 681 Unclaimed Funds Held by the Clerks of Court  
**SPONSOR(S):** Clemons, Sr.  
**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 536

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Whittaker	Harrington 
2) Appropriations Committee			
3) Government Accountability Committee			

**SUMMARY ANALYSIS**

The Uniform Unclaimed Property Act provides that intangible property held for the owner by a court that has not been claimed by the owner for more than 1 year after it became payable is presumed unclaimed. Under the act, the unclaimed property is remitted to the Department of Financial Services (DFS). DFS is responsible for receiving the property, attempting to locate the owners, and returning the property to them. The process differs for unclaimed surplus funds that remain after a foreclosure. Upon the conclusion of a foreclosure, any undisbursed funds are held in surplus by the clerk of the court for 60 days. If no legal claim is made for the surplus, the clerk is required to appoint a "surplus trustee" to locate the owner of the surplus. The primary duty of a surplus trustee is to locate the owner of record and return the surplus funds to the owner.

The bill amends procedures relating to the disbursement of surplus funds after a foreclosure. The bill provides that if no claim is filed during the 60-day period after the clerk issues a certificate of disbursement or if any surplus funds remain after payment to a subordinate lienholder, the clerk must report and remit the surplus to DFS. The bill repeals the law relating to surplus trustees. As such, the owner of the surplus funds may claim the funds with DFS.

The bill repeals s. 43.19, F.S., relating to money held in the court registry. As a result, the court will remit the unclaimed money to the DFS after 1 year for disposition pursuant to the Florida Disposition of Unclaimed Property Act. The bill also provides that for purposes of establishing entitlement to real property, only the owner of record reported by the clerk, or the estate or beneficiary of a deceased owner of record reported by the clerk, is entitled to the surplus. Any surplus of less than \$10 escheats to the clerk.

The bill may have an insignificant negative fiscal impact on the state and does not appear to have a fiscal impact on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Unclaimed Property

Section 43.19, F.S., provides for the disposition of unclaimed money paid into the court registry. If such unclaimed funds remain in the registry for 5 years or more, the court must direct that the money be deposited with the Chief Financial Officer to the credit of the State School Fund. A person, firm or corporation entitled to any of the money may obtain an order directing the payment of the money to the claimant by petitioning the court and providing written notice to the state attorney and proof of entitlement to the money.<sup>1</sup>

In 1987, Florida adopted the Uniform Unclaimed Property Act that serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. It provides that intangible property held for the owner by a court that has not been claimed by the owner for more than 1 year after it became payable is presumed unclaimed.<sup>2</sup> Under the act, the Department of Financial Services, Bureau of Unclaimed Property (DFS) is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them. There is no statute of limitations in the act, and citizens may claim their property at any time and at no cost.

Upon the payment or delivery of unclaimed property to DFS, the state assumes custody and responsibility for the safekeeping of the property.<sup>3</sup> The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to DFS may file a claim for the property, subject to certain requirements.<sup>4</sup> Claims for recovery of unclaimed property may be filed by or on behalf of any person with an interest in the property.<sup>5</sup> While the act provides the opportunity for anyone to recover the full value of their property at no cost, provision is made for claimants to designate someone who may perfect the claim for them. The claimant may designate and empower a representative to pursue the claim by executing a power of attorney agreement. The claimant may also sell the right to the property to certain individuals who are registered with DFS for this purpose.<sup>6</sup> In either case, the transaction is subject to a fee limitation, unless a disclosure statement is provided to the claimant, in the form and with the content specified in the act.

DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, DFS is to deliver or pay over to the claimant the property or the amount DFS actually received or the proceeds, if it has been sold by DFS.<sup>7</sup> If the property remains unclaimed, all proceeds from abandoned property are then deposited by DFS into the Unclaimed Property Trust Fund.<sup>8</sup> DFS is allowed to retain up to \$15 million to make prompt payment on verified claims and to cover costs incurred by DFS in administering and enforcing the act. All remaining funds received must be deposited into the State School Fund to be used for public education.<sup>9</sup>

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<sup>1</sup> Section 43.19(3), F.S.

<sup>2</sup> Section 717.113, F.S.

<sup>3</sup> Section 717.1201, F.S.

<sup>4</sup> Sections 717.117 and 717.124, F.S.

<sup>5</sup> Section 717.124, F.S.

<sup>6</sup> Section 717.1351, F.S.

<sup>7</sup> Section 717.124, F.S.

<sup>8</sup> Section 717.123, F.S.

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

### Surplus Trustees – Judicial Sales of Real Property

Foreclosure is the legal process for enforcement of a security interest in real property. In most foreclosures, the property is sold and the proceeds of the sale are applied against the debt. In some cases, the property is sold for more than the debt. The difference is known as the surplus. Upon the conclusion of a foreclosure, any undisbursed funds are held in surplus by the clerk of the court for 60 days. If no legal claim is made for the surplus, the clerk is required to appoint a surplus trustee to locate the owner of the surplus. As part of the process, the clerk is authorized to deduct certain fees from the surplus funds.<sup>10</sup>

A surplus trustee is an entity that holds and administers surplus proceeds from a foreclosure. The primary duty of a surplus trustee is to locate the owner of record within 1 year after appointment. Surplus trustees are certified by DFS.<sup>11</sup> The clerks assign the surplus trustees to cases using a rotational system developed by the DFS.<sup>12</sup>

A surplus trustee is entitled to service charges and fees which are disbursed by the clerk and payable from the surplus. Surplus trustees receive a cost advance of 2 percent of the surplus and upon obtaining a court order disbursing the surplus to the owner of record, the surplus trustee then receives an additional 10 percent of the surplus.<sup>13</sup> Upon locating the owner of record, the surplus trustee files a petition with the court on behalf of the owner of record seeking disbursement of the surplus funds. If the surplus trustee is unable to locate the owner of record within 1 year of appointment, the clerk notifies the surplus trustee that the appointment is terminated. The clerk treats the remaining funds as unclaimed property to be deposited with DFS pursuant to ch. 717, F.S.

According to the DFS, there are 79 surplus trustee entities.<sup>14</sup> Surplus trustees have been appointed in 10,033 cases.<sup>15</sup> The total value of those cases is \$85,032,758 (6,970 cases involved a surplus of less than \$5,000 and 3,063 cases involved a surplus greater than \$5,000).<sup>16</sup>

### **Effect of the Bill**

The bill repeals s. 43.19, F.S., relating to money in the court registry. As a result, money in the court registry that has not been claimed after 1 year is presumed unclaimed. Once the property is “unclaimed,” the clerk will report the property to DFS pursuant to s. 717.117, F.S. Claimants, or their representatives, can claim the money by filing a claim with DFS.

The bill amends procedures relating to the disbursement of surplus funds after a foreclosure. The bill provides that if no claim is filed during the 60-day period after the clerk issues a certificate of disbursement or if any surplus funds remain after payment to a subordinate lienholder, the clerk must report and remit the surplus to DFS.

The bill deletes provisions relating to surplus trustees. Instead, such funds will be remitted to DFS. As such, owners of surplus funds that remain after a judicial sale will have the opportunity to recover 100 percent of their surplus, rather than having a 12 percent deduction pursuant to the surplus trustee process.

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<sup>10</sup> Section 45.035, F.S.

<sup>11</sup> Section 45.034(4), F.S.

<sup>12</sup> Sections 45.034 and 45.035, F.S.

<sup>13</sup> Section 45.034(7), F.S.

<sup>14</sup> DFS Bill Analysis for HB 681 at p. 2 (on file with the Oversight, Transparency & Administration Subcommittee). A list of the surplus trustees can be found online at: <http://www.myfloridacfo.com/aadir/SurplusTrustees/SurplusTrusteeEntities2016-2017.pdf> (last accessed March 6, 2017).

<sup>15</sup> *Id.*

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



The bill provides that for purposes of establishing entitlement to real property, only the owner of record reported by the clerk, or the estate or beneficiary of a deceased owner of record reported by the clerk, is entitled to the surplus. Any surplus of less than \$10 escheats to the clerk.

**B. SECTION DIRECTORY:**

- Section 1. Repeals s. 43.19, F.S., relating to the disposition of certain money paid into a court which is unclaimed.
- Section 2. Amends s. 45.032, deleting provisions relating to surplus trustees.
- Section 3. Amends s. 45.033, conforming a provision to changes made by the act.
- Section 4. Repeals s. 45.034, F.S., relating to qualifications and appointment of a surplus trustee in foreclosure actions.
- Section 5. Amends s. 45.035, F.S., revising service charges that a clerk may receive and deduct from surplus amounts.
- Section 6. Amends s. 717.124, F.S., conforming a cross reference.
- Section 7. Amends s. 717.138, F.S., conforming a cross reference.
- Section 8. Amends s. 717.1401, F.S., conforming a cross reference.
- Section 9. Provides an effective date of July 1, 2017.

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

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

- 1. Revenues:  
See Fiscal Comments.
- 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:**

The bill may have a minimal fiscal impact on the state. Over the past decade, DFS has received \$8,400 in application fees relating to the surplus trustee program (\$25 application fee). This bill will eliminate

that fee.<sup>17</sup> In addition, the clerks of court are entitled to certain nominal fees associated with the surplus trustee process that they will no longer receive. However, clerks will be able to retain custody of any surplus case values that are less than \$10.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

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

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

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 unclaimed funds held by the clerks  
 of court; repealing s. 43.19, F.S., relating to the  
 disposition of certain money paid into a court which  
 is unclaimed; amending s. 45.032, F.S.; deleting  
 provisions defining and specifying the powers of a  
 "surplus trustee"; requiring the clerk to report as  
 unclaimed property a surplus under certain  
 circumstances; providing reporting requirements;  
 requiring the Department of Financial Services to  
 prescribe a form by rule; specifying the entities who  
 are entitled to a surplus under certain circumstances;  
 conforming provisions to changes made by the act;  
 amending s. 45.033, F.S.; conforming a provision to  
 changes made by the act; repealing s. 45.034, F.S.,  
 relating to qualifications and appointment of a  
 surplus trustee in foreclosure actions; amending s.  
 45.035, F.S.; revising service charges that a clerk  
 may receive and deduct from surplus amounts; amending  
 ss. 717.124, 717.138, and 717.1401, F.S.; conforming  
 cross-references; providing an effective date.

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

Section 1. Section 43.19, Florida Statutes, is repealed.

26 Section 2. Paragraph (d) of subsection (1) and subsections  
 27 (3) and (4) of section 45.032, Florida Statutes, are amended,  
 28 and subsection (5) of that section is renumbered as subsection  
 29 (4), to read:

30 45.032 Disbursement of surplus funds after judicial sale.—

31 (1) For purposes of ss. 45.031-45.035, the term:

32 ~~(d) "Surplus trustee" means a person qualifying as a~~  
 33 ~~surplus trustee pursuant to s. 45.034.~~

34 (3) During the 60 days after the clerk issues a  
 35 certificate of disbursements, the clerk shall hold the surplus  
 36 pending a court order. Upon expiration of the 60 days, the clerk  
 37 shall report the surplus as provided in paragraph (c).

