



Oversight, Transparency & Administration Subcommittee

March 20, 2017
3:30 PM – 6:30 PM
Morris Hall

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Oversight, Transparency & Administration Subcommittee

Start Date and Time: Monday, March 20, 2017 03:30 pm
End Date and Time: Monday, March 20, 2017 06:30 pm
Location: Morris Hall (17 HOB)
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 521 Vote-by-Mail Ballots by Davis
HB 533 City of Tampa, Hillsborough County by Cruz
HB 707 Secretary of State by Spano
HB 709 Pub.Rec./Statewide Voter Registration System by Spano
HB 1163 Agency Rulemaking by Spano
HB 1225 Division of Administrative Hearings by Fitzenhagen
HB 1261 Annual Corporate Reports and Fees by Grant, M.
HB 1283 Inspectors General & Auditors by Raulerson
HB 1285 Pub. Rec./Chief Inspector General and Agency Inspectors General by Raulerson
HB 1289 Local Financial Emergencies by Raulerson
HB 6031 Elections by Geller
HB 7053 Pub. Rec./Minor Victims of Sexual Offenses by Criminal Justice Subcommittee, Spano

Consideration of the following proposed committee bill(s):

PCB OTA 17-05 -- OGSR/Agency Personnel
PCB OTA 17-06 -- OGSR/Protective Injunctions for Certain Types of Violence

NOTICE FINALIZED on 03/16/2017 4:22PM by Larson.Lisa

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 521 Vote-by-Mail Ballots
SPONSOR(S): Davis
TIED BILLS: IDEN./SIM. BILLS: SB 726

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

SUMMARY ANALYSIS

Florida law allows an elector to cast his or her ballot by mail. Those ballots, termed "vote-by-mail ballots," are subject to specific requirements and procedures set in statute. Once the elector has completed his or her vote-by-mail ballot, the elector may choose to mail, deliver, or have delivered the completed ballot to the Supervisor of Elections (Supervisor).

Early voting allows voters to vote in advance of an upcoming election in specified locations. The Supervisor must allow a voter to vote early in his or her main office or in any established branch offices. In addition to those mandatory early voting sites, a Supervisor, at his or her discretion, may also designate any of the following locations as early voting sites:

- City hall;
- Permanent public library facility;
- Fairground;
- Civic center;
- Courthouse;
- County commission building;
- Stadium;
- Convention center; and
- Government-owned senior center.

The bill allows an elector to personally deliver his or her vote-by-mail ballot to an early voting site during its hours of operation. The Division of Elections within the Department of State is required to adopt rules for the receipt of these vote-by-mail ballots.

There may be an indeterminate negative fiscal impact to the State and local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Vote-by-mail Ballots

Florida law allows an elector to cast his or her ballot by mail.¹ Those ballots, termed "vote-by-mail ballots," are subject to specific requirements and procedures set in statute.² In brief, an elector may request a vote-by-mail ballot from his or her Supervisor of Elections (Supervisor).³ Thereafter, the Supervisor must mail the elector a letter containing a ballot, instructions for completing the ballot,⁴ and a secrecy envelope for returning the ballot.⁵ Once the elector has completed the ballot and inserted and sealed the ballot within the secrecy envelope, the elector may choose to "[m]ail, deliver, or have delivered the completed mailing envelope" to the Supervisor.⁶

Early Voting

Early voting allows voters to vote in advance of an upcoming election in specified locations.⁷ The Supervisor must allow a voter to vote early in his or her main office or in any established branch offices.⁸ In addition to those mandatory early voting sites, a Supervisor, at his or her discretion, may also designate any of the following locations as early voting sites:

- City hall;
- Permanent public library facility;
- Fairground;
- Civic center;
- Courthouse;
- County commission building;
- Stadium;
- Convention center; and
- Government-owned senior center.⁹

In addition, a Supervisor may designate one early voting site per election in an area of the county that does not have any of the sites listed.¹⁰ Each county is required to operate at least as many early voting sites as it did in the 2012 general election.¹¹

Each county must begin early voting by the tenth day before an election that contains state or federal races and cannot end early voting prior to the third day before that election.¹² However, at the Supervisor's discretion, early voting may be offered up to fifteen days before an election and continue

¹ Section 101.62, F.S.

² See ss. 101.6105, 101.6106, 101.6107, 101.62, 101.64, 101.65, 101.655, 101.661, 101.662, 101.67, 101.68, 101.69, 101.6921, 101.6923, 101.6925, 101.694, 101.6951, 101.6952, 101.697, and 101.698, F.S.

³ Section 101.62, F.S.

⁴ Section 101.65, F.S.

⁵ Section 101.64(1), F.S. Prior to vote-by-mail ballot being sent to the voter, the envelope must be addressed to the Supervisor.

⁶ Section 101.65, F.S.

⁷ Section 101.657(1)(a), F.S.

⁸ *Id.* Branch offices of the Supervisor must be a permanent facility and shall have been designated and used as such for at least one year prior to the election.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 101.657(1)(d), F.S.

until the second day before that election.¹³ Each early voting site must be open at least eight hours per day and may continue operating for up to a maximum of twelve hours per day.¹⁴

Effect of the Bill

The bill allows an elector to personally deliver his or her vote-by-mail ballot to an early voting site during its hours of operation. The Division of Elections within the Department of State is required to adopt rules for the receipt of these vote-by-mail ballots.

B. SECTION DIRECTORY:

Section 1 amends s. 101.64, F.S., relating to the delivery of vote-by-mail ballots.

Section 2 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:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate negative fiscal impact on the State because it requires the Division of Elections of the Department of State to adopt rules governing the receipt of the ballots at early voting sites. In addition, the bill may have an indeterminate negative fiscal impact on local governments because early voting sites will be required to accept vote-by-mail ballots. As such, the counties will need to adopt procedures for the receipt and safe keeping of the vote-by-mail ballots.

¹³ *Id.*

¹⁴ *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Art. VII, s. 18 of the Florida Constitution because it is an election law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Division of Elections of the Department of State to adopt uniform rules for the receipt of vote-by-mail ballots at early voting sites.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to vote-by-mail ballots; amending s.
 3 101.64, F.S.; authorizing an absent elector to
 4 personally deliver his or her completed vote-by-mail
 5 ballot to an early voting site during specified hours;
 6 requiring the Division of Elections to adopt rules;
 7 providing an effective date.

8

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

10

11 Section 1. Subsection (5) is added to section 101.64,
 12 Florida Statutes, to read:



13 101.64 Delivery of vote-by-mail ballots; envelopes; form;
 14 early voting sites.-

15 (5) An absent elector may vote by personally delivering
 16 his or her completed vote-by-mail ballot to an early voting site
 17 during the early voting period hours established under s.
 18 101.657. The Division of Elections of the Department of State
 19 shall adopt uniform rules for the receipt of the ballots.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 533 City of Tampa, Hillsborough County
SPONSOR(S): Cruz
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	13 Y, 0 N	Renner	Miller
2) Oversight, Transparency & Administration Subcommittee		Harrington 	Harrington 
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Firefighters and Police Pension Fund for the City of Tampa was created by special act in 1933. In 2015, the Legislature required certain local pension plan sponsors to create a defined contribution component within their plans to fund special benefits.

The bill authorizes the City of Tampa to enter into a supplemental contract with every firefighter or police officer who is an active member of the City Pension Fund for Firefighters and Police Officers (Fund) in the City of Tampa on or after the date this act becomes a law or who enters into a pension contract with the city. The bill provides for the establishment of a defined contribution plan component, which is not currently funded. If such plan component is funded, the bill authorizes the Board of Trustees to adopt rules implementing the defined contribution plan component. The changes to the pension contract in this act must be made available in a supplemental pension contract to every active firefighter and police officer. In addition, any person who becomes a member of the Fund on or after the date the bill becomes law is required, as a condition of the membership into the Fund, to sign a pension contract which includes the provisions of this act, and must make contributions if required as a result of the benefits. The bill also provides that provisions of the bill are severable.

The bill does not appear to have a fiscal impact on state or local governments.

The bill will take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Protection of Public Employee Retirement Benefits Act

Part VII of chapter 112, F.S., the Florida Protection of Public Employee Retirement Benefits Act (act) was adopted by the Legislature to implement the provisions of s. 14, Art. X of the Florida Constitution. The act establishes minimum standards for operating and funding public employee retirement systems and plans. It is applicable to all units of state, county, special district, and municipal governments participating in, operating, or administering a retirement system for public employees, which is funded in whole or in part by public funds.¹ Responsibility for administration of the act has been assigned primarily to the Division of Retirement (division), Department of Management Services.

The Florida Constitution prohibits any increase in retirement or pension benefits for a publicly funded plan, unless the increase has made or concurrently makes provision for funding the increase on an actuarially sound basis.² Local governments are prohibited from agreeing to a proposed change in retirement benefits if the plan administrator did not issue a statement of actuarial impact of the proposed change before both the adoption of the change by the governing body of the local government and the last public hearing about the proposed change.³ This statement must also be furnished to the division before the local government can agree to the change.⁴ The statement must indicate whether the proposed change complies with s. 14, Art. X of the Florida Constitution and with s. 112.64, F.S. (concerning the administration of pension funds and the amortization of any unfunded actuarial liability).⁵

Municipal Firefighter and Police Pensions

Chapters 175 and 185, F.S., provide the statutory authority for municipal and special fire control district firefighter pensions, and municipal police pensions. These acts were established by the Legislature to provide a "uniform retirement system" providing defined benefit plans for firefighters and police officers, and setting standards for operation and funding of these systems. Retirement systems or plans are to be managed, administered, operated and funded in such a manner as to maximize the protection of the retirement trust funds.

Chapter 175, F.S., was originally enacted in 1939 to provide an incentive (access to premium tax revenues) to encourage the establishment of firefighter retirement plans by Florida cities.⁶ Fourteen years later, in 1953, the Legislature enacted ch. 185, F.S., which created a similar funding mechanism for municipal police officers. Special fire control districts became eligible to participate under ch. 175, F.S., in 1993.⁷

¹ Section 112.62, F.S.

² Art. X, s. 14, Fla. Const.

³ Section 112.63(3), F.S.

⁴ *Id.*

⁵ *Id.*

⁶ See Department of Management Services, *Overview, Legislative History of Chapter 175/185 Program*, available at http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans/overview (last visited February 28, 2017).

⁷ *Id.*

Funding for these pension plans comes from four sources:⁸

- Net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the “premium tax”);
- Employee contributions;
- Other revenue sources; and
- Mandatory payments by the city of any extra amount needed to keep the plan solvent.

Chapter 2015-39, Laws of Florida, among other matters, required plan sponsors to create a defined contribution component within their plans to fund special benefits:⁹

- By October 1, 2015, for non-collectively bargained service;
- Upon entering into a collective bargaining agreement on or after July 1, 2015; or
- Upon the creation date of a new participating plan.

City of Tampa Firefighters and Police Pension Fund

The Firefighters and Police Pension Fund (Fund) for the City of Tampa originally was created through a special act in 1933¹⁰ and amended through subsequent acts. The provisions of these laws are incorporated into a pension contract and appropriate supplemental pension contracts, which are signed by each individual plan member.

The contract provides for pension plan administration, funding, membership and benefits. The general administration and responsibility for the proper operation of the pension system is vested in a board of trustees consisting of nine persons: three members of the city administration appointed by the mayor, three members of the fire department elected by active and retired firefighters, and three members of the police department elected by active and retired police officers.

Effect of Proposed Changes

Pursuant to the requirements of chapters 175 and 185, F.S., the bill authorizes the City of Tampa to enter into a supplemental contract with every firefighter or police officer who is an active member of the Fund on or after the date the bill becomes law or who enters into a pension contract with the City of Tampa.

The bill provides for the establishment of a defined contribution plan component, which is not currently funded. However, should the plan component become funded, the Board of Trustees is authorized to adopt rules regarding the operation of the defined contribution plan component.

The changes to the pension contract must be made available in a supplemental pension contract and an individual is not authorized to select some of said changes and reject other changes. Additionally, any actively employed firefighter or police officer who is entitled to benefits under the Fund will have the opportunity to sign a supplemental pension contract before October 1, 2017. However, any person who becomes a member of the Fund on or after the date the bill becomes law is required, as a condition of membership into the Fund, to sign a pension contract which includes the provisions of this act, and must make contributions if required as a result of the benefits. Furthermore, the bill approves, ratifies, validates and confirms the Fund.

Lastly, if the provisions of the act or its application are invalid, the invalidity will not affect other provisions or applications of the act which can be given effect without the invalid provision or application. Provisions of the act are severable.

⁸ Sections 175.091(1)(a)-(g) and 185.07(1)(a)-(g), F.S.

⁹ Sections 175.351(6) and 185.35(6), F.S.

¹⁰ See ch. 16721, Laws of Fla. (1933).

B. SECTION DIRECTORY:

- Section 1 Authorizes the City of Tampa to enter into a supplemental contract with certain firefighters and police officers.
- Section 2 Authorizes the Board of Trustees to adopt rules implementing the defined contribution plan component in the event it becomes funded.
- Section 3 Provides contract requirements.
- Section 4 Confirms the City of Tampa Firefighters and Police Officers Pension Contract.
- Section 5 Provides for severability.
- Section 6 Provides the bill is effective upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 23, 2016

WHERE? *Tampa Bay Times*, a daily newspaper in Hillsborough County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to the City of Tampa, Hillsborough
 3 County; authorizing the City of Tampa to enter into a
 4 supplemental contract with certain firefighters and
 5 police officers to comply with ch. 2015-39, Laws of
 6 Florida, by providing for the establishment of an
 7 unfunded defined contribution plan component;
 8 authorizing the board of trustees to adopt rules
 9 implementing the defined contribution plan component
 10 in the event it becomes funded; confirming in part the
 11 City of Tampa Firefighters and Police Officers Pension
 12 Contract; providing for severability; providing an
 13 effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. The City of Tampa is authorized and empowered
 18 to enter into a supplemental contract with each and every
 19 firefighter or police officer who is an active member of the
 20 City Pension Fund for Firefighters and Police Officers in the
 21 City of Tampa on or after the date this act becomes a law or who
 22 hereafter enters into a pension contract with the City.

23 Section 2. Section 29 of the City of Tampa Firefighters
 24 and Police Officers Pension Contract as prescribed by Section
 25 28-17 of the City of Tampa Code [Ordinance No. 4746-A, enacted

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

26 September 30, 1969], as amended by Section 28-19 of the City of
 27 Tampa Code [Ordinance No. 6038-A, enacted September 17, 1974],
 28 pursuant to chapter 74-613, Laws of Florida, as further amended
 29 by Ordinance No. 89-314, enacted December 21, 1989, and
 30 approved, ratified, validated, and confirmed by chapter 90-391,
 31 Laws of Florida, and as further amended by chapter 92-231, Laws
 32 of Florida, chapter 94-463, Laws of Florida, chapter 98-515,
 33 Laws of Florida, chapter 2000-485, Laws of Florida, Ordinance
 34 No. 2001-133, enacted July 3, 2001, chapter 2001-288, Laws of
 35 Florida, chapter 2002-369, Laws of Florida, Ordinance No. 2003-
 36 22, enacted January 23, 2003, chapter 2004-427, Laws of Florida,
 37 chapter 2007-304, Laws of Florida, chapter 2011-240, Laws of
 38 Florida, and chapter 2012-235, Laws of Florida, is created to
 39 read:

40 Section 29. Defined Contribution Plan Component. Pursuant
 41 to the requirements of sections 175.351(6) and 185.35(6),
 42 Florida Statutes, a defined contribution plan component is
 43 established for this special act. The defined contribution plan
 44 component is not currently funded. If such plan component is
 45 funded, the Board of Trustees may adopt rules regarding the
 46 operation of the defined contribution plan component of this
 47 special act.

48 Section 3. The changes to the pension contract in this act
 49 for firefighters and police officers who are active members of
 50 the City Pension Fund for Firefighters and Police Officers in

51 the City of Tampa on or after the date this act becomes a law
 52 shall be made available in a supplemental pension contract, and
 53 an individual shall not be permitted to select some of said
 54 changes and reject other of said changes. Any firefighter or
 55 police officer who is entitled to benefits under the City
 56 Pension Fund for Firefighters and Police Officers in the City of
 57 Tampa who is actively employed as a firefighter or police
 58 officer in the City of Tampa on or after the date this act
 59 becomes a law shall have the opportunity to sign such
 60 supplemental pension contract before October 1, 2017. However,
 61 any person who becomes a member of the City Pension Fund for
 62 Firefighters and Police Officers in the City of Tampa on or
 63 after the date this act becomes a law shall be required, as a
 64 condition of membership into such pension fund, to sign a
 65 pension contract which includes the provisions of this act, and
 66 shall be required to make contributions if required as a result
 67 of such benefits.

68 Section 4. The City of Tampa Firefighters and Police
 69 Officers Pension Contract as prescribed by Section 28-17 of the
 70 Tampa City Code [Ordinance No. 4746-A, enacted September 30,
 71 1969], as amended by Section 28-19 of the City of Tampa Code
 72 [Ordinance No. 6038-A, enacted September 17, 1974], pursuant to
 73 chapter 74-613, Laws of Florida, as further amended by Ordinance
 74 No. 89-314, enacted December 21, 1989, and approved, ratified,
 75 validated, and confirmed by chapter 90-391, Laws of Florida, and

76 as further amended by chapter 92-231, Laws of Florida, chapter
 77 94-463, Laws of Florida, chapter 98-515, Laws of Florida,
 78 chapter 2000-485, Laws of Florida, Ordinance No. 2001-133,
 79 enacted July 3, 2001, chapter 2001-288, Laws of Florida, chapter
 80 2002-369, Laws of Florida, Ordinance No. 2003-22, enacted
 81 January 23, 2003, chapter 2004-427, Laws of Florida, chapter
 82 2007-304, Laws of Florida, chapter 2011-240, Laws of Florida,
 83 and chapter 2012-235, Laws of Florida, is in all other respects
 84 approved, ratified, validated, and confirmed.

85 Section 5. If any provision of this act or its application
 86 to any person or circumstance is held to be invalid, the
 87 invalidity shall not affect other provisions or applications of
 88 this act which can be given effect without the invalid provision
 89 or application, and to this end the provisions of this act are
 90 severable.

91 Section 6. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 707 Secretary of State
SPONSOR(S): Spano
TIED BILLS: HB 709 **IDEN./SIM. BILLS:** SB 1070

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Toliver <i>JT</i>	Harrington <i>JA</i>
2) Transportation & Tourism Appropriations Subcommittee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Secretary of State (Secretary) is the head of the Department of State (Department) and Florida's chief election officer. Current law charges the Secretary with a variety of responsibilities in his or her capacity as Florida's chief election officer, including obtaining and maintaining uniformity in the interpretation and implementation of the election laws and creating and administering a statewide voter registration system. The voter registration system is the official list of registered voters in the state and contains the name and registration information of every legally registered voter in Florida. Voter registration officials, such as Supervisors of Elections (Supervisors), are provided secure access to the system and may update the voter registration information contained in the system. Current law requires the Supervisors to conduct voter registration list maintenance at least every odd-numbered year to protect the integrity of the electoral process. The program must be uniform, nondiscriminatory, and in compliance with federal election law.

The bill allows the Secretary, as he or she deems necessary, to enter into agreements to share information or data with other states for the purpose of maintaining the statewide voter registration system. The bill directs the Secretary to use that data to identify registered voters or applications for voter registration that would be potentially ineligible to vote.

The bill also provides that the Secretary must maintain the confidentiality of information or data given as part of the agreement if that information or data was confidential in its state of origin. However, the bill does allow this confidential information to be provided to persons or organizations responsible for the maintenance of the voter registration system.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Secretary of State

The Secretary of State (Secretary) is the head of the Department of State (Department)¹ and Florida's chief election officer. The Secretary is charged with a variety of responsibilities in his or her capacity as Florida's chief election officer, including obtaining and maintaining uniformity in the interpretation and implementation of the election laws; providing uniform standards for the proper and equitable implementation of the registration laws; providing technical assistance to the Supervisors of Elections (Supervisors) on voter education, election personnel training services, and voting systems; and creating and administering a statewide voter registration system as required by the Help America Vote Act of 2002.²

Voter Registration System

The Secretary implements, operates, and maintains the statewide voter registration system (system).³ The system is the official list of registered voters in the state and is required to contain the name and registration information of every legally registered voter in Florida.⁴ Voter registration officials, such as Supervisors, are provided secure access to the system and may update the voter registration information contained in the system.⁵ The Department is prohibited from contracting with any other entity for the operation of the system.⁶

Voter Registration List Maintenance

Florida law requires the Supervisors to conduct voter registration list maintenance at least every odd-numbered year to protect the integrity of the electoral process.⁷ The program must be uniform, nondiscriminatory,⁸ and in compliance with federal election law.⁹ Each Supervisor must incorporate one of the following methods in his or her list maintenance program:

- Use of change of address information given by the United States Postal Service through its licensees to identify registered voters whose addresses might have changed;
- Use of change of address information that is known from returned nonforwardable return-if-undeliverable mail sent to all registered voters in the county; or
- Use of change of address information that is known from returned nonforwardable return-if-undeliverable address confirmation requests mailed to every registered voter who has not voted in the last two years and who did not make any written request to update his or her registration record during that two-year period.¹⁰

The program must be completed at least 90 days before any federal election, and all actions must be entered, tracked, and maintained in the system.¹¹

¹ Section 20.10(1), F.S.

² Section 97.012, F.S.

³ Section 98.035(1), F.S.

⁴ Section 98.035(2), F.S.

⁵ *Id.*

⁶ Section 98.035(3), F.S.

⁷ Section 98.065(3), F.S.

⁸ The term "nondiscriminatory" applies to and includes persons with disabilities. Section 98.065(1), F.S.

⁹ Section 98.065(1), F.S.

¹⁰ Section 98.065(2), F.S.

¹¹ Section 98.065(3), F.S.

If a Supervisor receives change of address information from one of the methods listed above, jury notices, the Department of Highway Safety and Motor Vehicles, or from other sources which reveals that a registered voter's legal address might have changed, the Supervisor must change the registration records to reflect the new address.¹² The Supervisor must then send the registered voter an address change notice.¹³ If the Supervisor receives information that a registered voter has moved his or her legal residence outside the state, the Supervisor must send an address confirmation final notice by to the registered voter at his or her new address.¹⁴ Voters who are sent an address confirmation final notice who do not return the prepaid, preaddressed return form within 30 days or for whom the notice is returned as undeliverable are designated as inactive.¹⁵

Voter Registration Ineligibility Determinations

Currently, the Department identifies deceased persons, persons adjudicated of mental incapacity, persons convicted of a felony, and other ineligible voters contained in the system.¹⁶ The Supervisor¹⁷ is then notified of this finding and, after notifying the voter and giving him or her a chance to respond,¹⁸ makes a final determination regarding their eligibility.¹⁹ A person determined to be ineligible by a Supervisor may appeal that determination in circuit court.²⁰

Effect of the Bill

The bill allows the Secretary, as he or she deems necessary, to enter into agreements to share information or data with other states in order to maintain the statewide voter registration system. The bill directs the Secretary to use that data to identify registered voters or applications for voter registration that would be potentially ineligible to vote based on current law.

The bill also provides that the Secretary must maintain the confidentiality of information or data given as part of the agreement if that information or data was confidential in its state of origin. However, the bill does allow this confidential information to be provided to persons or organizations responsible for the maintenance of the system.

B. SECTION DIRECTORY:

Section 1 amends s. 97.012, F.S., relating to the Secretary.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹² Section 98.065(4)(a), F.S.

¹³ *Id.*

¹⁴ Section 98.065(4)(b), F.S.

¹⁵ Section 98.065(4)(c), F.S.

¹⁶ Section 98.075, F.S.

¹⁷ The Supervisors are also able to remove the name of a voter based on evidence without the Department having notified them in some circumstances. Section 98.075, F.S.

¹⁸ No notification is given to those determined to be deceased. Section 98.075(3), F.S.

¹⁹ Section 98.075(7), F.S.

²⁰ Section 98.0755, F.S.

2. Expenditures:

Indeterminate. If the Secretary of State chooses to enter into an agreement to share information or data with other states, there may be a fiscal impact associated with the exchange of information as well as an additional cost associated with culling the voters determined to be ineligible.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The Supervisors are charged with certain responsibilities associated with removing names from the voter registration system. If the Secretary enters into an agreement to share information, the arrangement will likely lead to an increase in the determinations of voter ineligibility and, therefore, might increase the work load of Supervisors and their staff in following the procedures for removing names from the system.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Art. VII, s. 18 of the State Constitution because it is an election law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to the Secretary of State; amending s.
 3 97.012, F.S.; requiring the secretary to enter into
 4 certain agreements with other states to maintain the
 5 statewide voter registration system; providing
 6 responsibilities of the secretary; providing an
 7 effective date.

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

10
 11 Section 1. Subsection (17) is added to section 97.012,
 12 Florida Statutes, to read:

13 97.012 Secretary of State as chief election officer.—The
 14 Secretary of State is the chief election officer of the state,
 15 and it is his or her responsibility to:

16 (17) Enter into agreements to share information or data
 17 with other states, as the secretary considers necessary, in
 18 order to maintain the statewide voter registration system.
 19 Except as otherwise provided in this subsection, the secretary
 20 shall maintain the confidentiality of any information or data
 21 provided that it is confidential in its state of origin.
 22 However, the secretary may provide such confidential information
 23 or data to persons or organizations responsible for the
 24 maintenance of the statewide voter registration system. The
 25 secretary shall use such information and data to identify

HB 707

2017

26 registered voters or applicants for voter registration who may
27 be potentially ineligible to vote based on information provided
28 in accordance with s. 98.075.

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



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		

1 Committee/Subcommittee hearing bill: Oversight, Transparency &
 2 Administration Subcommittee
 3 Representative Spano offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (2) of section 98.075, Florida

Statutes, is amended to read:

98.075 Registration records maintenance activities;
ineligibility determinations.-

(2) DUPLICATE REGISTRATION.-

(a) The department shall identify those voters who are registered more than once within the state or those applicants whose registration applications within the state would result in duplicate registrations. The most recent application shall be deemed an update to the voter registration record.



Amendment No. 1

17 (b)1. The department may enter into interstate agreements
18 to share and exchange information in order to verify voter
19 registration information. The department shall provide such
20 information to the supervisors to conduct registration list
21 maintenance activities.

22 2. The department may only participate in an interstate
23 agreement that is controlled and operated by the participating
24 states. The interstate agreement may not be operated or
25 controlled by the Federal government or any other entity acting
26 on behalf of the Federal government. The department must be able
27 to withdraw from any interstate agreement entered into at any
28 time.

29 3. If the department enters into an interstate agreement,
30 the department must submit a report to the Governor, the
31 President of the Senate, and the Speaker of the House of
32 Representatives by December 1 of each year. The report must
33 describe the agreement and provide information on the total
34 number of voters removed from the voter registration system as a
35 result of the agreement and the reasons for their removal.

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

37
38 -----
39 **T I T L E A M E N D M E N T**

40 Remove everything before the enacting clause and insert:



Amendment No. 1

41 An act relating to voter registration list maintenance; amending
42 s. 98.075, F.S.; authorizing the Department of State to enter
43 into certain interstate agreements to verify voter registration
44 information; requiring the department to share certain
45 information with the supervisors of elections; establishing
46 requirements for participation in such agreements; establishing
47 reporting requirements; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 709 Pub.Rec./Statewide Voter Registration System
SPONSOR(S): Spano
TIED BILLS: HB 707 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Toliver <i>HT</i>	Harrington <i>JJA</i>
2) Government Accountability Committee			

SUMMARY ANALYSIS

The Secretary of State (Secretary) is the head of the Department of State and Florida's chief election officer. Current law charges the Secretary with a variety of responsibilities in his or her capacity as chief election officer, including administering a statewide voter registration system. The voter registration system is the official list of registered voters in the state and contains the name and registration information of every legally registered voter in Florida. HB 707, which is tied to this bill, allows the Secretary of State, as he or she deems necessary, to enter into agreements to share information or data with other states for the purpose of maintaining the statewide voter registration system. HB 707 directs the Secretary to use that data to identify registered voters or applications for voter registration that would be potentially ineligible to vote.

The bill creates a public record exemption for information and data received by the Secretary for the purpose of maintaining the statewide voter registration system. The information and data is confidential and exempt from public record requirements if that information or data is confidential in its state of origin.

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

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

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 records received by the Secretary of State; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

The Florida Constitution guarantees every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.¹ The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.² The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.³ A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.⁴

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁵ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protect personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protect trade or business secrets.⁶

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁷

Secretary of State and Voter Registration List Maintenance

The Secretary of State (Secretary) is the head of the Department of State (Department)⁸ and Florida's chief election officer. The Secretary is charged with a variety of responsibilities in his or her capacity as Florida's chief election officer, including administering a statewide voter registration system (system).⁹ The system is the official list of registered voters in the state and is required to contain the name and registration information of every legally registered voter in Florida.¹⁰ Florida law currently requires the Supervisors of Elections (Supervisor) to conduct voter registration list maintenance at least every odd-numbered year to protect the integrity of the electoral process.¹¹ Each Supervisor is authorized to use certain information that indicates that a voter has changed addresses in this list maintenance effort.¹² In addition to those efforts, there are other methods used to determine if a voter listed in the system is ineligible.¹³ The Department, for instance, identifies deceased persons, persons adjudicated of mental

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(c).

³ *Id.*

⁴ *Id.*

⁵ Section 119.15, F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ Section 119.15(3), F.S.

⁸ Section 20.10(1), F.S.

⁹ Section 97.012, F.S.

¹⁰ Section 98.035(2), F.S.

¹¹ Section 98.065(3), F.S.

¹² Section 98.065(2), F.S.

¹³ Section 98.075, F.S.

incapacity, persons convicted of a felony, and other ineligible voters contained in the system.¹⁴ The Supervisor¹⁵ is then notified of these findings and, after notifying an affected voter and giving him or her a chance to respond,¹⁶ makes a final determination regarding voter eligibility.¹⁷

Public Record Exemption for Voter Registration Information

Current law provides a public record exemption for certain information held by an agency¹⁸ for purposes of voter registration.¹⁹ Specifically, the following information is confidential and exempt from public record requirements:

- All declinations to register to vote;
- Information relating to the place where a person registered to vote or where a person updated a voter registration; and
- The social security number, driver license number, and Florida identification number of a voter applicant or voter.²⁰

In addition, the signature of a voter registration applicant or a voter is exempt²¹ from copying requirements.²²

HB 707 (2017)

HB 707 allows the Secretary, as he or she deems necessary, to enter into agreements to share information or data with other states for the purpose of maintaining the statewide voter registration system. It directs the Secretary to use that data to identify registered voters or applications for voter registration that would be potentially ineligible to vote based on current law.

HB 707 also provides that the Secretary shall maintain the confidentiality of information or data given as part of the agreement if that information or data was confidential in its state of origin.

