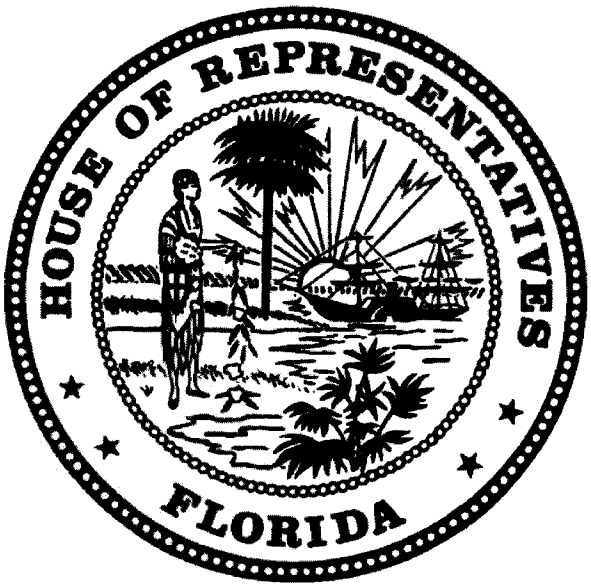

Oversight, Transparency & Administration Subcommittee

March 28, 2017
3:30 PM – 6:30 PM
Morris Hall

Meeting Packet

Richard Corcoran
Speaker

Neil Combee
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Oversight, Transparency & Administration Subcommittee

Start Date and Time:	Tuesday, March 28, 2017 03:30 pm
End Date and Time:	Tuesday, March 28, 2017 06:30 pm
Location:	Morris Hall (17 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

HB 27 Florida Slavery Memorial by McGhee
HB 351 Pub. Rec. and Meetings/Postsecondary Education Executive Search by Rommel
CS/HB 437 Pub.Rec./International Financial Institutions by Insurance & Banking Subcommittee, Raulerson
CS/HB 441 Court Records by Civil Justice & Claims Subcommittee, Diamond
CS/HB 501 Pub. Rec. and Meetings/Information Technology/Postsecondary Education Institutions by Post-Secondary Education Subcommittee, Leek
HB 603 Publicly Funded Defined Benefit Retirement Plans by Fischer
HB 789 Procurement of Professional Services by Stone
CS/HB 791 Pub. Rec./Court Documents Containing Personal Identifying Information Relating to Involuntary Admissions for Substance Abuse Treatment Services by Children, Families & Seniors Subcommittee, Abruzzo
HB 843 Pub. Meetings and Records/Meetings Between Two Members of Board or Commission by Donalds, Rommel
CS/HB 861 Environmental Regulation Commission by Natural Resources & Public Lands Subcommittee, Willhite
CS/HB 909 Building Code Administrators and Inspectors by Careers & Competition Subcommittee, Goodson
CS/HB 981 Pub. Rec./Department of Elderly Affairs by Children, Families & Seniors Subcommittee, Gonzalez
HB 997 Florida Equal Access to Justice Act by Killebrew
HB 1025 Firefighters' Relief and Pension Fund of the City of Pensacola, Escambia County by Ingram
HB 1079 Pub. Rec. and Meetings/Campus Emergency Response for Public Postsecondary Institutions by Rommel
CS/HB 1107 Pub. Rec./Workers' Compensation by Insurance & Banking Subcommittee, Albritton
CS/HB 1135 West Palm Beach Police Pension Fund of the City of West Palm Beach, Palm Beach County by Local, Federal & Veterans Affairs Subcommittee, Willhite
CS/HB 1151 Lehigh Acres Fire Control and Rescue District and Alva Fire Protection and Rescue Service District, Lee County by Local, Federal & Veterans Affairs Subcommittee, Caldwell
HB 1203 Pub. Rec./DOC/Health Information by Gonzalez
PCS for HB 1281 -- Department of Management Services
HB 1295 Monroe County by Raschein
HB 1325 Elections by Renner
CS/HB 1417 Pub. Rec./Identifying Information of Human Trafficking Victims by Civil Justice & Claims Subcommittee, Spano

NOTICE FINALIZED on 03/24/2017 4:12PM by Larson.Lisa

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 27 Florida Slavery Memorial
SPONSOR(S): McGhee and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1722

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

A monument may not be constructed or placed on the premises of the Capitol Complex unless authorized by general law and unless the design and placement of the monument is approved by the Department of Management Services (DMS) after considering the recommendations of the Florida Historical Commission. Although various monuments have been authorized for placement at the Capitol Complex, there is not a slavery memorial.

The bill establishes the Florida Slavery Memorial and requires DMS to administer the memorial and to designate an appropriate public area for the memorial on the Capitol Complex. DMS must construct the memorial after considering the recommendations of the Florida Historical Commission and coordinate with the Division of Historical Resources of the Department of State in regards to the memorial's design and placement.

The bill may have an indeterminate fiscal impact to the state, but 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

Capitol Complex Monuments

A monument[1] may not be constructed or placed on the premises of the Capitol Complex unless authorized by general law and unless the design and placement of the monument is approved by the Department of Management Services (DMS) after considering the recommendations of the Florida Historical Commission.[2] DMS must coordinate with the Division of Historical Resources of the Department of State regarding a monument's design and placement.[3] DMS, in consultation with the Florida Historical Commission, must set aside an area of the Capitol Complex to be dedicated as a memorial garden for the placement of authorized monuments.[4]

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

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

Current law authorizes various memorials for placement at the Capitol Complex, including:

- The Florida Veterans' Walk of Honor;[5]
- The Florida Veterans' Memorial Garden;[6]
- The POW-MIA Chair of Honor Memorial;[7]
- Florida Law Enforcement Officers' Hall of Fame;[8]
- Florida Women's Hall of Fame;[9] and
- The Florida Holocaust Memorial.[10]

There is not a Slavery Memorial currently in Florida.

Division of Historical Resources

The Division of Historical Resources, which is established within the Department of State,[11] in part, is responsible for:

- Developing a comprehensive statewide historic preservation plan.

---

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

[2] Section 265.111(2), F.S.

[3] *Id.*

[4] Section 265.111(3), F.S.

[5] Section 265.0031, F.S.

[6] *Id.*

[7] Section 265.00301, F.S.

[8] Section 265.0041, F.S.

[9] Section 265.001, F.S.

[10] Section 365.005, F.S.

[11] Section 20.10(2)(b), F.S.

- Directing and conducting a comprehensive statewide survey of historic resources and maintaining an inventory of such resources.
- Ensuring that historic resources are taken into consideration at all levels of planning and development.
- Providing public information, education, and technical assistance relating to historic preservation programs.[12]

Florida Historical Commission

The Florida Historical Commission (commission) was established in 2001 to enhance public participation and involvement in the preservation and protection of the state's historic and archaeological sites and properties.[13] The commission is part of the Department of State and is tasked with advising and assisting the Division of Historical Resources in carrying out its programs, duties, and responsibilities.[14]

The Commission is composed of 11 members. Seven members of the Commission are appointed by the Governor in consultation with the Secretary of State, two by the President of the Senate, and two by the Speaker of the House of Representatives.[15] The Commission must include:

- A licensed architect with expertise in historic preservation and architectural history;
- A professional historian in the field of American history;
- A professional architectural historian;
- An archaeologist specializing in the field of prehistory;
- An archaeologist specializing in the historic period; and
- Representatives of the public with demonstrated interest in the preservation of Florida's historical and archaeological heritage.[16]

The Commission must provide assistance, advice, and recommendations to the Division of Historical Resources.[17] Section 267.0612(9), F.S., also requires the Commission to provide recommendations to DMS on the design and placement of monuments authorized by general law to be placed on the premises of the Capitol Complex.