38 (a) If the owner of record claims the surplus during the  
 39 60-day period and there is no subordinate lienholder, the court  
 40 shall order the clerk to deduct any applicable service charges  
 41 from the surplus and pay the remainder to the owner of record.  
 42 The clerk may establish a reasonable requirement that the owner  
 43 of record prove his or her identity before receiving the  
 44 disbursement. The clerk may assist an owner of record in making  
 45 a claim. An owner of record may use the following form in making  
 46 a claim:

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 48 (Caption of Action)

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 50 OWNER'S CLAIM FOR

MORTGAGE FORECLOSURE SURPLUS

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State of ....

County of ....

Under penalty of perjury, I (we) hereby certify that:

1. I was (we were) the owner of the following described real property in .... County, Florida, prior to the foreclosure sale and as of the date of the filing of the lis pendens:

...(Legal description of real property)...

2. I (we) do not owe any money on any mortgage on the property that was foreclosed other than the one that was paid off by the foreclosure.

3. I (we) do not owe any money that is the subject of an unpaid judgment, tax warrant, condominium lien, cooperative lien, or homeowners' association.

4. I am (we are) not currently in bankruptcy.

5. I (we) have not sold or assigned my (our) right to the mortgage surplus.

6. My (our) new address is: .....

7. If there is more than one owner entitled to the surplus, we have agreed that the surplus should be paid .... jointly, or to: ....., at the following address: .....

8. I (WE) UNDERSTAND THAT I (WE) AM (ARE) NOT REQUIRED TO

76 HAVE A LAWYER OR ANY OTHER REPRESENTATION AND I (WE) DO NOT HAVE  
77 TO ASSIGN MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO CLAIM ANY  
78 MONEY TO WHICH I (WE) MAY BE ENTITLED.

79 9. I (WE) UNDERSTAND THAT THIS STATEMENT IS GIVEN UNDER  
80 OATH, AND IF ANY STATEMENTS ARE UNTRUE THAT I (WE) MAY BE  
81 PROSECUTED CRIMINALLY FOR PERJURY.

82

83 ... (Signatures) ...

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85 Sworn to (or affirmed) and subscribed before me this ....  
86 day of ....., ... (year) ....., by ... (name of person making  
87 statement) .....

88 ... (Signature of Notary Public - State of Florida) ...

89 ... (Print, Type, or Stamp Commissioned Name of Notary  
90 Public) ...

91

92 Personally Known .... OR Produced Identification ....

93 Type of Identification Produced .....

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95 (b) If any person other than the owner of record claims an  
96 interest in the proceeds during the 60-day period or if the  
97 owner of record files a claim for the surplus but acknowledges  
98 that one or more other persons may be entitled to part or all of  
99 the surplus, the court shall set an evidentiary hearing to  
100 determine entitlement to the surplus. At the evidentiary

101 hearing, an equity assignee has the burden of proving that he or  
 102 she is entitled to some or all of the surplus funds. The court  
 103 may grant summary judgment to a subordinate lienholder prior to  
 104 or at the evidentiary hearing. The court shall consider the  
 105 factors in s. 45.033 when hearing a claim that any person other  
 106 than a subordinate lienholder or the owner of record is entitled  
 107 to the surplus funds.

108 (c) If no claim is filed during the 60-day period, or if  
 109 any surplus funds remain after each subordinate lienholder who  
 110 filed a claim within the 60-day period has been paid, the clerk  
 111 shall immediately report as unclaimed property any surplus  
 112 amount of \$10 or more to the Department of Financial Services on  
 113 such forms as the department prescribes by rule pursuant to s.  
 114 717.138. In reporting the unclaimed property, the clerk shall  
 115 include his or her name, address, county, and judicial circuit  
 116 number; the case number; the name of each owner of record as  
 117 defined in paragraph (1)(a); the owner's last known address at  
 118 which service of the final judgment, pursuant to s.  
 119 45.031(1)(a), was made; the surplus amount; and at least one of  
 120 the following: the street name and number, city, state, and zip  
 121 code of the real property sold at the judicial sale; the parcel  
 122 identification of the real property sold at the judicial sale;  
 123 or the real estate number of the real property sold at the  
 124 judicial sale. For purposes of establishing entitlement to the  
 125 property, only the owner of record reported by the clerk, or the

126 estate or beneficiary as defined in s. 731.201, of a deceased  
 127 owner of record reported by the clerk, is entitled to the  
 128 surplus. Any surplus of less than \$10 escheats to the clerk. ~~the~~  
 129 ~~clerk shall appoint a surplus trustee from a list of qualified~~  
 130 ~~surplus trustees as authorized in s. 45.034. Upon such~~  
 131 ~~appointment, the clerk shall prepare a notice of appointment of~~  
 132 ~~surplus trustee and shall furnish a copy to the surplus trustee.~~  
 133 ~~The form of the notice may be as follows:~~

134

135 ~~(Caption of Action)~~

136

137 ~~NOTICE OF APPOINTMENT~~  
 138 ~~OF SURPLUS TRUSTEE~~

139

140 ~~The undersigned clerk of the court certifies that he or she~~  
 141 ~~disbursed the proceeds received from the sale of the property as~~  
 142 ~~provided in the order or final judgment to the persons named in~~  
 143 ~~the certificate of disbursements, and that surplus funds of~~  
 144 ~~\$. . . . remain and are subject to disbursement to the owner of~~  
 145 ~~record. You have been appointed as surplus trustee for the~~  
 146 ~~purpose of finding the owner of record in order for the clerk to~~  
 147 ~~disburse the surplus, after deducting costs, to the owner of~~  
 148 ~~record.~~

149 ~~WITNESS my hand and the seal of the court on . . . ., . . . (year) . . . .~~

150

~~. . . (Clerk) . . .~~



By ... (Deputy Clerk)...

~~(4) If the surplus trustee is unable to locate the owner of record entitled to the surplus within 1 year after appointment, the appointment shall terminate and the clerk shall notify the surplus trustee that his or her appointment was terminated. Thirty days after termination of the appointment of the surplus trustee, the clerk shall treat the remaining funds as unclaimed property to be deposited with the Chief Financial Officer pursuant to chapter 717.~~

Section 3. Paragraph (d) of subsection (3) of section 45.033, Florida Statutes, is amended, and paragraph (e) of that subsection is redesignated as paragraph (d), to read:

45.033 Sale or assignment of rights to surplus funds in a property subject to foreclosure.-

(3) A voluntary transfer or assignment shall be a transfer or assignment qualified under this subsection, thereby entitling the transferee or assignee to the surplus funds or a portion or percentage of the surplus funds, if:

~~(d) The transferor or assignee is qualified as a surplus trustee, or could qualify as a surplus trustee, pursuant to s. 45.034.~~

Section 4. Section 45.034, Florida Statutes, is repealed.

Section 5. Paragraphs (b) and (d) of subsection (2) of section 45.035, Florida Statutes, are amended, and paragraph (c)

176 of that subsection is redesignated as paragraph (b), to read:

177 45.035 Clerk's fees.—In addition to other fees or service  
 178 charges authorized by law, the clerk shall receive service  
 179 charges related to the judicial sales procedure set forth in ss.  
 180 45.031-45.034 and this section:

181 (2) If there is a surplus resulting from the sale, the  
 182 clerk may receive the following service charges, which shall be  
 183 deducted from the surplus:

184 ~~(b) The clerk is entitled to a service charge of \$15 for~~  
 185 ~~notifying a surplus trustee of his or her appointment.~~

186 ~~(d) The clerk is entitled to a service charge of \$15 for~~  
 187 ~~appointing a surplus trustee, furnishing the surplus trustee~~  
 188 ~~with a copy of the final judgment and the certificate of~~  
 189 ~~disbursements, and disbursing to the surplus trustee the~~  
 190 ~~trustee's cost advance.~~

191 Section 6. Subsection (8) of section 717.124, Florida  
 192 Statutes, is amended to read:

193 717.124 Unclaimed property claims.—

194 (8) This section applies to all unclaimed property  
 195 reported and remitted to the Chief Financial Officer, including,  
 196 but not limited to, property reported pursuant to ss. ~~43.19,~~  
 197 45.032, 732.107, 733.816, and 744.534.

198 Section 7. Section 717.138, Florida Statutes, is amended  
 199 to read:

200 717.138 Rulemaking authority.—The department shall

201 administer and provide for the enforcement of this chapter. The  
 202 department has authority to adopt rules pursuant to ss.  
 203 120.536(1) and 120.54 to implement the provisions of this  
 204 chapter. The department may adopt rules to allow for electronic  
 205 filing of fees, forms, and reports required by this chapter. The  
 206 authority to adopt rules pursuant to this chapter applies to all  
 207 unclaimed property reported and remitted to the Chief Financial  
 208 Officer, including, but not limited to, property reported and  
 209 remitted pursuant to ss. ~~43.19~~, 45.032, 732.107, 733.816, and  
 210 744.534.

211 Section 8. Section 717.1401, Florida Statutes, is amended  
 212 to read:

213 717.1401 Repeal.—This chapter shall not repeal, but shall  
 214 be additional and supplemental to the existing provisions of ss.  
 215 43.18, ~~43.19~~, and 402.17 and chapter 716.

216 Section 9. This act shall take effect July 1, 2017.  
 217



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: Oversight, Transparency &  
2 Administration Subcommittee  
3 Representative Clemons offered the following:

**Amendment (with directory and title amendments)**

Remove lines 34-129 and insert:

(3) During the 60 days after the clerk issues a certificate of disbursements, the clerk shall hold the surplus pending a court order.

(c) If the remainder of the surplus has not been paid to the owner of record or any subordinate lienholder, it is subject to s. 717.113 and shall be reported and remitted to the Department of Financial Services in accordance with ss. 717.117 and 717.119. For purposes of establishing entitlement to the property, only the owner of record reported by the clerk, or the estate or beneficiary as defined in s. 731.201 of a deceased



Amendment No. 1

17 owner of record reported by the clerk, is entitled to the  
18 surplus. Any surplus of less than \$10 escheats to no claim is  
19 ~~filed during the 60 day period, the clerk shall appoint a~~  
20 ~~surplus trustee from a list of qualified~~

21 -----  
22  
23 **D I R E C T O R Y   A M E N D M E N T**

24 Remove lines 26-29 and insert:

25 Section 2. Paragraph (d) of subsection (1), paragraph (c)  
26 of subsection (3), and subsection (4) of section 45.032, Florida  
27 Statutes, are amended to read:



28 -----  
29  
30 **T I T L E   A M E N D M E N T**

31 Remove lines 9-11 and insert:  
32 circumstances; specifying the entities who



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 789 Procurement of Professional Services  
**SPONSOR(S):** Stone  
**TIED BILLS:**           **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Moore 	Harrington 
2) Government Accountability Committee			

### SUMMARY ANALYSIS

In 1973, the Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA), which requires state and local government agencies to procure the "professional services" of an architect, professional engineer, landscape architect, or registered surveyor and mapper using a qualifications-based selection process. Qualifications-based selection is a process whereby service providers are retained on the basis of competency, qualifications, and experience, rather than price.