Effect of the Bill

The bill, which is linked to the passage of HB 707, creates a public record exemption for information and data received by the Secretary for the purpose of maintaining the statewide voter registration system. The information and data is confidential and exempt from public record requirements if that information or data is confidential in its state of origin.

B. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law exempting information and data received by the Secretary for the purpose of maintaining the statewide voter registration system.

¹⁴ *Id.*

¹⁵ The Supervisors are also able to remove the name of a voter based on evidence without the Department having notified them in some circumstances. Section 98.075, F.S.

¹⁶ No notification is given to those determined to be deceased. Section 98.075(3), F.S.

¹⁷ Section 98.075(7), F.S.

¹⁸ Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission or other separate unit of government created or established by law including, for the purposes of 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.”

¹⁹ Section 97.0585, F.S.

²⁰ Section 97.0585(1), F.S.

²¹ There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att’y Gen. Fla. 85-692 (1985).

²² Section 97.0585(2), F.S.

Section 2 provides a public necessity statement.

Section 3 provides an effective date that is contingent upon the passage of HB 707 or similar legislation.

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:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information and data received by the Secretary that is confidential in its state of origin to facilitate information sharing with other states. Thus, the bill does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Open Government Sunset Review

The exemption does not contain the required Open Government Sunset Review repeal language that provides that the exemption will repeal five years after enactment, unless reviewed and saved from repeal by the Legislature.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to public records; specifying that
 3 certain information and data obtained by the Secretary
 4 of State from another state, and that is confidential
 5 under the laws of such state, is confidential or
 6 exempt from public records requirements; providing a
 7 statement of public necessity; providing a contingent
 8 effective date.

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

11
 12 Section 1. Information and data received by the Secretary
 13 of State relating to the statewide voter registration system
 14 pursuant to s. 97.012(17), Florida Statutes, and that is
 15 confidential in its state of origin, is confidential and exempt
 16 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
 17 the State Constitution.

18 Section 2. The Legislature finds that it is a public
 19 necessity that voter registration information received from
 20 other states in conjunction with an information sharing
 21 agreement associated with the maintenance of the statewide voter
 22 registration system be made confidential or exempt from s.
 23 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 24 State Constitution to the extent that the information received
 25 is confidential in the state from which it is received.

HB 709

2017

26 Participating in agreements to share information and data with
27 other states is critical to ensuring the statewide voter
28 registration system does not contain ineligible voters.
29 Maintaining a statewide voter registration system with only
30 legally qualified voters is critical to fair elections in this
31 state.

32 Section 3. This act shall take effect on the same date
33 that HB 707 or similar legislation takes effect, if such
34 legislation is adopted in the same legislative session or an
35 extension thereof and becomes a law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Oversight, Transparency &
 2 Administration Subcommittee
 3 Representative Spano offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subparagraph 4. is added to paragraph (b) of subsection (2) of section 98.075, Florida Statutes, as created by HB 707, 2017 Regular Session, to read:

98.075 Registration records maintenance activities; ineligibility determinations.-

(2) DUPLICATE REGISTRATION.-

(b)4. Information received by the department, pursuant to an interstate agreement, from another state that is confidential or exempt pursuant to the laws of that state, is exempt from s. 119.07(1) and s. 24(a), Article I of the State Constitution.



Amendment No. 1

17 This subparagraph is subject to the Open Government Sunset
18 Review Act in accordance with s. 119.15 and shall stand repealed
19 on October 2, 2022, unless reviewed and saved from repeal
20 through reenactment by the Legislature.

21 Section 2. The Legislature finds that it is a public
22 necessity that information received by the Department of State,
23 pursuant to an interstate agreement entered into under s.
24 98.075(2), Florida Statutes, from another state that is
25 confidential or exempt pursuant to the laws of that state be
26 made exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
27 Article I of the State Constitution. Participating in interstate
28 agreements to share and exchange information with other states
29 in order to verify voter registration information is critical to
30 ensuring the accuracy of the statewide voter registration
31 system. Maintaining an accurate statewide voter registration
32 system is critical to fair elections in this state. Without the
33 public record exemption, the department will be unable to
34 receive information from other states that might otherwise be
35 confidential or exempt pursuant to the laws of those states,
36 which would impair the ability of the department and supervisors
37 of elections to maintain accurate voter rolls. As a result, the
38 effective and efficient administration of the statewide voter
39 registration system would be hindered.

40 Section 3. This act shall take effect on the same date
41 that HB 707 or similar legislation takes effect, if such



Amendment No. 1

42 | legislation is adopted in the same legislative session or an
43 | extension thereof and becomes a law.

44 |

45 | -----

46 |

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

47 |

Remove everything before the enacting clause and insert:

48 |

An act relating to public records; amending s. 98.075, F.S.;

49 |

creating a public record exemption for certain information

50 |

received by the Department of State from another state that is

51 |

confidential or exempt pursuant to the laws of that state;

52 |

providing for future legislative review and repeal of the

53 |

exemption; providing a statement of public necessity; providing


54 |

a contingent effective date.

55 |

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1163 Agency Rulemaking
SPONSOR(S): Spano
TIED BILLS: IDEN./SIM. BILLS: SB 1640

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

SUMMARY ANALYSIS

A statement of estimated regulatory costs (SERC) is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule, as well as the potential impact on agencies and other governmental entities to implement the rule. Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule, however, a SERC must be prepared if the proposed rule will have a negative impact on small businesses or increase regulatory costs more than \$200,000 within one year after implementation.

The bill requires an agency to prepare a SERC before the adoption, amendment, or repeal of any rule other than an emergency rule.

The bill requires the Department of State (department) to maintain a website open to the public for the sole purpose of publishing SERCs. Agencies must provide all SERCs to the department for publication on the website. If an agency revises a SERC, the revised SERC must also be provided to the department for publication on the website. The bill further requires an agency to include a link on the agency website to the department's website. The department's website must be accessible to the public and may not require the use of login credentials for a person to access a SERC.

The bill also removes the requirement that the agency head approve certain rulemaking notices.

The bill may have a negative fiscal impact on state government. The bill does not appear to have a fiscal impact on local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Rulemaking

The Administrative Procedure Act¹ sets forth a uniform set of procedures that agencies must follow when exercising delegated rulemaking authority. A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.² Rulemaking authority is delegated by the Legislature through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”³ a rule. Agencies do not have discretion whether to engage in rulemaking.⁴ To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.⁵ The grant of rulemaking authority itself need not be detailed. The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.⁶

An agency begins the formal rulemaking process, upon approval of the agency head, by filing a notice of the proposed rule.⁷ The notice is published by the Department of State in the Florida Administrative Register⁸ and must provide certain information, including the text of the proposed rule, a summary of the agency’s statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule.⁹ Although the notice includes a summary of the SERC, if prepared, publication of the SERC is not required.

Statement of Estimated Regulatory Costs

A SERC is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.¹⁰ Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule.¹¹ A SERC must be prepared if the proposed rule will have a negative impact on small businesses or increase regulatory costs more than \$200,000 within one year after implementation of the rule.¹²

A SERC must include estimates of:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule’s impact on small businesses, counties, and cities.¹³

¹ Chapter 120, F.S.

² Section 120.52(16), F.S.

³ Section 120.52(17), F.S.

⁴ Section 120.54(1)(a), F.S.

⁵ Sections 120.52(8) and 120.536(1), F.S.

⁶ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

⁷ Section 120.54(3)(a)1., F.S.

⁸ Section 120.55(1)(b), F.S.

⁹ Section 120.55(1)(b)1. and 2., F.S.

¹⁰ Section 120.541(2), F.S.

¹¹ Section 120.54(3)(b)1., F.S.

¹² Section 120.54(3)(b)1., F.S.

¹³ Section 120.541(2)(b)-(e), F.S.

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first 5 years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness, productivity, or innovation; or
- Regulatory costs, including any transactional costs.¹⁴

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.¹⁵

At least 21 days before filing a rule for adoption, an agency that is required to revise a SERC must provide the statement to the person who submitted the lower cost regulatory alternative and to the committee and must provide notice on the agency's website that is available to the public.¹⁶

Effect of the Bill

The bill requires an agency to prepare a SERC before the adoption, amendment, or repeal of any rule other than an emergency rule.

The bill also requires the Department of State (department) to maintain a website open to the public for the sole purpose of publishing SERCs. Agencies must provide the department with all SERCs for publication on the website after proper notice is published. Revised SERCs must also be provided to the department for publication after proper notice is published.

The bill further requires an agency to include a link on its webpage to the department's SERC website. The department's website may not require the use of login credentials for a person to access a SERC.

Lastly, the bill removes the requirement that the agency head approve notices for rulemaking.

B. SECTION DIRECTORY:

Section 1. Amends s. 120.54, F.S., requiring an agency to prepare a SERC before adopting, amending, or repealing any rule other than an emergency rule.

Section 2. Amends s. 120.541, F.S., requiring the department to maintain a website that solely includes SERCs; requiring an agency that prepares or revises a SERC to provide the SERC to the department for publication on the website; requiring an agency to include an internet website link to the department's SERC website on the agency website; requiring the department's SERCs website to be accessible to the public; prohibiting the required use of login credentials for internet access to SERCs; conforming provisions to changes made by the act.

Section 3. Amends s. 120.56, F.S., conforming a cross-reference.

Section 4. Provides an effective date of July 1, 2017.

¹⁴ Section 120.541(2)(a), F.S.

¹⁵ Section 120.541(3), F.S.

¹⁶ Section 120.541(1)(d), F.S.

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 negative fiscal impact on state government because each agency must prepare a SERC for every rule. In addition, the department must create and maintain a website to publish the SERCs.

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 (3) ADOPTION PROCEDURES.—
 27 (a) Notices.—
 28 1. Prior to the adoption, amendment, or repeal of any rule
 29 other than an emergency rule, an agency, ~~upon approval of the~~
 30 ~~agency head,~~ shall give notice of its intended action, setting
 31 forth a short, plain explanation of the purpose and effect of
 32 the proposed action; the full text of the proposed rule or
 33 amendment and a summary thereof; a reference to the grant of
 34 rulemaking authority pursuant to which the rule is adopted; and
 35 a reference to the section or subsection of the Florida Statutes
 36 or the Laws of Florida being implemented or interpreted. The
 37 notice must include a summary of the agency's statement of the
 38 estimated regulatory costs, ~~if one has been prepared,~~ based on
 39 the factors set forth in s. 120.541(2); a statement that any
 40 person who wishes to provide the agency with information
 41 regarding the statement of estimated regulatory costs, or to
 42 provide a proposal for a lower cost regulatory alternative as
 43 provided by s. 120.541(1), must do so in writing within 21 days
 44 after publication of the notice; and a statement as to whether,
 45 based on the statement of the estimated regulatory costs ~~or~~
 46 ~~other information expressly relied upon and described by the~~
 47 ~~agency if no statement of regulatory costs is required,~~ the
 48 proposed rule is expected to require legislative ratification
 49 pursuant to s. 120.541(3). The notice must state the procedure
 50 for requesting a public hearing on the proposed rule. Except

51 when the intended action is the repeal of a rule, the notice
 52 must include a reference both to the date on which and to the
 53 place where the notice of rule development that is required by
 54 subsection (2) appeared.

55 2. The notice shall be published in the Florida
 56 Administrative Register not less than 28 days prior to the
 57 intended action. The proposed rule shall be available for
 58 inspection and copying by the public at the time of the
 59 publication of notice.

60 3. The notice shall be mailed to all persons named in the
 61 proposed rule and to all persons who, at least 14 days prior to
 62 such mailing, have made requests of the agency for advance
 63 notice of its proceedings. The agency shall also give such
 64 notice as is prescribed by rule to those particular classes of
 65 persons to whom the intended action is directed.

66 4. The adopting agency shall file with the committee, at
 67 least 21 days prior to the proposed adoption date, a copy of
 68 each rule it proposes to adopt; a copy of any material
 69 incorporated by reference in the rule; a detailed written
 70 statement of the facts and circumstances justifying the proposed
 71 rule; a copy of any statement of estimated regulatory costs that
 72 has been prepared pursuant to s. 120.541; a statement of the
 73 extent to which the proposed rule relates to federal standards
 74 or rules on the same subject; and the notice required by
 75 subparagraph 1.

76 (b) Special matters to be considered in rule adoption.—

77 1. Statement of estimated regulatory costs.—Before the
 78 adoption, amendment, or repeal of any rule other than an
 79 emergency rule, an agency must ~~is encouraged to~~ prepare a
 80 statement of estimated regulatory costs of the proposed rule, as
 81 provided by s. 120.541. ~~However, an agency must prepare a~~
 82 ~~statement of estimated regulatory costs of the proposed rule, as~~
 83 ~~provided by s. 120.541, if:~~

84 a. ~~The proposed rule will have an adverse impact on small~~
 85 ~~business, or~~

86 b. ~~The proposed rule is likely to directly or indirectly~~
 87 ~~increase regulatory costs in excess of \$200,000 in the aggregate~~
 88 ~~in this state within 1 year after the implementation of the~~
 89 ~~rule.~~

90 2. Small businesses, small counties, and small cities.—

91 a. Each agency, before the adoption, amendment, or repeal
 92 of a rule, shall consider the impact of the rule on small
 93 businesses as defined by s. 288.703 and the impact of the rule
 94 on small counties or small cities as defined by s. 120.52.
 95 Whenever practicable, an agency shall tier its rules to reduce
 96 disproportionate impacts on small businesses, small counties, or
 97 small cities to avoid regulating small businesses, small
 98 counties, or small cities that do not contribute significantly
 99 to the problem the rule is designed to address. An agency may
 100 define "small business" to include businesses employing more

101 than 200 persons, may define "small county" to include those
 102 with populations of more than 75,000, and may define "small
 103 city" to include those with populations of more than 10,000, if
 104 it finds that such a definition is necessary to adapt a rule to
 105 the needs and problems of small businesses, small counties, or
 106 small cities. The agency shall consider each of the following
 107 methods for reducing the impact of the proposed rule on small
 108 businesses, small counties, and small cities, or any combination
 109 of these entities:

110 (I) Establishing less stringent compliance or reporting
 111 requirements in the rule.

112 (II) Establishing less stringent schedules or deadlines in
 113 the rule for compliance or reporting requirements.

114 (III) Consolidating or simplifying the rule's compliance
 115 or reporting requirements.

116 (IV) Establishing performance standards or best management
 117 practices to replace design or operational standards in the
 118 rule.

119 (V) Exempting small businesses, small counties, or small
 120 cities from any or all requirements of the rule.

121 b.(I) If the agency determines that the proposed action
 122 will affect small businesses as defined by the agency as
 123 provided in sub-subparagraph a., the agency shall send written
 124 notice of the rule to the rules ombudsman in the Executive
 125 Office of the Governor at least 28 days before the intended

126 action.

127 (II) Each agency shall adopt those regulatory alternatives
 128 offered by the rules ombudsman in the Executive Office of the
 129 Governor and provided to the agency no later than 21 days after
 130 the rules ombudsman's receipt of the written notice of the rule
 131 which it finds are feasible and consistent with the stated
 132 objectives of the proposed rule and which would reduce the
 133 impact on small businesses. When regulatory alternatives are
 134 offered by the rules ombudsman in the Executive Office of the
 135 Governor, the 90-day period for filing the rule in subparagraph
 136 (e)2. is extended for a period of 21 days.

137 (III) If an agency does not adopt all alternatives offered
 138 pursuant to this sub-subparagraph, it shall, before rule
 139 adoption or amendment and pursuant to subparagraph (d)1., file a
 140 detailed written statement with the committee explaining the
 141 reasons for failure to adopt such alternatives. Within 3 working
 142 days after the filing of such notice, the agency shall send a
 143 copy of such notice to the rules ombudsman in the Executive
 144 Office of the Governor.

145 Section 2. Paragraphs (a) and (b) of subsection (1) of
 146 section 120.541, Florida Statutes, are amended, and subsection
 147 (6) is added to that section, to read:

148 120.541 Statement of estimated regulatory costs.—

149 (1)(a) Within 21 days after publication of the notice
 150 required under s. 120.54(3)(a), a substantially affected person

151 may submit to an agency a good faith written proposal for a
 152 lower cost regulatory alternative to a proposed rule which
 153 substantially accomplishes the objectives of the law being
 154 implemented. The proposal may include the alternative of not
 155 adopting any rule if the proposal explains how the lower costs
 156 and objectives of the law will be achieved by not adopting any
 157 rule. If such a proposal is submitted, the 90-day period for
 158 filing the rule is extended 21 days. Upon the submission of the
 159 lower cost regulatory alternative, the agency ~~shall prepare a~~
 160 ~~statement of estimated regulatory costs as provided in~~
 161 ~~subsection (2), or~~ shall revise its prior statement of estimated
 162 regulatory costs, and either adopt the alternative or provide a
 163 statement of the reasons for rejecting the alternative in favor
 164 of the proposed rule.

165 ~~(b) If a proposed rule will have an adverse impact on~~
 166 ~~small business or if the proposed rule is likely to directly or~~
 167 ~~indirectly increase regulatory costs in excess of \$200,000 in~~
 168 ~~the aggregate within 1 year after the implementation of the~~
 169 ~~rule, the agency shall prepare a statement of estimated~~
 170 ~~regulatory costs as required by s. 120.54(3)(b).~~

171 (6) The Department of State shall maintain a website that
 172 solely includes statements of estimated regulatory costs.

173 (a) An agency that prepares a statement of estimated
 174 regulatory costs must provide, after publication of the notice
 175 required under s. 120.54(3)(a), the statement to the department

176 for publication on the website.

177 (b) An agency that revises a statement of estimated
 178 regulatory costs must provide, after publication of the notice
 179 required under paragraph (1)(d), the statement to the department
 180 for publication on the website.

181 (c) An agency must include an Internet website link to the
 182 department's website on the agency's website.

183 (d) The department's website must be accessible to the
 184 public and may not require the use of any login credential in
 185 order for a person to access a statement of estimated regulatory
 186 costs.

187 Section 3. Paragraph (a) of subsection (2) of section
 188 120.56, Florida Statutes, is amended to read:

189 120.56 Challenges to rules.—

190 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

191 (a) A petition alleging the invalidity of a proposed rule
 192 shall be filed within 21 days after the date of publication of
 193 the notice required by s. 120.54(3)(a); within 10 days after the
 194 final public hearing is held on the proposed rule as provided by
 195 s. 120.54(3)(e)2.; within 20 days after the statement of
 196 estimated regulatory costs or revised statement of estimated
 197 regulatory costs, if applicable, has been prepared and made
 198 available as provided in s. 120.541(1)(c) ~~120.541(1)(d)~~; or
 199 within 20 days after the date of publication of the notice
 200 required by s. 120.54(3)(d). The petitioner has the burden to

HB 1163


2017

201 prove by a preponderance of the evidence that the petitioner
202 would be substantially affected by the proposed rule. The agency
203 then has the burden to prove by a preponderance of the evidence
204 that the proposed rule is not an invalid exercise of delegated
205 legislative authority as to the objections raised. A person who
206 is not substantially affected by the proposed rule as initially
207 noticed, but who is substantially affected by the rule as a
208 result of a change, may challenge any provision of the resulting
209 proposed rule.

210 Section 4. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1225 Division of Administrative Hearings
SPONSOR(S): Fitzenhagen
TIED BILLS: **IDEN./SIM. BILLS:** SB 1352

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

SUMMARY ANALYSIS

Administrative law judges (ALJs) preside over disputes arising under the Administrative Procedure Act and other state laws in which the substantial interests of a person are determined by an agency and which involve a disputed issue of material fact. Each ALJ is employed by the Division of Administrative Hearings (DOAH), which is headed by a director who also serves as chief ALJ. The director must be appointed by the Administration Commission and confirmed by the Senate. ALJs are not specifically exempt from the Career Service System; therefore, they are classified as Career Service employees.

The bill requires the director of DOAH to be a full-time ALJ employed by DOAH. The bill also removes the requirement for the director to be confirmed by the Senate.

The bill requires full-time ALJs to be appointed by the Governor from a list of three individuals nominated by a statewide nominating commission. The bill specifies the composition of the commission and the process by which the members of the commission must be appointed. The bill also establishes a process by which the Governor must appoint or reappoint ALJs and specifies the length of ALJs' terms of office. The bill requires DOAH to maintain the 33 ALJ positions in existence as of June 30, 2017, and allows each ALJ to continue to serve until June 30, 2018.

Lastly, the bill repeals the provision that excludes attorneys who serve as ALJs from the Career Service exemption for other attorney positions, thereby classifying ALJs as Select Exempt employees.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Administrative Law Judges

Administrative law judges (ALJs) preside over disputes arising under the Administrative Procedure Act¹ and other state laws in which the substantial interests of a person are determined by an agency² and which involve a disputed issue of material fact.³ When a state agency proposes to take some action that is adverse to a person, the affected person is normally entitled to request an administrative hearing to determine the matter.⁴

Each ALJ is employed by the Division of Administrative Hearings (DOAH) and must have been a member of The Florida Bar in good standing for the preceding 5 years.⁵ DOAH is administratively housed under the Department of Management Services (DMS); however, DOAH is not subject to the control, supervision, or direction of DMS. The head of DOAH is a director who also serves as chief ALJ. The director must be appointed by the Administration Commission⁶ and confirmed by the Senate. The director and any deputy chief ALJ must possess the same minimum qualifications as the ALJs employed by DOAH.⁷

Currently, when a vacancy occurs for an ALJ, a posting is made on PeopleFirst, the human resources website for the state of Florida. Applications are screened by DOAH through an internal committee process. The internal committee members are appointed by the chief judge, and the chief judge heads the committee. Committee member opinions carry significant weight regarding which candidates to select, but the ultimate decision is made by the chief judge.⁸

Career Service System

Chapter 110, F.S., establishes the state's personnel management system. The system must provide means to recruit, select, train, develop, and maintain an effective and responsible workforce and must

¹ Chapter 120, F.S.

² The term "agency" means the following officers or governmental entities if acting pursuant to powers other than those derived from the Constitution:

(a) The Governor; each state officer and state department, and each departmental unit described in s. 20.04, F.S.; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only if a majority of its governing board is comprised of nonelected persons; educational units; and each entity described in chs. 163, 373, 380, and 582, F.S., and s. 186.504, F.S.

(b) Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.

(c) Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to this chapter by general or special law or existing judicial decisions.

This definition does not include a municipality or legal entity created solely by a municipality; a legal entity or agency created in whole or in part pursuant to part II of ch. 361, F.S.; a metropolitan planning organization created pursuant to s. 339.175, F.S.; a separate legal or administrative entity created pursuant to s. 339.175, F.S., of which a metropolitan planning organization is a member; an expressway authority pursuant to ch. 348, F.S. or any transportation authority or commission under ch. 343, F.S., or ch. 349, F.S.; or a legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), F.S., unless any party to such agreement is otherwise an agency pursuant to this definition. Section 120.52(1), F.S.

³ Section 120.65(4), F.S.

⁴ DOAH, *Representing Yourself Before the Division of Administrative Hearings*, <https://www.doah.state.fl.us/ALJ/RepYourself.pdf> (last visited March 11, 2017).

⁵ Section 120.65(4), F.S.

⁶ The Administration Commission is part of the Executive Office of the Governor and is comprised of the Governor and Cabinet. Section 14.202, F.S.

⁷ Section 120.65(1), F.S.

⁸ Telephone conversation with DOAH staff, March 15, 2017.

include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, employee performance evaluations, affirmative action, and other related activities.⁹

DMS is charged with establishing and maintaining a classification and compensation program addressing Career Service, Select Exempt Service, and Senior Management Service positions.¹⁰ The classification of a position determines the types of benefits assigned to the position and the compensation and collective bargaining status of the position. A position must be classified as Career Service unless it is specifically exempted by statute.¹¹

A Career Service employee who has satisfactorily completed at least a one-year probationary period may only be suspended or dismissed for cause. Cause includes poor performance, negligence, inefficiency or inability to perform assigned duties, insubordination, violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime.¹² Career Service employees that have completed the probationary period are also entitled to a grievance process¹³ and have the right to appeal a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal.¹⁴

Select Exempt Service is a separate system of personnel administration for positions that are exempt from the Career Service System.¹⁵ Employees in the Select Exempt Service serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.¹⁶ The Select Exempt Service provides greater pay and benefits overall than are provided for Career Service employees, but less pay and benefits overall than are provided for the Senior Management Service.¹⁷

Current law exempts from the Career Service System all positions that require as a prerequisite to employment the receipt of a Bachelor of Laws or Juris Doctor degree from a law school accredited by the American Bar Association and thereafter membership in The Florida Bar. However, attorneys who serve as ALJs within DOAH are specifically excluded from this exemption; therefore, they are classified as Career Service employees.¹⁸

Effect of the Bill

The bill requires the director of DOAH to be a full-time ALJ employed by DOAH. The bill also removes the requirement for the director to be confirmed by the Senate.

In addition, the bill requires full-time ALJs to be appointed by the Governor and prohibits an ALJ from engaging in the private practice of law during his or her term of office. The Governor must appoint an ALJ from a list of three individuals nominated by a statewide nominating commission.

⁹ Section 110.105(1), F.S.

¹⁰ Section 110.2035(1), F.S.

¹¹ Section 110.205(1), F.S.

¹² Section 110.227(1), F.S.

¹³ Section 110.227(4), F.S.

¹⁴ Section 110.227(5) and (6), F.S.,

¹⁵ Section 110.602, F.S.

¹⁶ Section 110.604, F.S.

¹⁷ See s. 110.603, F.S.

¹⁸ Section 110.205(2)(r), F.S.

The commission must be composed of the following members:

- Three members appointed by the Governor, at least one of whom must be a minority person as defined in s. 288.703, F.S.;
- Two members appointed by the Attorney General;
- Two members appointed by the Chief Financial Officer; and
- Two members appointed by the Commissioner of Agriculture.

Beginning July 1, 2017, the Governor and each member of the Cabinet must appoint one member to serve a two-year term and appoint the remaining members to serve four-year terms. Thereafter, each member must be appointed for a four-year term. If a vacancy occurs on the commission, it must be filled by the original appointing authority for the unexpired balance of the term.

The bill prohibits an attorney who appears before any ALJ more than four times a year from serving on the commission. The bill also requires the meetings and determinations of the commission as to the ALJs to be open to the public.

The bill requires each ALJ to be appointed for a four-year term, but authorizes the Governor to remove an ALJ during his or her term of office for cause. Before the expiration of an ALJ's term of office, the commission must review the judge's conduct and determine whether the ALJ's performance is satisfactory. In determining whether an ALJ's performance is satisfactory, the commission must consider the extent to which the ALJ has met the requirements of the APA. The commission must report its findings to the Governor at least six months before the ALJ's term expires. The Governor must review the commission's report and may reappoint the ALJ for an additional four-year term. If the Governor does not reappoint the ALJ, the Governor must inform the commission. The ALJ must remain in office until the Governor appoints a successor. If a vacancy occurs during an ALJ's unexpired term, if the commission does not find the ALJ's performance satisfactory, or if the Governor does not reappoint the ALJ, the Governor must appoint a successor judge for a four-year term in accordance with the process described below.

The Governor must appoint each ALJ by June 30, 2018, for a term beginning on July 1, 2018. For the term beginning on July 1, 2018, ALJs must be appointed in the following manner:

- Eight ALJs appointed to a one-year term;
- Eight ALJs appointed to a two-year term;
- Eight ALJs appointed to a three-year term; and
- Nine ALJs appointed to a four-year term.

Thereafter, each term of office must be four years.

The bill requires DOAH to maintain the 33 ALJ positions in existence as of June 30, 2017, and allows each ALJ to continue to serve until June 30, 2018. The bill specifies that it does not prohibit an ALJ serving before July 1, 2018, from being appointed to serve as an ALJ by the Governor.

Lastly, the bill repeals the provision that excludes attorneys who serve as ALJs from the Career Service exemption for other attorney positions, thereby classifying ALJs as Select Exempt employees.

B. SECTION DIRECTORY:

- Section 1. Amends s. 110.205, F.S., related to Career Service; exemptions.
- Section 2. Amends s. 120.65, F.S., related to ALJs.
- 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:

The bill may have an indeterminate fiscal impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to the Division of Administrative
3 Hearings; amending s. 110.205, F.S.; revising
4 positions at the division that are exempt from the
5 Career Service System; amending s. 120.65, F.S.;
6 requiring the Administration Commission to select from
7 full-time administrative law judges employed with the
8 division in appointing a division director; removing
9 the requirement that the division director is subject
10 to Senate confirmation; deleting provisions regarding
11 minimum qualifications of the division director and
12 deputy chief administrative law judges; requiring the
13 Governor to appoint administrative law judges;
14 prohibiting an administrative law judge from engaging
15 in the private practice of law during his or her term
16 of office; requiring the Governor to appoint
17 administrative law judges from nominees recommended by
18 a statewide nominating commission unless otherwise
19 provided; specifying the composition and term lengths
20 of members of the commission; prohibiting certain
21 attorneys from serving on the commission; providing
22 that meetings and determinations of the commission are
23 open to the public; specifying term lengths of
24 administrative law judges; prescribing procedures for
25 the commission to review a judge's performance before

26 the expiration of a term; requiring the Governor to
 27 take certain action regarding a judge after the
 28 commission's review; providing for initial
 29 appointments of administrative law judges and
 30 staggered terms; providing transitional provisions;
 31 providing an effective date.

32

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

34

35 Section 1. Paragraph (r) of subsection (2) of section
 36 110.205, Florida Statutes, is amended to read:

37 110.205 Career service; exemptions.—

38 (2) EXEMPT POSITIONS.—The exempt positions that are not
 39 covered by this part include the following:

40 (r) All positions not otherwise exempt under this
 41 subsection which require as a prerequisite to employment:
 42 licensure as a physician pursuant to chapter 458, licensure as
 43 an osteopathic physician pursuant to chapter 459, licensure as a
 44 chiropractic physician pursuant to chapter 460, including those
 45 positions which are occupied by employees who are exempted from
 46 licensure pursuant to s. 409.352; licensure as an engineer
 47 pursuant to chapter 471, which are supervisory positions; or for
 48 12 calendar months, which require as a prerequisite to
 49 employment that the employee have received the degree of
 50 Bachelor of Laws or Juris Doctor from a law school accredited by

51 the American Bar Association and thereafter membership in The
 52 Florida Bar, ~~except for any attorney who serves as an~~
 53 ~~administrative law judge pursuant to s. 120.65 or for hearings~~
 54 ~~conducted pursuant to s. 120.57(1)(a)~~. Unless otherwise fixed by
 55 law, the department shall set the salary and benefits for these
 56 positions in accordance with the rules established for the
 57 Selected Exempt Service.