Effect of the Bill

The bill establishes the Florida Slavery Memorial to recognize the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the American Colonies and to honor nameless and forgotten men, women, and children who have gone unrecognized for their undeniable and weighty contributions to the United States. It requires DMS to administer the memorial and set aside an appropriate public area for the memorial on the premises of the Capitol Complex.[18]

The bill requires DMS to construct and place the memorial after it has considered the recommendations of the commission and to coordinate with the Division of Historical Resources of the Department of State regarding the memorial's design and placement.

B. SECTION DIRECTORY:

Section 1 Creates s. 265.006, F.S., to establish the Florida Slavery Memorial.

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

---

[12] Section 267.031(5), F.S.
[13] Chapter 2001-199, L.O.F.; codified as s. 267.0612, F.S.
[14] Section 267.0612, F.S.
[15] Section 267.0612(1)(a)1., F.S.
[16] *Id.*
[17] *See* s. 267.0612(6), F.S.
[18] The bill specifies that the memorial will not be on the State Capitol Circle Office Complex. The "Capitol Complex" is generally the buildings bound by Monroe Street, Jefferson Street, Duval Street, and Gaines Street in Tallahassee.

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 will have an indeterminate cost to DMS for the creation and placement of the memorial.

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.

A bill to be entitled

An act relating to the Florida Slavery Memorial; creating s. 265.006, F.S.; providing legislative intent; establishing the Florida Slavery Memorial; providing for administration of the memorial by the Department of Management Services; providing conditions for construction and placement of the memorial; providing an effective date.

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

Section 1. Section 265.006, Florida Statutes, is created to read:

265.006 Florida Slavery Memorial.—

(1) It is the intent of the Legislature to recognize the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the American Colonies and to honor the nameless and forgotten men, women, and children who have gone unrecognized for their undeniable and weighty contributions to the United States.

(2) There is established the Florida Slavery Memorial.

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

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

State Capital Circle Office Complex. The department shall construct and place the Florida Slavery Memorial after it has considered the recommendations of the Florida Historical Commission as required pursuant to ss. 265.111 and 267.0612(9) and coordinated with the Division of Historical Resources of the Department of State regarding the design and placement of the memorial.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 351 Pub. Rec. and Meetings/Postsecondary Education Executive Search
SPONSOR(S): Rommel and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 478

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Post-Secondary Education Subcommittee	11 Y, 3 N	McAlarney	Bishop
2) Oversight, Transparency & Administration Subcommittee		Toliver LT	Harrington
3) Education Committee			

SUMMARY ANALYSIS

State universities and Florida College System (FCS) institutions occasionally establish search committees to fill vacant positions for president, provost, or dean. The search committee may be comprised of members from an institution's board of trustees, faculty or student representatives, members of the community, members from the Board of Governors or State Board of Education, and other potentially interested persons. The purpose of the committee is to locate qualified applicants who are interested in filling the vacant position at the university or institution, vetting applicants, and selecting a candidate to fill the position.

The bill creates an exemption from public record and public meeting requirements for information associated with the applicant recruitment process and discussions associated with the applicant search for certain state university and FCS institution employees. Specifically, the bill provides that any personal identifying information of an applicant for president, provost, or dean of any state university or FCS institution is confidential and exempt from public record requirements. It also creates a public meeting exemption for any meeting held for the purpose of identifying or vetting applicants for president, provost, or dean of any state university or FCS institution.

The bill provides instances when the public meeting exemption does not apply. In addition, it provides that the names of any applicants who comprise a final group of applicants must be released by the state university or FCS institution no later than 10 days before the date of the meeting at which final action or vote is to be taken on the employment of the applicants. All documents containing personal identifying information of any applicants who comprise a final group of applicants become subject to public record requirements when the applicants' names are released.

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

Public Meetings Law
Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings is addressed further in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.[2] The board or commission must provide reasonable notice of all public meetings.[3] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[4] Minutes of a public meeting must be promptly recorded and open to public inspection.[5]

Public Record and Public Meeting Exemptions
The Legislature, however, may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[6] A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.[7]

Furthermore, the Open Government Sunset Review Act[8] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

[1] Article I, s. 24(a), FLA. CONST.
[2] Section 286.011(1), F.S.
[3] *Id.*
[4] Section 286.011(6), F.S.
[5] Section 286.011(2), F.S.
[6] Article I, s. 24(c), FLA. CONST.
[7] *Id.*
[8] Section 119.15, F.S.

- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.

Search Committees

Oftentimes, when looking to fill a vacant president, provost, or dean position, state universities and Florida College System (FCS) institutions[9] establish a search committee, which may be comprised of members from an institution's board of trustees, faculty or student representatives, members of the community, members from the Board of Governors or State Board of Education, and other potentially interested persons. The purpose of the committee is to locate qualified applicants who are interested in filling the vacant position at the university or institution, vetting applicants, and selecting a candidate to fill the position.[10]

The search committee often retains the services of a consulting firm for the purpose of conducting the search for a president, provost, or dean. It is typical for the consultant to make the initial contact with a potential applicant to determine if the person is interested in applying to fill the vacancy at the state university or FCS institution.

Information obtained by a search committee or consultant, including applications and other information gathered by a committee or consultant regarding applicants, must be made available for copying and inspection upon request. In addition, any meetings associated with the search process, including vetting of applicants, are open to the public.[11]

Effect of Proposed Changes

The bill creates an exemption from public record requirements for information associated with the applicant recruitment process and an exemption from public meeting requirements for discussions associated with the applicant search.

Specifically, the bill provides that any personal identifying information of an applicant for president, provost, or dean of any state university or FSC institution is confidential and exempt[12] from public record requirements.

The bill also creates a public meeting exemption for any meeting held for the purpose of identifying or vetting applicants for president, provost, or dean of any state university or FCS institution. It provides that the public meeting exemption does not apply to a meeting held for the purpose of establishing qualifications of potential applicants or any compensation framework to be offered to potential applicants; however, any portion of such meeting that would disclose personal identifying information of an applicant or potential applicant is exempt from public meeting requirements.

---

[9] The Board of trustees for a FCS institution is charged with appointing an institution president and may appoint a search committee for this purpose. Section 1001.64(19), F.S.

[10] The Board of Governors must confirm the selected candidate for president of a state university. Section 1001.706(6)(a), F.S.