The CCNA establishes a three-phase process for procuring professional services:

- Phase 1 – Public announcement and qualification.
- Phase 2 – Competitive selection.
- Phase 3 – Competitive negotiation.

During Phase 1, state and local agencies must publicly announce each occasion when professional services will be purchased for certain projects and activities. A consultant who wishes to provide professional services to an agency must first be certified by the agency as qualified to provide the needed services.

During Phase 2, an agency must evaluate the qualifications and past performance of interested consultants and conduct discussions with at least three consultants regarding their qualifications, approach to the project, and ability to furnish the required services. The agency must then select at least three consultants, ranked in order of preference, that it considers the most highly qualified to perform the required services.

During Phase 3, the competitive negotiation phase, an agency must negotiate compensation with each consultant in order of rank, beginning with the highest ranked, until an agreement is reached. If the agency is unable to negotiate a satisfactory contract with a consultant, negotiations with that consultant must be formally terminated. Once the agency terminates negotiations with a consultant at any point in the process, the agency may not resume negotiations with that consultant for that particular project.

The bill amends the current CCNA process to replace the competitive negotiation phase with a best value selection process. Under the new process, each firm selected as one of the most qualified during the competitive selection phase must submit a compensation proposal for the proposed work. The agency must evaluate the compensation proposal, the information provided during the competitive selection phase, and any other information the agency requests in order to make a best value selection. However, the bill provides that compensation may not exceed 50 percent of the total weight of the published evaluation criteria.

The bill also authorizes an agency to reject any or all submissions received in response to the public announcement for a proposed project.

The bill may have an indeterminate positive fiscal impact on the state and local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

###### Consultants' Competitive Negotiation Act

In 1972, Congress passed the Brooks Act,<sup>1</sup> which requires federal agencies to use a qualifications-based selection process for architectural, engineering, and associated services, such as mapping and surveying. Qualifications-based selection is a process whereby service providers are retained on the basis of competency, qualifications, and experience, rather than price. According to the National Society of Professional Engineers, 47 states and numerous localities have implemented a qualifications-based selection process similar to the process outlined in the Brooks Act for procuring design services.<sup>2</sup>

In 1973, the Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA),<sup>3</sup> which is modeled after the Brooks Act. The CCNA requires state and local government agencies to procure the "professional services" of an architect, professional engineer, landscape architect, or registered surveyor and mapper using a qualifications-based selection process. However, the CCNA explicitly states that it does not prohibit a continuing contract<sup>4</sup> between a firm and an agency.<sup>5</sup> The CCNA prohibits excluding the public from CCNA proceedings.<sup>6</sup>

The CCNA establishes a three-phase process for procuring professional services:

- Phase 1 – Public announcement and qualification.
- Phase 2 – Competitive selection.
- Phase 3 – Competitive negotiation.

During Phase 1, the public announcement and qualification phase, state and local agencies must publicly announce each occasion when professional services will be purchased for one of the following:

- A project, when the basic construction cost is estimated by the agency to exceed \$325,000; or
- A planning or study activity, when the fee for professional services exceeds \$35,000.<sup>7</sup>

The public notice must include a general description of the project and indicate how interested firms or individuals (consultants) may apply for consideration.<sup>8</sup>

A consultant who wishes to provide professional services to an agency must first be certified by the agency as qualified to provide the needed services pursuant to law and the agency's regulations.<sup>9</sup> In

<sup>1</sup> Public Law 92-582, 86 Stat. 1278 (1972).

<sup>2</sup> *Qualifications-Based Selection of Engineering Services*, NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS, <https://www.nspe.org/resources/issues-and-advocacy/action-issues/qualifications-based-selection-engineering-services> (last visited March 6, 2017).

<sup>3</sup> Codified as s. 287.055, F.S.

<sup>4</sup> The CCNA defines the term "continuing contract" to mean a contract for professional services entered into in accordance with all the procedures of the CCNA between an agency and a firm whereby the firm provides professional services to the agency for projects in which the estimated construction cost of each project under the contract does not exceed \$2 million, for study activity if the fee for professional services for each study under the contract does not exceed \$200,000, or for work of a specified nature as outlined in the contract, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts may not be required to bid against one another. Section 287.055(2)(g), F.S.

<sup>5</sup> Section 287.055(4)(d), F.S.

<sup>6</sup> Section 287.055(3)(e), F.S.

<sup>7</sup> Section 287.055(3)(a)1., F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 287.055(3)(c), F.S.



determining whether a consultant is qualified, the agency must consider the capabilities, adequacy of personnel, past record, and experience of the consultant as well as whether the consultant is a certified minority business enterprise.<sup>10</sup> Each agency must encourage consultants desiring to provide professional services to the agency to annually submit statements of qualifications and performance data.<sup>11</sup>

During Phase 2, the competitive selection phase, an agency must evaluate the qualifications and past performance of interested consultants and conduct discussions with at least three consultants regarding their qualifications, approach to the project, and ability to furnish the required services.<sup>12</sup> The agency must then select at least three consultants, ranked in order of preference, that it considers the most highly qualified to perform the required services. In determining whether a consultant is qualified, the agency must consider such factors as the ability of professional personnel; whether a consultant is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the consultant; and the volume of work previously awarded to each consultant by the agency, with the object of effecting an equitable distribution of contracts among qualified consultants, provided such distribution does not violate the principle of selecting the most highly qualified consultants. During this phase, the CCNA prohibits the agency from requesting, accepting, or considering proposals for the compensation to be paid.<sup>13</sup>

During Phase 3, the competitive negotiation phase, an agency must first negotiate compensation with the highest ranked consultant. If the agency is unable to negotiate a satisfactory contract with that consultant at a price the agency determines to be fair, competitive, and reasonable, negotiations with the consultant must be formally terminated. The agency must then negotiate with the remaining ranked consultants, in order of rank, and follow the same process until an agreement is reached. If the agency is unable to negotiate a satisfactory contract with any of the ranked consultants, the agency must select additional consultants, ranked in the order of competence and qualification without regard to price, and continue negotiations until an agreement is reached.<sup>14</sup> Once the agency terminates negotiations with a consultant at any point in the process, the agency may not resume negotiations with that consultant for that particular project.

### **Effect of the Bill**

The bill amends the current CCNA process to replace the competitive negotiation phase with a best value selection process. Under the new process, each firm selected as one of the most qualified during the competitive selection phase must submit a compensation proposal for the proposed work. The agency must evaluate the compensation proposal, the information provided during the competitive selection phase, and any other information the agency requests in order to make a best value selection. However, the bill provides that compensation may not exceed 50 percent of the total weight of the published evaluation criteria.

The bill authorizes an agency to reject any or all submissions received in response to the public announcement for a proposed project.

The bill removes the requirement for each agency to encourage design consultants desiring to provide professional services to the agency to annually submit statements of qualifications and performance data. Instead, an agency must determine whether a candidate is qualified for each specific project.

The bill authorizes the Department of Management Services to adopt rules.

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<sup>10</sup> Section 287.055(3)(d), F.S.

<sup>11</sup> Section 287.055(3)(b), F.S.

<sup>12</sup> Section 287.055(4)(a), F.S.

<sup>13</sup> The CCNA did not prohibit discussion of compensation in the initial vendor selection phase until 1988, when the Legislature enacted a provision that allows consideration of compensation to occur only during the negotiation phase. Chapter 88-108, L.O.F.

<sup>14</sup> Section 287.055(5), F.S.

Finally, the bill reorganizes the section.

**B. SECTION DIRECTORY:**

Section 1. amends s. 287.055, F.S., relating to acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services.

Section 2. provides an effective date of July 1, 2017.

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

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

1. Revenues:

The bill does not appear to impact state government revenues.

2. Expenditures:

The bill may have an indeterminate positive fiscal impact on state agencies if they are able to negotiate lower costs in contracts for design professional services.

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

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

The bill may have an indeterminate positive fiscal impact on local government agencies if they are able to negotiate lower costs in contracts for design professional services.

**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 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 authorizes the Department of Management Services to adopt rules.

**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 procurement of professional services; amending s. 287.055, F.S.; removing the requirement for agencies to encourage certain firms to submit annual statements of qualifications and performance data; clarifying provisions relating to selection of firms by an agency under the competitive selection process; authorizing an agency to reject any or all submissions received in response to a public announcement under the competitive selection process; creating a best value selection process; removing a requirement that an agency formally terminate negotiations with the most qualified firm when the agency is unable to negotiate a satisfactory contract and undertake negotiations with the second most qualified firm; authorizing the Department of Management Services to adopt rules; providing an effective date.

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

Section 1. Subsections (6) through (11) of section 287.055, Florida Statutes, are renumbered as subsections (7) through (12), respectively, present subsections, (3), (4), (5), and (7) are amended, and new subsections (6), (13), and (14) are

26 added to that section to read:

27 287.055 Acquisition of professional architectural,  
 28 engineering, landscape architectural, or surveying and mapping  
 29 services; definitions; procedures; contingent fees prohibited;  
 30 penalties.-

31 (3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES.-

32 (a)1. Each agency shall publicly announce, in a uniform  
 33 and consistent manner, each occasion when professional services  
 34 must be purchased for a project the basic construction cost of  
 35 which is estimated by the agency to exceed the threshold amount  
 36 provided in s. 287.017 for CATEGORY FIVE or for a planning or  
 37 study activity when the fee for professional services exceeds  
 38 the threshold amount provided in s. 287.017 for CATEGORY TWO,  
 39 except in cases of valid public emergencies certified by the  
 40 agency head. The public notice must include a general  
 41 description of the project and must indicate how interested  
 42 consultants may apply for consideration.

43 2. Each agency shall provide a good faith estimate in  
 44 determining whether the proposed activity meets the threshold  
 45 amounts referred to in this paragraph.

46 ~~(b) Each agency shall encourage firms engaged in the~~  
 47 ~~lawful practice of their professions that desire to provide~~  
 48 ~~professional services to the agency to submit annually~~  
 49 ~~statements of qualifications and performance data.~~

50 ~~(c)~~ Any firm or individual desiring to provide

51 professional services to the agency must ~~first~~ be certified by  
 52 the agency as qualified pursuant to law and the regulations of  
 53 the agency. The agency must find that the firm or individual to  
 54 be employed is fully qualified to render the required service.