58 Section 2. Subsections (1) through (4) of section 120.65,
 59 Florida Statutes, are amended to read:

60 120.65 Administrative law judges.—

61 (1) The Division of Administrative Hearings within the
 62 Department of Management Services shall be headed by the a
 63 director of the Division of Administrative Hearings. The
 64 director ~~who~~ shall be appointed by the Administration Commission
 65 and must be a full-time administrative law judge employed by the
 66 division and confirmed by the Senate. The director, who shall
 67 ~~also serve as the chief administrative law judge, and any deputy~~
 68 ~~chief administrative law judge must possess the same minimum~~
 69 ~~qualifications as the administrative law judges employed by the~~
 70 ~~division~~. The Deputy Chief Judge of Compensation Claims must
 71 possess the minimum qualifications established in s. 440.45(2)
 72 and shall report to the director. The division is ~~shall be~~ a
 73 separate budget entity, and the director shall be its agency
 74 head for all purposes. The Department of Management Services
 75 shall provide administrative support and service to the division

76 to the extent requested by the director. The division is ~~shall~~
 77 not ~~be~~ subject to control, supervision, or direction by the
 78 Department of Management Services in any manner, including, but
 79 not limited to, personnel, purchasing, transactions involving
 80 real or personal property, and budgetary matters.

81 (2) The Governor shall appoint full-time administrative
 82 law judges to conduct hearings in accordance with this chapter.
 83 A person may not serve as an administrative law judge unless he
 84 or she has been a member of The Florida Bar in good standing for
 85 the previous 5 years. An administrative law judge may not engage
 86 in the private practice of law during his or her term of office.

87 (a)1. Except as provided in paragraph (b), the Governor
 88 shall appoint an administrative law judge from a list of three
 89 persons nominated by a statewide nominating commission. The
 90 statewide nominating commission shall be composed of three
 91 members, at least one of whom must be a minority person as
 92 defined in s. 288.703, appointed by the Governor; two members
 93 appointed by the Attorney General; two members appointed by the
 94 Chief Financial Officer; and two members appointed by the
 95 Commissioner of Agriculture.

96 2. Beginning July 1, 2017, the Governor and each member of
 97 the Cabinet shall appoint one member to serve a 2-year term and
 98 appoint the remaining members to serve 4-year terms. Thereafter,
 99 each member shall be appointed for a 4-year term. A vacancy
 100 occurring on the commission shall be filled by the original

101 appointing authority for the unexpired balance of the term.

102 3. An attorney who appears before any administrative law
 103 judge more than 4 times a year may not serve on the statewide
 104 nominating commission. The meetings and determinations of the
 105 nominating commission as to the administrative law judges shall
 106 be open to the public.

107 (b) Each administrative law judge shall be appointed for a
 108 4-year term, but during his or her term of office may be removed
 109 by the Governor for cause. Before the expiration of a judge's
 110 term of office, the statewide nominating commission shall review
 111 the judge's conduct and determine whether the judge's
 112 performance is satisfactory. In determining whether a judge's
 113 performance is satisfactory, the commission shall consider the
 114 extent to which the judge has met the requirements of this
 115 chapter. The commission shall report its finding to the Governor
 116 no later than 6 months before the expiration of the judge's term
 117 of office. The Governor shall review the commission's report and
 118 may reappoint the administrative law judge for an additional 4-
 119 year term. If the Governor does not reappoint the judge, the
 120 Governor shall inform the commission. The judge shall remain in
 121 office until the Governor has appointed a successor judge in
 122 accordance with this subsection. If a vacancy occurs during a
 123 judge's unexpired term, the commission does not find the judge's
 124 performance satisfactory, or the Governor does not reappoint the
 125 judge, the Governor shall appoint a successor judge for a 4-year

126 term in accordance with paragraph (c).

127 (c) The Governor shall appoint each administrative law
 128 judge by June 30, 2018, for a term beginning on July 1, 2018.
 129 For the term beginning on July 1, 2018, administrative law
 130 judges shall be appointed in the following manner: 8 judges
 131 appointed to a 1-year term; 8 judges appointed to a 2-year term;
 132 8 judges appointed to a 3-year term; and 9 judges appointed to a
 133 4-year term. Thereafter, each term of office shall be 4 years.

134 (d) The division shall maintain the 33 administrative law
 135 judge positions in existence as of June 30, 2017. Each
 136 administrative law judge may continue to serve until June 30,
 137 2018. This subsection does not prohibit an administrative law
 138 judge serving before July 1, 2018, from being appointed to serve
 139 as an administrative law judge pursuant to paragraph (c).

140 (3)+2) The director has the right to appeal actions by the
 141 Executive Office of the Governor that affect amendments to the
 142 division's approved operating budget or any personnel actions
 143 pursuant to chapter 216 to the Administration Commission, which
 144 shall decide such issue by majority vote. The appropriations
 145 committees may advise the Administration Commission on the
 146 issue. If the President of the Senate and the Speaker of the
 147 House of Representatives object in writing to the effects of the
 148 appeal, the appeal may be affirmed by the affirmative vote of
 149 two-thirds of the commission members present.

150 (4)+3) Each state agency as defined in chapter 216 and

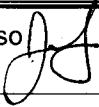
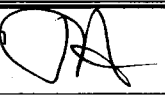
151 each political subdivision shall make its facilities available,
 152 at a time convenient to the provider, for use by the division in
 153 conducting proceedings pursuant to this chapter.

154 ~~(4) The division shall employ administrative law judges to~~
 155 ~~conduct hearings required by this chapter or other law. Any~~
 156 ~~person employed by the division as an administrative law judge~~
 157 ~~must have been a member of The Florida Bar in good standing for~~
 158 ~~the preceding 5 years.~~

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1261 Annual Corporate Reports and Fees
SPONSOR(S): Grant
TIED BILLS: IDEN./SIM. **BILLS:** SB 1698

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

SUMMARY ANALYSIS

The Florida Business Corporation Act governs domestic and foreign corporations doing business in Florida. The act requires each domestic and foreign corporation in the state to file necessary documents with the Department of State (DOS), including articles of incorporation, bylaws, and shareholder agreements in order to be authorized to conduct business in the state. Currently, all corporations authorized to conduct business in the state are required to submit an annual report to DOS. Upon filing the annual report, a corporation must also submit certain fees.

The bill amends s. 607.1622, F.S., to permit corporations to file the required report with DOS biennially instead of annually, and sets the cost for fees of filing biennially as double the cost of filing annually. The bill also revises other provisions to conform to the changes made by the act.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Business Corporation Act

Chapter 607, F.S. also known as the "Florida Business Corporation Act" governs domestic and foreign corporations doing business in Florida.¹ The act provides various requirements and provisions pertaining to necessary business documents such as shareholder agreements,² articles of incorporation,³ bylaws,⁴ mergers,⁵ and conversions.⁶ The Legislature reserves the power to amend the act at any time, and all domestic and foreign corporations subject to the act must adhere to any amendments.⁷

Under the act, the Department of State (DOS) is responsible for authorizing corporations to conduct business in the state, collecting fees, and filing forms. DOS may prescribe and furnish on request forms for certificate of status, certificate of authority to transact business in the state, certificate of withdrawal, and the annual report.⁸ The fees for filing documents and issuing certificates are set by the act. Currently, the annual report fee is \$61.25 and the annual supplemental corporate fee is \$88.75.⁹

Annual Report

Each domestic and foreign corporation authorized to do business in the state is required to submit an annual report to DOS stating the name of the corporation, the state or country of incorporation, the date of incorporation, the address of its principal office, the mailing address, federal employer identification number, and any additional information DOS may deem necessary or appropriate.¹⁰ DOS is responsible for prescribing the forms on which the annual report must be made and may use the uniform business report to satisfy the requirements of the statute.¹¹ The annual report is due no later than May 1.¹² The annual report fee and supplemental corporate fee are due at the time of filing, and a late fee of \$400 must be imposed if the supplemental corporate fee is remitted after May 1, unless extenuating circumstances exist.¹³ Failure to file an annual report can result in dissolution or cancellation of the corporation's certificate of authority to do business as well as a freeze on legal protection in any state court until the report is filed and all fees are paid.¹⁴

Effect of the Bill

The bill amends s. 607.1622, F.S., to permit biennial reports as an alternative to annual reports. The bill does not appear to specify who determines the frequency of the reports. As such, it appears that the

¹ s. 607.0101, F.S.

² s. 607.0731, F.S.

³ s. 607.0202, F.S.

⁴ s. 607.0206, F.S.

⁵ s. 607.1109, F.S.

⁶ s. 607.1112, F.S.

⁷ s. 607.0102, F.S.

⁸ s. 607.0121, F.S.

⁹ s. 607.0122, F.S.

¹⁰ s. 607.1622, F.S.

¹¹ s. 607.1622(9), F.S.

¹² s. 607.1622(5), F.S.

¹³ s. 607.193(2)(b), F.S. The late charge may be waived if the business entity was administratively dissolved or its certificate of authority was revoked due to its failure to file an annual report and the entity subsequently applied for reinstatement and paid the applicable reinstatement fee.

¹⁴ s. 607.1622(8), F.S.

corporation may decide whether to file annually or biennially. The bill sets the cost of the fees for biennial reports as exactly double the annual fee costs, and amends other sections relating to reports to conform to the changes made by the bill.

B. SECTION DIRECTORY:

Section 1 amends s. 607.1622, F.S., to permit biennial reports as an alternative to annual reports.

Section 2 amends s. 607.0122, F.S., to provide the fee value for biennial reports and biennial supplemental corporate fees.

Sections 3 through 18 amend ss. 606.06, 607.0121, 607.0128, 607.01401, 607.0141, 607.0502, 607.0705, 607.1420, 607.1421, 607.1509, 607.15101, 607.1530, 607.1531, 607.15315, 607.1601, and 607.193, F.S., conforming provisions to changes made by the bill.

Section 19 provides an effective date of January 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The fiscal impact of this bill is indeterminate. Some corporations may elect to submit the report every other year, and some may elect to submit the report annually. As such, revenues generated from the filings may fluctuate every year. In addition, DOS may have costs associated with adjusting its internal processes, forms, and websites to allow for the receipt of the alternative reporting cycles.

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

1 A bill to be entitled
 2 An act relating to annual corporate reports and fees;
 3 amending s. 607.1622, F.S.; authorizing domestic and
 4 foreign corporations to submit biennial reports to the
 5 Department of State; amending s. 607.0122, F.S.;
 6 establishing a biennial report filing fee and a
 7 biennial supplemental corporate fee; amending ss.
 8 606.06, 607.0121, 607.0128, 607.01401, 607.0141,
 9 607.0502, 607.0705, 607.1420, 607.1421, 607.1509,
 10 607.15101, 607.1530, 607.1531, 607.15315, 607.1601,
 11 and 607.193, F.S.; conforming provisions to changes
 12 made by the act; providing an effective date.

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

15
 16 Section 1. Section 607.1622, Florida Statutes, is amended
 17 to read:

18 607.1622 Annual or biennial report for Department of
 19 State.—

20 (1) Each domestic corporation and each foreign corporation
 21 authorized to transact business in this state shall deliver to
 22 the Department of State for filing a sworn annual or biennial
 23 report on such forms as the Department of State prescribes that
 24 sets forth:

25 (a) The name of the corporation and the state or country

26 under the law of which it is incorporated;

27 (b) The date of incorporation or, if a foreign
 28 corporation, the date on which it was admitted to do business in
 29 this state;

30 (c) The address of its principal office and the mailing
 31 address of the corporation;

32 (d) The corporation's federal employer identification
 33 number, if any, or, if none, whether one has been applied for;

34 (e) The names and business street addresses of its
 35 directors and principal officers;

36 (f) The street address of its registered office and the
 37 name of its registered agent at that office in this state;

38 (g) Language permitting a voluntary contribution of \$5 per
 39 taxpayer, which contribution shall be transferred into the
 40 Election Campaign Financing Trust Fund. A statement providing an
 41 explanation of the purpose of the trust fund shall also be
 42 included; and

43 (h) Such additional information as may be necessary or
 44 appropriate to enable the Department of State to carry out ~~the~~
 45 ~~provisions of~~ this act.

46 (2) Proof to the satisfaction of the Department of State
 47 that, on or before May 1 of the year the report was due, such
 48 report was deposited in the United States mail in a sealed
 49 envelope, properly addressed with postage prepaid, shall be
 50 deemed compliance with this requirement.

51 (3) If an annual or biennial report does not contain the
 52 information required by this section, the Department of State
 53 shall promptly notify the reporting domestic or foreign
 54 corporation in writing and return the report to it for
 55 correction. If the report is corrected to contain the
 56 information required by this section and delivered to the
 57 Department of State within 30 days after the effective date of
 58 notice, it is deemed to be timely filed.

59 (4) Each report shall be executed by the corporation by an
 60 officer or director or, if the corporation is in the hands of a
 61 receiver or trustee, shall be executed on behalf of the
 62 corporation by such receiver or trustee, and the signing thereof
 63 shall have the same legal effect as if made under oath, without
 64 the necessity of appending such oath thereto.

65 (5) The first ~~annual~~ report must be delivered to the
 66 Department of State between January 1 and May 1 of the year
 67 following the calendar year in which a domestic corporation was
 68 incorporated or a foreign corporation was authorized to transact
 69 business. Subsequent annual or biennial reports must be
 70 delivered to the Department of State between January 1 and May 1
 71 of the subsequent calendar years in which the reports are due.

72 (6) Information in the annual or biennial report must be
 73 current as of the date the ~~annual~~ report is executed on behalf
 74 of the corporation.

75 (7) If an additional updated report is received, the

76 department shall file the document and make the information
 77 contained therein part of the official record.

78 (8) Any corporation failing to file an annual or biennial
 79 report that ~~which~~ complies with ~~the requirements of~~ this section
 80 shall not be permitted to maintain or defend any action in any
 81 court of this state until such report is filed and all fees and
 82 taxes due under this act are paid and shall be subject to
 83 dissolution or cancellation of its certificate of authority to
 84 do business as provided in this act.

85 (9) The department shall prescribe the forms on which to
 86 make the annual or biennial report called for in this section
 87 and may substitute the uniform business report, pursuant to s.
 88 606.06, as a means of satisfying the requirement of this part.

89 Section 2. Present subsections (4) and (18) through (24)
 90 of section 607.0122, Florida Statutes, are amended, and new
 91 subsections (18) and (25) are added to that section, to read:

92 607.0122 Fees for filing documents and issuing
 93 certificates.—The Department of State shall collect the
 94 following fees when the documents described in this section are
 95 delivered to the department for filing:

96 (4) Corporation's statement of change of registered agent
 97 or registered office or both if not included on the annual or
 98 biennial report: \$35.

99 (18) Biennial report: \$122.50.

100 (19)~~(18)~~ Articles of correction: \$35.

101 ~~(20)~~~~(19)~~ Application for certificate of status: \$8.75.

102 ~~(21)~~~~(20)~~ Certificate of domestication of a foreign
103 corporation: \$50.

104 ~~(22)~~~~(21)~~ Certified copy of document: \$52.50.

105 ~~(23)~~~~(22)~~ Serving as agent for substitute service of
106 process: \$87.50.

107 ~~(24)~~~~(23)~~ Annual supplemental corporate fee: \$88.75.

108 ~~(25)~~ Biennial supplemental corporate fee: \$177.50.

109 ~~(26)~~~~(24)~~ Any other document required or permitted to be
110 filed by this act: \$35.

111 Section 3. Subsection (2) of section 606.06, Florida
112 Statutes, is amended to read:

113 606.06 Uniform business report.—The department may use the
114 uniform business report:

115 (2) As a substitute for any annual or biennial report or
116 renewal filing required by chapters 495, 605, 607, 609, 617,
117 620, 621, and 865.

118 Section 4. Paragraph (d) of subsection (1) of section
119 607.0121, Florida Statutes, is amended to read:

120 607.0121 Forms.—

121 (1) The Department of State may prescribe and furnish on
122 request forms for:

123 (d) The annual or biennial report, for which the
124 department may prescribe the use of the uniform business report,
125 pursuant to s. 606.06.

126
 127 If the Department of State so requires, the use of these forms
 128 shall be mandatory.

129 Section 5. Paragraph (d) of subsection (2) of section
 130 607.0128, Florida Statutes, is amended to read:

131 607.0128 Certificate of status.—

132 (2) A certificate of status or authorization sets forth:

133 (d) That its most recent annual or biennial report
 134 required by s. 607.1622 has been delivered to the department;
 135 and

136 Section 6. Subsection (20) of section 607.01401, Florida
 137 Statutes, is amended to read:

138 607.01401 Definitions.—As used in this act, unless the
 139 context otherwise requires, the term:

140 (20) "Principal office" means the office (in or out of
 141 this state) where the principal executive offices of a domestic
 142 or foreign corporation are located as designated in the articles
 143 of incorporation or other initial filing until an annual or
 144 biennial report has been filed, and thereafter as designated in
 145 the annual or biennial report.

146 Section 7. Paragraph (b) of subsection (4) of section
 147 607.0141, Florida Statutes, is amended to read:

148 607.0141 Notice.—

149 (4) Written notice to a domestic or foreign corporation
 150 authorized to transact business in this state may be addressed:

151 (b) To the corporation or its secretary at its principal
 152 office or electronic mail address as authorized and shown in its
 153 most recent annual or biennial report or, in the case of a
 154 corporation that has not yet delivered an annual or biennial
 155 report, in a domestic corporation's articles of incorporation or
 156 in a foreign corporation's application for certificate of
 157 authority.

158 Section 8. Subsections (2) and (4) of section 607.0502,
 159 Florida Statutes, are amended to read:

160 607.0502 Change of registered office or registered agent;
 161 resignation of registered agent.—

162 (2) Any registered agent may resign his or her agency
 163 appointment by signing and delivering for filing with the
 164 Department of State a statement of resignation and mailing a
 165 copy of such statement to the corporation at its principal
 166 office address shown in its most recent annual or biennial
 167 report or, if none, filed in the articles of incorporation or
 168 other most recently filed document. The statement of resignation
 169 shall state that a copy of such statement has been mailed to the
 170 corporation at the address so stated. The agency is terminated
 171 as of the 31st day after the date on which the statement was
 172 filed and unless otherwise provided in the statement,
 173 termination of the agency acts as a termination of the
 174 registered office.

175 (4) Changes of the registered office or registered agent

176 may be made by a change on the corporation's annual or biennial
 177 report form filed with the Department of State.

178 Section 9. Subsection (5) of section 607.0705, Florida
 179 Statutes, is amended to read:

180 607.0705 Notice of meeting.—

181 (5) Notwithstanding the foregoing, no notice of a
 182 shareholders' meeting need be given to a shareholder if:

183 (a) An annual or biennial report and proxy statements for
 184 two consecutive annual meetings of shareholders or

185 (b) All, and at least two checks in payment of dividends
 186 or interest on securities during a 12-month period,

187
 188 have been sent by first-class United States mail, addressed to
 189 the shareholder at her or his address as it appears on the share
 190 transfer books of the corporation, and returned undeliverable.

191 The obligation of the corporation to give notice of a
 192 shareholders' meeting to any such shareholder shall be
 193 reinstated once the corporation has received a new address for
 194 such shareholder for entry on its share transfer books.

195 Section 10. Paragraph (a) of subsection (1) of section
 196 607.1420, Florida Statutes, is amended to read:

197 607.1420 Grounds for administrative dissolution.—

198 (1) The Department of State may commence a proceeding
 199 under s. 607.1421 to administratively dissolve a corporation if:

200 (a) The corporation has failed to file its annual or

201 biennial report and pay the annual or biennial report filing fee
 202 by 5 p.m. Eastern Time on the third Friday in September of the
 203 year the report is due;

204 Section 11. Subsection (1) of section 607.1421, Florida
 205 Statutes, is amended to read:

206 607.1421 Procedure for and effect of administrative
 207 dissolution.—

208 (1) If the Department of State determines that one or more
 209 grounds exist under s. 607.1420 for dissolving a corporation, it
 210 shall serve the corporation with notice of its intention to
 211 administratively dissolve the corporation. If the corporation
 212 has provided the department with an electronic mail address,
 213 such notice shall be by electronic transmission. Administrative
 214 dissolution for failure to file an annual or biennial report
 215 shall occur on the fourth Friday in September of the ~~each~~ year
 216 the report is due. The Department of State shall issue a
 217 certificate of dissolution to each dissolved corporation.
 218 Issuance of the certificate of dissolution may be by electronic
 219 transmission to any corporation that has provided the department
 220 with an electronic mail address.

221 Section 12. Subsection (1) of section 607.1509, Florida
 222 Statutes, is amended to read:

223 607.1509 Resignation of registered agent of foreign
 224 corporation.—

225 (1) The registered agent of a foreign corporation may

226 resign his or her agency appointment by signing and delivering
 227 to the Department of State for filing a statement of resignation
 228 and mailing a copy of such statement to the corporation at the
 229 corporation's principal office address shown in its most recent
 230 annual or biennial report or, if none, shown in its application
 231 for a certificate of authority or other most recently filed
 232 document. The statement of resignation must state that a copy of
 233 such statement has been mailed to the corporation at the address
 234 so stated. The statement of resignation may include a statement
 235 that the registered office is also discontinued.

236 Section 13. Subsection (2) of section 607.15101, Florida
 237 Statutes, is amended to read:

238 607.15101 Service of process, notice, or demand on a
 239 foreign corporation.—

240 (2) A foreign corporation may be served by registered or
 241 certified mail, return receipt requested, addressed to the
 242 secretary of the foreign corporation at its principal office
 243 shown in its application for a certificate of authority or in
 244 its most recent annual or biennial report if the foreign
 245 corporation:

246 (a) Has no registered agent or its registered agent cannot
 247 with reasonable diligence be served;

248 (b) Has withdrawn from transacting business in this state
 249 under s. 607.1520; or

250 (c) Has had its certificate of authority revoked under s.

251 607.1531.

252 Section 14. Subsection (1) of section 607.1530, Florida
 253 Statutes, is amended to read:

254 607.1530 Grounds for revocation of authority to transact
 255 business.—The Department of State may commence a proceeding
 256 under s. 607.1531 to revoke the certificate of authority of a
 257 foreign corporation authorized to transact business in this
 258 state if:

259 (1) The foreign corporation has failed to file its annual
 260 or biennial report with the Department of State by 5 p.m.
 261 Eastern Time on the third Friday in September of the year the
 262 report is due.

263 Section 15. Subsection (1) of section 607.1531, Florida
 264 Statutes, is amended to read:

265 607.1531 Procedure for and effect of revocation.—

266 (1) If the Department of State determines that one or more
 267 grounds exist under s. 607.1530 for revocation of a certificate
 268 of authority, the Department of State shall serve the foreign
 269 corporation with notice of its intent to revoke the foreign
 270 corporation's certificate of authority. If the foreign
 271 corporation has provided the department with an electronic mail
 272 address, such notice shall be by electronic transmission.
 273 Revocation for failure to file an annual or biennial report
 274 shall occur on the fourth Friday in September of the ~~each~~ year
 275 the report is due. The department shall issue a certificate of

276 revocation to each revoked corporation. Issuance of the
 277 certificate of revocation may be by electronic transmission to
 278 any corporation that has provided the department with an
 279 electronic mail address.

280 Section 16. Paragraph (b) of subsection (1) of section
 281 607.15315, Florida Statutes, is amended to read:

282 607.15315 Revocation; application for reinstatement.—

283 (1)

284 (b) As an alternative, the foreign corporation may submit
 285 a current annual or biennial report, signed by the registered
 286 agent and an officer or director, which substantially complies
 287 with the requirements of paragraph (a).

288 Section 17. Paragraph (g) of subsection (5) of section
 289 607.1601, Florida Statutes, is amended to read:

290 607.1601 Corporate records.—

291 (5) A corporation shall keep a copy of the following
 292 records:

293 (g) Its most recent annual or biennial report delivered to
 294 the Department of State under s. 607.1622.

295 Section 18. Section 607.193, Florida Statutes, is amended
 296 to read:

297 607.193 Supplemental corporate fee.—

298 (1) In addition to any other taxes imposed by law, an
 299 annual supplemental corporate fee of \$88.75 or a biennial
 300 supplemental corporate fee of \$177.50, as applicable, is imposed

301 on each business entity that is authorized to transact business
 302 in this state and is required to file an annual or biennial
 303 report with the Department of State under s. 605.0212, s.
 304 607.1622, or s. 620.1210.

305 (2)(a) The business entity shall remit the supplemental
 306 corporate fee to the Department of State at the time it files
 307 the annual or biennial report required by s. 605.0212, s.
 308 607.1622, or s. 620.1210.

309 (b) In addition to the fees levied under ss. 605.0213,
 310 607.0122, and 620.1109 and the supplemental corporate fee, a
 311 late charge of \$400 shall be imposed if the supplemental
 312 corporate fee is remitted after May 1 of the year the fee is due
 313 except in circumstances in which a business entity was
 314 administratively dissolved or its certificate of authority was
 315 revoked due to its failure to file an annual or biennial report
 316 and the entity subsequently applied for reinstatement and paid
 317 the applicable reinstatement fee.

318 Section 19. This act shall take effect January 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1283 Inspectors General & Auditors
SPONSOR(S): Raulerson
TIED BILLS: HB 1285 **IDEN./SIM. BILLS:** SB 1478

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Moore <i>AM</i>	Harrington <i>DA</i>
2) Public Integrity & Ethics Committee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Office of Inspector General (OIG) is established in each state agency to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Inspectors general under the jurisdiction of the Cabinet or the Governor and Cabinet are appointed by the agency head and may only be removed by the agency head. Inspectors general under the jurisdiction of the Governor are appointed by the Chief Inspector General (CIG) and may only be removed by the CIG. The CIG within the Executive Office of the Governor provides oversight and monitors the activities of the agency inspectors general under the Governor's jurisdiction.

The bill amends provisions related to inspectors general, the CIG, and certain auditors. Specifically, the bill:

- Requires the CIG to meet the same educational and experience qualifications required of agency inspectors general;
- Requires the CIG to have open and direct access to the Governor at all times;
- Adds experience in fraud examination to the list of qualifications that must be considered in the selection of an inspector general for an agency under the jurisdiction of the Governor;
- Authorizes an inspector general and his or her staff to take and record testimony or statements of any person as reasonably necessary for the furtherance of an investigation or review;
- Requires agency inspectors general to include certain budget information in their annual reports;
- Requires the CIG to prepare an annual report that includes the budget information provided in the inspector general annual reports;
- Changes the term "electronic data processing" to "information technology" in various provisions to conform to current agency and industry terminology;
- Specifies that any staff member employed within an OIG is included in the Select Exempt Service and that an agency inspector general is included in the Senior Management Service;
- Specifies that any auditor employed within the Division of Accounting and Auditing within the Department of Financial Services is included in the Select Exempt Service; and
- Requires the State Board of Administration to establish an OIG and appoint an inspector general.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Inspectors General

Authorized under s. 20.055, F.S., an Office of Inspector General (OIG) is established in each state agency¹ to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Section 14.32, F.S., creates the Office of the Chief Inspector General (CIG) within the Executive Office of the Governor. The CIG monitors the activities of the agency inspectors general under the Governor's jurisdiction and is required to do the following:

- Initiate, supervise, and coordinate investigations, recommend policies, and carry out other activities designed to deter, detect, prevent, and eradicate fraud, waste, abuse, mismanagement, and misconduct in government;
- Investigate, upon receipt of a complaint or for cause, any administrative action of any agency the administration of which is under the direct supervision of the Governor;
- Request such assistance and information as may be necessary for the performance of the CIG's duties;
- Examine the records and reports of any agency the administration of which is under the direct supervision of the Governor;
- Coordinate complaint-handling activities with agencies;
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline to receive complaints and information concerning the possible violation of law or administrative rules, mismanagement, fraud, waste, abuse of authority, malfeasance, or a substantial or specific danger to the health, welfare, or safety of the public;
- Report expeditiously to and cooperate fully with the Department of Law Enforcement, the Department of Legal Affairs, and other law enforcement agencies when there are recognizable grounds to believe that there has been a violation of criminal law or that a civil action should be initiated;
- Act as liaison with outside agencies and the federal government to promote accountability, integrity, and efficiency in state government;
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction;
- Review, evaluate, and monitor the policies, practices, and operations of the Executive Office of the Governor; and
- Conduct special investigations and management reviews at the request of the Governor.²

Each agency OIG is responsible for the following:

- Advising in the development of performance measures, standards, and procedures for the evaluation of state agency programs;
- Assessing the reliability and validity of information provided by the agency on performance measures and standards;
- Reviewing the actions taken by the agency to improve agency performance, and making recommendations, if necessary;

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

² Section 14.32(2), F.S.

- Supervising and coordinating audits, investigations, and reviews relating to the programs and operations of the state agency;
- Conducting, supervising, or coordinating other activities carried out or financed by the agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;
- Providing central coordination of efforts to identify and remedy waste, abuse, and deficiencies to the agency head,³ or the CIG for agencies under the jurisdiction of the Governor; recommending corrective action concerning fraud, abuses, and deficiencies; and reporting on the progress made in implementing corrective action;
- Coordinating agency-specific audit activities between the Auditor General, federal auditors, and other governmental bodies to avoid duplication;
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact;
- Ensuring that an appropriate balance is maintained between audit, investigative, and other accountability activities; and
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.⁴

For state agencies under the jurisdiction of the Governor, the inspector general must be appointed by the CIG. For state agencies under the jurisdiction of the Cabinet or the Governor and Cabinet, each agency head must appoint an inspector general.⁵

Qualifications

Inspectors general must possess minimum educational and experience qualifications, and the investigations they conduct must adhere to specific internal auditing standards.⁶ To ensure agency audits are performed in accordance with applicable auditing standards, the inspector general or the director of auditing within the OIG must possess the following qualifications:

- A bachelor's degree from an accredited college or university with a major in accounting, or with a major in business that includes five courses in accounting, and five years of experience as an internal auditor or independent postauditor, electronic data processing auditor, accountant, or any combination thereof. The experience must at a minimum consist of audits of units of government or private business enterprises, operating for profit or not for profit;
- A master's degree in accounting, business administration, or public administration from an accredited college or university and four years of experience; or
- A certified public accountant license or certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination, and four years of experience.⁷

For agencies under the jurisdiction of the Governor, the inspector general must be selected on the basis of integrity, leadership capability, and experience in accounting, auditing, financial analysis, law, management analysis, program evaluation, public administration, investigation, criminal justice administration, or other closely related field. The inspector general must also have a four-year degree from an accredited institution of higher learning or have at least five years of experience in at least one of the following areas:

- Inspector general.
- Supervisory experience in an OIG or an investigative public agency similar to an OIG.

³ Section 20.055(1)(a), F.S., defines "agency head" as the Governor, a Cabinet officer, a secretary as defined in s. 20.03(5), F.S., or an executive director as defined in s. 20.03(6), F.S. It also includes the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, the executive director of the Office of Early Learning, and the Chief Justice of the State Supreme Court.

⁴ Section 20.055(2), F.S.

⁵ Section 20.055(3)(a)1., F.S.

⁶ See s. 20.055(4), F.S.

⁷ Section 20.055(4)(a), F.S.