[11] FCS institutions and state universities are considered state agencies, subject to public records and public meetings laws. *See Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983) (holding that a University of Florida screening committee was subject to Florida's Sunshine Law); *Rhea v. District Bd. Of Trustees of Santa Fe College*, 109 So. 3d 851, 855, fn. 1 (Fla. 1st DCA 2013) (noting that Santa Fe College, as part of the FCS, is a state agency having a duty to provide access to public records).

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

Any meeting or interview held after a final group of applicants has been established and held for the purpose of making a final selection to fill the position of president, provost, or dean is subject to public meeting requirements. In addition, the names of any applicants who comprise a final group of applicants must be released by the state university or FCS institution no later than 10 days before the date of the meeting at which final action or vote is to be taken on the employment of the applicants. All documents containing personal identifying information of any applicants who comprise a final group of applicants become subject to public record requirements when the applicants' names are released.

The bill provides that the section is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2022, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1. Creates s. 1004.097, F.S., to provide public record and public meeting exemptions associated with a search conducted by a state university or FCS institution for the purpose of identifying or vetting applicants for president, provost, or dean.

Section 2. Provides a statement of public necessity as required by the State Constitution.

Section 3. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   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:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement
Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it 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 public record and public meeting exemptions; 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 personal identifying information of an applicant for president, provost, or dean of any state university or FCS institution, in addition to a public meeting exemption for any meetings wherein such information is discussed or such applicants are vetted. The exemptions seek to ensure that a search committee can avail of qualified applicants without those applicants fearing the possibility of losing their current jobs as a consequence of applying to these institutions. As such, the exemptions do not appear to be in conflict with the constitutional requirement that the exemptions be no broader than necessary to accomplish their stated purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to public records and public meetings; creating s. 1004.097, F.S.; providing an exemption from public records requirements for any personal identifying information of an applicant for president, provost, or dean of a state university or Florida College System institution; providing an exemption from public meeting requirements for any meeting held for the purpose of identifying or vetting applicants for president, provost, or dean of a state university or Florida College System institution and for any portion of a meeting held for the purpose of establishing qualifications of, or any compensation framework to be offered to, such potential applicants that would disclose personal identifying information of an applicant or potential applicant; providing for applicability; requiring release of the names of specified applicants within a certain timeframe; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 1004.097, Florida Statutes, is created to read:

1004.097 Information identifying applicants for president, provost, or dean at state universities and Florida College System institutions; public records exemption; public meeting exemption.

(1) Any personal identifying information of an applicant for president, provost, or dean of a state university or Florida College System institution is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) Any meeting held for the purpose of identifying or vetting applicants for president, provost, or dean of a state university or Florida College System institution is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This exemption does not apply to a meeting held for the purpose of establishing qualifications of potential applicants or any compensation framework to be offered to potential applicants. However, any portion of such a meeting that would disclose personal identifying information of an applicant or potential applicant is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(3) Any meeting or interview held after a final group of applicants has been established and held for the purpose of making a final selection to fill the position of president, provost, or dean of a state university or Florida College System

institution is subject to the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution.

(4) The names of applicants who comprise a final group of applicants pursuant to subsection (3) must be released by the state university or Florida College System institution no later than 10 days before the date of the meeting at which final action or vote is to be taken on the employment of the applicants.

(5) Any personal identifying information of applicants who comprise a final group of applicants pursuant to subsection (3) become subject to the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution at the time the names of such applicants are released pursuant to subsection (4).

(6) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that any personal identifying information of an applicant for president, provost, or dean of a state university or Florida College System institution be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. It is also the finding of the Legislature that any meeting held for the purpose of identifying or vetting applicants for president, provost, or dean of a state

university or Florida College System institution and any portion of a meeting held for the purpose of establishing qualifications of, or any compensation framework to be offered to, such potential applicants that would disclose personal identifying information of an applicant or potential applicant be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Art. I of the State Constitution. The task of filling the position of president, provost, or dean within a state university or Florida College System institution is often conducted by an executive search committee. Many, if not most, applicants for such a position are currently employed at another job at the time they apply and could jeopardize their current positions if it were to become known that they were seeking employment elsewhere. These exemptions from public records and public meeting requirements are needed to ensure that such a search committee can avail itself of the most experienced and desirable pool of qualified applicants from which to fill the position of president, provost, or dean of a state university or Florida College System institution. If potential applicants fear the possibility of losing their current jobs as a consequence of attempting to progress along their chosen career path or simply seeking different and more rewarding employment, failure to have these safeguards in place could have a chilling effect on the number and quality of applicants available to fill the position of

president, provost, or dean of a state university or Florida College System institution.

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

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		

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

Representative Rommel offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 1004.097, Florida Statutes, is created to read:

1004.097 Information identifying applicants for president, vice president, provost, or dean at state universities and Florida College System institutions; public records exemption; public meeting exemption.

(1) Any personal identifying information of an applicant for president, vice president, provost, or dean of a state university or Florida College System institution is confidential

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

(2) Any meeting held for the purpose of identifying or vetting applicants for president, vice president, provost, or dean of a state university or Florida College System institution is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This exemption does not apply to a meeting held for the purpose of establishing qualifications of potential applicants or any compensation framework to be offered to potential applicants. However, any portion of such a meeting that would disclose personal identifying information of an applicant or potential applicant is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(3) Any meeting or interview held after a final group of applicants has been established and held for the purpose of making a final selection to fill the position of president, vice president, provost, or dean of a state university or Florida College System institution is subject to the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution.

(4) The names of applicants who comprise a final group of applicants pursuant to subsection (3) must be released by the state university or Florida College System institution no later than 21 days before the date of the meeting at which final action or vote is to be taken on the employment of the applicants.

(5) Any personal identifying information of applicants who comprise a final group of applicants pursuant to subsection (3) become subject to the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution at the time the names of such applicants are released pursuant to subsection (4).

(6) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that any personal identifying information of an applicant for president, vice president, provost, or dean of a state university or Florida College System institution be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. It is also the finding of the Legislature that any meeting held for the purpose of identifying or vetting applicants for president, vice president, provost, or dean of a state university or Florida College System institution and any portion of a meeting held for the purpose of establishing qualifications of, or any compensation framework to be offered to, such potential applicants that would disclose personal identifying information of an applicant or potential applicant be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Art. I of the State Constitution. The task of filling the position of president,

vice president, provost, or dean within a state university or Florida College System institution is often conducted by an executive search committee. Many, if not most, applicants for such a position are currently employed at another job at the time they apply and could jeopardize their current positions if it were to become known that they were seeking employment elsewhere. These exemptions from public records and public meeting requirements are needed to ensure that such a search committee can avail itself of the most experienced and desirable pool of qualified applicants from which to fill the position of president, vice president, provost, or dean of a state university or Florida College System institution. If potential applicants fear the possibility of losing their current jobs as a consequence of attempting to progress along their chosen career path or simply seeking different and more rewarding employment, failure to have these safeguards in place could have a chilling effect on the number and quality of applicants available to fill the position of president, vice president, provost, or dean of a state university or Florida College System institution.