55 (c) Among the factors to be considered in evaluating the  
 56 firm or individual ~~making this finding~~ are the capabilities,  
 57 adequacy of personnel, past record, ~~and~~ experience of the firm  
 58 or individual, and any other factors determined by the agency to  
 59 be applicable to its particular requirements.

60 ~~(d)~~ Each agency shall also evaluate ~~professional services,~~  
 61 ~~including capabilities, adequacy of personnel, past record,~~  
 62 ~~experience,~~ whether the firm is a certified minority business  
 63 enterprise as defined by the Florida Small and Minority Business  
 64 Assistance Act, ~~and other factors determined by the agency to be~~  
 65 ~~applicable to its particular requirements.~~ When securing  
 66 professional services, an agency must endeavor to meet the  
 67 minority business enterprise procurement goals under s.  
 68 287.09451.

69 ~~(e)~~ ~~The public must not be excluded from the proceedings~~  
 70 ~~under this section.~~

71 (4) COMPETITIVE SELECTION.—

72 (a) For each proposed project, the agency shall evaluate  
 73 ~~current~~ statements of qualifications and performance data ~~on~~  
 74 ~~file with the agency, together with those that may be submitted~~  
 75 by ~~other~~ firms desiring to provide professional services to the

76 agency for ~~regarding~~ the proposed project, and shall conduct  
 77 discussions with, and may require public presentations by, at  
 78 least ~~no fewer than~~ three firms regarding their qualifications,  
 79 approach to the project, and ability to furnish the required  
 80 services.

81 (b) The agency shall select in order of preference at  
 82 least ~~no fewer than~~ three firms deemed to be the most highly  
 83 qualified to perform the required services. In determining  
 84 whether a firm is qualified, the agency shall consider such  
 85 factors provided in subsection (3) as well as the firm's ~~as the~~  
 86 ~~ability of professional personnel; whether a firm is a certified~~  
 87 ~~minority business enterprise; past performance; willingness to~~  
 88 meet time and budget requirements; location; recent, current,  
 89 and projected workloads of the firm ~~firms~~; and the volume of  
 90 work previously awarded to the ~~each~~ firm by the agency, with the  
 91 object of effecting an equitable distribution of contracts among  
 92 qualified firms, provided such distribution does not violate the  
 93 principle of selection of the most highly qualified firms. The  
 94 agency may request, accept, and consider proposals for the  
 95 compensation to be paid under the contract only during  
 96 competitive negotiations under subsection (5).

97 (c) This subsection does not apply to a professional  
 98 service contract for a project the basic construction cost of  
 99 which is estimated by the agency to be not in excess of the  
 100 threshold amount provided in s. 287.017 for CATEGORY FIVE or for

101 a planning or study activity when the fee for professional  
 102 services is not in excess of the threshold amount provided in s.  
 103 287.017 for CATEGORY TWO. However, if, in using another  
 104 procurement process, the majority of the compensation proposed  
 105 by firms is in excess of the appropriate threshold amount, the  
 106 agency shall reject all proposals and reinitiate the procurement  
 107 pursuant to this subsection.

108 (d) The agency may reject any or all submissions received  
 109 in response to the public announcement ~~Nothing in this act shall~~  
 110 ~~be construed to prohibit a continuing contract between a firm~~  
 111 ~~and an agency.~~

112 (5) BEST VALUE SELECTION PROCESS ~~COMPETITIVE NEGOTIATION.~~-

113 (a) Each firm selected as one of the most qualified shall  
 114 submit a compensation proposal for the proposed work. The  
 115 proposal shall be evaluated along with the information obtained  
 116 pursuant to subsection (4) and any other information the agency  
 117 chooses to request with the compensation proposal to make a best  
 118 value selection. Compensation may not exceed 50 percent of the  
 119 total weight of the published evaluation criteria.

120 (b) The agency shall negotiate a contract with the most  
 121 qualified firm for professional services at compensation which  
 122 the agency determines is fair, competitive, and reasonable. In  
 123 making such determination, the agency shall conduct a detailed  
 124 analysis of the cost of the professional services required in  
 125 addition to considering their scope and complexity. ~~For any~~



126 ~~lump sum or cost plus a fixed fee professional service contract~~  
 127 ~~over the threshold amount provided in s. 287.017 for CATEGORY~~  
 128 ~~FOUR, the agency shall require the firm receiving the award to~~  
 129 ~~execute a truth-in-negotiation certificate stating that wage~~  
 130 ~~rates and other factual unit costs supporting the compensation~~  
 131 ~~are accurate, complete, and current at the time of contracting.~~  
 132 ~~Any professional service contract under which such a certificate~~  
 133 ~~is required must contain a provision that the original contract~~  
 134 ~~price and any additions thereto will be adjusted to exclude any~~  
 135 ~~significant sums by which the agency determines the contract~~  
 136 ~~price was increased due to inaccurate, incomplete, or noncurrent~~  
 137 ~~wage rates and other factual unit costs. All such contract~~  
 138 ~~adjustments must be made within 1 year following the end of the~~  
 139 ~~contract.~~

140 ~~(b) Should the agency be unable to negotiate a~~  
 141 ~~satisfactory contract with the firm considered to be the most~~  
 142 ~~qualified at a price the agency determines to be fair,~~  
 143 ~~competitive, and reasonable, negotiations with that firm must be~~  
 144 ~~formally terminated. The agency shall then undertake~~  
 145 ~~negotiations with the second most qualified firm. Failing accord~~  
 146 ~~with the second most qualified firm, the agency must terminate~~  
 147 ~~negotiations. The agency shall then undertake negotiations with~~  
 148 ~~the third most qualified firm.~~

149 ~~(c) If ~~Should~~ the agency is ~~be~~ unable to negotiate a~~  
 150 ~~satisfactory contract with any of the selected firms, the agency~~

151 shall select additional firms in the order of their competence  
 152 and qualification and continue negotiations in accordance with  
 153 this subsection until an agreement is reached.

154 (6) TRUTH-IN-NEGOTIATION CERTIFICATE.—For any lump-sum or  
 155 cost-plus-a-fixed-fee professional service contract over the  
 156 threshold amount provided in s. 287.017 for CATEGORY FOUR, the  
 157 agency shall require the firm receiving the award to execute a  
 158 truth-in-negotiation certificate stating that wage rates and  
 159 other factual unit costs supporting the compensation are  
 160 accurate, complete, and current at the time of contracting. Any  
 161 professional service contract under which such a certificate is  
 162 required must contain a provision that the original contract  
 163 price and any additions thereto will be adjusted to exclude any  
 164 significant sums by which the agency determines the contract  
 165 price was increased due to inaccurate, incomplete, or noncurrent  
 166 wage rates and other factual unit costs. All such contract  
 167 adjustments must be made within 1 year after the contract ends.

168 (8) ~~(7)~~ AUTHORITY OF DEPARTMENT OF MANAGEMENT SERVICES.—

169 (a) Notwithstanding any other provision of this section,  
 170 the Department of Management Services shall be the agency of  
 171 state government which is solely and exclusively authorized and  
 172 empowered to administer and perform the functions described in  
 173 subsections (3), (4), and (5) respecting all projects for which  
 174 the funds necessary to complete same are appropriated to the  
 175 Department of Management Services, irrespective of whether such

176 projects are intended for the use and benefit of the Department  
 177 of Management Services or any other agency of government.  
 178 However, nothing herein shall be construed to be in derogation  
 179 of any authority conferred on the Department of Management  
 180 Services by other express provisions of law. Additionally, any  
 181 agency of government may, with the approval of the Department of  
 182 Management Services, delegate to the Department of Management  
 183 Services authority to administer and perform the functions  
 184 described in subsections (3), (4), and (5). Under the terms of  
 185 the delegation, the agency may reserve its right to accept or  
 186 reject a proposed contract.

187 (b) The department may adopt rules necessary to carry out  
 188 this section.

189 (13) PUBLIC ACCESS.—The public must not be excluded from  
 190 the proceedings under this section.

191 (14) CONTINUING CONTRACT.—Nothing in this act shall be  
 192 construed to prohibit a continuing contract between a firm and  
 193 an agency.

194 Section 2. This act shall take effect July 1, 2017.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HJR 811 Membership of Cabinet; Election of Secretary of State  
**SPONSOR(S):** Harrell  
**TIED BILLS:**           **IDEN./SIM. BILLS:** SJR 882

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Toliver <i>LT</i>	Harrington <i>TH</i>
2) Rules & Policy Committee			
3) Government Accountability Committee			

**SUMMARY ANALYSIS**

Currently, there are three publicly elected officials that comprise the Florida Cabinet: the Commissioner of Agriculture, the Attorney General, and the Chief Financial Officer. The Secretary of State is the state's chief election officer, chief cultural officer, custodian of state records, and head of the Department of State. The Secretary of State is appointed by the governor, subject to confirmation by the Senate.

The joint resolution makes the Secretary of State a statewide elected office as of June 1, 2019, and makes the Secretary of State a member of the Florida Cabinet. The Governor will appoint a person to serve as the Secretary of State until January 3, 2023. That appointment is subject to confirmation by the Senate. Beginning in 2022, and every four years thereafter, the Secretary of State will be elected concurrently with the other members of the Florida Cabinet. The resolution specifically directs the Legislature to enact implementing legislation by June 1, 2019.

The joint resolution will be considered by the electorate at the next general election on November 6, 2018. If adopted, the effective date of this resolution is June 1, 2019.

The joint resolution may have an indeterminate fiscal impact on the state. See Fiscal Comments.

**Article XI, s. 1 of the Florida Constitution requires a three-fifths vote of the members present and voting for final passage of a joint resolution proposing an amendment to the Florida Constitution. This joint resolution proposes a constitutional amendment; thus it requires a three-fifths vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Secretary of State

The Secretary of State is the state's chief election officer,<sup>1</sup> chief cultural officer,<sup>2</sup> custodian of state records,<sup>3</sup> and head of the Department of State (department).<sup>4</sup> The department consists of the Office of the Secretary and the Divisions of Administration, Corporations, Cultural Affairs, Elections, Historical Resources, and Library and Information Services.<sup>5</sup> The Secretary of State is appointed by the governor and serves at his or her pleasure, subject to confirmation by the Senate.<sup>6</sup>

##### Florida Cabinet

Currently, there are three publicly elected members of the Florida Cabinet: the Commissioner of Agriculture, the Attorney General, and the Chief Financial Officer. Prior to 2003, there were six publicly elected members of the Florida Cabinet: the Secretary of State, the Attorney General, the Comptroller, the Treasurer, the Commissioner of Agriculture, and the Commissioner of Education.<sup>7</sup>

##### **Effect of the Resolution**

The joint resolution increases the size of the Florida Cabinet. It makes the Secretary of State a statewide elected office and member of the Florida Cabinet. The joint resolution provides that the Secretary of State must keep the records of the official acts of the legislative and executive departments and perform the functions conferred by the State Constitution to the custodian of state records. This joint resolution must pass each chamber with a three-fifths vote before it may be placed on the ballot.<sup>8</sup> This joint resolution must be approved by 60 percent of the electors voting. If approved by the electorate, the joint resolution will take effect on June 1, 2019.