- Local, state, or federal law enforcement officer.
- Local, state, or federal court judge.
- Senior-level auditor or comptroller.
- The administration and management of complex audits and investigations.
- Managing programs for prevention, examination, detection, or elimination of fraud, waste, abuse, mismanagement, malfeasance, or misconduct in government or other organizations.⁸

Investigations

In carrying out his or her investigative duties and responsibilities, each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. For these purposes, each inspector general must do the following:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act;
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate;
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law;
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This must include freedom from any interference with investigations and timely access to records and other sources of information;
- At the conclusion of an investigation the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report; and
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.⁹

Annual Reports

By September 30 of each year, each inspector general is required to prepare an annual report summarizing the activities of the OIG during the immediately preceding fiscal year. However, the inspector general of the Florida Housing Finance Corporation is required to prepare the report within 90 days after the end of the fiscal year. The report must be provided to the agency head or, for state agencies under the jurisdiction of the Governor, to the CIG. The reports must include:

- A description of activities relating to the development, assessment, and validation of performance measures;
- A description of significant abuses and deficiencies relating to the administration of programs and operations of the agency disclosed by investigations, audits, reviews, or other activities during the reporting period;
- A description of the recommendations for corrective action made by the inspector general during the reporting period with respect to significant problems, abuses, or deficiencies identified;
- The identification of each significant recommendation described in previous annual reports on which corrective action has not been completed; and
- A summary of each audit and investigation completed during the reporting period.¹⁰

⁸ Section 20.055(4)(b), F.S.

⁹ Section 20.055(7), F.S.

¹⁰ Section 20.055(8), F.S.

Employment Classification

Chapter 110, F.S., establishes the state's personnel management system. The system must provide means to recruit, select, train, develop, and maintain an effective and responsible workforce and must include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, employee performance evaluations, affirmative action, and other related activities.¹¹

The Department of Management Services is charged with establishing and maintaining a classification and compensation program addressing Career Service, Select Exempt Service, and Senior Management Service positions.¹² The classification of a position determines the types of benefits assigned to the position and the compensation and collective bargaining status of the position. A position must be classified as Career Service unless it is specifically exempted by statute.¹³

A Career Service employee who has satisfactorily completed at least a one-year probationary period may only be suspended or dismissed for cause. Cause includes poor performance, negligence, inefficiency or inability to perform assigned duties, insubordination, violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime.¹⁴ Career Service employees that have completed the probationary period are also entitled to a grievance process¹⁵ and have the right to appeal a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal.¹⁶

Select Exempt Service is a separate system of personnel administration for positions that are exempt from the Career Service System.¹⁷ Employees in the Select Exempt Service serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.¹⁸ The Select Exempt Service provides greater pay and benefits overall than are provided for Career Service employees, but less pay and benefits overall than are provided for the Senior Management Service.¹⁹

The Senior Management Service is another separate system of personnel administration for positions in the executive branch whose duties and responsibilities are primarily and essentially policymaking or managerial in nature.²⁰ Employees in the Senior Management Service serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.²¹ The Senior Management Service provides a salary and benefit plan that provides appropriate incentives for the recruitment and retention of outstanding management personnel and provides for salary increases based on performance.²²

State Board of Administration

The State Board of Administration (SBA) is established by Article IV, s. 4(e) of the State Constitution, and is composed of the Governor as Chair, the Chief Financial Officer as Treasurer, and the Attorney General as Secretary. The statutory mandate of the SBA is to invest, manage, and safeguard assets of the Florida Retirement System Trust Fund as well as the assets of a variety of other funds, including

¹¹ Section 110.105(1), F.S.

¹² Section 110.2035(1), F.S.

¹³ Section 110.205(1), F.S.

¹⁴ Section 110.227(1), F.S.

¹⁵ Section 110.227(4), F.S.

¹⁶ Section 110.227(5) and (6), F.S.

¹⁷ Section 110.602, F.S.

¹⁸ Section 110.604, F.S.

¹⁹ See s. 110.603, F.S.

²⁰ Section 110.402(1), F.S.

²¹ Section 110.403(1)(a), F.S.

²² See s. 110.403(1)(b), F.S.

the Florida Hurricane Catastrophe Fund, the Lawton Chiles Endowment Fund, and Florida PRIME.²³ Section 215.44, F.S., outlines the SBA's specific powers and duties relating to the investment of these funds.

Effect of Proposed Changes

Chief Inspector General

The bill requires the CIG to meet the same educational and experience qualifications required of agency inspectors general. The bill also requires the CIG to have open and direct access to the Governor at all times.

Agency Inspector General Qualifications

The bill adds experience in fraud examination to the list of qualifications that must be considered in the selection of an inspector general for an agency under the jurisdiction of the Governor. The bill also adds managing programs for information security as a type of experience that an inspector general may have in order to meet the minimum experience requirements.

Investigations

The bill authorizes an inspector general and his or her staff to take and record testimony or statements of any person as reasonably necessary for the furtherance of an investigation or review undertaken by the inspector general.

Annual Reports

The bill requires the annual report that each agency inspector general is required to prepare to include any increase or decrease in allocations and expenditures estimating 10 percent or more of the inspector general's total budget during the preceding fiscal year and any significant increase or decrease in the number of permanent, temporary, loaned, grant-funded, or full-time equivalent staff within the OIG.

The bill also requires the CIG to prepare an annual report that summarizes the activities performed in compliance with inspector general duties and responsibilities and includes an aggregate of significant budgetary or administrative changes contained in the annual reports prepared by agency inspectors general for state agencies under the jurisdiction of the Governor.

Information Technology

The bill changes the term "electronic data processing" to "information technology" in various provisions to conform to current agency and industry terminology.

Employment Classification

The bill specifies that any staff member employed within an OIG is included in the Select Exempt Service. In addition, agency inspectors general are included in the Senior Management Service. The bill also specifies that any auditor employed within the Division of Accounting and Auditing within the Department of Financial Services is included in the Select Exempt Service.

State Board of Administration

The bill adds the SBA to the definition of "state agency" in s. 20.055, F.S., and adds the executive director of the SBA to the definition of "agency head," thereby requiring the SBA to establish an OIG and comply with the requirements of s. 20.055, F.S. The bill also adds to the list of the SBA's duties and powers in s. 215.44, F.S., a requirement for the SBA to appoint an inspector general.

²³ 2015-2016 Investment Report, State Board of Administration, at 3-6, available at <https://www.sbafla.com/fsb/Portals/FSB/Content/Performance/Annual/2015-16%20AIR.pdf?ver=2017-01-03-121048-220>.

B. SECTION DIRECTORY:

Section 1. amends s. 14.32, F.S., relating to the office of CIG.

Section 2. amends s. 20.055, F.S., relating to agency inspectors general.

Section 3. amends s. 20.121, F.S., relating to the Department of Financial Services.

Section 4. amends s. 215.44, F.S., relating to the SBA.

Section 5. 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 an impact on state government revenues.

2. Expenditures:

The bill may have an indeterminate fiscal impact on state agencies if staff members employed with the OIGs are not currently included in the Select Exempt Service or if agency inspectors general are not currently included in the Senior Management Service.

According to the Auditor General, because the SBA is being added to the definition of "state agency" in s. 20.055, F.S., the Auditor General will be required to conduct a quality assessment review of the SBA's internal audit activity once every three years. The Auditor General estimates that additional staffing costs related to 120 hours of audit effort will be incurred every three years to conduct the assessment.²⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

²⁴ Auditor General Bill Analysis for HB 1283, March 15, 2017 (on file with Oversight, Transparency & Administration Subcommittee staff).

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:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue

On lines 93 and 325-326 of the bill, the term "Selected Exempt Service" should read "Select Exempt Service."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to inspectors general and auditors;
 3 amending s. 14.32, F.S.; requiring the Chief Inspector
 4 General to meet specified qualifications applicable to
 5 agency inspectors general, to have open and direct
 6 access to the Governor, and to prepare an annual
 7 report containing specified information; amending s.
 8 20.055, F.S.; revising definitions; revising
 9 provisions relating to duties and responsibilities of
 10 agency inspectors general; providing that any staff
 11 employed within an office of the inspector general are
 12 Selected Exempt Service employees; providing that
 13 agency inspectors general are Senior Management
 14 Service employees; revising the qualifications of
 15 agency inspectors general; authorizing an agency
 16 inspector general and staff to take and record
 17 testimony or statements necessary to conduct an
 18 investigation or review; requiring each agency
 19 inspector general to include specified budgetary and
 20 staffing information in an annual report; amending s.
 21 20.121, F.S.; providing that an auditor employed
 22 within the Division of Accounting and Auditing of the
 23 Department of Financial Services is a Selected Exempt
 24 Service employee; amending s. 215.44, F.S.; requiring
 25 the State Board of Administration to appoint an

26 inspector general; providing an effective date.

27

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

29

30 Section 1. Subsection (1) of section 14.32, Florida
 31 Statutes, is amended, and paragraph (1) is added to subsection
 32 (2) of that section, to read:

33 14.32 Office of Chief Inspector General.—

34 (1) There is created in the Executive Office of the
 35 Governor the Office of Chief Inspector General. The Chief
 36 Inspector General is responsible for promoting accountability,
 37 integrity, and efficiency in the agencies under the jurisdiction
 38 of the Governor. The Chief Inspector General shall be appointed
 39 by and serve at the pleasure of the Governor and must meet the
 40 qualifications specified in s. 20.055(4). However, upon a change
 41 in Governors or reelection of the Governor, the Governor shall
 42 appoint, or may reappoint, a Chief Inspector General before
 43 adjournment sine die of the first regular session of the
 44 Legislature that convenes after such change in Governors or
 45 reelection of the Governor. The Chief Inspector General shall,
 46 at all times, have open and direct access to the Governor.

47 (2) The Chief Inspector General shall:

48 (1) Prepare an annual report that summarizes the
 49 activities performed in compliance with this section and
 50 includes an aggregate of significant budgetary or administrative

51 changes contained in annual reports prepared by inspectors
 52 general for state agencies under the jurisdiction of the
 53 Governor pursuant to s. 20.055(8).

54 Section 2. Paragraphs (a) and (d) of subsection (1),
 55 paragraph (b) of subsection (3), paragraphs (a) and (b) of
 56 subsection (4), subsections (6) and (7), paragraph (c) of
 57 subsection (8), and subsection (10) of section 20.055, Florida
 58 Statutes, are amended to read:

59 20.055 Agency inspectors general.—

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

61 (a) "Agency head" means the Governor, a Cabinet officer,
 62 or a secretary or executive director as those terms are defined
 63 in s. 20.03, the chair of the Public Service Commission, the
 64 Director of the Office of Insurance Regulation of the Financial
 65 Services Commission, the Director of the Office of Financial
 66 Regulation of the Financial Services Commission, the board of
 67 directors of the Florida Housing Finance Corporation, the
 68 executive director of the Office of Early Learning, the
 69 executive director of the State Board of Administration, and the
 70 Chief Justice of the State Supreme Court.

71 (d) "State agency" means each department created pursuant
 72 to this chapter and the Executive Office of the Governor, the
 73 Department of Military Affairs, the Fish and Wildlife
 74 Conservation Commission, the Office of Insurance Regulation of
 75 the Financial Services Commission, the Office of Financial

76 Regulation of the Financial Services Commission, the Public
 77 Service Commission, the Board of Governors of the State
 78 University System, the Florida Housing Finance Corporation, the
 79 Agency for State Technology, the Office of Early Learning, the
 80 State Board of Administration, and the state courts system.

81 (3)

82 (b) The inspector general shall report to and be under the
 83 general supervision of the agency head and is not subject to
 84 supervision by any other employee of the state agency in which
 85 the office is established. For state agencies under the
 86 jurisdiction of the Governor, the inspector general shall be
 87 under the general supervision of the agency head for
 88 administrative purposes, shall report to the Chief Inspector
 89 General, and may hire and remove staff within the office of the
 90 inspector general in consultation with the Chief Inspector
 91 General but independently of the agency. Any staff member
 92 employed within the office of an inspector general is included
 93 in the Selected Exempt Service as provided in chapter 110.
 94 Agency inspectors general are included in the Senior Management
 95 Service as provided in chapter 110.

96 (4) (a) To ensure that state agency audits are performed in
 97 accordance with applicable auditing standards, the inspector
 98 general or the director of auditing within the inspector
 99 general's office shall possess the following qualifications:

100 1. A bachelor's degree from an accredited college or

101 university with a major in accounting, or with a major in
 102 business which includes five courses in accounting, and 5 years
 103 of experience as an internal auditor or independent postauditor,
 104 information technology ~~electronic data processing~~ auditor,
 105 accountant, or any combination thereof. The experience shall at
 106 a minimum consist of audits of units of government or private
 107 business enterprises, operating for profit or not for profit; or

108 2. A master's degree in accounting, business
 109 administration, or public administration from an accredited
 110 college or university and 4 years of experience as required in
 111 subparagraph 1.; or

112 3. A certified public accountant license issued pursuant
 113 to chapter 473 or a certified internal audit certificate issued
 114 by the Institute of Internal Auditors or earned by examination,
 115 and 4 years of experience as required in subparagraph 1.

116 (b) For agencies under the jurisdiction of the Governor,
 117 the inspector general shall be selected on the basis of
 118 integrity, leadership capability, and experience in accounting,
 119 auditing, fraud examination, financial analysis, law, management
 120 analysis, program evaluation, public administration,
 121 investigation, criminal justice administration, or other closely
 122 related field. The inspector general is subject to a level 2
 123 background screening pursuant to chapter 435. The inspector
 124 general shall have a 4-year degree from an accredited
 125 institution of higher learning or have at least 5 years of

126 experience in at least one of the following areas:

- 127 1. Inspector general.
- 128 2. Supervisory experience in an office of inspector
- 129 general or an investigative public agency similar to an office
- 130 of inspector general.
- 131 3. Local, state, or federal law enforcement officer.
- 132 4. Local, state, or federal court judge.
- 133 5. Senior-level auditor or comptroller.
- 134 6. The administration and management of complex audits and
- 135 investigations.
- 136 7. Managing programs for information security, prevention,
- 137 examination, detection, elimination of fraud, waste, abuse,
- 138 mismanagement, malfeasance, or misconduct in government or other
- 139 organizations.

140
 141 An advanced degree in law, accounting, public administration, or
 142 other relevant field may substitute for 1 year of required
 143 experience.

144 (6) In carrying out the auditing duties and
 145 responsibilities of this section ~~act~~, each inspector general
 146 shall review and evaluate internal controls necessary to ensure
 147 the fiscal accountability of the state agency. The inspector
 148 general shall conduct financial, compliance, information
 149 technology ~~electronic data processing~~, and performance audits of
 150 the agency and prepare audit reports of his or her findings. The

151 scope and assignment of the audits shall be determined by the
 152 inspector general; however, the agency head may at any time
 153 request the inspector general to perform an audit of a special
 154 program, function, or organizational unit. The performance of
 155 the audit shall be under the direction of the inspector general,
 156 except that if the inspector general does not possess the
 157 qualifications specified in subsection (4), the director of
 158 auditing shall perform the functions listed in this subsection.

159 (a) Such audits shall be conducted in accordance with the
 160 current International Standards for the Professional Practice of
 161 Internal Auditing as published by the Institute of Internal
 162 Auditors, Inc., or, where appropriate, in accordance with
 163 generally accepted governmental auditing standards. All audit
 164 reports issued by internal audit staff shall include a statement
 165 that the audit was conducted pursuant to the appropriate
 166 standards.

167 (b) Audit workpapers and reports shall be public records
 168 to the extent that they do not include information which has
 169 been made confidential and exempt from the provisions of s.
 170 119.07(1) pursuant to law. However, when the inspector general
 171 or a member of the staff receives from an individual a complaint
 172 or information that falls within the definition provided in s.
 173 112.3187(5), the name or identity of the individual may not be
 174 disclosed to anyone else without the written consent of the
 175 individual, unless the inspector general determines that such

176 disclosure is unavoidable during the course of the audit or
 177 investigation.

178 (c) The inspector general and the staff shall have access
 179 to any records, data, and other information of the state agency
 180 he or she deems necessary to carry out his or her duties. The
 181 inspector general may also request such information or
 182 assistance as may be necessary from the state agency or from any
 183 federal, state, or local government entity.

184 (d) At the conclusion of each audit, the inspector general
 185 shall submit preliminary findings and recommendations to the
 186 person responsible for supervision of the program function or
 187 operational unit who shall respond to any adverse findings
 188 within 20 working days after receipt of the preliminary
 189 findings. Such response and the inspector general's rebuttal to
 190 the response shall be included in the final audit report.

191 (e) At the conclusion of an audit in which the subject of
 192 the audit is a specific entity contracting with the state or an
 193 individual substantially affected, if the audit is not
 194 confidential or otherwise exempt from disclosure by law, the
 195 inspector general shall, consistent with s. 119.07(1), submit
 196 the findings to the entity contracting with the state or the
 197 individual substantially affected, who shall be advised in
 198 writing that they may submit a written response within 20
 199 working days after receipt of the findings. The response and the
 200 inspector general's rebuttal to the response, if any, must be

201 included in the final audit report.

202 (f) The inspector general shall submit the final report to
 203 the agency head, the Auditor General, and, for state agencies
 204 under the jurisdiction of the Governor, the Chief Inspector
 205 General.

206 (g) The Auditor General, in connection with the
 207 independent postaudit of the same agency pursuant to s. 11.45,
 208 shall give appropriate consideration to internal audit reports
 209 and the resolution of findings therein. The Legislative Auditing
 210 Committee may inquire into the reasons or justifications for
 211 failure of the agency head to correct the deficiencies reported
 212 in internal audits that are also reported by the Auditor General
 213 and shall take appropriate action.

214 (h) The inspector general shall monitor the implementation
 215 of the state agency's response to any report on the state agency
 216 issued by the Auditor General or by the Office of Program Policy
 217 Analysis and Government Accountability. No later than 6 months
 218 after the Auditor General or the Office of Program Policy
 219 Analysis and Government Accountability publishes a report on the
 220 state agency, the inspector general shall provide a written
 221 response to the agency head or, for state agencies under the
 222 jurisdiction of the Governor, the Chief Inspector General on the
 223 status of corrective actions taken. The inspector general shall
 224 file a copy of such response with the Legislative Auditing
 225 Committee.

226 (i) The inspector general shall develop long-term and
 227 annual audit plans based on the findings of periodic risk
 228 assessments. The plan, where appropriate, should include
 229 postaudit samplings of payments and accounts. The plan shall
 230 show the individual audits to be conducted during each year and
 231 related resources to be devoted to the respective audits. The
 232 Chief Financial Officer, to assist in fulfilling the
 233 responsibilities for examining, auditing, and settling accounts,
 234 claims, and demands pursuant to s. 17.03(1), and examining,
 235 auditing, adjusting, and settling accounts pursuant to s. 17.04,
 236 may use audits performed by the inspectors general and internal
 237 auditors. For state agencies under the jurisdiction of the
 238 Governor, the audit plans shall be submitted to the Chief
 239 Inspector General. The plan shall be submitted to the agency
 240 head for approval. A copy of the approved plan shall be
 241 submitted to the Auditor General.

242 (7) (a) In carrying out the investigative duties and
 243 responsibilities specified in this section, each inspector
 244 general shall initiate, conduct, supervise, and coordinate
 245 investigations designed to detect, deter, prevent, and eradicate
 246 fraud, waste, mismanagement, misconduct, and other abuses in
 247 state government. For these purposes, each inspector general
 248 shall:

249 1. ~~(a)~~ Receive complaints and coordinate all activities of
 250 the agency as required by the Whistle-blower's Act pursuant to

251 ss. 112.3187-112.31895.

252 2.~~(b)~~ Receive and consider the complaints which do not
 253 meet the criteria for an investigation under the Whistle-
 254 blower's Act and conduct, supervise, or coordinate such
 255 inquiries, investigations, or reviews as the inspector general
 256 deems appropriate.

257 3.~~(c)~~ Report expeditiously to the Department of Law
 258 Enforcement or other law enforcement agencies, as appropriate,
 259 whenever the inspector general has reasonable grounds to believe
 260 there has been a violation of criminal law.

261 4.~~(d)~~ Conduct investigations and other inquiries free of
 262 actual or perceived impairment to the independence of the
 263 inspector general or the inspector general's office. This shall
 264 include freedom from any interference with investigations and
 265 timely access to records and other sources of information.

266 5.~~(e)~~ At the conclusion of each investigation in which the
 267 subject of the investigation is a specific entity contracting
 268 with the state or an individual substantially affected as
 269 defined by this section, and if the investigation is not
 270 confidential or otherwise exempt from disclosure by law, the
 271 inspector general shall, consistent with s. 119.07(1), submit
 272 findings to the subject that is a specific entity contracting
 273 with the state or an individual substantially affected, who
 274 shall be advised in writing that they may submit a written
 275 response within 20 working days after receipt of the findings.

276 Such response and the inspector general's rebuttal to the
 277 response, if any, shall be included in the final investigative
 278 report.

279 ~~6.(f)~~ Submit in a timely fashion final reports on
 280 investigations conducted by the inspector general to the agency
 281 head, except for whistle-blower's investigations, which shall be
 282 conducted and reported pursuant to s. 112.3189.

283 (b) The inspector general and his or her staff may take
 284 and record testimony or statements of any person as reasonably
 285 necessary for the furtherance of an investigation or review
 286 undertaken by the inspector general.

287 (8)

288 (c) The final reports prepared pursuant to paragraphs (a)
 289 and (b) shall be provided to the heads of the respective
 290 agencies and, for state agencies under the jurisdiction of the
 291 Governor, the Chief Inspector General. Such reports shall
 292 include, but need not be limited to:

293 1. A description of activities relating to the
 294 development, assessment, and validation of performance measures.

295 2. A description of significant abuses and deficiencies
 296 relating to the administration of programs and operations of the
 297 agency disclosed by investigations, audits, reviews, or other
 298 activities during the reporting period.

299 3. A description of the recommendations for corrective
 300 action made by the inspector general during the reporting period

301 with respect to significant problems, abuses, or deficiencies
 302 identified.

303 4. The identification of each significant recommendation
 304 described in previous annual reports on which corrective action
 305 has not been completed.

306 5. A summary of each audit and investigation completed
 307 during the reporting period.

308 6. Any increase or decrease in allocations and
 309 expenditures estimating 10 percent or more of the inspector
 310 general's total budget during the preceding state fiscal year
 311 and any significant increase or decrease in the number of
 312 permanent, temporary, loaned, grant-funded, or full-time
 313 equivalent staff within the office of the inspector general.

314 (10) Each agency inspector general shall, to the extent
 315 both necessary and practicable, include on his or her staff
 316 individuals with information technology ~~electronic data~~
 317 ~~processing~~ auditing experience.

318 Section 3. Paragraph (a) of subsection (2) of section
 319 20.121, Florida Statutes, is amended to read:

320 20.121 Department of Financial Services.—There is created
 321 a Department of Financial Services.

322 (2) DIVISIONS.—The Department of Financial Services shall
 323 consist of the following divisions and office:

324 (a) The Division of Accounting and Auditing. Any auditor
 325 employed within the division is included in the Selected Exempt

326 Service as provided in chapter 110.

327 Section 4. Paragraphs (d) and (e) of subsection (2) of
328 section 215.44, Florida Statutes, are redesignated as paragraphs
329 (e) and (f), respectively, and a new paragraph (d) is added to
330 that subsection, to read:

331 215.44 Board of Administration; powers and duties in
332 relation to investment of trust funds.—

333 (2)

334 (d) The board shall appoint an inspector general who shall
335 perform the duties and responsibilities required in s. 20.055.

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



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	_____	

1 Committee/Subcommittee hearing bill: Oversight, Transparency &
2 Administration Subcommittee

3 Representative Raulerson offered the following:

4
5 **Amendment**

6 Remove lines 308-335 and insert:

7 6. Any increase or decrease in the total allocations or
8 total expenditures in the inspector general's budget for the
9 preceding state fiscal year compared to the total allocations or
10 total expenditures in the budget for the prior state fiscal year
11 and any increase or decrease in the number of permanent,
12 temporary, loaned, grant-funded, or full-time equivalent staff
13 within the office of the inspector general.

14 (10) Each agency inspector general shall, to the extent
15 both necessary and practicable, include on his or her staff



Amendment No. 1

16 individuals with information technology ~~electronic data~~
17 ~~processing~~ auditing experience.

18 Section 3. Paragraph (a) of subsection (2) of section
19 20.121, Florida Statutes, is amended to read:

20 20.121 Department of Financial Services.—There is created
21 a Department of Financial Services.

22 (2) DIVISIONS.—The Department of Financial Services shall
23 consist of the following divisions and office:

24 (a) The Division of Accounting and Auditing. Any auditor
25 employed within the division is included in the Selected Exempt
26 Service as provided in chapter 110.

27 Section 4. Paragraphs (d) and (e) of subsection (2) of
28 section 215.44, Florida Statutes, are redesignated as paragraphs
29 (e) and (f), respectively, and a new paragraph (d) is added to
30 that subsection, to read:



31 215.44 Board of Administration; powers and duties in
32 relation to investment of trust funds.—

33 (2)

34 (d) The board shall appoint an inspector general who shall
35 perform the duties and responsibilities required in s. 20.055.
36 The board shall have sole authority to remove the inspector
37 general.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1285 Pub. Rec./Chief Inspector General and Agency Inspectors General
SPONSOR(S): Raulerson
TIED BILLS: HB 1283 **IDEN./SIM. BILLS:** SB 1480

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

SUMMARY ANALYSIS

Current law establishes an Office of Inspector General in each state agency to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. The Office of the Chief Inspector General (CIG), established within the Executive Office of the Governor, is responsible for monitoring the activities of the agency inspectors general under the Governor's jurisdiction. The CIG and state agency inspectors general are required to conduct audits and investigations of the state agencies under their purview.

The bill creates a public record exemption for any audit or investigative work papers, records, reports, reviews, inquiries, or other documentation obtained or created during or in relation to an active audit or investigation conducted by the CIG or an agency inspector general. Such information is confidential and exempt from public record requirements until completion of the audit or investigation or issuance of a final report. Upon completion of the audit or investigation or issuance of a final report, the information is subject to disclosure to the extent that it does not include information that has been made confidential and exempt.

The bill specifies that when the CIG or a member of his or her staff receives a complaint or information that is protected by the Whistle-blower's Act, the name or identity of the individual providing the information may not be disclosed to anyone else without the written consent of the individual, unless the CIG determines that such disclosure is unavoidable during the course of an active audit or investigation.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill provides that it becomes effective on the same date that HB 1283 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Art. I, s. 24(a). The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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.
- Protect trade or business secrets.³

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁴

Inspectors General

Authorized under s. 20.055, F.S., an Office of Inspector General (OIG) is established in each state agency⁵ to provide a central point for the coordination and responsibility for activities that promote accountability, integrity, and efficiency in government. Section 14.32, F.S., creates the Office of the Chief Inspector General (CIG) within the Executive Office of the Governor. The CIG monitors the activities of the agency inspectors general under the Governor's jurisdiction and is required to do the following:

- Initiate, supervise, and coordinate investigations, recommend policies, and carry out other activities designed to deter, detect, prevent, and eradicate fraud, waste, abuse, mismanagement, and misconduct in government;
- Investigate, upon receipt of a complaint or for cause, any administrative action of any agency the administration of which is under the direct supervision of the Governor;

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 119.15(3), F.S.

⁵ Section 20.055(1)(d), F.S., defines "state agency" as each department created pursuant to chapter 20, F.S., and also includes the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, the Agency for State Technology, the Office of Early Learning, and the state courts system.

- Request such assistance and information as may be necessary for the performance of the CIG's duties;
- Examine the records and reports of any agency the administration of which is under the direct supervision of the Governor;
- Coordinate complaint-handling activities with agencies;
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline to receive complaints and information concerning the possible violation of law or administrative rules, mismanagement, fraud, waste, abuse of authority, malfeasance, or a substantial or specific danger to the health, welfare, or safety of the public;
- Report expeditiously to and cooperate fully with the Department of Law Enforcement, the Department of Legal Affairs, and other law enforcement agencies when there are recognizable grounds to believe that there has been a violation of criminal law or that a civil action should be initiated;
- Act as liaison with outside agencies and the federal government to promote accountability, integrity, and efficiency in state government;
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction;
- Review, evaluate, and monitor the policies, practices, and operations of the Executive Office of the Governor; and
- Conduct special investigations and management reviews at the request of the Governor.⁶

Each agency OIG is responsible for the following:

- Advising in the development of performance measures, standards, and procedures for the evaluation of state agency programs;
- Assessing the reliability and validity of information provided by the agency on performance measures and standards;
- Reviewing the actions taken by the agency to improve agency performance, and making recommendations, if necessary;
- Supervising and coordinating audits, investigations, and reviews relating to the programs and operations of the state agency;
- Conducting, supervising, or coordinating other activities carried out or financed by the agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;
- Providing central coordination of efforts to identify and remedy waste, abuse, and deficiencies to the agency head,⁷ or the CIG for agencies under the jurisdiction of the Governor; recommending corrective action concerning fraud, abuses, and deficiencies; and reporting on the progress made in implementing corrective action;
- Coordinating agency-specific audit activities between the Auditor General, federal auditors, and other governmental bodies to avoid duplication;
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact;
- Ensuring that an appropriate balance is maintained between audit, investigative, and other accountability activities; and
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.⁸

⁶ Section 14.32(2), F.S.

⁷ Section 20.055(1)(a), F.S., defines "agency head" as the Governor, a Cabinet officer, a secretary as defined in s. 20.03(5), F.S., or an executive director as defined in s. 20.03(6), F.S. It also includes the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, the executive director of the Office of Early Learning, and the Chief Justice of the State Supreme Court.

⁸ Section 20.055(2), F.S.

In carrying out his or her auditing duties and responsibilities, each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general must conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings.⁹

Audit work papers and reports are considered public records to the extent that they do not include information that has been made confidential and exempt from the provisions of s. 119.07(1), F.S.¹⁰ However, when the inspector general or a member of the staff receives a complaint or information that is protected by the Whistle-blower's Act,¹¹ the name or identity of the individual providing the information may not be disclosed to anyone else without the written consent of the individual, unless the inspector general determines that such disclosure is unavoidable during the course of the audit or investigation.¹²

The inspector general and his or her staff must have access to any records, data, and other information of the state agency that he or she deems necessary to carry out his or her duties. The inspector general is authorized to request such information or assistance as may be necessary from the state agency or from any federal, state, or local governmental entity.¹³

In carrying out his or her investigative duties and responsibilities, each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. For these purposes, each inspector general must do the following:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act;
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate;
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law;
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This must include freedom from any interference with investigations and timely access to records and other sources of information;
- At the conclusion of an investigation the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report; and
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.¹⁴

⁹ Section 20.055(6), F.S.

¹⁰ Section 20.055(6)(b), F.S.

¹¹ Sections 112.3187 – 112.31895, F.S., may be cited as the "Whistle-blower's Act." According to the act, it is the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employer or independent contractor that create a substantial and specific danger to the public's health, safety, or welfare. It is further the intent of the Legislature to prevent agencies or independent contractors from taking retaliatory action against any person who discloses information to an appropriate agency alleging improper use of government office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer, or employee. Section 112.3187(2), F.S.

¹² Section 20.055(6)(b), F.S.