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

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

Remove everything before the enacting clause and insert:

An act relating to public records and public meetings; creating s. 1004.097, F.S.; providing an exemption from public records requirements for any personal identifying information of an applicant for president, vice president, provost, or dean of a state university or Florida College System institution; providing an exemption from public meeting requirements for any meeting held for the purpose of identifying or vetting applicants for president, vice president, provost, or dean of a state university or Florida College System institution and for any portion of a meeting held for the purpose of establishing qualifications of, or any compensation framework to be offered to, such potential applicants that would disclose personal identifying information of an applicant or potential applicant; providing for applicability; requiring release of the names of specified applicants within a certain timeframe; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 437 Pub.Rec./International Financial Institutions
SPONSOR(S): Insurance & Banking Subcommittee; Raulerson
TIED BILLS: CS/HB 435 **IDEN./SIM. BILLS:** CS/SB 738

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Hinshelwood	Luczynski
2) Oversight, Transparency & Administration Subcommittee		Whittaker	Harrington
3) Commerce Committee			

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) regulates "financial institutions", the definition of which is expanded in companion bill CS/HB 435 to include two new entities called an "international trust entity" and a "limited service affiliate."

The bill creates public record exemptions related to each of those new entities in order to make the following information confidential and exempt from public disclosure:

- Any personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in records relating to reports of examinations, operations, or condition of an international trust company representative office or a limited service affiliate, including working papers.
- Any portion of a list of names of the shareholders or members of an affiliated international trust entity or a limited service affiliate.
- Information received by the OFR from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

The bill provides for the release of such confidential and exempt information to specified entities. It also provides that a person who willfully discloses information made confidential and exempt by this act commits a felony of the third degree.

The bill also substantially amends the applicable public record exemptions in s. 655.057, F.S., by specifying that the exemptions are not only confidential and exempt from s. 119.071(1), F.S., but also from article I, section 24(a) of the Florida Constitution.

The bill provides for repeal of the newly created and expanded exemptions on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides public necessity statements as required by the Florida Constitution.

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 new public record exemptions and expands existing exemptions; 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, 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. 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 Act[2] 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]

Examination & Investigative Duties of the Office of Financial Regulation (OFR)

The OFR regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[5] The OFR's Division of Financial Institutions charters, licenses, and regulates various entities that engage in financial institution business in Florida, in accordance with the financial institutions codes and the rules promulgated thereunder.[6] The OFR also ensures that state financial institutions (i.e. financial institutions chartered or organized by the state of Florida) comply with state and applicable federal requirements for safety and soundness.

"Financial institution" is defined as "a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust company representative office, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq."[7]

---

[1] FLA. CONST. art. I, s. 24(c).
[2] *See* s. 119.15, F.S.
[3] s. 119.15(6)(b), F.S.
[4] s. 119.15(3), F.S.
[5] s. 20.121(3)(a)2., F.S.
[6] chs. 655, 657, 658, 660, 662, 663, 665, and 667, F.S.; chs. 69U-100 through 69U-162, F.A.C.
[7] s. 655.005(1)(i), F.S.

Among its duties, the OFR is required to conduct examinations of the condition of each state financial institution at least every 18 months.[8] In relation to state financial institutions that also have a federal regulator, the OFR may accept an examination of a state financial institution made by an appropriate federal regulatory agency, and may conduct joint or concurrent examinations with federal agencies.[9] However, at least once during every 36-month period, the OFR must conduct an examination of each state financial institution in a manner that allows the preparation of a complete examination report.[10]

In addition to performing regular examinations, the OFR may also make investigations which it deems necessary to determine whether a person has violated or is about to violate any provision of the financial institutions codes or the rules promulgated thereunder.[11]

Public Record Exemptions for Documents Relating to Financial Institutions Generally

In the course of performing examinations of financial institutions and engaging in investigations, the OFR generates many documents of a sensitive nature that fall under the definition of "public record." Two categories of such documents are "reports of examination, condition, or operation" and "working papers." An "examination report" is "any record submitted to or prepared by the OFR as part of its duties performed pursuant to s. 655.012, F.S. [providing general supervisory power] or s. 655.045(1), F.S. [requiring the OFR to perform examinations]."[12]

"Working papers" are defined as the records of the procedures followed, the tests performed, the information obtained, and the conclusions reached in an examination or investigation performed under s. 655.032, F.S. [relating to investigations] or s. 655.045, F.S. [relating to examinations]. Working papers include planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution as defined in s. 655.005(1), F.S., and schedules or commentaries prepared or obtained in the course of such examination or investigation.[13]

Pursuant to s. 655.057, F.S., working papers and reports of examination, operation, and condition are currently confidential and exempt from the public records disclosure requirements of s. 119.07(1), F.S.[14] Such documents may only be released to specified parties under certain circumstances, but any such information or records obtained from the OFR that is confidential must be maintained as confidential and exempt from s. 119.07(1), F.S.[15] Although reports of examination are generally confidential and exempt from public disclosure, the statute provides that reports of examination must be released by the OFR within 1 year after the appointment of a liquidator, receiver, or conservator to the financial institution.[16] However, any portion of such reports which discloses the identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the institution must be redacted because this information remains confidential and exempt from the public records disclosure requirements of s. 119.07(1), F.S.[17]

Section 655.057, F.S., also provides that "all records and information relating to an investigation by the [OFR] are confidential and exempt from s. 119.07(1) until the investigation is completed or ceases to be active."[18] Even after an investigation is completed or ceases to be active, portions of the covered documents remain confidential and exempt from public disclosure under s. 119.071(1), F.S., to the

---

[8] s. 655.045(1), F.S.
[9] s. 655.045(1)(a), F.S.
[10] *Id.*
[11] s. 655.032(1), F.S.
[12] s. 655.057(12)(a), F.S.
[13] s. 655.057(12)(d), F.S.
[14] s. 655.057(2), F.S.
[15] *Id.*
[16] s. 655.057(2)(g), F.S.
[17] *Id.*
[18] s. 655.057(1), F.S.

extent that the documents would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information[19] or the identity of a confidential source, defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures.

If an investigation relates to an informal enforcement action, once such investigation is completed or ceases to be active, the informal enforcement action[20] itself is confidential and exempt from s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution to the extent that disclosure would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information[21] or the identity of a confidential source, defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures. This exemption for informal enforcement actions is already subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.[22]

Section 655.057, F.S., provides that trade secrets which comply with the procedure specified in s. 655.0591, F.S., and which are held by the OFR in accordance with its statutory duties are confidential and exempt from s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution.[23] This exemption for trade secrets is already subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.[24]

Additionally, the following information is made confidential and exempt from s. 119.071(1), F.S.:

- The list of members of a credit union or mutual association.[25]
- Any portion of a list of shareholders of a bank, trust company, or stock association which reveals the identities of the shareholders.[26]
- Any confidential documents supplied to the OFR or to employees of any financial institution by other state or federal governmental agencies.[27]

Notwithstanding the above exemptions, s. 655.057, F.S., specifies information that may be provided to particular parties under certain circumstances.[28] However, any such information or records obtained from the OFR that is confidential must be maintained as confidential and exempt from s. 119.07(1), F.S.[29]

---

[19] "Personal financial information" is defined as "1. Information relating to the existence, nature, source, or amount of a person's personal income, expenses, or debt. 2. Information relating to a person's financial transactions of any kind. 3. Information relating to the existence, identification, nature, or value of a person's assets, liabilities, or net worth." s. 655.057(12)(c), F.S.