If this joint resolution passes, the Governor is required to appoint the Secretary of State for a term beginning June 1, 2019. The Governor's appointment is subject to confirmation by the Senate. The joint resolution requires the person appointed to serve as Secretary of State to meet the same qualifications that apply to the other members of the Florida Cabinet. This process maintains the current election cycle for all members of the Florida Cabinet and allows the Secretary of State to be installed on the Florida Cabinet in an expeditious and reasonable manner and without the costs of having to conduct a statewide special election.

Beginning with the 2022 general election, the Secretary of State will be elected concurrently with the other members of the Florida Cabinet. As is the case with all members of the Florida Cabinet, the Secretary of State will be subject to an eight-year term limit.<sup>9</sup>

The joint resolution requires the Legislature to enact implementing legislation that includes any conforming changes to the Florida Statutes made necessary by the reorganization of the Florida Cabinet by the amendment's effective date.

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<sup>1</sup> Section 97.012, F.S.

<sup>2</sup> Section 265.284, F.S.

<sup>3</sup> FLA. CONST. Art XII, s. 24(b); *see also* s. 20.10(1), F.S.

<sup>4</sup> Section 20.10(1), F.S.

<sup>5</sup> Section 20.10(2), F.S.

<sup>6</sup> Section 20.10(1), F.S.

<sup>7</sup> FLA. CONST. Art. IV, s. 4(b) (1998).

<sup>8</sup> FLA. CONST. Art. XI, s. 5.

<sup>9</sup> FLA CONST. Art. IV, s. 4.

B. SECTION DIRECTORY:

Not applicable.

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

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Article XI, s. 5(d) of the State Constitution requires publication of a proposed constitutional amendment in a newspaper of general circulation in each county. The Division of Elections is required to advertise the full text of a proposed constitutional amendment twice in a newspaper of general circulation in each county before the election. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of a proposed amendment.<sup>10</sup>

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

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<sup>10</sup> Section 101.171, F.S.  
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DATE: 3/9/2017

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.



House Joint Resolution

A joint resolution proposing amendments to Sections 3 and 4 of Article IV and the creation of a new section in Article XII of the State Constitution to provide for the election of the Secretary of State and his or her inclusion as a member of the Cabinet.

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

That the following amendments to Sections 3 and 4 of Article IV and the creation of a new section in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE IV

EXECUTIVE

SECTION 3. Succession to office of governor; acting governor.—

(a) Upon vacancy in the office of governor, the lieutenant governor shall become governor. Further succession to the office of governor shall be prescribed by law. A successor shall serve for the remainder of the term.

(b) Upon impeachment of the governor and until completion of trial thereof, or during the governor's physical or mental

26 | incapacity, the lieutenant governor shall act as governor.  
 27 | Further succession as acting governor shall be prescribed by  
 28 | law. Incapacity to serve as governor may be determined by the  
 29 | supreme court upon due notice after docketing of a written  
 30 | suggestion thereof by four ~~three~~ cabinet members, and in such  
 31 | case restoration of capacity shall be similarly determined after  
 32 | docketing of written suggestion thereof by the governor, the  
 33 | legislature, or four ~~three~~ cabinet members. Incapacity to serve  
 34 | as governor may also be established by certificate filed with  
 35 | the custodian of state records by the governor declaring  
 36 | incapacity for physical reasons to serve as governor, and in  
 37 | such case restoration of capacity shall be similarly  
 38 | established.

39 | SECTION 4. Cabinet.—

40 | (a) There shall be a cabinet composed of an attorney  
 41 | general, a chief financial officer, ~~and~~ a commissioner of  
 42 | agriculture, and a secretary of state. In addition to the powers  
 43 | and duties specified herein, they shall exercise such powers and  
 44 | perform such duties as may be prescribed by law. In the event of  
 45 | a tie vote of the governor and cabinet, the side on which the  
 46 | governor voted shall be deemed to prevail.

47 | (b) The attorney general shall be the chief state legal  
 48 | officer. There is created in the office of the attorney general  
 49 | the position of statewide prosecutor. The statewide prosecutor  
 50 | shall have concurrent jurisdiction with the state attorneys to

51 prosecute violations of criminal laws occurring or having  
 52 occurred, in two or more judicial circuits as part of a related  
 53 transaction, or when any such offense is affecting or has  
 54 affected two or more judicial circuits as provided by general  
 55 law. The statewide prosecutor shall be appointed by the attorney  
 56 general from not less than three persons nominated by the  
 57 judicial nominating commission for the supreme court, or as  
 58 otherwise provided by general law.

59 (c) The chief financial officer shall serve as the chief  
 60 fiscal officer of the state, ~~and~~ shall settle and approve  
 61 accounts against the state, and shall keep all state funds and  
 62 securities.

63 (d) The commissioner of agriculture shall have supervision  
 64 of matters pertaining to agriculture except as otherwise  
 65 provided by law.

66 (e) The secretary of state shall keep the records of the  
 67 official acts of the legislative and executive departments and  
 68 perform the functions conferred by this constitution upon the  
 69 custodian of state records.

70 (f) ~~(e)~~ The governor as chair, the chief financial officer,  
 71 and the attorney general shall constitute the state board of  
 72 administration, which shall succeed to all the power, control,  
 73 and authority of the state board of administration established  
 74 pursuant to Article IX, Section 16 of the Constitution of 1885,  
 75 and which shall continue as a body at least for the life of

76 Article XII, Section 9(c).

77 ~~(g)(f)~~ The governor as chair, the chief financial officer,  
 78 the attorney general, ~~and~~ the commissioner of agriculture, and  
 79 the secretary of state shall constitute the trustees of the  
 80 internal improvement trust fund and the land acquisition trust  
 81 fund as provided by law.

82 ~~(h)(g)~~ The governor as chair, the chief financial officer,  
 83 the attorney general, ~~and~~ the commissioner of agriculture, and  
 84 the secretary of state shall constitute the agency head of the  
 85 Department of Law Enforcement.

86 ARTICLE XII

87 SCHEDULE

88 Cabinet reorganization.-

89 (a) The amendments to Sections 3 and 4 of Article IV  
 90 relating to the inclusion of the secretary of state as a member  
 91 of the cabinet shall take effect June 1, 2019. For the term  
 92 beginning June 1, 2019, and continuing through January 3, 2023,  
 93 the secretary of state shall be appointed by the governor,  
 94 subject to confirmation by the senate. The secretary of state  
 95 must be an elector of at least 30 years of age who has resided  
 96 in the state for the preceding seven years at the time of the  
 97 governor's appointment. Beginning with the 2022 statewide  
 98 general election and every four years thereafter, the office of  
 99 secretary of state shall be filled by election in conformance  
 100 with Section 5(a), Article IV.

101        (b) By June 1, 2019, the legislature shall enact  
 102        implementing legislation that includes any conforming changes to  
 103        the Florida Statutes necessitated by the reorganization of the  
 104        cabinet.

105                BE IT FURTHER RESOLVED that the following statement be  
 106        placed on the ballot:

107                                CONSTITUTIONAL AMENDMENT

108                                ARTICLE IV, SECTIONS 3 AND 4

109                                        ARTICLE XII

110                MEMBERSHIP OF CABINET; ELECTION OF SECRETARY OF STATE.—

111        Revises the membership of the Cabinet, effective June 1, 2019,  
 112        to include the Secretary of State, whom the Governor shall  
 113        appoint, subject to Senate confirmation, for a term ending  
 114        January 3, 2023; and thereafter provides for the statewide  
 115        election of the secretary, beginning in 2022. The Legislature  
 116        shall implement the amendment by law. Currently, the secretary  
 117        is appointed by and serves at the pleasure of the Governor and  
 118        is not a Cabinet member.

119



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1137 Use of State Funds  
**SPONSOR(S):** Edwards  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1668

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Whittaker <i>WS</i>	Harrington <i>DA</i>
2) Government Operations & Technology Appropriations Subcommittee			
3) Government Accountability Committee			

### SUMMARY ANALYSIS

#### Per Diem and Travel Expenses

The bill provides that when an employee of a state agency or the judicial branch is attending a meeting, conference, or convention organized or sponsored in whole or in part by a state agency or the judicial branch, the reimbursement for lodging expenses may not exceed \$150 per day. However, an employee may expend his or her own funds for any lodging expenses in excess of the limit.

#### Maximum Cost Per Square Foot for New State-funded Building Construction

The Department of Management Services is responsible for the overall management of the Florida Facilities Pool, as well as other facilities and structures DMS has been given responsibility to manage. Current law does not establish a fixed pricing structure for the construction of new buildings.

The bill provides that a state entity that requests state funds to construct or contract for the construction of a new building must comply with maximum cost per square foot requirements provided in the bill. All new building construction must utilize the maximum cost nearest in proximity to the location of the building proposed for construction. The bill establishes the methodology that must be used to calculate the cost per square foot of a proposed new building.

#### State Fund Prohibitions

Current law prohibits the use of state funds for the purchase, preparation, printing, or mailing of any card to convey holiday greetings. The bill prohibits the use of state funds for the following additional purposes:

- The purchase of alcoholic beverages; and
- The purchase of food or beverages for events related to state agency employee, board member, or vendor appreciation or recognition.

The bill may have an indeterminate positive fiscal impact on the state and does not appear to have a fiscal impact on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Per Diem and Travel Expenses**

###### Present Situation

The Legislature has established standard travel reimbursement rates applicable to all public officers, public employees, and other individuals whose travel is authorized and paid for by a public agency.<sup>1</sup> All travel must be authorized by the head of the agency, or his or her designated representative, from whose funds the travel expenses are paid. In addition, travel expenses must be limited to those necessarily incurred in the performance of a public purpose authorized by law to be performed by the agency.<sup>2</sup> Current law establishes the following three categories of travel:

- Class A – Continuous travel of 24 hours or more away from official headquarters.<sup>3</sup>
- Class B – Continuous travel of less than 24 hours that involves overnight absence from official headquarters.<sup>4</sup>
- Class C – Travel for short or day trips where the traveler is not away from his or her official headquarters overnight.<sup>5</sup>

Currently, Florida allows \$80 per diem for Class A and B travel.<sup>6</sup> If expenses exceed \$80, the state will pay a maximum of \$36 (\$6 for breakfast, \$11 for lunch, and \$19 for dinner) in addition to the actual expenses for lodging at a single-occupancy rate supported by paid bills.<sup>7</sup> Class C travel is not reimbursed on a per diem basis, but instead for each meal during which the travel occurred.<sup>8</sup>

The 2016-17 implementing bill created a limit on the amount of actual expenses for lodging that may be reimbursed under certain circumstances. The bill provided that when an employee of a state agency or the judicial branch is attending a meeting, conference, or convention organized or sponsored in whole or in part by a state agency or the judicial branch, the reimbursement for lodging expenses may not exceed \$150 per day. However, an employee may expend his or her own funds for any lodging expenses in excess of the limit. This limit is in effect until July 1, 2017.