¹³ Section 20.055(6)(c), F.S.

¹⁴ Section 20.055(7), F.S. The Whistle-blower's Act provides a public record exemption for all information received by the CIG or an agency inspector general and prohibits the disclosure of the name or identity of individuals protected under the act without their

House Bill 1283

House Bill 1283 makes various changes to the laws governing the CIG and agency inspectors general, including:

- Adding additional qualifications that the CIG or an agency inspector general must meet;
- Specifying that the CIG must have open and direct access to the Governor at all times;
- Requiring the State Board of Administration to have an inspector general;
- Authorizing inspectors general to take and record testimony and statements during an investigation or review;
- Classifying OIG staff as Select Exempt Service and agency inspectors general as Senior Management Service; and
- Requiring the CIG and agency inspectors general to include certain budget information in their annual reports.

Effect of Proposed Changes

The bill creates a public record exemption for any audit or investigative work papers, records, reports, reviews, inquiries, or other documentation obtained or created during or in relation to an active audit or investigation conducted by the CIG pursuant to s. 14.32, F.S., or an agency inspector general pursuant to s. 20.055, F.S. Such information is confidential and exempt from public record requirements until completion of the audit or investigation or issuance of a final report. Upon completion of the audit or investigation or issuance of a final report, the information is subject to disclosure to the extent that it does not include information that has been made confidential and exempt.

The bill specifies that when the CIG or a member of his or her staff receives a complaint or information that is protected by the Whistle-blower's Act, the name or identity of the individual providing the information may not be disclosed to anyone else without the written consent of the individual, unless the CIG determines that such disclosure is unavoidable during the course of an active audit or investigation.

The bill provides a public necessity statement as required by the State Constitution, specifying that it is a public necessity to protect documents obtained or created during an active audit or investigation because the public release of such information could jeopardize the overall integrity of the audit or investigation and any subsequent findings and recommendations issued by the CIG or an agency inspector general.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides that it becomes effective on the same date that HB 1283 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. 14.32, F.S., relating to the Office of Chief Inspector General.

Section 2. amends s. 20.055, F.S., relating to agency inspectors general.

Section 3. provides a public necessity statement.

Section 4. provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for any audit or investigative work papers, records, reports, reviews, inquiries, or other documentation obtained or created during or in relation to an active audit or investigation conducted by the CIG pursuant to s. 14.32, F.S., or an agency inspector general pursuant to s. 20.055, F.S. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue

The bill specifies that the confidential and exempt audit and investigative documents must become public records upon completion of the audit or investigation or issuance of a final report to the extent that the documents do not include information that has been made confidential and exempt. As the bill is currently drafted, the documents would not become public records upon completion of an audit or investigation or issuance of a final report because the exemption has made them confidential and exempt.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to public records; amending ss. 14.32
 3 and 20.055, F.S.; providing exemptions from public
 4 records requirements for audit or investigative
 5 workpapers, records, reports, reviews, inquiries, or
 6 other documentation obtained or created during or in
 7 relation to an active audit or investigation by the
 8 Chief Inspector General or an agency inspector general
 9 until completion of such audit or investigation or
 10 issuance of a final report; providing for future
 11 legislative review and repeal of the exemptions;
 12 providing a statement of public necessity; providing a
 13 contingent effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Subsection (6) is added to section 14.32,
 18 Florida Statutes, to read:

19 14.32 Office of Chief Inspector General.—

20 (6) Any audit or investigative workpapers, records,
 21 reports, reviews, inquiries, or other documentation obtained or
 22 created during or in relation to an active audit or
 23 investigation conducted pursuant to this section are
 24 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 25 of the State Constitution until completion of such audit or

26 investigation or issuance of a final report. Upon completion of
 27 an audit or investigation or issuance of a final report, such
 28 audit or investigative workpapers, records, reports, reviews,
 29 inquiries, or other documentation shall be public records to the
 30 extent that they do not include information that has been made
 31 confidential and exempt from s. 119.07(1). When the Chief
 32 Inspector General or a member of the staff receives from an
 33 individual a complaint or information that falls within the
 34 definition provided in s. 112.3187(5), the name or identity of
 35 the individual may not be disclosed to anyone else without the
 36 written consent of the individual, unless the Chief Inspector
 37 General determines that such disclosure is unavoidable during
 38 the course of an active audit or investigation. This subsection
 39 is subject to the Open Government Sunset Review Act in
 40 accordance with s. 119.15 and shall stand repealed on October 2,
 41 2022, unless reviewed and saved from repeal through reenactment
 42 by the Legislature.

43 Section 2. Paragraph (b) of subsection (6) and subsection
 44 (7) of section 20.055, Florida Statutes, are amended to read:

45 20.055 Agency inspectors general.—

46 (6) In carrying out the auditing duties and
 47 responsibilities of this act, each inspector general shall
 48 review and evaluate internal controls necessary to ensure the
 49 fiscal accountability of the state agency. The inspector general
 50 shall conduct financial, compliance, electronic data processing,

51 and performance audits of the agency and prepare audit reports
 52 of his or her findings. The scope and assignment of the audits
 53 shall be determined by the inspector general; however, the
 54 agency head may at any time request the inspector general to
 55 perform an audit of a special program, function, or
 56 organizational unit. The performance of the audit shall be under
 57 the direction of the inspector general, except that if the
 58 inspector general does not possess the qualifications specified
 59 in subsection (4), the director of auditing shall perform the
 60 functions listed in this subsection.

61 (b) Any audit workpapers, records, reports, reviews,
 62 inquiries, or other documentation obtained or created during or
 63 in relation to an active audit conducted pursuant to this
 64 section are confidential and exempt from s. 119.07(1) and s.
 65 24(a), Art. I of the State Constitution until completion of such
 66 audit or issuance of a final report. Upon completion of an audit
 67 or issuance of a final report, such audit workpapers, records,
 68 ~~and~~ reports, reviews, inquiries, or other documentation shall be
 69 public records to the extent that they do not include
 70 information that ~~which~~ has been made confidential and exempt
 71 from ~~the provisions of s. 119.07(1) pursuant to law. However,~~
 72 When the inspector general or a member of the staff receives
 73 from an individual a complaint or information that falls within
 74 the definition provided in s. 112.3187(5), the name or identity
 75 of the individual may not be disclosed to anyone else without

76 the written consent of the individual, unless the inspector
 77 general determines that such disclosure is unavoidable during
 78 the course of an active ~~the~~ audit ~~or investigation~~. This
 79 paragraph is subject to the Open Government Sunset Review Act in
 80 accordance with s. 119.15 and shall stand repealed on October 2,
 81 2022, unless reviewed and saved from repeal through reenactment
 82 by the Legislature.

83 (7) (a) In carrying out the investigative duties and
 84 responsibilities specified in this section, each inspector
 85 general shall initiate, conduct, supervise, and coordinate
 86 investigations designed to detect, deter, prevent, and eradicate
 87 fraud, waste, mismanagement, misconduct, and other abuses in
 88 state government. For these purposes, each inspector general
 89 shall:

90 1. (a) Receive complaints and coordinate all activities of
 91 the agency as required by the Whistle-blower's Act pursuant to
 92 ss. 112.3187-112.31895.

93 2. (b) Receive and consider the complaints which do not
 94 meet the criteria for an investigation under the Whistle-
 95 blower's Act and conduct, supervise, or coordinate such
 96 inquiries, investigations, or reviews as the inspector general
 97 deems appropriate.

98 3. (c) Report expeditiously to the Department of Law
 99 Enforcement or other law enforcement agencies, as appropriate,
 100 whenever the inspector general has reasonable grounds to believe

101 | there has been a violation of criminal law.

102 | ~~4.(d)~~ Conduct investigations and other inquiries free of
 103 | actual or perceived impairment to the independence of the
 104 | inspector general or the inspector general's office. This shall
 105 | include freedom from any interference with investigations and
 106 | timely access to records and other sources of information.

107 | ~~5.(e)~~ At the conclusion of each investigation in which the
 108 | subject of the investigation is a specific entity contracting
 109 | with the state or an individual substantially affected as
 110 | defined by this section, and if the investigation is not
 111 | confidential or otherwise exempt from disclosure by law, the
 112 | inspector general shall, consistent with s. 119.07(1), submit
 113 | findings to the subject that is a specific entity contracting
 114 | with the state or an individual substantially affected, who
 115 | shall be advised in writing that they may submit a written
 116 | response within 20 working days after receipt of the findings.
 117 | Such response and the inspector general's rebuttal to the
 118 | response, if any, shall be included in the final investigative
 119 | report.

120 | ~~6.(f)~~ Submit in a timely fashion final reports on
 121 | investigations conducted by the inspector general to the agency
 122 | head, except for whistle-blower's investigations, which shall be
 123 | conducted and reported pursuant to s. 112.3189.

124 | (b) Any investigative workpapers, records, reports,
 125 | reviews, inquiries, or other documentation obtained or created

126 during or in relation to an active investigation conducted
127 pursuant to this section are confidential and exempt from s.
128 119.07(1) and s. 24(a), Art. I of the State Constitution until
129 completion of such investigation or issuance of a final report.
130 Upon completion of an investigation or issuance of a final
131 report, such investigative workpapers, records, reports,
132 reviews, inquiries, or other documentation shall be public
133 records to the extent that they do not include information that
134 has been made confidential and exempt from s. 119.07(1). When
135 the inspector general or a member of the staff receives from an
136 individual a complaint or information that falls within the
137 definition provided in s. 112.3187(5), the name or identity of
138 the individual may not be disclosed to anyone else without the
139 written consent of the individual, unless the inspector general
140 determines that such disclosure is unavoidable during the course
141 of an active investigation. This paragraph is subject to the
142 Open Government Sunset Review Act in accordance with s. 119.15
143 and shall stand repealed on October 2, 2022, unless reviewed and
144 saved from repeal through reenactment by the Legislature.

145 Section 3. The Legislature finds that it is a public
146 necessity that any audit or investigative workpapers, records,
147 reports, reviews, inquiries, or other documentation obtained or
148 created during or in relation to an active audit or
149 investigation conducted by the Chief Inspector General or an
150 agency inspector general be made confidential and exempt from s.

151 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 152 State Constitution. The Legislature further finds that the
 153 public release of such audit or investigative workpapers,
 154 records, reports, reviews, inquiries, or other documentation
 155 during an active audit or investigation could jeopardize the
 156 overall integrity of such audit or investigation and any
 157 subsequent findings and recommendations issued by the Chief
 158 Inspector General or an agency inspector general. The exemptions
 159 from public records requirements are necessary to ensure that
 160 the Chief Inspector General and agency inspectors general are
 161 able to reasonably and effectively conduct independent and
 162 complete audits or investigations as necessary to fulfill their
 163 duties and responsibilities specified in ss. 14.32 and 20.055,
 164 Florida Statutes, respectively.

165 Section 4. This act shall take effect on the same date
 166 that HB 1283 or similar legislation takes effect, if such
 167 legislation is adopted in the same legislative session or an
 168 extension thereof and becomes law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Oversight, Transparency &
2 Administration Subcommittee
3 Representative Raulerson offered the following:

Amendment (with title amendment)

6 Remove lines 25-141 and insert:
7 of the State Constitution until such audit or investigation is
8 no longer active. When the audit or investigation is no longer
9 active, such audit or investigative workpapers, records,
10 reports, reviews, inquiries, or other documentation shall be
11 public records to the extent that they do not include
12 information that has been made confidential and exempt from s.
13 119.07(1) by another exemption. This subsection is subject to
14 the Open Government Sunset Review Act in accordance with s.
15 119.15 and shall stand repealed on October 2, 2022, unless



Amendment No. 1

16 reviewed and saved from repeal through reenactment by the
17 Legislature.

18 Section 2. Paragraph (b) of subsection (6) and subsection
19 (7) of section 20.055, Florida Statutes, are amended to read:

20 20.055 Agency inspectors general.—

21 (6) In carrying out the auditing duties and
22 responsibilities of this act, each inspector general shall
23 review and evaluate internal controls necessary to ensure the
24 fiscal accountability of the state agency. The inspector general
25 shall conduct financial, compliance, electronic data processing,
26 and performance audits of the agency and prepare audit reports
27 of his or her findings. The scope and assignment of the audits
28 shall be determined by the inspector general; however, the
29 agency head may at any time request the inspector general to
30 perform an audit of a special program, function, or
31 organizational unit. The performance of the audit shall be under
32 the direction of the inspector general, except that if the
33 inspector general does not possess the qualifications specified
34 in subsection (4), the director of auditing shall perform the
35 functions listed in this subsection.

36 (b) Any audit workpapers, records, reports, reviews,
37 inquiries, or other documentation obtained or created during or
38 in relation to an active audit conducted pursuant to this
39 section are confidential and exempt from s. 119.07(1) and s.
40 24(a), Art. I of the State Constitution until such audit is no



Amendment No. 1

41 longer active. When the audit is no longer active, such audit
42 workpapers, records, and reports, reviews, inquiries, or other
43 documentation shall be public records to the extent that they do
44 not include information that ~~which~~ has been made confidential
45 and exempt from ~~the provisions of~~ s. 119.07(1) by another
46 exemption pursuant to law. However, When the inspector general
47 or a member of the staff receives from an individual a complaint
48 or information that falls within the definition provided in s.
49 112.3187(5), the name or identity of the individual may not be
50 disclosed to anyone else without the written consent of the
51 individual, unless the inspector general determines that such
52 disclosure is unavoidable during the course of the audit or
53 investigation. This paragraph is subject to the Open Government
54 Sunset Review Act in accordance with s. 119.15 and shall stand
55 repealed on October 2, 2022, unless reviewed and saved from
56 repeal through reenactment by the Legislature.

57 (7)(a) In carrying out the investigative duties and
58 responsibilities specified in this section, each inspector
59 general shall initiate, conduct, supervise, and coordinate
60 investigations designed to detect, deter, prevent, and eradicate
61 fraud, waste, mismanagement, misconduct, and other abuses in
62 state government. For these purposes, each inspector general
63 shall:

64 1.(a) Receive complaints and coordinate all activities of
65 the agency as required by the Whistle-blower's Act pursuant to



Amendment No. 1

66 ss. 112.3187-112.31895.

67 2.~~(b)~~ Receive and consider the complaints which do not
68 meet the criteria for an investigation under the Whistle-
69 blower's Act and conduct, supervise, or coordinate such
70 inquiries, investigations, or reviews as the inspector general
71 deems appropriate.

72 3.~~(e)~~ Report expeditiously to the Department of Law
73 Enforcement or other law enforcement agencies, as appropriate,
74 whenever the inspector general has reasonable grounds to believe
75 there has been a violation of criminal law.

76 4.~~(d)~~ Conduct investigations and other inquiries free of
77 actual or perceived impairment to the independence of the
78 inspector general or the inspector general's office. This shall
79 include freedom from any interference with investigations and
80 timely access to records and other sources of information.

81 5.~~(e)~~ At the conclusion of each investigation in which the
82 subject of the investigation is a specific entity contracting
83 with the state or an individual substantially affected as
84 defined by this section, and if the investigation is not
85 confidential or otherwise exempt from disclosure by law, the
86 inspector general shall, consistent with s. 119.07(1), submit
87 findings to the subject that is a specific entity contracting
88 with the state or an individual substantially affected, who
89 shall be advised in writing that they may submit a written
90 response within 20 working days after receipt of the findings.

895021 - HB 1285 Amendment.lines 25-141.docx

Published On: 3/17/2017 7:06:09 PM



Amendment No. 1

91 Such response and the inspector general's rebuttal to the
92 response, if any, shall be included in the final investigative
93 report.

94 ~~6.(f)~~ Submit in a timely fashion final reports on
95 investigations conducted by the inspector general to the agency
96 head, except for whistle-blower's investigations, which shall be
97 conducted and reported pursuant to s. 112.3189.

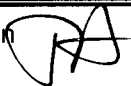
98 (b) Any investigative workpapers, records, reports,
99 reviews, inquiries, or other documentation obtained or created
100 during or in relation to an active investigation conducted
101 pursuant to this section are confidential and exempt from s.
102 119.07(1) and s. 24(a), Art. I of the State Constitution until
103 such investigation is no longer active. When the investigation
104 is no longer active, such investigative workpapers, records,
105 reports, reviews, inquiries, or other documentation shall be
106 public records to the extent that they do not include
107 information that has been made confidential and exempt from s.
108 119.07(1) by another exemption. This paragraph is subject to the

110 -----
111 **T I T L E A M E N D M E N T**

112 Remove lines 9-10 and insert:
113 until such audit or investigation is no longer active;
114 providing for future

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1289 Local Financial Emergencies
SPONSOR(S): Raulerson
TIED BILLS: IDEN./SIM. BILLS: SB 1402

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

SUMMARY ANALYSIS

Local governmental entities, charter schools, charter technical career centers, and district school boards are subject to review and oversight by the Governor, the charter school sponsor, the charter technical career center sponsor, or the Commissioner of Education, as appropriate, when a financial emergency exists. The Governor or the Commissioner of Education, as appropriate, may implement measures to assist the local governmental entity or district school board in resolving a financial emergency. For example, a financial emergency board may be created to oversee the activities of the local governmental entity or the district school board. If a board is established for a local governmental entity, the Governor must appoint board members and select a chair. If the board is established for a district school board, the State Board of Education must appoint the board members and select a chair. Financial emergency boards may, among other tasks, provide recommendations and reports to the Governor or the Commissioner of Education.

The bill expands the entities that have oversight over local governmental entities, charter schools, charter technical career centers, and district school boards for financial emergencies. Specifically, the bill provides that those local governmental entities are subject to review and oversight by the Senate, the House of Representatives, and the Legislative Auditing Committee. As such, when certain financial emergencies exist, a local governmental entity, or an agency in certain cases, must also notify the President of the Senate and the Speaker of the House of Representatives. Upon notification of such an emergency, the Governor, in cooperation with the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee must contact the local governmental entity or the Commissioner of Education to determine what actions have been taken by the local governmental entity or district school board to resolve or prevent the condition and determine whether the local governmental entity or district school board needs state assistance.

The bill also revises the financial emergency boards. The bill specifies who can appoint members and establishes member qualifications. The bill revises the duties of the board and authorizes the board to assume operational and institutional control over a local governmental entity's or district school board's functions under certain circumstances.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Financial Emergencies

The Local Governmental Entity, Chart School, Charter Technical Career Center, and District School Board Financial Emergencies Act (act) governs certain local governmental financial emergencies.¹ The purposes of the act are to promote financial responsibility of the entities, assist the entities in providing essential services without interruption and in meeting their financial obligations, and to assist the entities through improvement of local financial management procedures.²

The act provides that local governmental entities, charter schools, charter technical career centers, and district school boards are subject to review and oversight by the Governor, the charter school sponsor, the charter technical career center sponsor, or the Commissioner of Education, as appropriate, when certain financial emergencies exist:³

- Failure within the same fiscal year in which due to pay short-term loans or failure to make bond debt service or other long-term debt payments when due, as a result of lack of funds.
- Failure to pay uncontested claims from creditors within 90 days after the claim is presented, as a result of lack of funds.
- Failure to transfer at the appropriate time, due to lack of funds:
 - Taxes withheld on the income of employees; or
 - Employer and employee contributions for:
 - Federal social security; or
 - Any pension, retirement, or benefit plan of an employee.
- Failure for one pay period to pay, due to lack of funds:
 - Wages and salaries owed to employees; or
 - Retirement benefits owed to former employees.

If a financial emergency exists due to a lack of funds, or will occur if action is not taken, a local government must notify the Governor and the Legislative Auditing Committee.⁴ A charter school must notify the charter school sponsor, the Commissioner of Education, and the Legislative Auditing Committee. A charter technical career center must notify the charter technical career center sponsor, the Commissioner of Education, and the Legislative Auditing Committee. A district school board must notify the Commissioner of Education and the Legislative Auditing Committee.⁵

Any state agency must notify the Governor, charter school sponsor, charter technical career center sponsor, or the Commissioner of Education, as appropriate, within 30 days after determining there is a financial emergency that occurred or could occur if action is not taken to assist the local governmental entity, charter school, charter technical career center, or district school board.⁶

Upon notification that a financial emergency occurred or will occur, the Governor or his or her designee must contact the local governmental entity or the Commissioner of Education or his or her designee to determine what actions have been taken by the local governmental entity or district school board to resolve or prevent the condition.⁷ The information requested must be provided within 45 days of the

¹ Sections 218.50 – 218.504, F.S.

² Section 218.501, F.S.

³ Section 218.503(1), F.S.

⁴ Section 218.503(2), F.S.

⁵ *Id.*

⁶ *Id.*

⁷ Section 218.503(3), F.S.

request. The Governor, or the Commissioner of Education, as appropriate, must determine whether the local governmental entity or district school board needs state assistance to resolve or prevent the condition. If state assistance is needed, the local governmental entity or district school board is considered to be in a state of financial emergency. At that point, certain measures of assistance may occur, including:⁸

- Requiring approval of the local governmental entity's budget by the Governor or approval of the district school board's budget by the Commissioner of Education;
- Authorizing a state loan to a local governmental entity and providing for repayment of same;
- Prohibiting a local governmental entity or district school board from issuing bonds, notes, certificates of indebtedness, or any other form of debt until such time as it is no longer in a financial emergency;
- Making such inspections and reviews of records, information, reports, and assets of the local governmental entity or district school board as are needed;
- Consulting with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports into compliance with state requirements;
- Providing technical assistance to the local governmental entity or the district school board;
- Establishing a financial emergency board to oversee the activities of the local governmental entity or the district school board; and
- Requiring and approving a plan, to be prepared by officials of the local governmental entity or district school board in consultation with the appropriate state officials, prescribing actions that will cause the local governmental entity or district school board to no longer be in a financial emergency.

Financial Emergency Boards

If a financial emergency board is established for a local governmental entity, the Governor must appoint board members and select a chair.⁹ If the board is established for a district school board, the State Board of Education must appoint the board members and select a chair.¹⁰ The board must adopt roles necessary for conducting board business. The financial emergency board may:¹¹

- Review records, reports, and assets of the local governmental entity or the district school board as are needed;
- Consult with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports of the local governmental entity or district school board into compliance with state requirements;
- Review the operations, management, efficiency, productivity, and financing of functions and operations of the local governmental entity or the district school board; and
- Consult with other governmental entities for consolidation of all administrative direction and support services, including, but not limited to, services for asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.

Recommendations and reports made by the board must be submitted to the Governor for local governmental agencies or to the Commissioner of Education and the State Board of Education for district school boards for appropriate action.¹²

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

Effect of the Bill

The bill expands the entities that have oversight over local governmental entities, charter schools, charter technical career centers, and district school boards for financial emergencies. Specifically, the bill provides that those local governmental entities are subject to review and oversight by the Senate, the House of Representatives, and the Legislative Auditing Committee. As such, when certain financial emergencies exist, a local governmental entity, or an agency in certain cases, must also notify the President of the Senate and the Speaker of the House of Representatives. Upon notification of such an emergency, the Governor, in cooperation with the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee must contact the local governmental entity or the Commissioner of Education to determine what actions have been taken by the local governmental entity or district school board to resolve or prevent the condition and determine whether the local governmental entity or district school board needs state assistance to resolve or prevent the condition.

The bill also revises the financial emergency boards. The bill provides that a financial emergency board must consist of an odd number of members comprised of at least seven members but not more than 13. If the board is established for a local governmental entity, the President of the Senate and the Speaker of the House of Representatives must each appoint two of the board members. The Governor must appoint the remainder of the board members and designate the chair. If the board is established for a district school board, the President of the Senate and the Speaker of the House of Representatives must each appoint two of the board members. The State Board of Education must appoint the remainder of the board members and designate the chair.

The bill establishes qualifications for members of a financial emergency board. Such members must collectively possess the knowledge, skills, and competencies needed to perform their individual responsibilities and accomplish the mission of the board, including, but not limited to, internal quality control, finance, business administration, and public works. The chair must have experience in one of the following positions or areas:

- Inspector General.
- Supervisory experience in an office of inspector general or an investigative public agency similar to an office of inspector general.
- Local, state, or federal law enforcement officer.
- Local, state, or federal court judge.
- Senior-level auditor or comptroller.
- The administration and management of complex audits and investigations.
- Managing programs for prevention, examination, detection, elimination of fraud, waste, abuse, mismanagement, malfeasance, or misconduct in government or other organizations.
- Certified fraud examiner.

The board must have access to records, data, and other information of the local governmental entity or the district school board necessary and given the technical and financial resources necessary to complete their duties. The board must adopt rules necessary for conducting board business. In addition, the board may:

- Hire or retain legal counsel.
- Obtain external advice and assistance if the board or the staff of the entity under review lacks the knowledge, skills, or other competencies needed to perform all or part of the duties necessary to resolve the financial emergency conditions.
- Request and obtain assistance from any federal agency, state agency, or local entity.
- Issue and serve subpoenas or subpoenas duces tecum to compel the attendance of witnesses and the production of documents, reports, answers, records, accounts, and data in any format. In the event of noncompliance with a subpoena issued, the chair of the board may petition the circuit court of the county for an order requiring the person to appear and testify and to produce documents.

- Require a person to file a statement in writing, under oath, as to all the facts and circumstances concerning the matter to be audited, examined, or investigated.
- Makes such reviews of records, reports, and assets of the local governmental entity or the district school board as are needed.
- Consult with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports of the local governmental entity or the district school board into compliance with state requirements.
- Review the operations, management, efficiency, productivity, and financing of functions and operations of the local governmental entity or the district school board.
- Consult with other governmental entities for the consolidation of all administrative direction and support services, including, but not limited to, services for asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.

Each recommendation and report made by the board addressing a local entity must be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Legislative Auditing Committee, and the local governmental entity under review. Each recommendation and report addressing a district school board must be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Legislative Auditing Committee, the district school board under review, the Commissioner of Education, and the State Board of Education.

If a local governmental entity or district school board fails to remedy or take action on recommendations made in any report within 60 days after receipt, the board may assume operational and institutional control of the functions of the local government entity or district school board.

B. SECTION DIRECTORY:

- Section 1. Amends s. 218.503, F.S., expanding the entities that have oversight over local government entities, charter schools, charter technical career centers, and district school boards under certain circumstances; revises the financial emergency board.
- Section 2. Amends s. 218.504, F.S., conforming provisions to changes made by the bill.
- Section 3. Provides an effective date of becoming a law.

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 fiscal impact on the state. The bill specifies the number of members on a financial emergency board and provides that such boards may hire or retain legal counsel among other duties. As such, there may be increased costs associated with the creation of financial emergency boards depending on the nature of the board and actions of the board.

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; 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 financial emergency board must adopt rules necessary for conducting their business.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to local financial emergencies;
 3 amending s. 218.503, F.S.; expanding the entities that
 4 have oversight over local governmental entities,
 5 charter schools, charter technical career centers, and
 6 district school boards under certain circumstances;
 7 specifying the number of members to be on a financial
 8 emergency board; specifying the entities who shall
 9 appoint members to the board; providing qualifications
 10 of members and chair of the board; revising the
 11 information to which the board has access; authorizing
 12 the board to hire or retain legal counsel; requiring
 13 the adoption of rules to conduct board business;
 14 requiring recommendations and reports to be submitted
 15 to specified entities; authorizing the board to assume
 16 operational and institutional control of a local
 17 governmental entity's or district school board's
 18 functions under certain circumstances; amending s.
 19 218.504, F.S.; conforming provisions to changes made
 20 in the act; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Subsections (1), (2), and (3) of section
 25 218.503, Florida Statutes, are amended, subsections (4), (5),

26 and (6) are renumbered as subsections (5), (6), and (7),
 27 respectively, and a new subsection (4) is added to that section,
 28 to read:

29 218.503 Determination of financial emergency.—

30 (1) Local governmental entities, charter schools, charter
 31 technical career centers, and district school boards shall be
 32 subject to review and oversight by the Governor, the Senate, the
 33 House of Representatives, the Legislative Auditing Committee,
 34 the charter school sponsor, the charter technical career center
 35 sponsor, or the Commissioner of Education, as appropriate, when
 36 any one of the following conditions occurs:

37 (a) Failure within the same fiscal year in which due to
 38 pay short-term loans or failure to make bond debt service or
 39 other long-term debt payments when due, as a result of a lack of
 40 funds.

41 (b) Failure to pay uncontested claims from creditors
 42 within 90 days after the claim is presented, as a result of a
 43 lack of funds.

44 (c) Failure to transfer at the appropriate time, due to
 45 lack of funds:

- 46 1. Taxes withheld on the income of employees; or
- 47 2. Employer and employee contributions for:
 - 48 a. Federal social security; or
 - 49 b. Any pension, retirement, or benefit plan of an
 - 50 employee.

51 (d) Failure for one pay period to pay, due to lack of
 52 funds:
 53 1. Wages and salaries owed to employees; or
 54 2. Retirement benefits owed to former employees.
 55 (2) A local governmental entity shall notify the Governor,
 56 the President of the Senate, the Speaker of the House of
 57 Representatives, and the Legislative Auditing Committee; a
 58 charter school shall notify the charter school sponsor, the
 59 Commissioner of Education, and the Legislative Auditing
 60 Committee; a charter technical career center shall notify the
 61 charter technical career center sponsor, the Commissioner of
 62 Education, and the Legislative Auditing Committee; and a
 63 district school board shall notify the Commissioner of Education
 64 and the Legislative Auditing Committee, when one or more of the
 65 conditions specified in subsection (1) have occurred or will
 66 occur if action is not taken to assist the local governmental
 67 entity, charter school, charter technical career center, or
 68 district school board. In addition, any state agency must,
 69 within 30 days after a determination that one or more of the
 70 conditions specified in subsection (1) have occurred or will
 71 occur if action is not taken to assist the local governmental
 72 entity, charter school, charter technical career center, or
 73 district school board, notify the Governor, charter school
 74 sponsor, charter technical career center sponsor, or the
 75 Commissioner of Education, as appropriate, and the President of

76 the Senate, the Speaker of the House of Representatives, and the
 77 Legislative Auditing Committee.

78 (3) Upon notification that one or more of the conditions
 79 in subsection (1) have occurred or will occur if action is not
 80 taken to assist the local governmental entity or district school
 81 board, the Governor or his or her designee, in cooperation with
 82 the President of the Senate or his or her designee, the Speaker
 83 of the House of Representatives or his or her designee, and the
 84 Legislative Auditing Committee, shall contact the local
 85 governmental entity or the Commissioner of Education or his or
 86 her designee ~~shall contact the district school board~~ to
 87 determine what actions have been taken by the local governmental
 88 entity or the district school board to resolve or prevent the
 89 condition. The information requested must be provided within 45
 90 days after the date of the request. If the local governmental
 91 entity or the district school board does not comply with the
 92 request, the Governor or his or her designee or the Commissioner
 93 of Education or his or her designee shall notify the members of
 94 the Legislative Auditing Committee who may take action pursuant
 95 to s. 11.40. The Governor or the Commissioner of Education, as
 96 appropriate, shall determine whether the local governmental
 97 entity or the district school board needs state assistance to
 98 resolve or prevent the condition into the future. If state
 99 assistance is needed, the local governmental entity or district
 100 school board is considered to be in a state of financial

101 emergency. The Governor or the Commissioner of Education, as
 102 appropriate, may ~~has the authority to~~ implement measures as set
 103 forth in ss. 218.50-218.504 to assist the local governmental
 104 entity or district school board in resolving the financial
 105 emergency. Such measures may include, but are not limited to:

106 (a) Requiring approval of the local governmental entity's
 107 budget by the Governor or approval of the district school
 108 board's budget by the Commissioner of Education.