[20] "Informal enforcement action" is defined as "a board resolution, a document of resolution, or an agreement in writing between the office and a financial institution which: 1. The office imposes on an institution when the office considers the administrative enforcement guidelines in s. 655.031 and determines that a formal enforcement action is not an appropriate administrative remedy; 2. Sets forth a program of corrective action to address one or more safety and soundness deficiencies and violations of law or rule at the institution; and 3. Is not subject to enforcement by imposition of an administrative fine pursuant to s. 655.041." s. 655.057(12)(b), F.S.

[21] *See* s. 655.057(12)(c), F.S., *supra* definition of "personal financial information" note 19.

[22] s. 655.057(14), F.S.

[23] s. 655.057(4), F.S.

[24] s. 655.057(14), F.S.

[25] s. 655.057(7), F.S.

[26] s. 655.057(8), F.S.

[27] s. 655.057(9), F.S.

[28] s. 655.057(5), F.S.

[29] *Id.*

State Regulation of International Banking Offices and International Trust Company Representative Offices (ITCROs)

International banking is regulated under ch. 663, F.S., which currently has two parts: part I relates to international banking corporations (IBCs), and part II relates to international development banks. An IBC is "a banking corporation organized and licensed under the laws of a foreign country. . . . The term also includes foreign trust companies, or any similar business entities, including, but not limited to, foreign banks with fiduciary powers, that conduct trust business as defined in the financial institutions codes."[30] The OFR does not regulate an IBC, i.e., the home country institution, except to the extent that an IBC seeks to establish an office in Florida.

IBCs include foreign depository institutions that engage in banking activities and may have trust powers that were granted to it by the country where the foreign institution is organized. This type of IBC may operate through a variety of business models, which must be licensed by the OFR[31] and include the following:

- International representative offices - Permissible activities include promoting or assisting the deposit-taking, lending, or other financial or banking activities of an IBC; serving as a liaison in Florida between an IBC and its existing and potential customers; soliciting business for the IBC and its subsidiaries and affiliates; providing information to customers concerning their accounts; answering questions; receiving applications for extensions of credit and other banking services; transmitting documents on behalf of customers; and making arrangements for customers to transact business on their accounts. However, a representative office may not conduct any banking or trust business in Florida.[32]
- International administrative offices - Permissible activities include administering personnel and operations; engaging in data processing or recordkeeping activities; and negotiating, approving, or servicing loans or extensions of credit and investments.[33] Additionally, this type of office may engage in any activities permissible for an international representative office.[34]
- International bank agencies - Permissible activities include making loans, extensions of credit, or investments; acting as custodian; furnishing investment management and investment advisory services to nonresident persons whose principal places of business or domicile are outside the United States and to resident entities or persons with respect to international or foreign investments; receiving specified types of deposits; and, with prior authorization from the OFR, accepting appointments as trustee by nonresident persons and exercising trust powers with respect to such fiduciary accounts.[35] Additionally, this type of office may engage in any activities permissible for an international administrative office.[36]
- International branches - An international branch has the same rights and privileges as a federally licensed international branch.[37] Additionally, this type of office may engage in any activities permissible for an international bank agency.[38]

IBCs also include "offshore" international non-depository trust companies or similar business entities. Currently, an ITCRO is the only type of office through which an international trust company or similar business entity may directly operate in Florida. An ITCRO is an office of an IBC or trust company organized and licensed under the laws of a foreign country which office is established or maintained in Florida for engaging in non-fiduciary activities described in s. 663.0625, F.S. An ITCRO also includes any affiliate, subsidiary, or other person that engages in such activities on behalf of such IBC or trust company from an office located in Florida.[39]

---

[30] s. 663.01(6), F.S.
[31] ss. 663.04 and 663.05, F.S.
[32] s. 663.062, F.S.
[33] s. 663.063, F.S.
[34] s. 663.06(5)(c), F.S.
[35] s. 663.061, F.S.; Rule 69U-140.008, F.A.C.
[36] s. 663.06(5)(b), F.S.
[37] s. 663.064, F.S.
[38] s. 663.06(5)(a), F.S.
[39] s. 663.01(9), F.S.

ITCROs are not banks and may not accept deposits, make loans, or act as a fiduciary. The activities of a licensed ITCRO are limited to engaging in non-fiduciary activities that are ancillary to the trust business of the IBC or trust company.[40] The permissible activities for an ITCRO include:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an IBC or trust company;
- Contacting existing or potential customers;
- Answering questions and providing information about matters related to customer accounts;
- Serving as a liaison in Florida between the IBC or trust company and its existing or potential customers (e.g., forwarding requests for distribution or changes in investment objectives, or forwarding forms and funds received from the customer); and
- Such other activities as may be approved by the OFR or rules of the Financial Services Commission (Commission).[41]

An ITCRO's representatives and employees may not act as a fiduciary, which means they may not do such things as accept the fiduciary appointment, execute the fiduciary documents that create the fiduciary relationship, or make discretionary decisions regarding the investment or distribution of fiduciary accounts.[42]

There are currently 2 international administrative offices, 9 international bank agencies, 6 international representative offices, and 6 international bank branches licensed with the OFR.[43] To date, no ITCROs are licensed with the OFR.[44]

CS/HB 435 (2017)

CS/HB 435 is the companion bill that revises regulations under ch. 663, F.S. CS/HB 435 relocates the regulation of ITCROs in part I of ch. 663, F.S., to a newly-created part III in order to separate the regulation of ITCROs from the regulation of international representative offices, international administrative offices, international bank agencies, and international branches. The provisions under the newly created part III were copied from current part I, including amendments to part I that are proposed in CS/HB 435, and the language was tailored to apply to trust business. CS/HB 435 also creates part IV of ch. 663, F.S., to provide a regulatory framework for a new kind of registered entity called a limited service affiliate (of international trust entities). CS/HB 435 does not amend part II of ch. 663, F.S.

An international trust entity is an international trust company or organization, or any similar business entity, or an affiliated or subsidiary entity that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws where such entity is organized and supervised. A limited service affiliate is a marketing and liaison office that engages in specified permissible activities on behalf of an international trust entity. Such permissible activities include:

1) Marketing and liaison services related to or for the benefit of the affiliated international trust entities, directed exclusively at professionals and current or prospective nonresident clients of an affiliated international trust entity;
2) Advertising and marketing at trade, industry, or professional events;
3) Transmission of documents between the international trust entity and its current or prospective clients or a designee of such clients; and
4) Transmission of information about the trust or trust holdings of current clients between current clients or their designees and the international trust entity.