###### Effect of the Bill

The bill codifies the implementing bill's \$150 per day limit on lodging expenses in s. 112.061, F.S.

##### **Maximum Cost for New State-Funded Building Construction**

###### Present Situation

###### *State Agencies and the Judicial Branch*

Section 216.043, F.S., provides that each agency head and the Chief Justice of the Supreme Court, utilizing their independent judgment, may request fixed capital outlay (FCO) funding in their respective Legislative Budget Requests (LBR). The statute requires certain specific information to be provided with a request of an FCO appropriation. Specifically, the law requires an overall itemized listing of the FCO

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<sup>1</sup> Section 112.061(1), F.S. The term "public agency" is defined as any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, county, city, town, village, municipality, or any other separate unit of government created pursuant to law. Section 112.061(2)(a), F.S.

<sup>2</sup> Section 112.061(3), F.S.

<sup>3</sup> Section 112.061(2)(k), F.S.

<sup>4</sup> Section 112.061(2)(l), F.S.

<sup>5</sup> Section 112.061(2)(m), F.S.

<sup>6</sup> Section 112.061(6), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 112.061(5)(b), F.S.



estimated expenditures; a detailed statement of program needs; estimated construction costs and square footage; site costs; the amount of operating capital necessary to furnish and equip a new or renovated facility; and the anticipated sources of funding to be used to construct the facility. In addition, requirements are also in place for an analysis of the continuing operating costs, as well as the availability and suitability of privately constructed and owned buildings and facilities that meet the needs and program requirements of the agency or of the judicial branch.

#### *State Universities and State Colleges*

Chapter 1013, F.S., contains various requirements for the Department of Education to follow in developing its legislative budget request for FCO funding for Florida College and State University System facilities. For example:

- Pursuant to s.1013.31, F.S., at least every five years, each institutional board must arrange for an educational plant survey of facilities of each district or campus. The survey must contain an inventory, recommendations for existing and new facilities, and include labor market data and a needs analysis. Projections of additional space needs for colleges must comply with State Board of Education rules. Projections for additional space for universities must comply with standards of the Board of Governors. This survey provides the foundation of the department's FCO legislative budget request as well as the annual Capital Improvement Plan required by s. 216.0158, F.S., for colleges and university facilities.
- Section 1013.64, F.S., requires the State Board of Education (for colleges) and the Board of Governors (for universities) to each submit three-year priority lists based on available funds as provided by the consensus estimating conference. Each project in the list must be recommended by the survey as required in s. 1013.31, F.S.

#### *School Districts*

Florida law provides certain limits for school district construction costs relating to new construction, renovation, and remodeling of educational plant space for elementary, middle, and high schools. Specifically, s. 1013.64, F.S., prescribes that no expenditures utilizing state Public Education Capital Outlay (PECO) funds or funding from the Debt Service Trust Fund may be used for any new construction of educational plant space if the costs exceed the total cost per student station established in law. The established cost per student station is adjusted annually by the PECO Revenue Estimating Conference to reflect any increase or decrease in the Consumer Price Index. Beginning July 1, 2017, the limitation on the expenditure of funds for new construction of educational plant space in excess of the established cost per student station will expand to include any funding source.

#### *Department of Management Services Report*

The General Appropriations Act for fiscal year 2015-2016 directed the Department of Management Services (DMS) to use the funds in specific appropriation 2713 to recommend a maximum square foot cost plan for new fixed capital outlay construction to include the design, construction, permitting, furniture and fixtures, and any appurtenances. The proviso required DMS to submit the plan to the President of the Senate, the Speaker of the House of Representatives, and the Executive Office of the Governor no later than December 1, 2015.<sup>9</sup> DMS completed a report on the plan and submitted it on that date.

The report<sup>10</sup> analyzed the costs for new building construction in five cities throughout Florida: Fort Myers, Jacksonville, Miami, Tampa, and Tallahassee. The report also considered the additional costs required for developments of regional impact (DRIs), which are developments that, because of their character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.<sup>11</sup> Based on this analysis, the report provided the following rates for the cost per square foot for the five cities:

- Cost per square foot without DRI costs:

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<sup>9</sup> Chapter 2015-232, L.O.F.

<sup>10</sup> A copy of the report is on file with the Oversight, Transparency & Administration Subcommittee

<sup>11</sup> Section 380.06(1), F.S.

- Fort Myers – \$365.98
- Jacksonville – \$397.16
- Miami – \$564.55
- Tampa – \$411.59
- Tallahassee – \$395.13
- Cost per square foot with DRI costs:
  - Fort Myers – \$491.37
  - Jacksonville – \$494.84
  - Miami – \$794.82
  - Tampa – \$584.25
  - Tallahassee – \$493.06

### *Producer Price Index*

The Producer Price Index (PPI) is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI's measure price changes from the perspective of the seller. This contrasts with other measures, such as the Consumer Price Index, that measure price change from the purchaser's perspective. Sellers' and purchasers' prices may differ due to government subsidies, sales and excise taxes, and distribution costs.<sup>12</sup>

### Effect of the Bill

The bill establishes a maximum cost per square foot that a state entity may request or contract to spend for new construction of a building utilizing state funds. The bill provides the following definitions:

- "Art" means the artwork for a new state-funded building as set forth in s. 255.043, F.S.
- "Building" means an office building, a courthouse, an administrative building, or a university or college classroom building or auditorium building. The term does not include a nursing, medical, laboratory, science, technology, correctional, residential, or food service facility or a facility with fewer than 10,000 total square feet.
- "Core costs" means the costs associated with providing infrastructure for the core areas of each floor of a building including potable domestic water risers, separate sanitary and storm drain systems, sanitary vents, electrical power distribution panels, circuit breakers, electrical closets, a designated connection point to the central fire alarm system, distribution backboards within wire closets, and connections to horizontal extensions within a tenant's usable area.
- "Department" means the Department of Management Services.
- "DRI" means large projects that require a development-of-regional-impact review and permit as set forth in s. 380.06, F.S.
- "Furniture, fixtures, and equipment" means the movable furniture, fixtures, and other equipment that have no permanent connection to the structure of a building.
- "Maximum cost per square foot" means the maximum cost per square foot as determined in the bill or in the legislative budget instructions for the construction of a new building.
- "Permitting costs" means the costs or fees required to obtain relevant permission to undertake a new building construction project, including, but not limited to, environmental permits, building permits, State Fire Marshal reviews, utility connection fees, impact fees, and the department's project management fees.
- "Professional services fees" means the fees charged by construction design professionals, including engineers, who are utilized in planning and designing an energy-efficient and sustainable building that meets the goals identified in s. 255.252, F.S.
- "Raw building construction costs" means the costs associated with the building construction contract, including the cost of materials and the cost of labor and equipment necessary to install materials. The term includes shell costs, core costs, and tenant costs.
- "Shell costs" means the costs associated with the building structure, exterior envelope physical characteristics, vertical circulation, public spaces, and physical plant support spaces of a building.

<sup>12</sup> Bureau of Labor Statistics, *Producer Price Indexes*, <https://www.bls.gov/ppi/ppiover.htm#data> (last visited March 6, 2017)

- “State entity” means a state agency or department, the judicial branch, a state university, or a state college.
- “Tenant costs” means the costs associated with the design and construction for the installation of materials; HVAC, electrical, and plumbing systems; and life safety items to meet the tenant office layout needs that are within the shell and core of a building. The term does not include the cost of furniture, fixtures, and equipment.
- “Total construction cost” means the total of the raw building construction costs; permitting costs; cost to install utility services; professional service fees; and art, furniture, fixtures, and equipment costs. The term does not include the cost for the physical property, parking areas, and parking structures.

The bill specifies different rates for the maximum cost per square foot depending on the region in which the new building will be constructed and whether the building is part of a DRI. For fiscal year 2017-2018, the maximum cost per square foot rates for each region are as follows:

- Fort Myers
  - Cost per square foot without DRI - \$365.98
  - Cost per square foot with DRI - \$491.37
- Jacksonville
  - Cost per square foot without DRI - \$397.16
  - Cost per square foot with DRI - \$494.84
- Miami
  - Cost per square foot without DRI - \$564.55
  - Cost per square foot with DRI - \$794.82
- Tallahassee
  - Cost per square foot without DRI - \$395.13
  - Cost per square foot with DRI - \$493.06
- Tampa
  - Cost per square foot without DRI - \$411.59
  - Cost per square foot with DRI - \$584.25

A state entity must apply the maximum cost per square foot amount using the region that is in closest proximity to the region in which the new building will be constructed.

Beginning July 1, 2018, and annually thereafter, DMS must review and recommend adjustments to the maximum cost per square foot rates based on the percentage change in the average of the Producer Price Index Data for New Office Building Construction published by the U.S. Department of Labor. DMS must provide such recommendations to the Executive Office of the Governor and the appropriations committees of the Legislature for review and consideration for inclusion in the legislative budget instructions utilized by agencies, as provided in s. 216.023(3), F.S.

The bill establishes the methodology that must be used to calculate the cost per square foot of a proposed new building. To determine the cost per square foot, the estimated total construction cost plus 10 percent must be divided by the total square footage of the proposed new building. For purposes of this calculation, the total square footage does not include the physical property, parking areas, and parking structures. The value derived from this calculation may not exceed the maximum cost per square foot specified in the bill or as modified in the most recent legislative budget instructions.

At the request of a state entity that may seek state funds to construct or contract for the construction of a new building, DMS must:

- Review the building construction plans and calculate the estimated cost per square foot.
- Upon completion of its review, certify the estimated cost per square foot and specify whether the cost per square foot is equal to or less than the applicable maximum cost per square foot.
- Provide recommendations for reducing the estimated cost per square foot if such cost exceeds the applicable maximum cost per square foot.

A state entity may not request state funds for new building construction if the estimated cost per square foot exceeds the applicable maximum cost per square foot, unless DMS has certified that the total estimated cost per square foot will exceed the maximum cost per square foot by no more than 10 percent and the additional cost is attributable to:

- Necessary security-related costs;
- Building material costs needed due to site limitations for construction on a specific site; or
- Extraordinary permitting costs.

The bill requires a state entity head to certify that each legislative budget request for new building construction complies with the maximum cost per square foot requirements. If the cost per square foot of the a new building exceeds the maximum cost per square foot, the state entity head must identify in writing the specific additional costs that exceed the maximum.