109 (b) Authorizing a state loan to a local governmental
 110 entity and providing for repayment of same.

111 (c) Prohibiting a local governmental entity or district
 112 school board from issuing bonds, notes, certificates of
 113 indebtedness, or any other form of debt until such time as it is
 114 no longer subject to this section.

115 (d) Making such inspections and reviews of records,
 116 information, reports, and assets of the local governmental
 117 entity or district school board as are needed. The appropriate
 118 local officials shall cooperate in such inspections and reviews.

119 (e) Consulting with officials and auditors of the local
 120 governmental entity or the district school board and the
 121 appropriate state officials regarding any steps necessary to
 122 bring the books of account, accounting systems, financial
 123 procedures, and reports into compliance with state requirements.

124 (f) Providing technical assistance to the local
 125 governmental entity or the district school board.

126 (g)~~1~~. Establishing and empowering a financial emergency
 127 board to oversee the activities of the local governmental entity
 128 or the district school board as set forth in subsection (4). ~~If~~
 129 ~~a financial emergency board is established for a local~~
 130 ~~governmental entity, the Governor shall appoint board members~~
 131 ~~and select a chair. If a financial emergency board is~~
 132 ~~established for a district school board, the State Board of~~
 133 ~~Education shall appoint board members and select a chair. The~~
 134 ~~financial emergency board shall adopt such rules as are~~
 135 ~~necessary for conducting board business. The board may:~~
 136 a. ~~Make such reviews of records, reports, and assets of~~
 137 ~~the local governmental entity or the district school board as~~
 138 ~~are needed.~~
 139 b. ~~Consult with officials and auditors of the local~~
 140 ~~governmental entity or the district school board and the~~
 141 ~~appropriate state officials regarding any steps necessary to~~
 142 ~~bring the books of account, accounting systems, financial~~
 143 ~~procedures, and reports of the local governmental entity or the~~
 144 ~~district school board into compliance with state requirements.~~
 145 c. ~~Review the operations, management, efficiency,~~
 146 ~~productivity, and financing of functions and operations of the~~
 147 ~~local governmental entity or the district school board.~~
 148 d. ~~Consult with other governmental entities for the~~
 149 ~~consolidation of all administrative direction and support~~
 150 ~~services, including, but not limited to, services for asset~~

151 ~~sales, economic and community development, building inspections,~~
 152 ~~parks and recreation, facilities management, engineering and~~
 153 ~~construction, insurance coverage, risk management, planning and~~
 154 ~~zoning, information systems, fleet management, and purchasing.~~

155 ~~2. The recommendations and reports made by the financial~~
 156 ~~emergency board must be submitted to the Governor for local~~
 157 ~~governmental entities or to the Commissioner of Education and~~
 158 ~~the State Board of Education for district school boards for~~
 159 ~~appropriate action.~~

160 (h) Requiring and approving a plan, to be prepared by
 161 officials of the local governmental entity or the district
 162 school board in consultation with the appropriate state
 163 officials, prescribing actions that will cause the local
 164 governmental entity or district school board to no longer be
 165 subject to this section. The plan must include, but need not be
 166 limited to:

167 1. Provision for payment in full of obligations outlined
 168 in subsection (1), designated as priority items, which are
 169 currently due or will come due.

170 2. Establishment of priority budgeting or zero-based
 171 budgeting in order to eliminate items that are not affordable.

172 3. The prohibition of a level of operations which can be
 173 sustained only with nonrecurring revenues.

174 4. Provisions implementing the consolidation, sourcing, or
 175 discontinuance of all administrative direction and support

176 services, including, but not limited to, services for asset
 177 sales, economic and community development, building inspections,
 178 parks and recreation, facilities management, engineering and
 179 construction, insurance coverage, risk management, planning and
 180 zoning, information systems, fleet management, and purchasing.

181 (4) (a) Any financial board established must consist of an
 182 odd number of members comprised of at least 7 but not more than
 183 13 members.

184 1. If a financial emergency board is established for a
 185 local governmental entity, the President of the Senate and the
 186 Speaker of the House of Representatives shall each appoint two
 187 of the members to the board. The Governor shall appoint the
 188 remainder of the board members and shall designate the chair of
 189 the board.

190 2. If a financial emergency board is established for a
 191 district school board, the President of the Senate and the
 192 Speaker of the House of Representatives shall each appoint two
 193 of the members to the board. The State Board of Education shall
 194 appoint the remainder of the board members and shall designate
 195 the chair of the board.

196 (b) Appointees to a financial emergency board should
 197 collectively possess the knowledge, skills, and competencies
 198 needed to perform their individual responsibilities and
 199 accomplish the mission of the financial emergency board,
 200 including, but not limited to, internal quality control,

201 finance, business administration, and public works. The chair of
 202 the financial emergency board must have experience in at least
 203 one of the following positions or areas:

- 204 1. Inspector general.
- 205 2. Supervisory experience in an office of inspector
 206 general or an investigative public agency similar to an office
 207 of inspector general.
- 208 3. Local, state, or federal law enforcement officer.
- 209 4. Local, state, or federal court judge.
- 210 5. Senior-level auditor or comptroller.
- 211 6. The administration and management of complex audits and
 212 investigations.
- 213 7. Managing programs for prevention, examination,
 214 detection, elimination of fraud, waste, abuse, mismanagement,
 215 malfeasance, or misconduct in government or other organizations.
- 216 8. Certified fraud examiner.

217 (c) The financial emergency board shall have access to
 218 records, data, and other information of the local governmental
 219 entity or the district school board that the board deems
 220 necessary to carry out its duties and shall be given the
 221 technical and financial resources necessary to complete those
 222 duties. The financial emergency board shall adopt such rules as
 223 are necessary for conducting board business. The board may:

- 224 1. Hire or retain legal counsel.
- 225 2. Obtain external advice and assistance if the financial

226 emergency board or the staff of the entity under review lacks
 227 the knowledge, skills, or other competencies needed to perform
 228 all or part of the duties necessary to resolve the financial
 229 emergency conditions.

230 3. Request and obtain assistance from any federal agency,
 231 state agency, or local entity.

232 4. Issue and serve subpoenas or subpoenas duces tecum to
 233 compel the attendance of witnesses and the production of
 234 documents, reports, answers, records, accounts, and data in any
 235 format. In the event of noncompliance with a subpoena issued
 236 pursuant to this subparagraph, the chair of the financial
 237 emergency board may petition the circuit court of the county for
 238 an order requiring the subpoenaed person to appear and testify
 239 and to produce documents.

240 5. Require a person to file a statement in writing, under
 241 oath, as to all the facts and circumstances concerning the
 242 matter to be audited, examined, or investigated.

243 6. Make such reviews of records, reports, and assets of
 244 the local governmental entity or the district school board as
 245 are needed.

246 7. Consult with officials and auditors of the local
 247 governmental entity or the district school board and the
 248 appropriate state officials regarding any steps necessary to
 249 bring the books of account, accounting systems, financial
 250 procedures, and reports of the local governmental entity or the

251 district school board into compliance with state requirements.

252 8. Review the operations, management, efficiency,
 253 productivity, and financing of functions and operations of the
 254 local governmental entity or the district school board.

255 9. Consult with other governmental entities for the
 256 consolidation of all administrative direction and support
 257 services, including, but not limited to, services for asset
 258 sales, economic and community development, building inspections,
 259 parks and recreation, facilities management, engineering and
 260 construction, insurance coverage, risk management, planning and
 261 zoning, information systems, fleet management, and purchasing.

262 (d)1. Each recommendation and report made by the financial
 263 emergency board addressing a local entity must be submitted to
 264 the Governor, the President of the Senate, the Speaker of the
 265 House of Representatives, the Legislative Auditing Committee,
 266 and the local governmental entity under review.

267 2. Each recommendation and report made by the financial
 268 emergency board addressing a district school board must be
 269 submitted to the Governor, the President of the Senate, the
 270 Speaker of the House of Representatives, the Legislative
 271 Auditing Committee, the district school board under review, the
 272 Commissioner of Education, and the State Board of Education for
 273 appropriate action.

274 (e) If a local governmental entity or the district school
 275 board, as appropriate, fails to remedy or take action on

276 recommendations made in any report submitted under paragraph (d)
 277 within 60 days after receiving the recommendations, the
 278 financial emergency board may assume operational and
 279 institutional control of the local governmental entity's or
 280 district school board's functions.

281 Section 2. Paragraph (b) of subsection (1) and subsection
 282 (2) of section 218.504, Florida Statutes, is amended to read:

283 218.504 Cessation of state action.—The Governor or the
 284 Commissioner of Education, as appropriate, has the authority to
 285 terminate all state actions pursuant to ss. 218.50-218.504.
 286 Cessation of state action must not occur until the Governor or
 287 the Commissioner of Education, as appropriate, has determined
 288 that:

289 (1) The local governmental entity, charter school, charter
 290 technical career center, or district school board:

291 (b) Has resolved the conditions outlined in s. 218.503(1)
 292 or (4) s. 218.503(1).

293 (2) None of the conditions outlined in ss. 218.503(1) or
 294 (4) s. 218.503(1) exists.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6031 Elections
SPONSOR(S): Geller
TIED BILLS: IDEN./SIM. **BILLS:** SB 1494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Toliver <i>WT</i>	Harrington <i>HA</i>
2) Government Accountability Committee			

SUMMARY ANALYSIS

The Florida Constitution sets forth residency requirements for legislators, county commissioners, justices and judges, and the governor, lieutenant governor, and members of the cabinet. The constitutional residency requirement for legislators, county commissioners, justices and judges has been interpreted by Florida courts to mean that residency within the district represented by the office sought is required at the time of election or at the time the candidate assumes office.

Current law provides a residency requirement for write-in candidates. Specifically, s. 99.0615, F.S., requires a write-in candidate to reside within the district represented by the office sought at the time of qualification. The Florida Supreme Court recently found the statute unconstitutional because it conflicts with the residency requirements within the Florida Constitution, which require residency at the time of election or when the candidate assumes office and not at the time of qualification.

This bill repeals s. 99.0615, F.S., which was found unconstitutional by Florida Supreme Court.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Residency Requirements for Candidates

The Florida Constitution sets forth eligibility requirements, including residency requirements, for legislators,¹ county commissioners,² justices,³ judges,⁴ and the governor, lieutenant governor, and members of the cabinet.⁵

The Florida Constitution sets forth the following residency requirements:

- A legislator must be an elector and resident of the district in which elected, and must have resided in the state for two years prior to the election.⁶
- A county commissioner must be elected from the district from which he or she resides.⁷
- A justice or judge must reside in the territorial jurisdiction of the court from which elected.⁸
- The governor, lieutenant governor, and members of the cabinet must be an elector who has resided in the state for the seven years preceding the election.⁹

The Florida Constitution requires the governor, lieutenant governor, and members of the cabinet to meet residency requirements at the time of election.¹⁰ In addition, state courts have interpreted the Florida Constitution to establish specific dates by which residency requirements must be met for certain constitutional officers. Legislators¹¹ and county commissioners¹² must be residents of the district represented by the office sought at the time of election, while justices and judges must be residents at the time of assuming office.¹³ The Florida Supreme Court has held that the Legislature is prohibited from imposing any additional eligibility requirements upon candidates for these offices.¹⁴

Residency Requirements for Write-in Candidates

Section 99.0615, F.S., requires a write-in candidate to reside, at the time of qualification, within the district represented by the office.

Litigation Concerning Residency Requirements for Write-in Candidates

In 2016, the Florida Supreme Court, in *Brinkmann v. Francois*, 184 So. 3d 504 (Fla. 2016), held that s. 99.0615, F.S., was unconstitutional because the timing of the residency requirement for write-in candidates conflicts with the timing of the residency requirement for county commission candidates as established in the Florida Constitution.¹⁵ The case involved a county commission primary where five candidates were on the ballot and an additional candidate, Mr. Francois, entered the race as a write-in candidate.¹⁶ Mr. Francois did not live in the district represented by the office sought at the time of filing

¹ Article III, s. 15(c), FLA. CONST.

² Article VIII, s. 1(e), FLA. CONST.

³ Article V, s. 8, FLA. CONST.

⁴ *Id.*

⁵ Article IV, s. 5, FLA. CONST.

⁶ Article III, s. 15(c), FLA. CONST.

⁷ Article VIII, s. 1(e), FLA. CONST.

⁸ Article V, s. 8, FLA. CONST.

⁹ Article IV, s. 5(b), FLA. CONST.

¹⁰ Article IV, s. 5, Fla. Const.

¹¹ *Norman*, 46 So.3d at 183.

¹² *Grassi*, 532 So.2d at 1056.

¹³ *Miller v. Mendez*, 804 So.2d 1243, 1247 (Fla. 2001).

¹⁴ *State v. Grassi*, 532 So.2d 1055 (Fla. 1988).

¹⁵ *Brinkmann v. Francois*, 184 So.3d 504 (Fla. 2016).

¹⁶ *Id.*

his papers to qualify as a write-in candidate.¹⁷ The court reasoned that s. 99.0615, F.S., imposed qualifications in contravention to those specified in the Florida Constitution and, therefore, the statute was unconstitutional.¹⁸

Effect of the Bill

The bill repeals s. 99.0615, F.S., which was found unconstitutional by the Florida Supreme Court.

B. SECTION DIRECTORY:

Section 1 repeals s. 99.0615, F.S., relating to write-in candidate residency requirements.

Section 2 provides that the bill will become effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Art. VII, s. 18 of the Florida Constitution because it is an election law.

¹⁷ *Id.*

¹⁸ *Id.*

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

HB 6031


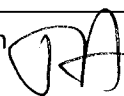
2017

1
2
3
4
5
6
7
8
9

A bill to be entitled
An act relating to elections; repealing s. 99.0615,
F.S., relating to write-in candidate residency
requirements; providing an effective date.
Be It Enacted by the Legislature of the State of Florida:
Section 1. Section 99.0615, Florida Statutes, is repealed.
Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7053 PCB CRJ 17-04 Pub. Rec./Minor Victims of Sexual Offenses
SPONSOR(S): Criminal Justice Subcommittee, Spano
TIED BILLS: HB 7049 **IDEN./SIM. BILLS:** SB 1560

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	15 Y, 0 N	White	White
1) Oversight, Transparency & Administration Subcommittee		Grosso 	Harrington 
2) Judiciary Committee			

SUMMARY ANALYSIS

Current law provides a public record exemption for information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in ch. 800, F.S., or ss. 794.011, 827.071, 847.012, 847.0125, 847.013, 847.0133, or 847.0145, F.S. HB 7049, which is tied to this bill, repeals s. 827.071, F.S., relating to sexual performance by a child, and moves its provisions to ss. 847.003 and 847.0137, F.S. HB 7049 also amends various definitions; for example, the bill defines terms to include morphed child pornography. As such, the tied bill expands the information protected in the current public record exemption.

This bill amends the public record exemption for the videotaped statement of a minor to remove references to s. 827.071, F.S., and add references to ss. 847.003 and 847.0137, F.S. These changes conform to the changes made by HB 7049.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect on the same date that HB 7049 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. HB 7049 takes effect on October 1, 2017.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records, Generally

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no more broad than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁴ provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.⁵

The Act also 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.⁶ Specified questions must be considered by the Legislature during the review process.⁷

Public Record Exemptions for Certain Victim Information

Current law provides public record exemptions for the following criminal intelligence information⁸ and criminal investigative information:⁹

- Information that reveals the identity of the victim of child abuse or that reveals the identity of a victim of human trafficking who is under the age of 18;

¹ FLA. CONST. art. I, s. 24(c).

² This portion of a public records exemption is commonly referred to as a "public necessity statement."

³ FLA. CONST. art. I, s. 24(c).

⁴ Section 119.15, F.S.

⁵ Section 119.15(6)(b), F.S.

⁶ Section 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S., requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁸ Section 119.011(3)(a), F.S., defines "criminal intelligence information" as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

⁹ Section 119.011(3)(b), F.S., defines "criminal investigative information" as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

- Information that may reveal the identity of a victim of any sexual offense, including an offense proscribed in ch. 794,¹⁰ 796,¹¹ 800,¹² 827,¹³ or 847,¹⁴ F.S.; and
- Photographs, videotapes, or images of any part of the body of the victim of a sexual offense prohibited by ch. 794, 796, 800, 827, or 847, F.S., and s. 810.145,¹⁵ F.S., regardless of whether it identifies the victim.¹⁶

Current law also provides that any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in ch. 800, F.S., or ss. 794.011,¹⁷ 827.071,¹⁸ 847.012,¹⁹ 847.0125,²⁰ 847.013,²¹ 847.0133,²² or 847.0145,²³ F.S., is confidential and exempt²⁴ from public record requirements.²⁵

HB 7049

HB 7049, which is tied to this bill, repeals s. 827.071, F.S., relating to sexual performance by a child, and moves its provisions to ss. 847.003 and 847.0137, F.S. HB 7049 also amends various definitions; for example, the bill defines terms to include morphed child pornography. As such, the tied bill expands the information protected in the current public record exemption. HB 7049 takes effect October 1, 2017.

Effect of the Bill

The bill amends the public record exemption for any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct to remove references to s. 827.071, F.S.,²⁶ and add references to ss. 847.003 and 847.0137, F.S. These changes conform to the changes made by HB 7049.

The court has held that an amendment eliminating a public record exemption applies prospectively from the effective date of the amendment.²⁷ Further, s. 119.15(7), F.S., provides that records created before the date of the repeal of an exemption may not be made public unless otherwise provided by law. This bill does not provide that the confidential and exempt records relating to a victim of certain sexual acts as proscribed in s. 827.071, F.S., will be made publicly available upon repeal of that cross-

¹⁰ Chapter 794, F.S., relates to sexual battery.

¹¹ Chapter 796, F.S., relates to prostitution.

¹² Chapter 800, F.S., relates to lewdness and indecent exposure.

¹³ Chapter 827, F.S., relates to abuse of children.

¹⁴ Chapter 847, F.S., relates to obscenity.

¹⁵ Section 810.145, F.S., relates to video voyeurism.

¹⁶ Section 119.071(2)(h)1., F.S.

¹⁷ Section 794.011, F.S., relates to sexual battery.

¹⁸ Section 827.071, F.S., relates to sexual performance by a child.

¹⁹ Section 847.012, F.S., relates to harmful materials and sale of distribution to minors or using minors in production prohibited.

²⁰ Section 847.0125, F.S., relates to retail display of materials harmful to minors prohibited.

²¹ Section 847.013, F.S., relates to exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations.

²² Section 847.0133, F.S., relates to protection of minors and prohibition of certain acts in connection with obscenity.

²³ Section 847.0145, F.S., relates to selling or buying of minors.

²⁴ In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

²⁴ There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att’y Gen. Fla. 85-692 (1985).

²⁵ Section 119.071(2)(j)2.a., F.S.

²⁶ Section 119.15(7), F.S., provides that records made before the date of a repeal of an exemption under this section may not be made public unless otherwise provided by law.

²⁷ *See Baker v. Eckerd Corporation*, 697 So.2d 970 (Fla. 2d DCA 1997).

reference. As such, any records containing such information that were created prior to the repeal of the reference to s. 827.071, F.S., remain confidential and exempt from public record requirements.

The bill provides for repeal of the revised exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

Finally, the bill provides an effective date that is contingent upon the passage of HB 7049 or similar legislation. HB 7049 takes effect on October 1, 2017.

B. SECTION DIRECTORY:

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

Section 2. Provides a public necessity statement.

Section 3. Provides that the act takes effect on the same date that HB 7049 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have any impact on state revenues.
2. Expenditures: The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: 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 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, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands the current public record exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

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

- B. RULE-MAKING AUTHORITY: The bill does not appear to create the 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.
 3 119.071, F.S.; expanding the exemption from public
 4 records requirements for any information in a
 5 videotaped statement of a minor who is alleged to be
 6 or who is a victim of sexual battery, lewd acts, or
 7 other sexual misconduct; providing for future review
 8 and repeal of the exemption; providing a statement of
 9 public necessity; providing a contingent effective
 10 date.

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

13
 14 Section 1. Paragraph (j) of subsection (2) of section
 15 119.071, Florida Statutes, is amended to read:

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

18 (2) AGENCY INVESTIGATIONS.—

19 (j)1. Any document that reveals the identity, home or
 20 employment telephone number, home or employment address, or
 21 personal assets of the victim of a crime and identifies that
 22 person as the victim of a crime, which document is received by
 23 any agency that regularly receives information from or
 24 concerning the victims of crime, is exempt from s. 119.07(1) and
 25 s. 24(a), Art. I of the State Constitution. Any information not

26 otherwise held confidential or exempt from s. 119.07(1) which
 27 reveals the home or employment telephone number, home or
 28 employment address, or personal assets of a person who has been
 29 the victim of sexual battery, aggravated child abuse, aggravated
 30 stalking, harassment, aggravated battery, or domestic violence
 31 is exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 32 Constitution, upon written request by the victim, which must
 33 include official verification that an applicable crime has
 34 occurred. Such information shall cease to be exempt 5 years
 35 after the receipt of the written request. Any state or federal
 36 agency that is authorized to have access to such documents by
 37 any provision of law shall be granted such access in the
 38 furtherance of such agency's statutory duties, notwithstanding
 39 this section.

40 2.a. Any information in a videotaped statement of a minor
 41 who is alleged to be or who is a victim of sexual battery, lewd
 42 acts, or other sexual misconduct proscribed in chapter 800 or in
 43 s. 794.011, s. 847.003, ~~s. 827.071~~, s. 847.012, s. 847.0125, s.
 44 847.013, s. 847.0133, s. 847.0137, or s. 847.0145, which reveals
 45 that minor's identity, including, but not limited to, the
 46 minor's face; the minor's home, school, church, or employment
 47 telephone number; the minor's home, school, church, or
 48 employment address; the name of the minor's school, church, or
 49 place of employment; or the personal assets of the minor; and
 50 which identifies that minor as the victim of a crime described

51 in this subparagraph, held by a law enforcement agency, is
 52 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 53 of the State Constitution. Any governmental agency that is
 54 authorized to have access to such statements by any provision of
 55 law shall be granted such access in the furtherance of the
 56 agency's statutory duties, notwithstanding the provisions of
 57 this section.

58 b. A public employee or officer who has access to a
 59 videotaped statement of a minor who is alleged to be or who is a
 60 victim of sexual battery, lewd acts, or other sexual misconduct
 61 proscribed in chapter 800 or in s. 794.011, s. 847.003, ~~s.~~
 62 ~~827.071~~, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, s.
 63 847.0137, or s. 847.0145 may not willfully and knowingly
 64 disclose videotaped information that reveals the minor's
 65 identity to a person who is not assisting in the investigation
 66 or prosecution of the alleged offense or to any person other
 67 than the defendant, the defendant's attorney, or a person
 68 specified in an order entered by the court having jurisdiction
 69 of the alleged offense. A person who violates this provision
 70 commits a misdemeanor of the first degree, punishable as
 71 provided in s. 775.082 or s. 775.083.

72 c. This subparagraph is subject to the Open Government
 73 Sunset Review Act in accordance with s. 119.15 and shall stand
 74 repealed on October 2, 2022, unless reviewed and saved from
 75 repeal through reenactment by the Legislature.

76 Section 2. The Legislature finds that it is a public
 77 necessity that any information in a videotaped statement of a
 78 minor who is alleged to be or who is a victim of sexual battery,
 79 lewd acts, or other sexual misconduct as proscribed by s.
 80 847.003 or s. 847.0137, Florida Statutes, be made confidential
 81 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 82 Article I of the State Constitution. The Legislature finds that
 83 such information is highly sensitive and shows the minor victim
 84 describing in graphic detail sexual acts for which the minor is
 85 alleged to be or is a victim. If such information regarding a
 86 minor victim of sex crimes were viewed, copied, or publicized,
 87 it could result in trauma, sorrow, humiliation, or emotional
 88 injury to the minor victim and the victim's family. The
 89 Legislature finds that it is important to strengthen the
 90 protections afforded minor victims of sex crimes in order to
 91 ensure their privacy and to prevent their revictimization. This
 92 exemption serves to minimize the trauma to those minor victims
 93 because the release of such information would compound the
 94 tragedy already visited upon their lives. For these reasons, the
 95 Legislature finds that it is a public necessity to make
 96 confidential and exempt any information in a videotaped
 97 statement of a minor who is alleged to be or who is a victim of
 98 sexual battery, lewd acts, or other sexual misconduct as
 99 proscribed by s. 847.003 or s. 847.0137, Florida Statutes.

100 Section 3. This act shall take effect on the same date

HB 7053

2017

101 | that HB 7049 or similar legislation takes effect, if such
102 | legislation is adopted in the same legislative session or an
103 | extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTA 17-05 OGSR/Agency Personnel
SPONSOR(S): Oversight, Transparency & Administration Subcommittee
TIED BILLS: IDEN./SIM. **BILLS:** SB 7018

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee		Toliver <i>HT</i>	Harrington <i>RA</i>

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment. If, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.

Current law provides public record exemptions for certain identification and location information of specified agency personnel as well as certain information relating to the spouses and children of such personnel. The exemptions for these specified agency employees, as well as exemptions pertaining to the family of those employees, are set to repeal on October 1, 2017, unless the Legislature reenacts the exemptions. The categories of agency personnel with specified exemptions are:

- Law enforcement;
- Department of Children and Families personnel with certain duties;
- Department of Health personnel with certain duties;
- Department of Revenue and local government personnel who collect revenue or child support;
- Department of Financial Services personnel with certain duties;
- Firefighters;
- Justices and judges;
- State attorneys and statewide prosecutors and their assistants;
- Magistrates, administrative law judges, judges of compensation claims, child support hearing officers;
- Human resources, labor relations personnel;
- Code enforcement personnel;
- Guardian ad Litem Program personnel;
- Department of Juvenile Justice personnel;
- Public defenders, criminal conflict and civil regional counsel and their assistants;
- Department of Business and Professional Regulation investigators; and
- County Tax Collectors.

The bill reenacts the public record exemptions for agency personnel and their families. The bill also expands certain public record exemptions for agency personnel and their families in an effort to provide uniformity. The bill provides for repeal of the expanded exemptions on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

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

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 expands existing public record exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

The Florida Constitution guarantees every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.¹ The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.² The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.³ A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.⁴

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)⁵ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁶

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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.
- Protect trade or business secrets.⁷

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.⁸ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created⁹ then a public necessity statement and a two-thirds vote for passage are not required.

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(c).

³ *Id.*

⁴ *Id.*

⁵ Section 119.15, F.S.

⁶ Section 119.15(3), F.S.

⁷ Section 119.15(6)(b), F.S.

⁸ Section 24(c), Art. I, FLA. CONST.

⁹ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

General Public Record Exemptions for Agency Personnel

There are three general public record exemptions that apply to all agency personnel: social security numbers, medical information, and personal identifying information of dependent children who are insured by an agency group insurance plan.¹⁰

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.¹¹ An employing agency may only release social security numbers for one of the following reasons: the release is required by law, a receiving government agency needs the social security number to perform its duties, or the employee consents to disclosure of his or her social security number.¹² In addition, there is a general exemption for social security numbers which applies to the public¹³ that makes social security numbers confidential and exempt.¹⁴ This exemption applies to any agency that holds anyone's social security number, including the social security numbers of agency personnel.¹⁵

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee.¹⁶ This exemption applies to prospective, current, and former employees.¹⁷

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure.¹⁸ This exemption applies to the children of current and former employees and is also retroactively applied.¹⁹

Public Records Exemptions for Specified Agency Personnel

Provisions in s. 119.071(4)(d), F.S., make exempt from public disclosure the personal identification and location information of specified agency personnel, their spouses, and their children. An agency that holds this information and is not the employing agency of the employee must keep the exempt status of that information only if the employee or the employing agency submits a written request for maintenance of the exemption to the custodial agency.²⁰

How the Exemptions Differ

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S., is similar in the categories of information protected, but not identical. All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public disclosure the home addresses and telephone numbers of the enumerated personnel. Employees' dates of birth and photographs are exempt for some personnel, but not all.²¹

Section 119.071(4)(d)2., F.S., also makes exempt from public disclosure certain types of information about employees' spouses and children. The exemptions for family members include home addresses, telephone numbers, spouses' places of employment, and the locations of children's schools. The

¹⁰ Section 119.071(4)(a) and (b), F.S.

¹¹ Section 119.071(4)(a)1., F.S.

¹² Section 119.071(4)(a)2., F.S.

¹³ Section 119.071(5)(a)5., F.S.

¹⁴ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. (See Attorney General Opinion 85-62, August 1, 1985).

¹⁵ Section 119.071(5)(a)5., F.S.

¹⁶ Section 119.071(4)(b)1., F.S.

¹⁷ *Id.*

¹⁸ Section 119.071(4)(b)2., F.S.

¹⁹ *Id.*

²⁰ Section 119.071(4)(d)3., F.S.

²¹ Section 119.071(4)(d)2., F.S.

exemptions for family members, however, are not uniform. The names, dates of birth, and photographs of families members are exempt from public disclosure, but not for all family members of all personnel.

Some of the exemptions are conditional upon the actions of the employee. For example, certain personnel must make “reasonable efforts to protect” his or her information from being accessible through public means for the exemption to apply.²²

In addition, some of the provisions exempt information from ch. 119, F.S., but not from Article I, s. 24(a), of the Florida Constitution. This means that information would be exempt if held by an executive branch agency, but may not necessarily be exempt if held by the legislative or judicial branches of government.

Law Enforcement, Correctional Officers, Certain Personnel of the Department of Children and Families, the Department of Health, the Department of Revenue, and Local Governments

Current law provides a public record exemption for the home address, telephone numbers, social security numbers, date of birth, and photographs of active or former sworn or civilian law enforcement personnel, including:

- Correctional and correctional probation officers;
- Personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities;
- Personnel of the Department of Health who support child abuse investigations; and
- Personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement.

Legislative History of the Exemption

In 1979, the Legislature created a public record exemption for the “home address, telephone number and photograph of law enforcement personnel” as well as for their spouses and children.²³ This exemption was part of a larger exemption created for criminal intelligence information.