---

[40] s. 663.0625, F.S.
[41] No such additional activities have been approved by the OFR or promulgated by rule.
[42] s. 663.0625, F.S.
[43] OFFICE OF FINANCIAL REGULATION, *Financial Institution Search*, at https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx (search conducted Mar. 23, 2017).
[44] *Id.*

A limited service affiliate is prohibited from engaging in the following activities:

1) Advertising and marketing related to or for the benefit of the international trust entity which are directed to the general public;
2) Acting as a fiduciary, including, but not limited to, accepting the fiduciary appointment, executing the fiduciary documents that create the fiduciary relationship, or making discretionary decisions regarding the investment or distribution of fiduciary accounts;
3) Accepting custody of any trust property or any other good, asset, or thing of value on behalf of the affiliated international trust entity, its subsidiaries or affiliates, or subsidiaries and affiliates of the ITCRO;
4) Soliciting business within this state from the general public related to or for the benefit of an affiliated international trust entity;
5) Adding a financial institution-affiliated party to the limited service affiliate without prior written notification to the OFR;
6) Commencing services for an international trust entity without complying with applicable requirements;
7) Providing services for any international trust entity that is in bankruptcy, conservatorship, receivership, liquidation, or a similar status under the laws of any country; or
8) Otherwise conducting banking or trust business.

Effect of the Bill

Companion bill CS/HB 435 creates two new entity types: "international trust entities" and "limited service affiliates." Accordingly, this bill creates new statutes containing public record exemptions related to each of those entities. The first set of public record exemptions created by the bill are for an ITCRO, which is the only type of office through which an international trust entity can *directly* operate a marketing and liaison office in Florida. The second set of public record exemptions created by the bill are for a limited service affiliate (of an international trust entity), which is a marketing and liaison office that engages in specified permissible activities *on behalf* of an international trust entity but which is a separate legal entity from the international trust entity.

Because CS/HB 435 also expands the definition of "financial institution" to include both "international trust entities" and "limited service affiliates", this bill makes certain existing public record exemptions in s. 655.057, F.S., subject to the Open Government Sunset Review Act and sets the exemptions for repeal on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Public Record Exemptions Relating to an ITCRO

Within part III of ch. 663, F.S., as created by CS/HB 435, the bill creates s. 663.416, F.S., to provide public record exemptions related to an ITCRO. Specifically, the bill makes the following information held by the OFR confidential and exempt from s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution:

1) Any personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of an international trust company representative office or in records relating to reports of examinations, operations, or condition of an ITCRO, including working papers.
2) Any portion of a list of names of the shareholders or members of an affiliated international trust entity.
3) Information received by the OFR from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

The term "reports of examinations, operations, or condition" means records submitted to or prepared by the OFR as part of its duties performed pursuant to s. 655.012, F.S., relating to the OFR's general supervisory powers, or s. 655.045, F.S., relating to the OFR's examination authority. The term "working papers" is defined as the records of the procedure followed, the tests performed, the information

obtained, and the conclusions reached in an investigation or examination performed under s. 655.032, F.S., relating to the OFR's investigative authority, or s. 655.045, F.S., relating to the OFR's examination authority. The term includes planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution, as defined in s. 655.005, F.S., and schedules or commentaries prepared or obtained in the course of such investigation or examination.

Information made confidential and exempt by s. 663.416, F.S., may be disclosed by the OFR:

1) To the authorized representative or representatives of the ITCRO under examination, which authorized representative or representatives must be identified in a resolution or by written consent of the board of directors, or the equivalent, of the international trust entity.
2) To a fidelity insurance company, upon written consent of the board of directors, or the equivalent, of the international trust entity.
3) To an independent auditor, upon written consent of the board of directors, or the equivalent, of the international trust entity.
4) To the liquidator, receiver, or conservator for the international trust entity, if a liquidator, receiver, or conservator is appointed. However, any portion of the information which discloses the identity of a customer or prospective customer of the international trust entity, or a shareholder or member of the international trust entity, must be redacted by the OFR before releasing such portion to the liquidator, receiver, or conservator.
5) To a law enforcement agency in furtherance of the agency's official duties and responsibilities.
6) To the appropriate law enforcement or prosecutorial agency for the purpose of reporting any suspected criminal activity.
7) Pursuant to a legislative subpoena. A legislative body or committee that receives records or information pursuant to such a subpoena must maintain the confidential status of the records or information, except in a case involving the investigation of charges against a public official subject to impeachment or removal, in which case the records or information may be disclosed only to the extent necessary as determined by such legislative body or committee.

Nothing in s. 663.416, F.S., prevents or restricts the publication of a report required by federal law.

A person who willfully discloses information made confidential and exempt by s. 663.416, F.S., commits a third-degree felony.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that it is a public necessity to protect personal identifying information of existing customers, prospective customers, shareholders, or members of the affiliated international trust entity. Disclosure of such information could defame or jeopardize the personal and financial safety of those individuals and their family members. Additionally, placing the personal identifying information of these individuals within the public domain would increase the security risk that those individuals or their families could become the target of criminal activity.

The public necessity statement further specifies that it is a public necessity to protect information received from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law. Disclosure of such information would deter other regulatory bodies from communicating vital information to the OFR and would cause the OFR to violate existing information-sharing agreements governing the sharing of confidential supervisory information.

The bill provides for repeal of the exemptions in s. 663.416, F.S., on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Public Record Exemptions Relating to a Limited Service Affiliate

Within part IV of ch. 663, F.S., as created by CS/HB 435, the bill creates s. 663.540, F.S., to provide public record exemptions related to a limited service affiliate. The bill makes the following information

held by the OFR confidential and exempt from s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution:

1) Any personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of a limited service affiliate or in records relating to reports of examinations, operations, or condition of a limited service affiliate, including working papers.
2) Any portion of a list of names of the shareholders or members of a limited service affiliate.
3) Information received by the OFR from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

The term "reports of examinations, operations, or condition" means records submitted to or prepared by the OFR as part of its duties performed pursuant to s. 655.012, F.S., relating to the OFR's general supervisory powers, or s. 663.537, F.S., relating to the OFR's examination authority. The term "working papers" is defined as the records of the procedure followed, the tests performed, the information obtained, and the conclusions reached in an investigation or examination performed under s. 655.032, F.S., relating to the OFR's investigative authority, or s. 663.537, F.S., relating to the OFR's examination authority. The term includes planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution, as defined in s. 655.005, F.S., and schedules or commentaries prepared or obtained in the course of such investigation or examination.

Information made confidential and exempt by s. 663.540, F.S., may be disclosed by the OFR:

1) To the authorized representative or representatives of the limited service affiliate under examination, which authorized representative or representatives must be identified in a resolution or by written consent of the board of directors, if the limited service affiliate is a corporation, or of the managers, if the limited service affiliate is a limited liability company.
2) To a fidelity insurance company, upon written consent of the limited service affiliate's board of directors, if the limited service affiliate is a corporation, or of the managers, if the limited service affiliate is a limited liability company.
3) To an independent auditor, upon written consent of the limited service affiliate's board of directors, if the limited service affiliate is a corporation, or of the managers, if the limited service affiliate is a limited liability company.
4) To the liquidator, receiver, or conservator for a limited service affiliate, if a liquidator, receiver, or conservator is appointed. However, any portion of the information which discloses the identity of a customer of the affiliated international trust entity, or a shareholder or member of the limited service affiliate, must be redacted by the OFR before releasing such portion to the liquidator, receiver, or conservator.
5) To a law enforcement agency in furtherance of the agency's official duties and responsibilities.
6) To the appropriate law enforcement or prosecutorial agency for the purpose of reporting any suspected criminal activity.
7) Pursuant to a legislative subpoena. A legislative body or committee that receives records or information pursuant to such a subpoena must maintain the confidential status of the records or information, except in a case involving the investigation of charges against a public official subject to impeachment or removal, in which case the records or information may be disclosed only to the extent necessary as determined by such legislative body or committee.