The bill prohibits a state entity from spending or entering into a contract to spend state funds for new building construction if the cost per square foot of a new building exceeds the applicable maximum cost per square foot, unless specifically authorized by law. A contract in violation of the maximum cost per square foot requirements is void. In addition, a person who willfully spends, or enters into a contract to spend, state funds in excess of the maximum cost per square foot, except as provided above or specifically authorized by law, is guilty of a second degree misdemeanor.

The bill also requires a legislative budget request for fixed capital outlay for new building construction to comply with the maximum cost per square foot requirements.

## **State Fund Prohibitions**

### Present Situation

Current law prohibits the use of state funds for the purchase, preparation, printing, or mailing of any card to convey holiday greetings.<sup>13</sup>

### Effect of the Bill

The bill prohibits the use of state funds for the following additional purposes:

- The purchase of alcoholic beverages; and
- The purchase of food or beverages for events related to state agency employee, board member, or vendor appreciation or recognition.

## **B. SECTION DIRECTORY:**

- Section 1. Amends s. 112.061, F.S., providing a limitation on actual expenses of certain lodging that may be reimbursed for a state agency or judicial branch employee; authorizing an employee to expend his or her own funds on lodging expenses that exceed a specified amount.
- Section 2. Creates s. 216.0161, F.S., establishing maximum cost per square foot guidelines for new state-funded construction.
- Section 3. Amends s. 216.023, F.S., requiring legislative budget requests for fixed capital outlay for new building construction to comply with certain requirements.
- Section 4. Amends s. 286.27, F.S., prohibiting the use of state funds to purchase alcoholic beverages and food or beverages for certain state agency appreciation or recognition events.

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<sup>13</sup> Section 286.27, F.S.  
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Section 5. Provides an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

The bill may have an indeterminate positive fiscal impact on the state because the bill limits the costs per square foot for new construction. In addition, the bill may have an indeterminate positive fiscal impact on state agencies and the judicial branch because it limits to \$150 the amount that may be reimbursed per day for employee travel lodging expenses under certain circumstances.

## 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.



26 | complies with the requirements of this law;  
 27 | prohibiting a state entity from spending or  
 28 | contracting to spend state funds for new building  
 29 | construction if certain costs exceed specified maximum  
 30 | authorized cost per square foot amounts; providing  
 31 | penalties; amending s. 216.023, F.S.; requiring  
 32 | legislative budget requests for fixed capital outlay  
 33 | for new building construction to comply with certain  
 34 | requirements; amending s. 286.27, F.S.; prohibiting  
 35 | the use of state funds to purchase alcoholic beverages  
 36 | and food or beverages for certain state agency  
 37 | appreciation or recognition events; providing an  
 38 | effective date.

39 |

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

41 |

42 | Section 1. Paragraph (c) of subsection (6) of section  
 43 | 112.061, Florida Statutes, is redesignated as paragraph (d),  
 44 | paragraph (a) of subsection (6) is amended, and a new paragraph  
 45 | (c) is added to that subsection, to read:

46 | 112.061 Per diem and travel expenses of public officers,  
 47 | employees, and authorized persons.—

48 | (6) RATES OF PER DIEM AND SUBSISTENCE ALLOWANCE.—For  
 49 | purposes of reimbursement rates and methods of calculation, per  
 50 | diem and subsistence allowances are provided as follows:

51 (a) All travelers shall be allowed for subsistence when  
 52 traveling to a convention or conference or when traveling within  
 53 or outside the state in order to conduct bona fide state  
 54 business, which convention, conference, or business serves a  
 55 direct and lawful public purpose with relation to the public  
 56 agency served by the person attending such meeting or conducting  
 57 such business, either of the following for each day of such  
 58 travel at the option of the traveler:

- 59 1. Eighty dollars per diem; or
- 60 2. If actual expenses exceed \$80, the amounts permitted in  
 61 paragraph (b) for subsistence, plus actual expenses for lodging  
 62 at a single-occupancy rate, except as provided in paragraph (c),  
 63 to be substantiated by paid bills therefor.

64  
 65 When lodging or meals are provided at a state institution, the  
 66 traveler shall be reimbursed only for the actual expenses of  
 67 such lodging or meals, not to exceed the ~~maximums~~ maximum  
 68 provided for in this subsection.

69 (c) Actual expenses for lodging associated with the  
 70 attendance of an employee of a state agency or the judicial  
 71 branch at a meeting, conference, or convention organized or  
 72 sponsored in whole or in part by a state agency or the judicial  
 73 branch may not exceed \$150 per day. However, an employee may  
 74 expend his or her own funds for any lodging expenses that exceed  
 75 \$150 per day.



76 Section 2. Section 216.0161, Florida Statutes, is created  
 77 to read:

78 216.0161 Maximum cost per square foot for new state-funded  
 79 building construction.-

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

81 (a) "Art" means the artwork for a new state-funded  
 82 building as set forth in s. 255.043.

83 (b) "Building" means an office building, a courthouse, an  
 84 administrative building, or a university or college classroom  
 85 building or auditorium building. The term does not include a  
 86 nursing, medical, laboratory, science, technology, correctional,  
 87 residential, or food service facility or a facility with fewer  
 88 than 10,000 total square feet.

89 (c) "Core costs" means the costs associated with providing  
 90 infrastructure for the core areas of each floor of a building  
 91 including potable domestic water risers, separate sanitary and  
 92 storm drain systems, sanitary vents, electrical power  
 93 distribution panels, circuit breakers, electrical closets, a  
 94 designated connection point to the central fire alarm system,  
 95 distribution backboards within wire closets, and connections to  
 96 horizontal extensions within a tenant's usable area.

97 (d) "Department" means the Department of Management  
 98 Services.

99 (e) "DRI" means large projects that require a development-  
 100 of-regional-impact review and permit as set forth in s. 380.06.

101 (f) "Furniture, fixtures, and equipment" means the movable  
 102 furniture, fixtures, and other equipment that have no permanent  
 103 connection to the structure of a building.

104 (g) "Maximum cost per square foot" means the maximum cost  
 105 per square foot as determined in subsection (3) or in the  
 106 legislative budget instructions for the construction of a new  
 107 building.

108 (h) "Permitting costs" means the costs or fees required to  
 109 obtain relevant permission to undertake a new building  
 110 construction project, including, but not limited to,  
 111 environmental permits, building permits, State Fire Marshal  
 112 reviews, utility connection fees, impact fees, and the  
 113 department's project management fees.

114 (i) "Professional service fees" means the fees charged by  
 115 construction design professionals, including engineers, who are  
 116 utilized in planning and designing an energy-efficient and  
 117 sustainable building that meets the goals identified in s.  
 118 255.252.

119 (j) "Raw building construction costs" means the costs  
 120 associated with the building construction contract, including  
 121 the cost of materials and the cost of labor and equipment  
 122 necessary to install materials. The term includes shell costs,  
 123 core costs, and tenant costs.

124 (k) "Shell costs" means the costs associated with the  
 125 building structure, exterior envelope physical characteristics,

126 vertical circulation, public spaces, and physical plant support  
 127 spaces of a building.

128 (l) "State entity" means a state agency or department, the  
 129 judicial branch, a state university, or a state college.

130 (m) "Tenant costs" means the costs associated with the  
 131 design and construction for the installation of materials; HVAC,  
 132 electrical, and plumbing systems; and life safety items to meet  
 133 the tenant office layout needs that are within the shell and  
 134 core of a building. The term does not include the cost of  
 135 furniture, fixtures, and equipment.

136 (n) "Total construction cost" means the total of the raw  
 137 building construction costs; permitting costs; cost to install  
 138 utility services; professional service fees; and art, furniture,  
 139 fixtures, and equipment costs. The term does not include the  
 140 cost for the physical property, parking areas, and parking  
 141 structures.

142 (2) A state entity that requests state funds to construct  
 143 or contract for the construction of a new building must comply  
 144 with the maximum cost per square foot requirements provided in  
 145 this section. The state entity shall apply the maximum cost per  
 146 square foot amount using the region that is in closest proximity  
 147 to the region in which the new building will be constructed,  
 148 taking into consideration whether the building is part of a DRI.

149 (3) (a) For fiscal year 2017-2018, the maximum cost per  
 150 square foot shall be:

151	Region	Cost per sq. ft. w/o DRI	Cost per sq. ft. w/ DRI
152	Fort Myers	\$365.98	\$491.37
153	Jacksonville	\$397.16	\$494.84
154	Miami	\$564.55	\$794.82
155	Tallahassee	\$395.13	\$493.06
156	Tampa	\$411.59	\$584.25

157        (b) Beginning July 1, 2018, and annually thereafter, the  
 158 department shall review the maximum cost per square foot and  
 159 recommend adjustments, based on the percentage change in the  
 160 average of the Producer Price Index Data for New Office Building  
 161 Construction published by the United States Department of Labor,  
 162 to the Executive Office of the Governor and the appropriations  
 163 committees of the Legislature for review and consideration for  
 164 inclusion in the legislative budget instructions pursuant to s.  
 165 216.023(3).

166        (4) To determine the cost per square foot of a proposed  
 167 new building, the estimated total construction cost plus 10  
 168 percent must be divided by the total square footage of the  
 169 proposed new building. For purposes of this subsection, the  
 170 total square footage of the proposed new building does not  
 171 include the physical property, parking areas, and parking  
 172 structures. The value derived from this calculation may not  
 173 exceed the maximum cost per square foot provided in subsection  
 174 (3) or as modified in the most recent legislative budget  
 175 instructions.

176 (5) At the request of a state entity that may seek state  
 177 funds to construct or contract for the construction of a new  
 178 building, the department shall:

179 (a) Review the building construction plans and calculate  
 180 the estimated cost per square foot.

181 (b) After completing its review, certify the estimated  
 182 cost per square foot and specify whether the cost per square  
 183 foot is equal to or less than the maximum cost per square foot  
 184 provided in subsection (3) or as modified in the most recent  
 185 legislative budget instructions.

186 (c) Provide recommendations for reducing the estimated  
 187 cost per square foot if such cost exceeds the maximum cost per  
 188 square foot provided in subsection (3).

189 (6) A state entity may not request state funds for new  
 190 building construction if the estimated cost per square foot  
 191 exceeds the maximum cost per square foot provided in subsection  
 192 (3) or in the legislative budget instructions, unless the  
 193 department has certified that the total estimated cost per  
 194 square foot will exceed the maximum cost per square foot by no  
 195 more than 10 percent and the additional cost is attributable to:

196 (a) Necessary security-related costs;

197 (b) Building material costs needed due to site limitations  
 198 for construction on a specific site; or

199 (c) Extraordinary permitting costs.