In 1985, the Legislature expanded the exemption to include “active or former” law enforcement.²⁴

In 1989, the exemption for active or former law enforcement was amended to include personnel of the Department of Health and Rehabilitative Services whose duties included the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, and also expanded to include day care facilities of the personnel’s children.²⁵ Public records exemptions were not required to include public necessity statements at that time, so the Legislative intent was not expressed in a separate statement.²⁶

In 1995, Department of Revenue and local government personnel whose responsibilities include revenue collection and enforcement or child-support enforcement were amended into this exemption. The public necessity statement provided that releasing information about such personnel would jeopardize their safety and impede personnel from executing their jobs.²⁷

In 1998, the exemption was amended to change the name of the Department of Health and Rehabilitative Services to the Department of Children and Family Services. In addition, the exemption was amended to include Department of Health personnel whose duties supported the investigation of

²² Section 119.071(4)(d)2.e., F.S.

²³ The exemption included the place of employment of the spouses and children of law enforcement personnel, as well as the names and locations of the schools of the children. Ch. 79-187. L.O.F.

²⁴ Chapter 85-301, L.O.F.

²⁵ Chapter 89-80, L.O.F.

²⁶ Public necessity statements were required for public records exemptions after 1992, when Article I, s. 24, of the Florida Constitution was adopted.

²⁷ Chapter 1995-170, L.O.F..

child abuse or neglect.²⁸ In this case, the absence of a public necessity statement indicates that this was not an expansion of the public records exemption but a revision reflecting the changes made during the reorganization of the Department of Health and Rehabilitative Services.

In 2012, the Legislature expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members.²⁹ The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.³⁰ In addition, a clarification was made to indicate that both sworn and civilian law enforcement personnel were included in the exemption.

In 2013, the Legislature enacted a public records exemption for the names of the spouses and children of the above named personnel; this exemption will sunset on October 2, 2018. The public necessity statement provides:

As a result of their duties, these sworn and civilian law enforcement personnel often come in close contact with individuals who not only may be a threat to these personnel, but who might seek to take revenge against them by harming their spouses and children. Permitting access to the names of the spouses and children of active or former sworn or civilian law enforcement personnel provides a means by which individuals who have been investigated, arrested, interrogated, or incarcerated can identify and cause physical or emotional harm to these spouses and children.³¹

Firefighters

Current law provides a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of certified firefighters; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children.

Legislative History of the Exemption

In 1991, the Legislature created a public record exemption for firefighters and their families, but it did not protect the dates of birth of such personnel. Public record exemptions were not required to include public necessity statements at that time, so the Legislative intent was not expressed in a separate statement.³²

In 2012, the Legislature expanded this exemption to include the dates of birth of the firefighters as well as their family members.³³ The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.

Justices and Judges

Current law provides a public record exemption for the home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges.

²⁸ Chapter 98-137, s. 7, L.O.F.

²⁹ Chapter 2012-149, L.O.F.

³⁰ *Id.*

³¹ Chapter 2013-243, s. 2, L.O.F.

³² Public necessity statements were required for public record exemptions after 1992, when Article I, s. 24 of the Florida Constitution was adopted.

³³ Chapter 2012-149, L.O.F.

Legislative History of the Exemption

In 1991, the Legislature created a public record exemption for current justices and judges and their families.³⁴ This public records exemption was created in 1991, so there is no public necessity statement explaining why the exemption was created.

In 2012, the Legislature expanded this exemption to include the dates of birth of the personnel as well as their family members.³⁵ The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual. In addition, the Legislature expanded the exemption to include former justices and judges as well as their families. The public necessity statement for this expansion indicated that justices and judges as well as their family members can be targets of revenge and that risk continues after justices and judges complete their public service.

State Attorneys, Assistant State Attorneys, Statewide Prosecutor and Assistant Statewide Prosecutors

Current law provides a public record exemption for the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children.

Legislative History of the Exemption

In 1994, the Legislature created a public record exemption for state attorneys and their assistants as well as the statewide prosecutor and his or her assistants.³⁶ The public necessity statement provides that identifying information should be exempt from public disclosure because these personnel and their families "could be harmed by a criminal defendant or a friend or family member of a criminal defendant."³⁷

In 2012, the Legislature expanded this exemption to include the dates of birth of the personnel as well as their family members.³⁸ The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.³⁹

In 2013, the Legislature expanded the exemption to include the names of the spouses and children of state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors.⁴⁰ The public necessity statement provides that the enumerated attorneys prosecute dangerous and violent individuals and permitting access to the names of a prosecutor's family members "provides a means by which a criminal defendant or a friend or family member of such defendant could harm or threaten with harm these spouses and children."⁴¹

General Magistrates, Special Magistrates, Judges of Compensation Claims, Administrative Law Judges, and Child Support Enforcement Hearing Officers

Current law provides a public record exemption for the home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and

³⁴ Chapter 1991-149, L.O.F.

³⁵ Chapter 2012-149, L.O.F.

³⁶ Chapter 1994-176, L.O.F.

³⁷ Chapter 1994-176, s. 2, L.O.F.

³⁸ Chapter 2012-149, L.O.F.

³⁹ *Id.* at s. 2.

⁴⁰ Chapter 2013-243, L.O.F.

⁴¹ *Id.* at s. 2.

children of such personnel; and the names and locations of schools and day care facilities attended by the children.

Legislative History of the Exemption

In 2008, the Legislature created a public record exemption for these finders-of-fact and their families.⁴² The public record exemption covers the same types of information as the exemption for judges, but requires the finder-of-fact to provide a written statement that they have made reasonable efforts to protect their information from being publically accessibly. The 2008 public necessity statement provides that “[r]elease of such identifying and location information might place such officials and their family members in danger of physical and emotional harm from disgruntled criminal defendants or litigants.”⁴³

Human Resource, Labor Relations, or Employee Relations Directors, Assistant Directors, Managers, or Assistant Managers of any Local Government Agency or Water Management District

Current law provides a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, places of employment of the spouses and children of such personnel; and the names and location of schools and day care facilities.

Legislative History of the Exemption

In 2001, the Legislature created a public record exemption for these personnel and their families.⁴⁴ The public necessity statement provides that the exemption is warranted because the personnel or their family members “could be harmed or threatened with harm by a current or former employee or a friend or family member of a current or former employee.”⁴⁵ The exemption was narrowed and saved from repeal in 2006.⁴⁶

In 2012, the Legislature expanded this exemption to include the dates of birth of the personnel as well as their family members.⁴⁷ The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.⁴⁸

Code Enforcement Officers

Current law provides a public record exemption for the home address, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children.

Legislative History of the Exemption

In 1994, the Legislature created a public record exemption for county and municipal code inspectors and code enforcement officers.⁴⁹ The 1994 public necessity statement noted that “release of this information would jeopardize the safety and welfare of . . . code enforcement officers and their families.”

In 2001, this exemption was amended to only include current or former code enforcement officers. The public necessity statement contained provides that the exemption is warranted because “[c]itations

⁴² Chapter 2008-41, L.O.F.

⁴³ *Id.*

⁴⁴ Chapter 2001-249, L.O.F.

⁴⁵ *Id.* at s. 2.

⁴⁶ Chapter 2006-211, L.O.F. The exemption was narrowed by removing the exemption of social security numbers and the photographs of spouses and children.

⁴⁷ Chapter 2012-149, L.O.F.

⁴⁸ *Id.*

⁴⁹ Chapter 1994-128, L.O.F.

issued in response to violations that they encounter often lead to retribution by the offenders” and the release of identifying information “has led to threats, acts of violence, and unwarranted risk to the officers and their families.”⁵⁰

In 2012, the Legislature expanded this exemption to include the dates of birth of the personnel as well as their family members.⁵¹ The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.

Guardians ad Litem and Guardian ad Litem Program Personnel

Current law provides a public record exemption for the home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children.

Legislative History of the Exemption

In 2005, the Legislature created a public record exemption for guardians ad litem.⁵² The exemption for guardians ad litem includes professional staff, contract attorneys, and support staff who work for the Guardian ad Litem Program.⁵³ Guardians ad litem must provide a written statement that they made reasonable efforts to protect their information from being publically accessible. The 2005 public necessity statement provides that the release of identifying information and location information of current and former guardians ad litem and their family members could seriously jeopardize the safety and welfare of these enumerated personnel as “[d]ifferent persons may be disgruntled with the testimony, report, or recommendation made by guardians ad litem.”

In 2010, this exemption was amended to include the names and locations of schools and day care facilities attended by the children of current or former guardians ad litem.⁵⁴ The 2010 public necessity statement provides that the exemption is warranted because “the children of guardians ad litem could become a potential target for acts of revenge” and “the safety and welfare of the children . . . could be seriously jeopardized.”⁵⁵

In 2012, the Legislature expanded this exemption to include the dates of birth of the personnel as well as their family members.⁵⁶ The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.

Department of Juvenile Justice Specified Employees

Current law provide a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice officers and counselors, human services counselor administrators, rehabilitation therapists, and social service counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children.

Legislative History of the Exemption

In 2006, the Legislature created a public record exemption for Department of Juvenile Justice (DJJ) specified personnel and their families.⁵⁷ The 2006 public necessity statement provides that DJJ

⁵⁰ Chapter 2001-249, s. 3, L.O.F.

⁵¹ Chapter 2012-149, L.O.F.

⁵² Chapter 2005-213, L.O.F.

⁵³ Section 39.820(1), F.S.

⁵⁴ Chapter 2010-71, L.O.F.

⁵⁵ *Id.*

⁵⁶ Chapter 2012-149, L.O.F.

⁵⁷ Chapter 2006-180, L.O.F.

personnel and their family members “could be harmed or threatened with harm by a juvenile defendant or by a friend or family member of a juvenile defendant” if their information were public.

In 2011, the public record exemption was revised to match the job titles of DJJ staff as they were currently used.⁵⁸

In 2012, the Legislature expanded this exemption to include the dates of birth of the personnel as well as their family members.⁵⁹ The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.

Public Defenders, Assistant Public Defenders, Criminal Conflict and Civil Regional Counsel and Assistant Criminal Conflict and Civil Regional Counsel

Current law provides a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children.

Legislative History of the Exemption

In 2010, the Legislature created a public records exemption for public defenders, their assistants, and their families, as well as criminal conflict and civil regional counsel, their assistants and their families.⁶⁰ The 2010 public necessity statement provides that the release of identifying information and location information of the personnel or their family members “would jeopardize the safety of these attorneys and their families” because “individuals may become disgruntled by the proceedings or the outcome of a criminal or civil case, which could result in these attorneys and their families becoming targets for acts of violence.”

In 2012, the Legislature expanded this exemption to include the dates of birth of the personnel as well as their family members.⁶¹ The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.

In 2014, the names of the spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel were added to the exemption.⁶² The public necessity for the expansion of the exemption was because the personnel come in close contact with people who make seek revenge by harming the personnel’s spouses and children.⁶³

Department of Business and Professional Regulation Investigators and Inspectors

Current law provides a public record exemption for the home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation (DBPR); the names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children.

Legislative History of the Exemption

In 2012, the Legislature created a public record exemption for DBPR investigators and inspectors, as well as their families.⁶⁴ These employees are required to make reasonable efforts to protect their

⁵⁸ Chapter 2011-201, L.O.F.

⁵⁹ Chapter 2012-149, L.O.F.

⁶⁰ Chapter 2010-171, L.O.F.

⁶¹ Chapter 2012-149, L.O.F.

⁶² Chapter 2014-172, L.O.F.

⁶³ Chapter 2014-172, s. 2, L.O.F.

⁶⁴ Chapter 2012-214, L.O.F.

information from being publically accessible. The public necessity statement provides that the release of identifying information and location information of such personnel or their family members might place them "in danger of physical or emotional harm from disgruntled individuals . . . whose business or professional practices have come under the scrutiny of the Department of Business and Professional Regulation."⁶⁵

County Tax Collectors

Current law provides a public record exemption for the home addresses and telephone numbers of county tax collectors; the names, home addresses, telephone numbers, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children.

Legislative History of the Exemption

In 2012, the Legislature created a public record exemption for county tax collectors and their families.⁶⁶ These employees are required to make reasonable efforts to protect their information from being publically accessible. The public necessity statement provides that the release of identifying information and location information of county tax collectors or their family members might place them "in danger of physical or emotional harm from disgruntled individuals who have contentious reactions to revenue collection or . . . child support enforcement actions."⁶⁷

Department of Health Personnel

Current law provides a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities by the department; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children.

Legislative History of the Exemption

In 2014, the Legislature created a public record exemption for personnel of the Department of Health with certain duties, as well as the families of such personnel.⁶⁸ These employees are required to make reasonable efforts to protect their information from being publicly accessible. The public necessity statement provides that the release of identifying and location information of Department of Health personnel and their family members might place them "in danger of physical and emotional harm from disgruntled individuals who have contentious reactions to actions carried out by such personnel of the Department of Health, or whose business or professional practices have come under the scrutiny of investigators and inspectors of the Department of Health."⁶⁹

Impaired Practitioner Consultants

Current law provides a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children.

⁶⁵ Chapter 2012-214, s. 2, L.O.F.

⁶⁶ Chapter 2012-214, L.O.F.

⁶⁷ Chapter 2012-214, s. 2, L.O.F.

⁶⁸ Chapter 2014-72, L.O.F.

⁶⁹ Chapter 2014-72, s. 2, L.O.F.

Legislative History of the Exemption

In 2015, the Legislature created a public record exemption for impaired practitioner consultants and their families.⁷⁰ These consultants are required to make reasonable efforts to protect their information from being publicly accessible. The public necessity statement provides that as a result of certain threats and incidents that occurred between treatment program participants and their impaired practitioner consultants, "identifying and location information could place an impaired practitioner consultant or an employee of a consultant ... or the spouses and children of such consultants or their employees in danger of being physically or emotionally harmed or stalked by a person who has a hostile reaction to a recommendation, report, or conclusion provided by a consultant or an employee of a consultant in the determination of whether the practitioner is impaired."⁷¹

Emergency Medical Technicians or Paramedics

Current law provides a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children.

Legislative History of the Exemption

In 2016, the Legislature created a public record exemption for emergency medical technicians or paramedics and their families.⁷² These emergency medical technicians are required to make reasonable efforts to protect their information from being publicly accessible. The public necessity statement provides that the "release of identifying and location information of emergency medical technicians or paramedics certified under chapter 401, Florida Statutes, or the spouses and children of such emergency medical technicians or paramedics, could place them in danger of being physically or emotionally harmed or stalked by a person who has a hostile reaction to his or her encounter with such emergency medical technicians or paramedics."⁷³

Inspectors and Auditors

Current law provides a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children.

Legislative History of the Exemption

In 2016, the Legislature created a public record exemption for personnel employed in an agency's office of inspector general or internal audit department and their families.⁷⁴ These employees are required to make reasonable efforts to protect their information from being publicly accessible. The public necessity statement provides that "the release of such identifying and location information might place such personnel and their family members in danger of physical and emotional harm from disgruntled individuals who may react inappropriately to investigations, audits, and other actions carried out by such personnel, or to scrutiny of their business or professional practices."⁷⁵

⁷⁰ Chapter 2015-37, L.O.F.

⁷¹ Chapter 2015-37, s. 2, L.O.F.

⁷² Chapter 2016-159, L.O.F.

⁷³ Chapter 2016-159, s. 3, L.O.F.

⁷⁴ Chapter 2016-164, L.O.F.

⁷⁵ Chapter 2016-164, s. 2, L.O.F.

Public Record Exemptions under Review

Pursuant to the Open Government Sunset Review Act, many of the exemptions are scheduled to repeal on October 2, 2017, unless reenacted by the Legislature. During the 2016 interim, subcommittee staff sent questionnaires to agencies, water management districts, counties, cities, law enforcement personnel, state attorneys, and public defenders affected by the exemptions. The surveys covered 12 statutory exemptions and approximately 20 professions.

In all, 178 entities responded.⁷⁶ All but two of the entities that tracked such information reported that they had received public record requests for personnel information. The majority of the surveyed entities recommended that all of the exemptions be reenacted as they are.⁷⁷ Personnel safety was the most common reason cited for reenacting the exemptions.

Several of the entities stated that they had problems applying the exemptions. They suggested that all of the exemptions be made uniform so that it would be easier to redact information.

Employing entities gathered large amounts of information about each of their employees, much more than is covered by the existing exemptions. Employers made several recommendations about what other types of information should be exempt. This included:

- All family members who resided with the exempt personnel (such as parents and step-children);
- Vehicle information;
- People who share custody of children but are not spouses;
- Personal email addresses; and
- Professional or recreational licenses and permits.

Effect of the Bill

The bill reenacts the public record exemptions for identification and location information of certain agency personnel with changes to create consistency in the law.

Social Security Numbers

Currently agency personnel public record exemptions in s. 119.071(4)(d)2., F.S., state that social security numbers of certain personnel and their families are exempt from public disclosure. The bill removes the public record exemptions for social security numbers because there is a general exemption for the social security numbers of all current and former agency personnel in s. 119.071(4)(a), F.S. There is also an exemption for social security numbers in s. 119.071(5)(a)5., F.S., which is a general public record exemption for everyone. Sections 119.071(4)(a), F.S., and 119.071(5)(a)5., F.S., make social security numbers confidential and exempt from ch. 119, F.S., as well as the State Constitution.

By removing social security numbers from the personnel exemptions in s. 119.071(4)(d)2., F.S., the conflict between public record exemptions for social security numbers is eliminated. In addition, the discretion of the records custodian to release social security numbers will be restricted to those conditions outlined in statute.

The Florida Constitution

It has been the practice of the Legislature to make records exempt from both s. 119.07(1), F.S., and s. 24(a), Article I of the Florida Constitution. An exemption from the Florida Constitution ensures that a public record exemption applies to a record when it is held by each branch of government. This bill

⁷⁶ This number reflects 27 agencies, 75 cities, five water management districts, 24 counties, 20 sheriff's offices, two police departments, the Florida Police Chief's Association, 11 state attorney offices and 12 public defender offices. The survey responses are on file with the Oversight, Transparency & Administration Subcommittee.

⁷⁷ Several entities left blanks in response to the questions of whether any of the exemptions should be permitted to repeal. Some stated that they had no opinion or no recommendation. Some entities, such as small cities or unaffected agencies, reported that they did not employ any of the professions in the survey.

expands exemptions to include the Florida Constitution if they do not currently do so. The bill incorporates the State Constitution into the public record exemptions for the following personnel:

- Law enforcement;
- DCF, DOH, and DOR personnel with certain duties;
- Firefighters; and
- Justices and judges.

Making these exemptions subject to s. 24(a), Article I of the Florida Constitution is an expansion of the current exemptions. As such, the bill provides for the future repeal of the exemptions that are expanded, unless reviewed and saved from repeal by reenactment by the Legislature.

Dates of Birth of DBPR Personnel and County Tax Collectors

Most of the public record exemptions for personnel also protect the dates of birth of the personnel and their families. Inspectors and investigators of DBPR and county tax collectors, however, do not have this protection. This bill expands the public record exemptions for DBPR personnel, county tax collectors, and their families by adding dates of birth to their exemptions.⁷⁸ The addition of date of birth for these two categories of employees constitutes an expansion of the current exemption. As such, the bill provides for the future repeal of the exemptions that are expanded, unless reviewed and saved from repeal by reenactment by the Legislature.

Names of Children and Spouses of Personnel

Existing public record exemptions for agency personnel make exempt from public disclosure the names of the personnel's children and spouses with the following exceptions:

- Justices and judges;
- Magistrates, judges of compensation claims, DOAH administrative law judges;
- Child support enforcement hearing officers; and
- Firefighters.

The bill exempts from public disclosure the names of the children and spouses of these personnel. Adding the names of spouses and children to the exemptions is an expansion of the current exemptions. As such, the bill provides for the future repeal of the exemptions that are expanded, unless reviewed and saved from repeal by reenactment by the Legislature.

The Requirement to Make Reasonable Efforts to Protect Information

This bill removes the requirement that certain personnel must prove that they have made reasonable efforts to protect their information from being accessible to the public. The bill removes this requirement for the following personnel:

- Magistrates, judges of compensation claims, DOAH administrative law judges, and child support enforcement hearing officers;
- Guardians ad litem;
- DBPR investigators;
- County tax collectors;
- DOH personnel with certain duties;
- Impaired practitioner consultants;
- Emergency medical technicians or paramedics; and
- Personnel employed in an agency's office of inspector general or internal audit department.

This language was removed because such identifying and location information could expose the personnel or their family members to danger from physical or emotional harm and the exemption should be applied without requiring the personnel to prove that they have not made their information public. Removing this requirement also eases the administrative burden on personnel and their

⁷⁸ The public records exemptions for DBPR investigators and tax collectors passed in the same bill, HB 1089, which became ch. 2012-214, L.O.F., a public records exemption for dates of birth to all of the other personnel public records exemptions.

employers because most other personnel did not have to prove something in order to be eligible for the exemption. Agencies noted that the differences in each exemption made them difficult to implement.

Removing this requirement constitutes an expansion of the exemption. As such, the bill provides for the future repeal of the exemptions that are expanded, unless reviewed and saved from repeal by reenactment by the Legislature.

Public Necessity Statement

Public necessity statements for public records exemptions are required by the State Constitution. The public necessity statements provide two basic reasons for the public necessity of these exemptions. First, the expansions were necessary for the safety of the personnel and their families. The public necessity statements also reflect and supplement the public necessity statements that currently exist in the Laws of Florida. Second, the expansions were necessary to increase harmonization between the exemptions and thereby increase accuracy and efficiency when redactions are required.

Effective Date

This bill takes effect on October 1, 2017.

B. SECTION DIRECTORY:

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

Section 2 provides a public necessity statement.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to the expansion of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt information

prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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 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 expands an existing public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands an existing 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 or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 119.071, F.S., which
4 provides exemptions from public record requirements
5 for certain personal identifying and location
6 information of specified agency personnel, and the
7 spouses and children thereof; revising and
8 reorganizing the exemptions; removing redundant
9 exemptions for social security numbers; providing an
10 exemption from public record requirements for the
11 names of the spouses and children of certain agency
12 personnel; providing an exemption from public record
13 requirements for the dates of birth for certain agency
14 personnel and their spouses and children; removing the
15 scheduled repeal of certain exemptions; providing for
16 retroactive application; providing for future
17 legislative review and repeal of certain exemptions;
18 providing statements of public necessity; providing an
19 effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Paragraph (d) of subsection (4) of section
24 119.071, Florida Statutes, is amended to read:

25 119.071 General exemptions from inspection or copying of

26 public records.-

27 (4) AGENCY PERSONNEL INFORMATION.-

28 (d)1. For purposes of this paragraph, the term "telephone
 29 numbers" includes home telephone numbers, personal cellular
 30 telephone numbers, personal pager telephone numbers, and
 31 telephone numbers associated with personal communications
 32 devices.

33 2.a.~~(1)~~ The home addresses, telephone numbers, ~~social~~
 34 ~~security numbers,~~ dates of birth, and photographs of active or
 35 former sworn or civilian law enforcement personnel, including
 36 correctional and correctional probation officers, personnel of
 37 the Department of Children and Families whose duties include the
 38 investigation of abuse, neglect, exploitation, fraud, theft, or
 39 other criminal activities, personnel of the Department of Health
 40 whose duties are to support the investigation of child abuse or
 41 neglect, and personnel of the Department of Revenue or local
 42 governments whose responsibilities include revenue collection
 43 and enforcement or child support enforcement; the names, home
 44 addresses, telephone numbers, ~~social security numbers,~~
 45 photographs, dates of birth, and places of employment of the
 46 spouses and children of such personnel; and the names and
 47 locations of schools and day care facilities attended by the
 48 children of such personnel are exempt from s. 119.07(1) and s.
 49 24(a), Art. I of the State Constitution. This sub-subparagraph
 50 is subject to the Open Government Sunset Review Act in

51 accordance with s. 119.15 and shall stand repealed on October 2,
 52 2022, unless reviewed and saved from repeal through reenactment
 53 by the Legislature.

54 ~~(II) The names of the spouses and children of active or~~
 55 ~~former sworn or civilian law enforcement personnel and the other~~
 56 ~~specified agency personnel identified in sub-sub-subparagraph~~
 57 ~~(I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the~~
 58 ~~State Constitution.~~

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

63 b. (IV) The home addresses, telephone numbers, dates of
 64 birth, and photographs of current or former nonsworn
 65 investigative personnel of the Department of Financial Services
 66 whose duties include the investigation of fraud, theft, workers'
 67 compensation coverage requirements and compliance, other related
 68 criminal activities, or state regulatory requirement violations;
 69 the names, home addresses, telephone numbers, dates of birth,
 70 and places of employment of the spouses and children of such
 71 personnel; and the names and locations of schools and day care
 72 facilities attended by the children of such personnel are exempt
 73 from s. 119.07(1) and s. 24(a), Art. I of the State
 74 Constitution. This sub-subparagraph ~~sub-sub-subparagraph~~ is
 75 subject to the Open Government Sunset Review Act in accordance

76 with s. 119.15 and shall stand repealed on October 2, 2021,
 77 unless reviewed and saved from repeal through reenactment by the
 78 Legislature.

79 ~~c.b.~~ The home addresses, telephone numbers, dates of
 80 birth, and photographs of firefighters certified in compliance
 81 with s. 633.408; the names, home addresses, telephone numbers,
 82 photographs, dates of birth, and places of employment of the
 83 spouses and children of such firefighters; and the names and
 84 locations of schools and day care facilities attended by the
 85 children of such firefighters are exempt from s. 119.07(1) and
 86 s. 24(a), Art. I of the State Constitution. This sub-
 87 subparagraph is subject to the Open Government Sunset Review Act
 88 in accordance with s. 119.15 and shall stand repealed on October
 89 2, 2022, unless reviewed and saved from repeal through
 90 reenactment by the Legislature.

91 ~~d.e.~~ The home addresses, dates of birth, and telephone
 92 numbers of current or former justices of the Supreme Court,
 93 district court of appeal judges, circuit court judges, and
 94 county court judges; the names, home addresses, telephone
 95 numbers, dates of birth, and places of employment of the spouses
 96 and children of current or former justices and judges; and the
 97 names and locations of schools and day care facilities attended
 98 by the children of current or former justices and judges are
 99 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 100 Constitution. This sub-subparagraph is subject to the Open

101 Government Sunset Review Act in accordance with s. 119.15 and
 102 shall stand repealed on October 2, 2022, unless reviewed and
 103 saved from repeal through reenactment by the Legislature.

104 e.d.(I) The home addresses, telephone numbers, ~~social~~
 105 ~~security numbers,~~ dates of birth, and photographs of current or
 106 former state attorneys, assistant state attorneys, statewide
 107 prosecutors, or assistant statewide prosecutors; the names, home
 108 addresses, telephone numbers, ~~social security numbers,~~
 109 photographs, dates of birth, and places of employment of the
 110 spouses and children of current or former state attorneys,
 111 assistant state attorneys, statewide prosecutors, or assistant
 112 statewide prosecutors; and the names and locations of schools
 113 and day care facilities attended by the children of current or
 114 former state attorneys, assistant state attorneys, statewide
 115 prosecutors, or assistant statewide prosecutors are exempt from
 116 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

117 ~~(II) The names of the spouses and children of current or~~
 118 ~~former state attorneys, assistant state attorneys, statewide~~
 119 ~~prosecutors, or assistant statewide prosecutors are exempt from~~
 120 ~~s. 119.07(1) and s. 24(a), Art. I of the State Constitution.~~

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

125 f.e. The home addresses, dates of birth, and telephone

126 numbers of general magistrates, special magistrates, judges of
 127 compensation claims, administrative law judges of the Division
 128 of Administrative Hearings, and child support enforcement
 129 hearing officers; the names, home addresses, telephone numbers,
 130 dates of birth, and places of employment of the spouses and
 131 children of general magistrates, special magistrates, judges of
 132 compensation claims, administrative law judges of the Division
 133 of Administrative Hearings, and child support enforcement
 134 hearing officers; and the names and locations of schools and day
 135 care facilities attended by the children of general magistrates,
 136 special magistrates, judges of compensation claims,
 137 administrative law judges of the Division of Administrative
 138 Hearings, and child support enforcement hearing officers are
 139 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 140 Constitution ~~if the general magistrate, special magistrate,~~
 141 ~~judge of compensation claims, administrative law judge of the~~
 142 ~~Division of Administrative Hearings, or child support hearing~~
 143 ~~officer provides a written statement that the general~~
 144 ~~magistrate, special magistrate, judge of compensation claims,~~
 145 ~~administrative law judge of the Division of Administrative~~
 146 ~~Hearings, or child support hearing officer has made reasonable~~
 147 ~~efforts to protect such information from being accessible~~
 148 ~~through other means available to the public. This sub-~~
 149 subparagraph is subject to the Open Government Sunset Review Act
 150 in accordance with s. 119.15 and shall stand repealed on October

151 | 2, 2022, unless reviewed and saved from repeal through
 152 | reenactment by the Legislature.

153 | g.f. The home addresses, telephone numbers, dates of
 154 | birth, and photographs of current or former human resource,
 155 | labor relations, or employee relations directors, assistant
 156 | directors, managers, or assistant managers of any local
 157 | government agency or water management district whose duties
 158 | include hiring and firing employees, labor contract negotiation,
 159 | administration, or other personnel-related duties; the names,
 160 | home addresses, telephone numbers, dates of birth, and places of
 161 | employment of the spouses and children of such personnel; and
 162 | the names and locations of schools and day care facilities
 163 | attended by the children of such personnel are exempt from s.
 164 | 119.07(1) and s. 24(a), Art. I of the State Constitution.

165 | h.g. The home addresses, telephone numbers, dates of
 166 | birth, and photographs of current or former code enforcement
 167 | officers; the names, home addresses, telephone numbers, dates of
 168 | birth, and places of employment of the spouses and children of
 169 | such personnel; and the names and locations of schools and day
 170 | care facilities attended by the children of such personnel are
 171 | exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 172 | Constitution.

173 | i.h. The home addresses, telephone numbers, places of
 174 | employment, dates of birth, and photographs of current or former
 175 | guardians ad litem, as defined in s. 39.820; the names, home

176 addresses, telephone numbers, dates of birth, and places of
 177 employment of the spouses and children of such persons; and the
 178 names and locations of schools and day care facilities attended
 179 by the children of such persons are exempt from s. 119.07(1) and
 180 s. 24(a), Art. I of the State Constitution, ~~if the guardian ad~~
 181 ~~litem provides a written statement that the guardian ad litem~~
 182 ~~has made reasonable efforts to protect such information from~~
 183 ~~being accessible through other means available to the public.~~
 184 This sub-subparagraph is subject to the Open Government Sunset
 185 Review Act in accordance with s. 119.15 and shall stand repealed
 186 on October 2, 2022, unless reviewed and saved from repeal
 187 through reenactment by the Legislature.

188 j.i. The home addresses, telephone numbers, dates of
 189 birth, and photographs of current or former juvenile probation
 190 officers, juvenile probation supervisors, detention
 191 superintendents, assistant detention superintendents, juvenile
 192 justice detention officers I and II, juvenile justice detention
 193 officer supervisors, juvenile justice residential officers,
 194 juvenile justice residential officer supervisors I and II,
 195 juvenile justice counselors, juvenile justice counselor
 196 supervisors, human services counselor administrators, senior
 197 human services counselor administrators, rehabilitation
 198 therapists, and social services counselors of the Department of
 199 Juvenile Justice; the names, home addresses, telephone numbers,
 200 dates of birth, and places of employment of spouses and children

201 of such personnel; and the names and locations of schools and
 202 day care facilities attended by the children of such personnel
 203 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 204 Constitution.