Nothing in s. 663.540, F.S., prevents or restricts the publication of a report required by federal law.

A person who willfully discloses information made confidential and exempt by s. 663.540, F.S., commits a third-degree felony.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that it is a public necessity to protect personal identifying information of existing and prospective customers of an affiliated international trust entity or shareholders or members of a limited service affiliate.

Disclosure of such information could defame or jeopardize the personal and financial safety of those individuals. Additionally, placing the personal identifying information of these individuals within the public domain would increase the security risk that those individuals or their families could become the target of criminal activity.

The public necessity statement further specifies that it is a public necessity to protect information received from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law. Disclosure of such information would deter other regulatory bodies from communicating vital information to the OFR and would cause the OFR to violate existing information-sharing agreements governing the sharing of confidential supervisory information.

The bill provides for repeal of the exemptions in s. 663.540, F.S., on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Public Record Exemptions for Documents Relating to Financial Institutions Generally

Companion bill CS/HB 435 expands the definition of "financial institution" to include both "international trust entities" and "limited service affiliates", which in turn expands the scope of records subject to public record exemptions in s. 655.057, F.S., that relate to financial institutions generally. As a result of this substantial amendment of existing exemptions, the bill makes the applicable public record exemptions in s. 655.057, F.S., subject to the Open Government Sunset Review Act and sets the exemptions for repeal on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also substantially amends the applicable public record exemptions in s. 655.057, F.S., by specifying that the exemptions are not only confidential and exempt from s. 119.071(1), F.S., but also from article I, section 24(a) of the Florida Constitution.

Specifically, the bill amends the following subsections of s. 655.057, F.S.:

- Subsection (1), which makes records and information relating to an investigation by the OFR confidential and exempt until the investigation is completed or ceases to be active.
- Subsection (2), which provides that reports of examinations, operations, or condition, including working papers, or portions thereof, prepared by, or for the use of, the OFR or any state or federal agency responsible for the regulation or supervision of financial institutions in this state are confidential and exempt.
- Subsection (5), which specifies information that may be provided to particular parties under certain circumstances but requires that any such information or records obtained from the OFR that is confidential must be maintained as confidential and exempt.
- Subsection (9), which provides that any confidential documents supplied to the OFR or to employees of any financial institution by other state or federal governmental agencies are confidential and exempt.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that it is a public necessity to protect portions of records relating to a completed or inactive investigation by the OFR which would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information, reveal the identity of a confidential source, defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures; reports of examinations, operations, or condition, including working papers, or portions thereof, prepared by, or for the use of, the OFR or any state or federal agency responsible for the regulation or supervision of financial institutions in this state; any portion of such reports which discloses the identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the institution; and materials supplied to the OFR or to employees of any financial institution by other state or federal governmental agencies.

An exemption from public records requirements prevents gaps in the law by providing the same protections to international trust entities and limited services affiliates which are afforded to other

financial institutions, thereby preventing any disadvantage to these similarly regulated entities in comparison to other entities currently defined as "financial institutions." An exemption from public records requirements for reports of examinations, operations, or condition, including working papers, is necessary to ensure the OFR's ability to effectively and efficiently administer its examination and investigation duties. Public disclosure of records and information relating to an examination or investigation by the OFR could expose the subject financial institution to unwarranted damage to its good name or reputation and impair its safety and soundness, as well as the safety and soundness of the financial system in the state. Public disclosure of records and information relating to an investigation by the OFR which could jeopardize the integrity of another active investigation or reveal investigative techniques or procedures of the OFR would impair the OFR's ability to effectively and efficiently administer certain of its duties. Any portion of a record or information relating to an investigation or examination which reveals personal financial information or the identity of a confidential source may defame, or cause unwarranted damage to the good name or reputation of, those individuals, or jeopardize their safety.

B. SECTION DIRECTORY:

Section 1. Creates s. 663.416, F.S., relating to public records exemption.

Section 2. Provides a public necessity statement.

Section 3. Creates s. 663.540, F.S., relating to public records exemption.

Section 4. Provides a public necessity statement.

Section 5. Amends s. 655.057, F.S., relating to records; limited restrictions upon public access.

Section 6. Provides a public necessity statement.

Section 7. Provides that the act will take effect on the same date that CS/HB 435 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 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:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may create a minimal fiscal impact on OFR because staff responsible for complying with public record requests could require training related to the creation and expansion of public record exemptions. In addition, the OFR could incur costs associated with redacting the exempt information prior to the releasing the record.

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 public record or public meeting exemption. The bill creates new public record exemptions and expands current public record exemptions; thus, 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 new public record exemptions and expands current public record exemptions; thus, 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 public record exemptions for any personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in records relating to reports of examinations, operations, or condition of an ITCRO or a limited service affiliate, including working papers; and any portion of a list of names of the shareholders or members of an affiliated international trust entity or a limited service affiliate. The public record exemptions would protect the information because disclosure of such information could defame or jeopardize the personal and financial safety of those individuals and their family members. Additionally, placing the personal identifying information of these individuals within the public domain would increase the security risk that those individuals or their families could become the target of criminal activity.

The bill creates public record exemptions for information received by the OFR from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law. The public record exemptions would protect the information because disclosure of such information would deter other regulatory bodies from communicating vital information to the OFR and would cause the OFR to violate existing information-sharing agreements governing the sharing of confidential supervisory information.

The bill substantially amends certain existing public record exemptions that are applicable to financial institutions generally. An exemption from public records requirements prevents gaps in the

law and prevents any disadvantage to two newly created entities in comparison to other entities currently defined as "financial institutions." An exemption from public records requirements for reports of examinations, operations, or condition, including working papers, is necessary to ensure the OFR's ability to effectively and efficiently administer its examination and investigation duties. Public disclosure of records and information relating to an examination or investigation by the OFR could expose the subject financial institution to unwarranted damage to its good name or reputation and impair its safety and soundness, as well as the safety and soundness of the financial system in the state. Public disclosure of records and information relating to an investigation by the OFR which could jeopardize the integrity of another active investigation or reveal investigative techniques or procedures of the OFR would impair the OFR's ability to effectively and efficiently administer certain of its duties. Any portion of a record or information relating to an investigation or examination which reveals personal financial information or the identity of a confidential source may defame, or cause unwarranted damage to the good name or reputation of, those individuals, or jeopardize their safety.