200 (7) A state entity head shall certify that each

201 legislative budget request submitted under s. 216.023 for new  
 202 building construction complies with this section. If the cost  
 203 per square foot of a new building exceeds the maximum cost per  
 204 square foot, the state entity head shall identify in writing the  
 205 specific additional costs that exceed the maximum cost per  
 206 square foot as provided in subsection (6).

207 (8) A state entity may not spend or enter into a contract  
 208 to spend state funds for new building construction if the cost  
 209 per square foot of a new building exceeds the maximum cost per  
 210 square foot authorized pursuant to subsection (3) or subsection  
 211 (6), unless specifically authorized by law. A contract in  
 212 violation of this section is void. A person who willfully  
 213 spends, or enters into a contract to spend, state funds that  
 214 exceed the maximum cost per square foot, except as provided in  
 215 subsection (7) or unless specifically authorized by law, is  
 216 guilty of a misdemeanor of the second degree, punishable as  
 217 provided in s. 775.082 or s. 775.083.

218 Section 3. Subsection (11) is added to section 216.023,  
 219 Florida Statutes, to read:

220 216.023 Legislative budget requests to be furnished to  
 221 Legislature by agencies.—

222 (11) A legislative budget request for fixed capital outlay  
 223 for new building construction shall adhere to the maximum cost  
 224 per square foot requirements set forth in s. 216.0161.

225 Section 4. Section 286.27, Florida Statutes, is amended to

226 read:

227       286.27 Prohibited uses Use of state funds ~~for greeting~~  
 228 ~~cards prohibited.~~ No State funds may not shall be expended for:

229       (1) The purchase, preparation, printing, or mailing of any  
 230 card the sole purpose of which is to convey holiday greetings.

231       (2) The purchase of alcoholic beverages.

232       (3) The purchase of food or beverages for events related  
 233 to state agency employee, board member, or vendor appreciation  
 234 or recognition.


235       Section 5. This act shall take effect July 1, 2017.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1141 State Employment  
SPONSOR(S): Yarborough  
TIED BILLS: IDEN./SIM. BILLS: SB 1310

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Whittaker	Harrington 
2) Government Accountability Committee			

SUMMARY ANALYSIS

The Florida State Employees' Charitable Campaign (FSECC) is an annual charitable fundraising drive administered by the Department of Management Services. It is the only authorized charitable fundraising drive directed toward state employees within work areas during work hours, and for which the state will provide a payroll deduction. State officer and employee participation is completely voluntary. A state officer or employee choosing to donate during an FSECC fundraising drive must specifically designate a participating organization as the recipient of the officer's or employee's contribution. Participation in the FSECC is limited to nonprofit charitable organizations that meet certain criteria.

The bill eliminates the FSECC and provides that no organization, entity, or person may intentionally solicit a state employee through any means for fundraising or business purposes within work areas during work hours. However, this does not prohibit state-approved communications by entities that the state has contracted to provide employee benefits or services.

The bill may have a positive fiscal impact on the state and does not have a fiscal impact on local governments. See Fiscal Comments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The Florida State Employees' Charitable Campaign (FSECC) is an annual charitable fundraising drive administered by the Department of Management Services (DMS).<sup>1</sup> It is the only authorized charitable fundraising drive directed toward state employees within work areas during work hours. During an FSECC fundraising drive, a state officer or employee may contribute to various participating charitable organizations.<sup>2</sup> A state officer or employee choosing to donate during an FSECC fundraising drive must specifically designate a participating organization as the recipient of the contribution.<sup>3</sup> Participation is completely voluntary.<sup>4</sup> Employees can contribute through payroll deduction, a one-time gift, or both.<sup>5</sup>

Participation in the FSECC is limited to a nonprofit charitable organization that has as its principal mission public health and welfare, education, environmental restoration and conservation, civil and human rights, or the relief of human suffering and poverty.<sup>6</sup>

DMS must procure a fiscal agent or agents to receive, account for, and distribute charitable contributions among participating charitable organizations.<sup>7</sup> A FSECC steering committee<sup>8</sup> is established to assist it in oversight, development, and administration of the FSECC.<sup>9</sup>

FSECC has raised over \$94 million.<sup>10</sup>

##### Effect of the Bill

The bill eliminates the FSECC. The bill also prohibits an organization, entity, or person from intentionally soliciting a state employee through any means for fundraising or business purposes within work areas during work hours. However, this does not prohibit state-approved communications by entities that the state has contracted to provide employee benefits or services.

#### B. SECTION DIRECTORY:

Section 1. Repeals s. 110.181, F.S., relating to the FSECC.

Section 2. Creates s. 110.182, F.S., prohibiting an organization, entity, or person from intentionally soliciting state employees for fundraising or business purposes within specified areas during specified times; providing an exemption for certain state-approved communications.

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<sup>1</sup> Section 110.181(1)(a), F.S.

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

<sup>3</sup> Section 110.181(1)(b), F.S.

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

<sup>5</sup> Section 110.181(1)(a), F.S.

<sup>6</sup> Section 110.181(1)(c), F.S.

<sup>7</sup> Section 110.181(2)(a), F.S.

<sup>8</sup> The FSECC steering committee has seven members appointed by the administration commission, and two members appointed by the secretary of DMS from among applicants submitted from other agencies or departments. The committee members serve staggered terms and meet at the call of the secretary. Members serve without compensation, but are entitled to receive reimbursement for travel and per diem expenses. Section 110.181(4), F.S.

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

<sup>10</sup> Department of Management Services, *Donor Frequently Asked Questions*,

<http://www.dms.myflorida.com/content/download/128373/798921/FAQ-Donor-2016.pdf> (last visited March 7, 2017).

Section 3. Provides an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

The bill may have a positive fiscal impact on DMS because the department would no longer be required to procure the services of a fiscal agent or agents to receive, account for, and distribute charitable contributions among participating charitable organizations for the FSECC.

## 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 state employment; repealing s.  
 110.181, F.S., relating to Florida State Employees'  
 Charitable Campaign; creating s. 110.182, F.S.;  
 prohibiting an organization, entity, or person from  
 intentionally soliciting state employees for  
 fundraising or business purposes within specified  
 areas during specified times; providing an exemption  
 for certain state-approved communications; providing  
 an effective date.

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

Section 1. Section 110.181, Florida Statutes, is repealed.

Section 2. Section 110.182, Florida Statutes, is created  
 to read:

110.182 Solicitation of state employees prohibited.—An  
 organization, entity, or person may not intentionally solicit a  
 state employee through any means for fundraising or business  
 purposes within work areas during work hours. This section does  
 not prohibit state-approved communications by entities with whom  
 the state has contracted to provide employee benefits or  
 services.

Section 3. This act shall take effect July 1, 2017.



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A bill to be entitled  
 An act relating to firefighters; creating s. 112.1816,  
 F.S.; defining the term "firefighter"; establishing a  
 presumption as to a firefighter's condition or  
 impairment of health caused by certain types of cancer  
 he or she contracts in the line of duty; specifying  
 criteria a firefighter must meet to be entitled to the  
 presumption; requiring an employing agency to provide  
 a physical examination for a firefighter; specifying  
 circumstances under which the presumption does not  
 apply; providing for applicability; requiring the  
 Legislature to review specified cancer research  
 programs by a certain date; providing for an employer  
 contribution rate increase to fund changes made by the  
 act; providing a directive to the Division of Law  
 Revision and Information; providing a declaration of  
 important state interest; providing an effective date.

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

Section 1. Section 112.1816, Florida Statutes, is created  
 to read:

112.1816 Firefighter disability or death from cancer  
presumed contracted in the line of duty.-

(1) DEFINITION.-As used in this section, the term

26 "firefighter" has the same meaning as in s. 112.81.  
 27 (2) PRESUMPTION; ELIGIBILITY CONDITIONS.—  
 28 (a) Any condition or impairment of the health of a  
 29 firefighter employed full time by the state or any municipality,  
 30 county, port authority, special tax district, or fire control  
 31 district which is caused by multiple myeloma, non-Hodgkin's  
 32 lymphoma, prostate cancer, or testicular cancer and results in  
 33 total or partial disability or death is presumed to have been  
 34 accidental and to have been contracted in the line of duty  
 35 unless the contrary is shown by competent evidence. In order to  
 36 be entitled to this presumption, the firefighter:  
 37 1. Must have successfully passed a physical examination  
 38 administered before the individual began service as a  
 39 firefighter and which failed to reveal any evidence of such a  
 40 health condition;  
 41 2. Must have been employed as a firefighter with his or  
 42 her current employer for at least 5 continuous years before  
 43 becoming totally or partially disabled or before his or her  
 44 death;  
 45 3. Must not have used tobacco products for at least 5  
 46 years before becoming totally or partially disabled or before  
 47 his or her death; and  
 48 4. Must not have been employed during the preceding 5  
 49 years in any other position that is proven to create a higher  
 50 risk for multiple myeloma, non-Hodgkin's lymphoma, prostate

51 cancer, or testicular cancer. This includes any other employment  
 52 as a firefighter at another employing agency within the  
 53 preceding 5 years.

54 (b) An employing agency must provide a physical  
 55 examination for a firefighter before he or she begins service or  
 56 immediately thereafter. Notwithstanding subparagraph (a)1., if  
 57 the employing agency fails to provide a physical examination  
 58 before the firefighter begins service, or immediately  
 59 thereafter, the firefighter is entitled to the presumption,  
 60 provided that he or she meets the criteria specified in  
 61 subparagraphs (a)2., (a)3., and (a)4.

62 (c) The presumption does not apply to benefits payable  
 63 under or granted in a life insurance or disability insurance  
 64 policy unless the insurer and insured have negotiated for the  
 65 additional benefits to be included in the policy contract.

66 (3) APPLICABILITY.—A firefighter employed on July 1, 2017,  
 67 is not required to meet the physical examination requirement in  
 68 subsection (2) in order to be entitled to the presumption set  
 69 forth in this section.

70 Section 2. The Legislature shall review the current status  
 71 of research programs, funded wholly or in part by the General  
 72 Appropriations Act, which study the incidence of cancer in  
 73 firefighters. This review must be conducted before the convening  
 74 of the 2018 Regular Session of the Legislature to determine  
 75 whether any further statutory changes to this act are necessary.



76           Section 3. (1) In order to fund the benefit changes  
 77 provided in this act, the required employer contribution rate  
 78 for members of the Florida Retirement System established in s.  
 79 121.71(4), Florida Statutes, for the Special Risk Class is  
 80 increased by 0.01 percentage point.

81           (2) The adjustment provided in subsection (1) is in  
 82 addition to any other changes to such contribution rates which  
 83 may be enacted into law to take effect on July 1, 2017. The  
 84 Division of Law Revision and Information is directed to adjust  
 85 accordingly the contribution rates provided in s. 121.71,  
 86 Florida Statutes.

87           Section 4. The Legislature determines and declares that  
 88 this act fulfills an important state interest.

89           Section 5. This act shall take effect July 1, 2017.