205 k.j. ~~(I)~~ The home addresses, telephone numbers, dates of
 206 birth, and photographs of current or former public defenders,
 207 assistant public defenders, criminal conflict and civil regional
 208 counsel, and assistant criminal conflict and civil regional
 209 counsel; the names, home addresses, telephone numbers, dates of
 210 birth, and places of employment of the spouses and children of
 211 such defenders or counsel; and the names and locations of
 212 schools and day care facilities attended by the children of such
 213 defenders or counsel are exempt from s. 119.07(1) and s. 24(a),
 214 Art. I of the State Constitution.

215 ~~(II) The names of the spouses and children of the~~
 216 ~~specified agency personnel identified in sub-sub-subparagraph~~
 217 ~~(I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the~~
 218 ~~State Constitution. This sub-sub-subparagraph is subject to the~~
 219 ~~Open Government Sunset Review Act in accordance with s. 119.15~~
 220 ~~and shall stand repealed on October 2, 2019, unless reviewed and~~
 221 ~~saved from repeal through reenactment by the Legislature.~~

222 l.k. The home addresses, telephone numbers, dates of
 223 birth, and photographs of current or former investigators or
 224 inspectors of the Department of Business and Professional
 225 Regulation; the names, home addresses, telephone numbers, dates

226 | of birth, and places of employment of the spouses and children
 227 | of such current or former investigators and inspectors; and the
 228 | names and locations of schools and day care facilities attended
 229 | by the children of such current or former investigators and
 230 | inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of
 231 | the State Constitution ~~if the investigator or inspector has made~~
 232 | ~~reasonable efforts to protect such information from being~~
 233 | ~~accessible through other means available to the public.~~ This
 234 | sub-subparagraph is subject to the Open Government Sunset Review
 235 | Act in accordance with s. 119.15 and shall stand repealed on
 236 | October 2, 2022 ~~2017~~, unless reviewed and saved from repeal
 237 | through reenactment by the Legislature.

238 | ~~m.1.~~ m.1. The home addresses, ~~and~~ and telephone numbers, and dates
 239 | of birth of county tax collectors; the names, home addresses,
 240 | telephone numbers, dates of birth, and places of employment of
 241 | the spouses and children of such tax collectors; and the names
 242 | and locations of schools and day care facilities attended by the
 243 | children of such tax collectors are exempt from s. 119.07(1) and
 244 | s. 24(a), Art. I of the State Constitution ~~if the county tax~~
 245 | ~~collector has made reasonable efforts to protect such~~
 246 | ~~information from being accessible through other means available~~
 247 | ~~to the public.~~ This sub-subparagraph is subject to the Open
 248 | Government Sunset Review Act in accordance with s. 119.15 and
 249 | shall stand repealed on October 2, 2022 ~~2017~~, unless reviewed
 250 | and saved from repeal through reenactment by the Legislature.

251 n.m. The home addresses, telephone numbers, dates of
 252 birth, and photographs of current or former personnel of the
 253 Department of Health whose duties include, or result in, the
 254 determination or adjudication of eligibility for social security
 255 disability benefits, the investigation or prosecution of
 256 complaints filed against health care practitioners, or the
 257 inspection of health care practitioners or health care
 258 facilities licensed by the Department of Health; the names, home
 259 addresses, telephone numbers, dates of birth, and places of
 260 employment of the spouses and children of such personnel; and
 261 the names and locations of schools and day care facilities
 262 attended by the children of such personnel are exempt from s.
 263 119.07(1) and s. 24(a), Art. I of the State Constitution ~~if the~~
 264 ~~personnel have made reasonable efforts to protect such~~
 265 ~~information from being accessible through other means available~~
 266 ~~to the public.~~ This sub-subparagraph is subject to the Open
 267 Government Sunset Review Act in accordance with s. 119.15 and
 268 shall stand repealed on October 2, 2019, unless reviewed and
 269 saved from repeal through reenactment by the Legislature.

270 o.n. The home addresses, telephone numbers, dates of
 271 birth, and photographs of current or former impaired
 272 practitioner consultants who are retained by an agency or
 273 current or former employees of an impaired practitioner
 274 consultant whose duties result in a determination of a person's
 275 skill and safety to practice a licensed profession; the names,

276 home addresses, telephone numbers, dates of birth, and places of
 277 employment of the spouses and children of such consultants or
 278 their employees; and the names and locations of schools and day
 279 care facilities attended by the children of such consultants or
 280 employees are exempt from s. 119.07(1) and s. 24(a), Art. I of
 281 the State Constitution ~~if a consultant or employee has made~~
 282 ~~reasonable efforts to protect such information from being~~
 283 ~~accessible through other means available to the public.~~ This
 284 sub-subparagraph is subject to the Open Government Sunset Review
 285 Act in accordance with s. 119.15 and shall stand repealed on
 286 October 2, 2020, unless reviewed and saved from repeal through
 287 reenactment by the Legislature.

288 p.e. The home addresses, telephone numbers, dates of
 289 birth, and photographs of current or former emergency medical
 290 technicians or paramedics certified under chapter 401; the
 291 names, home addresses, telephone numbers, dates of birth, and
 292 places of employment of the spouses and children of such
 293 emergency medical technicians or paramedics; and the names and
 294 locations of schools and day care facilities attended by the
 295 children of such emergency medical technicians or paramedics are
 296 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 297 Constitution ~~if the emergency medical technicians or paramedics~~
 298 ~~have made reasonable efforts to protect such information from~~
 299 ~~being accessible through other means available to the public.~~
 300 This sub-subparagraph is subject to the Open Government Sunset

301 | Review Act in accordance with s. 119.15 and shall stand repealed
 302 | on October 2, 2021, unless reviewed and saved from repeal
 303 | through reenactment by the Legislature.

304 | g.p. The home addresses, telephone numbers, dates of
 305 | birth, and photographs of current or former personnel employed
 306 | in an agency's office of inspector general or internal audit
 307 | department whose duties include auditing or investigating waste,
 308 | fraud, abuse, theft, exploitation, or other activities that
 309 | could lead to criminal prosecution or administrative discipline;
 310 | the names, home addresses, telephone numbers, dates of birth,
 311 | and places of employment of spouses and children of such
 312 | personnel; and the names and locations of schools and day care
 313 | facilities attended by the children of such personnel are exempt
 314 | from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 315 | ~~if the personnel have made reasonable efforts to protect such~~
 316 | ~~information from being accessible through other means available~~
 317 | ~~to the public.~~ This sub-subparagraph is subject to the Open
 318 | Government Sunset Review Act in accordance with s. 119.15 and
 319 | shall stand repealed on October 2, 2021, unless reviewed and
 320 | saved from repeal through reenactment by the Legislature.

321 | 3. An agency that is the custodian of the information
 322 | specified in subparagraph 2. and that is not the employer of the
 323 | officer, employee, justice, judge, or other person specified in
 324 | subparagraph 2. shall maintain the exempt status of that
 325 | information only if the officer, employee, justice, judge, other

326 person, or employing agency of the designated employee submits a
 327 written request for maintenance of the exemption to the
 328 custodial agency.

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

332 ~~5. Except as otherwise expressly provided in this~~
 333 ~~paragraph, this paragraph is subject to the Open Government~~
 334 ~~Sunset Review Act in accordance with s. 119.15, and shall stand~~
 335 ~~repealed on October 2, 2017, unless reviewed and saved from~~
 336 ~~repeal through reenactment by the Legislature.~~

337 Section 2. (1)(a) The Legislature finds that it is a
 338 public necessity that the following information be made exempt
 339 from s. 24(a), Article I of the State Constitution:

340 1. The home addresses, telephone numbers, dates of birth,
 341 and photographs of active or former sworn or civilian law
 342 enforcement personnel, including correctional and correctional
 343 probation officers, personnel of the Department of Children and
 344 Families whose duties include the investigation of abuse,
 345 neglect, exploitation, fraud, theft, or other criminal
 346 activities, personnel of the Department of Health whose duties
 347 are to support the investigation of child abuse or neglect, and
 348 personnel of the Department of Revenue or local governments
 349 whose responsibilities include revenue collection and
 350 enforcement or child support enforcement; the home addresses,

351 telephone numbers, photographs, dates of birth, and places of
 352 employment of the spouses and children of such personnel; and
 353 the names and locations of schools and day care facilities
 354 attended by the children of such personnel;

355 2. The home addresses, telephone numbers, dates of birth,
 356 and photographs of firefighters certified in compliance with s.
 357 633.408, Florida Statutes; the home addresses, telephone
 358 numbers, photographs, dates of birth, and places of employment
 359 of the spouses and children of such firefighters; and the names
 360 and locations of schools and day care facilities attended by the
 361 children of such firefighters; and

362 3. The home addresses, dates of birth, and telephone
 363 numbers of current or former justices of the Supreme Court,
 364 district court of appeal judges, circuit court judges, and
 365 county court judges; the home addresses, telephone numbers,
 366 dates of birth, and places of employment of the spouses and
 367 children of current or former justices and judges; and the names
 368 and locations of schools and day care facilities attended by the
 369 children of current or former justices and judges.

370 (b) The Legislature finds that it is a public necessity to
 371 exempt this information from s. 24(a), Article I of the State
 372 Constitution in order to prevent disclosure of information that
 373 can be used to identify or locate these governmental personnel
 374 and their spouses and children. These governmental personnel
 375 perform duties that can adversely affect the rights of members

376 of the public. Adversely affected people and their families or
 377 friends may place blame on these governmental personnel for
 378 arrests, investigations, or judicial intervention. Governmental
 379 personnel may also be threatened or harmed by victims who
 380 believe governmental personnel did not adequately perform their
 381 duties. Such governmental personnel are subject to threats and
 382 violence on and off duty, and these threats persist after they
 383 leave their jobs. The threat of danger and revenge extend to the
 384 spouses and children of these governmental personnel.

385 (c) Furthermore, the combination of personal
 386 identification and location information can be used as a tool to
 387 perpetuate fraud against these governmental personnel and to
 388 acquire sensitive personal, financial, medical, and familial
 389 information, the release of which could cause great financial
 390 harm to these individuals and their families. Identity theft can
 391 also harm these governmental personnel and their families'
 392 reputations. It is in the public interest to protect fully these
 393 governmental employees and their families and to ensure that
 394 their identifying and location information is exempt from public
 395 disclosure when it is held by an entity in the executive,
 396 legislative, or judicial branch of government.

397 (2)(a) The Legislature finds that it is a public necessity
 398 to exempt the names of the children and spouses of the following
 399 governmental personnel from s. 119.07(1), Florida Statutes, and
 400 s. 24(a), Article I of the State Constitution:

401 1. Firefighters certified in compliance with s. 633.408,
 402 Florida Statutes;

403 2. Current or former justices of the Supreme Court,
 404 district court of appeal judges, circuit court judges, and
 405 county court judges; and

406 3. General magistrates, special magistrates, judges of
 407 compensation claims, administrative law judges of the Division
 408 of Administrative Hearings, and child support enforcement
 409 hearing officers.

410 (b) Such personnel are often required to interact with
 411 members of the public while they are in difficult circumstances.
 412 These personnel and their families are subject to threats by
 413 members of the public who may seek revenge against them.
 414 Allowing public access to the names of children and spouses will
 415 make the families of these personnel easy to find and expose
 416 them to threats or acts of revenge. Threats or acts of revenge
 417 against the children and spouses of such personnel could
 418 compromise the governmental personnel's ability to perform their
 419 duties without fear of retaliation.

420 (3)(a) The Legislature finds that it is a public necessity
 421 to make the following information exempt from s. 119.07(1),
 422 Florida Statutes, and s. 24(a), Article I of the State
 423 Constitution, regardless of whether such individuals made
 424 reasonable efforts to protect such information from being
 425 public:

426 1. The home addresses, dates of birth, and telephone
 427 numbers of general magistrates, special magistrates, judges of
 428 compensation claims, administrative law judges of the Division
 429 of Administrative Hearings, and child support enforcement
 430 hearing officers; the names, home addresses, telephone numbers,
 431 dates of birth, and places of employment of the spouses and
 432 children of general magistrates, special magistrates, judges of
 433 compensation claims, administrative law judges of the Division
 434 of Administrative Hearings, and child support enforcement
 435 hearing officers; and the names and locations of schools and day
 436 care facilities attended by the children of general magistrates,
 437 special magistrates, judges of compensation claims,
 438 administrative law judges of the Division of Administrative
 439 Hearings, and child support enforcement hearing officers;

440 2. The home addresses, telephone numbers, places of
 441 employment, dates of birth, and photographs of current or former
 442 guardians ad litem, as defined in s. 39.820, Florida Statutes;
 443 the names, home addresses, telephone numbers, dates of birth,
 444 and places of employment of the spouses and children of such
 445 persons; and the names and locations of schools and day care
 446 facilities attended by the children of such persons;

447 3. The home addresses, telephone numbers, dates of birth,
 448 and photographs of current or former investigators or inspectors
 449 of the Department of Business and Professional Regulation; the
 450 names, home addresses, telephone numbers, dates of birth, and

451 places of employment of the spouses and children of such current
 452 or former investigators and inspectors; and the names and
 453 locations of schools and day care facilities attended by the
 454 children of such current or former investigators and inspectors;
 455 and

456 4. The home addresses, telephone numbers, and dates of
 457 birth of county tax collectors; the names, home addresses,
 458 telephone numbers, dates of birth, and places of employment of
 459 the spouses and children of such tax collectors; and the names
 460 and locations of schools and day care facilities attended by the
 461 children of such tax collectors.

462 5. The home addresses, telephone numbers, dates of birth,
 463 and photographs of current or former personnel of the Department
 464 of Health whose duties include, or result in, the determination
 465 or adjudication of eligibility for social security disability
 466 benefits, the investigation or prosecution of complaints filed
 467 against health care practitioners, or the inspection of health
 468 care practitioners or health care facilities licensed by the
 469 Department of Health; the names, home addresses, telephone
 470 numbers, dates of birth, and places of employment of the spouses
 471 and children of such personnel; and the names and locations of
 472 schools and day care facilities attended by the children of such
 473 personnel.

474 6. The home addresses, telephone numbers, dates of birth,
 475 and photographs of current or former impaired practitioner

476 consultants who are retained by an agency or current or former
 477 employees of an impaired practitioner consultant whose duties
 478 result in a determination of a person's skill and safety to
 479 practice a licensed profession; the names, home addresses,
 480 telephone numbers, dates of birth, and places of employment of
 481 the spouses and children of such consultants or their employees;
 482 and the names and locations of schools and day care facilities
 483 attended by the children of such consultants or employees.

484 7. The home addresses, telephone numbers, dates of birth,
 485 and photographs of current or former emergency medical
 486 technicians or paramedics certified under chapter 401; the
 487 names, home addresses, telephone numbers, dates of birth, and
 488 places of employment of the spouses and children of such
 489 emergency medical technicians or paramedics; and the names and
 490 locations of schools and day care facilities attended by the
 491 children of such emergency medical technicians or paramedics.

492 8. The home addresses, telephone numbers, dates of birth,
 493 and photographs of current or former personnel employed in an
 494 agency's office of inspector general or internal audit
 495 department whose duties include auditing or investigating waste,
 496 fraud, abuse, theft, exploitation, or other activities that
 497 could lead to criminal prosecution or administrative discipline;
 498 the names, home addresses, telephone numbers, dates of birth,
 499 and places of employment of spouses and children of such
 500 personnel; and the names and locations of schools and day care

501 facilities attended by the children of such personnel.
 502 (b) The Legislature finds that exempting identifying and
 503 location information from public disclosure requirements
 504 protects such personnel and their family members from danger of
 505 physical and emotional harm from disgruntled criminal
 506 defendants, litigants, licensees, taxpayers, and other members
 507 of the public. These individuals may be subject to threats or
 508 acts of revenge because of the duties they perform. Their family
 509 members are also endangered by people who may seek to intimidate
 510 or harm such personnel. In addition, criminals could use
 511 identification and location information for identity theft that
 512 can cause financial harm to these personnel and their families.
 513 The harm that might result from the release of exempt
 514 information outweighs any public benefit that could be derived
 515 from disclosure. For these reasons, the exemptions should be
 516 applied without requiring such personnel prove that they have
 517 not made their information public.
 518 (c) In addition, requiring these personnel prove that they
 519 made reasonable efforts to protect their identification and
 520 location information is an added burden on these individuals as
 521 well as on agencies receiving a public records request. The
 522 extent to which these individuals must protect their information
 523 from public accessibility is unclear. It is also unclear how
 524 much proof an agency needs in order to grant the exemption. The
 525 burden on an agency to verify whether these individuals have

526 protected from public disclosure their identifying and location
 527 information adversely impacts the effective and efficient
 528 administration of government in establishing who is eligible for
 529 an exemption. Relatively few public record exemptions require an
 530 individual to prove that he or she made reasonable efforts to
 531 protect his or her information from being available to the
 532 public. Such inconsistencies among public record exemptions
 533 reduce accuracy and efficiency when redacting exempt information
 534 when a public records request for agency personnel information
 535 is made. It is not in the public interest for the public to
 536 receive inaccurately redacted information.

537 (4) (a) The Legislature finds that it is a public necessity
 538 that the dates of birth of the following people be made exempt
 539 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
 540 the State Constitution:

541 1. Current or former investigators or inspectors of the
 542 Department of Business and Professional Regulation and their
 543 spouses and children; and

544 2. County tax collectors and their spouses and children.

545 (b) Dates of birth can be used as a tool to perpetuate
 546 fraud against an individual and to acquire sensitive personal,
 547 financial, medical, and familial information, the release of
 548 which could cause great financial harm to an individual and his
 549 or her family. Identity theft can also be used to harm their
 550 reputations and good name.

551 (5) The Legislature finds that the amendments to s.
 552 119.071(4)(d), Florida Statutes, made by this act are necessary
 553 to bring greater uniformity among public record exemptions for
 554 agency personnel information because exempted information
 555 currently varies from exemption to exemption. Inconsistencies
 556 between public record exemptions for agency personnel
 557 information result in increased inaccuracy and inefficiency when
 558 information must be redacted in response to a public record
 559 request. Unnecessary complexity increases the likelihood that
 560 public record custodians may inaccurately redact information in
 561 a record. As a result, the public could receive an improperly
 562 redacted record that contains information that is not exempt or
 563 have access to exempt information that should have been
 564 redacted. It is not in the interest of the public to receive
 565 inaccurately redacted information, or to unnecessarily pay fees
 566 for staff time associated with redacting extraneous information.
 567 In addition, the accidental release of personal identifying and
 568 location information can endanger personnel or otherwise negate
 569 the purpose of the exemption.

570 Section 3. This act shall take effect October 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTA 17-06 OGSR/Protective Injunctions for Certain Types of Violence
SPONSOR(S): Oversight, Transparency & Administration Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee		Toliver <i>LT</i>	Harrington

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

In 2011, the Legislature required the Florida Association of Court Clerks and Comptrollers, subject to available funding, to develop an automated process by which a petitioner may request notification that a respondent has been served with a protective injunction against domestic violence, repeat violence, dating violence, or sexual violence. Such notification must be made within 12 hours after the sheriff or other law enforcement officer serves the protective injunction.

Current law provides that specified personal identifying and location information held by the clerk and law enforcement agencies in conjunction with the automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence is confidential and exempt from public record requirements. The clerk of court is required to apprise a petitioner of his or her right to request in writing that such information be made exempt from public record requirements. The exemption provides that such information is exempt for five years after receipt of the written request. The automated process itself has not been created yet; it is estimated to be completed in summer 2017.

The bill extends the repeal dates for the public record exemptions under review by one year to allow for the development, testing, and implementation of the automated system.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Public Record Exemptions for Victims of Violent and Sexual Crimes

Current law provides several protections from public record requirements for victims of various violent and sexual crimes. The following information is confidential and exempt⁶ from public record requirements:

- Any information, including the photograph, name, address, or other fact, that reveals the identity of the victim of child abuse;
- Any information that may reveal the identity of a victim of sexual offense; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense.⁷

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

⁷ Section 119.071(2)(h)1., F.S.

Current law also provides an exemption from public record requirements for any information not otherwise held confidential or exempt from public record requirements that reveals the home or employment telephone number or address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence, upon an officially verified written request by the victim. Such information ceases to be exempt 5 years after receipt of the written request. Any state or federal agency authorized to have access to such documents must be granted access in the furtherance of its duties.⁸

Injunctions for Victims of Violence

Sections 741.30 and 784.046, F.S., provide guidelines for the service of injunctions for protection against domestic violence, repeat violence, sexual violence, or dating violence. In 2011, the Legislature directed the Florida Association of Court Clerks and Comptrollers (Association), subject to available funding, to develop an automated process by which a petitioner may request notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence.⁹ This system requires the petitioner to provide the Association with personal identification and location information.

Public Record Exemptions under Review

In 2012, the Legislature created public record exemptions for information which reveals the home or employment telephone number, cellular telephone number, home or employment address, electronic mail address, or other election means of identification of a petitioner requesting notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence.¹⁰ The information is confidential and exempt from public record requirements.¹¹ The petitioner must be informed of his or her right to request, in writing, that such information be made exempt from public record requirements.¹² The exemption expires five years after the request.¹³ Any state or federal agency authorized to have access to such information in furtherance of their statutory duties must be given access.¹⁴

The 2012 public necessity statement for the exemptions provides that:¹⁵

Such information, if publicly available, could expose the victims of domestic violence, repeat violence, sexual violence, and dating violence to public humiliation and shame and could inhibit the victim from availing herself or himself of relief provided under state law. Additionally, if such information were publicly available, it could be used by the partner or former partner of the victim of domestic violence, repeat violence, sexual violence, or dating violence to determine the location of the victim, thus placing the victim in jeopardy.

Pursuant to the Open Government Sunset Review Act the exemptions will repeal on October 2, 2017, unless reenacted by the Legislature.¹⁶

During the 2016 interim, subcommittee staff consulted with staff from the Association regarding the automated system and discovered that the system was still in the development stage. According to the Association, the system will likely be ready for testing in the spring of 2017 and ready for full implementation in the summer of 2017.

⁸ Section 119.071(2)(j)1., F.S.

⁹ Chapter 2011-187, L.O.F.

¹⁰ Sections 741.30(8)(c)5.b. and 784.046(8)(c)5.b, F.S.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Chapter 2012-154, L.O.F.

¹⁶ Sections 741.30(8)(c)5.b. and 784.046(8)(c)5.b, F.S.

Effect of the Bill

The bill extends the repeal date for the public record exemptions under review by one year to allow for the development, testing, and implementation of the system.

B. SECTION DIRECTORY:

Section 1 amends s. 741.30, F.S., relating to domestic violence injunctions.

Section 2 amends s. 784.046, F.S., relating to repeat violence, sexual violence, or dating violence injunctions.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending ss. 741.30 and 784.046,
4 F.S., which provide exemptions from public record
5 requirements for personal identifying and location
6 information of a petitioner requesting notification of
7 service of an injunction for protection against
8 domestic violence, repeat violence, sexual violence,
9 and dating violence and other court actions related to
10 the injunction held by the clerks and law enforcement
11 agencies; extending the repeal dates; providing an
12 effective date.

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

15
16 Section 1. Paragraph (c) of subsection (8) of section
17 741.30, Florida Statutes, is amended to read:

18 741.30 Domestic violence; injunction; powers and duties of
19 court and clerk; petition; notice and hearing; temporary
20 injunction; issuance of injunction; statewide verification
21 system; enforcement; public records exemption.—

22 (8)

23 (c)1. Within 24 hours after the court issues an injunction
24 for protection against domestic violence or changes, continues,
25 extends, or vacates an injunction for protection against

26 domestic violence, the clerk of the court must forward a
 27 certified copy of the injunction for service to the sheriff with
 28 jurisdiction over the residence of the petitioner. The
 29 injunction must be served in accordance with this subsection.

30 2. Within 24 hours after service of process of an
 31 injunction for protection against domestic violence upon a
 32 respondent, the law enforcement officer must forward the written
 33 proof of service of process to the sheriff with jurisdiction
 34 over the residence of the petitioner.

35 3. Within 24 hours after the sheriff receives a certified
 36 copy of the injunction for protection against domestic violence,
 37 the sheriff must make information relating to the injunction
 38 available to other law enforcement agencies by electronically
 39 transmitting such information to the department.

40 4. Within 24 hours after the sheriff or other law
 41 enforcement officer has made service upon the respondent and the
 42 sheriff has been so notified, the sheriff must make information
 43 relating to the service available to other law enforcement
 44 agencies by electronically transmitting such information to the
 45 department.

46 5.a. Subject to available funding, the Florida Association
 47 of Court Clerks and Comptrollers shall develop an automated
 48 process by which a petitioner may request notification of
 49 service of the injunction for protection against domestic
 50 violence and other court actions related to the injunction for

51 protection. The automated notice shall be made within 12 hours
 52 after the sheriff or other law enforcement officer serves the
 53 injunction upon the respondent. The notification must include,
 54 at a minimum, the date, time, and location where the injunction
 55 for protection against domestic violence was served. When a
 56 petitioner makes a request for notification, the clerk must
 57 apprise the petitioner of her or his right to request in writing
 58 that the information specified in sub-subparagraph b. be held
 59 exempt from public records requirements for 5 years. The Florida
 60 Association of Court Clerks and Comptrollers may apply for any
 61 available grants to fund the development of the automated
 62 process.

63 b. Upon implementation of the automated process,
 64 information held by clerks and law enforcement agencies in
 65 conjunction with the automated process developed under sub-
 66 subparagraph a. which reveals the home or employment telephone
 67 number, cellular telephone number, home or employment address,
 68 electronic mail address, or other electronic means of
 69 identification of a petitioner requesting notification of
 70 service of an injunction for protection against domestic
 71 violence and other court actions related to the injunction for
 72 protection is exempt from s. 119.07(1) and s. 24(a), Art. I of
 73 the State Constitution, upon written request by the petitioner.
 74 Such information shall cease to be exempt 5 years after the
 75 receipt of the written request. Any state or federal agency that

76 is authorized to have access to such documents by any provision
 77 of law shall be granted such access in the furtherance of such
 78 agency's statutory duties, notwithstanding this sub-
 79 subparagraph. This sub-subparagraph is subject to the Open
 80 Government Sunset Review Act in accordance with s. 119.15 and
 81 shall stand repealed on October 2, 2018 ~~2017~~, unless reviewed
 82 and saved from repeal through reenactment by the Legislature.

83 6. Within 24 hours after an injunction for protection
 84 against domestic violence is vacated, terminated, or otherwise
 85 rendered no longer effective by ruling of the court, the clerk
 86 of the court must notify the sheriff receiving original
 87 notification of the injunction as provided in subparagraph 2.
 88 That agency shall, within 24 hours after receiving such
 89 notification from the clerk of the court, notify the department
 90 of such action of the court.

91 Section 2. Paragraph (c) of subsection (8) of section
 92 784.046, Florida Statutes, is amended to read:

93 784.046 Action by victim of repeat violence, sexual
 94 violence, or dating violence for protective injunction; dating
 95 violence investigations, notice to victims, and reporting;
 96 pretrial release violations; public records exemption.—

97 (8)

98 (c)1. Within 24 hours after the court issues an injunction
 99 for protection against repeat violence, sexual violence, or
 100 dating violence or changes or vacates an injunction for

101 protection against repeat violence, sexual violence, or dating
 102 violence, the clerk of the court must forward a copy of the
 103 injunction to the sheriff with jurisdiction over the residence
 104 of the petitioner.

105 2. Within 24 hours after service of process of an
 106 injunction for protection against repeat violence, sexual
 107 violence, or dating violence upon a respondent, the law
 108 enforcement officer must forward the written proof of service of
 109 process to the sheriff with jurisdiction over the residence of
 110 the petitioner.

111 3. Within 24 hours after the sheriff receives a certified
 112 copy of the injunction for protection against repeat violence,
 113 sexual violence, or dating violence, the sheriff must make
 114 information relating to the injunction available to other law
 115 enforcement agencies by electronically transmitting such
 116 information to the department.

117 4. Within 24 hours after the sheriff or other law
 118 enforcement officer has made service upon the respondent and the
 119 sheriff has been so notified, the sheriff must make information
 120 relating to the service available to other law enforcement
 121 agencies by electronically transmitting such information to the
 122 department.

123 5.a. Subject to available funding, the Florida Association
 124 of Court Clerks and Comptrollers shall develop an automated
 125 process by which a petitioner may request notification of

126 service of the injunction for protection against repeat
 127 violence, sexual violence, or dating violence and other court
 128 actions related to the injunction for protection. The automated
 129 notice shall be made within 12 hours after the sheriff or other
 130 law enforcement officer serves the injunction upon the
 131 respondent. The notification must include, at a minimum, the
 132 date, time, and location where the injunction for protection
 133 against repeat violence, sexual violence, or dating violence was
 134 served. When a petitioner makes a request for notification, the
 135 clerk must apprise the petitioner of her or his right to request
 136 in writing that the information specified in sub-subparagraph b.
 137 be held exempt from public records requirements for 5 years. The
 138 Florida Association of Court Clerks and Comptrollers may apply
 139 for any available grants to fund the development of the
 140 automated process.

141 b. Upon implementation of the automated process,
 142 information held by clerks and law enforcement agencies in
 143 conjunction with the automated process developed under sub-
 144 subparagraph a. which reveals the home or employment telephone
 145 number, cellular telephone number, home or employment address,
 146 electronic mail address, or other electronic means of
 147 identification of a petitioner requesting notification of
 148 service of an injunction for protection against repeat violence,
 149 sexual violence, or dating violence and other court actions
 150 related to the injunction for protection is exempt from s.

151 119.07(1) and s. 24(a), Art. I of the State Constitution, upon
 152 written request by the petitioner. Such information shall cease
 153 to be exempt 5 years after the receipt of the written request.
 154 Any state or federal agency that is authorized to have access to
 155 such documents by any provision of law shall be granted such
 156 access in the furtherance of such agency's statutory duties,
 157 notwithstanding this sub-subparagraph. This sub-subparagraph is
 158 subject to the Open Government Sunset Review Act in accordance
 159 with s. 119.15 and shall stand repealed on October 2, 2018 ~~2017~~,
 160 unless reviewed and saved from repeal through reenactment by the
 161 Legislature.

162 6. Within 24 hours after an injunction for protection
 163 against repeat violence, sexual violence, or dating violence is
 164 lifted, terminated, or otherwise rendered no longer effective by
 165 ruling of the court, the clerk of the court must notify the
 166 sheriff or local law enforcement agency receiving original
 167 notification of the injunction as provided in subparagraph 2.
 168 That agency shall, within 24 hours after receiving such
 169 notification from the clerk of the court, notify the department
 170 of such action of the court.

171 Section 3. This act shall take effect October 1, 2017.