The exemptions created do 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 a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2017, the Insurance & Banking Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute reflects the removal of a duplicative public record exemption relating to a limited service affiliate and creates consistency in the definitions of "working papers." The committee substitute also reflects technical and conforming changes to the statements of public necessity.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to public records; creating ss. 663.416 and 663.540, F.S.; defining terms; providing exemptions from public records requirements for certain information held by the Office of Financial Regulation relating to international trust company representative offices or limited service affiliates, respectively, and relating to affiliated international trust entities; authorizing the disclosure of the information by the office to specified persons; providing construction; providing criminal penalties; providing future legislative review and repeal of the exemptions; providing statements of public necessity; amending s. 655.057, F.S.; providing that certain exemptions from public records requirements for information relating to investigations, reports of examinations, operations, or condition, including working papers, and certain materials supplied by governmental agencies are exempt from s. 24(a) of Article I of the State Constitution, as a result of the expansion of such exemptions to include the records of international trust entities and limited services affiliates, as made by CS/HB 435, 2017 Regular Session; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 663.416, Florida Statutes, is created and incorporated into part III of chapter 663, Florida Statutes, as created by CS/HB 435, 2017 Regular Session, to read:

663.416 Public records exemption.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Reports of examinations, operations, or condition" means records submitted to or prepared by the office as part of the office's duties performed pursuant to s. 655.012 or s. 655.045.

(b) "Working papers" means the records of the procedure followed, the tests performed, the information obtained, and the conclusions reached in an investigation or examination performed under s. 655.032 or s. 655.045. The term includes planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution, as defined in s. 655.005, and schedules or commentaries prepared or obtained in the course of such investigation or examination.

(2) PUBLIC RECORDS EXEMPTION.—The following information held by the office is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Any personal identifying information of the customers

or prospective customers of an affiliated international trust entity which appears in the books and records of an international trust company representative office or in records relating to reports of examinations, operations, or condition of an international trust company representative office, including working papers.

(b) Any portion of a list of names of the shareholders or members of an affiliated international trust entity.

(c) Information received by the office from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

(3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT INFORMATION.—Information made confidential and exempt under subsection (2) may be disclosed by the office:

(a) To the authorized representative or representatives of the international trust company representative office under examination. The authorized representative or representatives must be identified in a resolution or by written consent of the board of directors, or the equivalent, of the international trust entity.

(b) To a fidelity insurance company, upon written consent of the board of directors, or the equivalent, of the international trust entity.

(c) To an independent auditor, upon written consent of the

board of directors, or the equivalent, of the international trust entity.

(d) To the liquidator, receiver, or conservator for the international trust entity, if a liquidator, receiver, or conservator is appointed. However, any portion of the information which discloses the identity of a customer or prospective customer of the international trust entity, or a shareholder or member of the international trust entity, must be redacted by the office before releasing such portion to the liquidator, receiver, or conservator.

(e) To a law enforcement agency in furtherance of the agency's official duties and responsibilities.

(f) To the appropriate law enforcement or prosecutorial agency for the purpose of reporting any suspected criminal activity.

(g) Pursuant to a legislative subpoena. A legislative body or committee that receives records or information pursuant to such a subpoena must maintain the confidential status of the records or information, except in a case involving the investigation of charges against a public official subject to impeachment or removal, in which case the records or information may be disclosed only to the extent necessary as determined by such legislative body or committee.

(4) PUBLICATION OF INFORMATION.—This section does not prevent or restrict the publication of a report required by

federal law.

(5) PENALTY.—A person who willfully discloses information made confidential and exempt by this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to make confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of an international trust company representative office or in records relating to reports of examinations, operations, or condition of an international trust company representative office, including working papers; any portion of a list of names of the shareholders or members of an affiliated international trust entity which is held by the office; and information received by the Office of Financial Regulation from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

(1) An exemption from public records requirements is necessary for such records and information because the Office of Financial Regulation may receive sensitive personal and financial information, including personal identifying information relating to such entities, in the course of its investigation and examination duties. Public disclosure of the personal identifying information of existing customers, prospective customers, shareholders, or members of the affiliated international trust entity could defame or jeopardize the personal and financial safety of those individuals and their family members. The individuals served by the affiliated international trust entity are often individuals of high net worth. Individuals of high net worth and shareholders or members of financial institutions are frequently the targets of criminal predators seeking access to their assets. It is important that the exposure of such individuals and their family members to threats of extortion, kidnapping, and other crimes not be increased. Placing the personal identifying information of these individuals within the public domain would increase the security risk that those individuals or their families could become the target of criminal activity.

(2) Public disclosure of information received by the Office of Financial Regulation from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or

country or pursuant to federal law may deteriorate the office's relationships with other regulatory bodies. The office frequently engages in joint examinations with federal regulators. If such information were subject to disclosure to the public, not only would such disclosure deter other regulatory bodies from communicating vital information to the office, but the office would violate existing information-sharing agreements governing the sharing of confidential supervisory information.

Section 3. Section 663.540, Florida Statutes, is created and incorporated into part IV of chapter 663, Florida Statutes, as created by CS/HB 435, 2017 Regular Session, to read:

663.540 Public records exemption.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Reports of examinations, operations, or condition" means records submitted to or prepared by the office as part of the office's duties performed pursuant to s. 655.012 or s. 663.537.

(b) "Working papers" means the records of the procedure followed, the tests performed, the information obtained, and the conclusions reached in an investigation or examination performed under s. 655.032 or s. 663.537. The term includes planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution, as defined in s. 655.005,

and schedules or commentaries prepared or obtained in the course of such investigation or examination.

(2) PUBLIC RECORDS EXEMPTION.—The following information held by the office is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Any personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of a limited service affiliate or in records relating to reports of examinations, operations, or condition of a limited service affiliate, including working papers.

(b) Any portion of a list of names of the shareholders or members of a limited service affiliate.

(c) Information received by the office from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

(3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT INFORMATION.—Information made confidential and exempt under subsection (2) may be disclosed by the office:

(a) To the authorized representative or representatives of the limited service affiliate under examination. The authorized representative or representatives must be identified in a resolution or by written consent of the board of directors, if the limited service affiliate is a corporation, or of the

managers, if the limited service affiliate is a limited liability company.

(b) To a fidelity insurance company, upon written consent of the limited service affiliate's board of directors, if the limited service affiliate is a corporation, or of the managers, if the limited service affiliate is a limited liability company.

(c) To an independent auditor, upon written consent of the limited service affiliate's board of directors, if the limited service affiliate is a corporation, or of the managers, if the limited service affiliate is a limited liability company.

(d) To the liquidator, receiver, or conservator for a limited service affiliate, if a liquidator, receiver, or conservator is appointed. However, any portion of the information which discloses the identity of a customer of the affiliated international trust entity, or a shareholder or member of the limited service affiliate, must be redacted by the office before releasing such portion to the liquidator, receiver, or conservator.

(e) To a law enforcement agency in furtherance of the agency's official duties and responsibilities.

(f) To the appropriate law enforcement or prosecutorial agency for the purpose of reporting any suspected criminal activity.

(g) Pursuant to a legislative subpoena. A legislative body or committee that receives records or information pursuant to

such a subpoena must maintain the confidential status of the records or information, except in a case involving the investigation of charges against a public official subject to impeachment or removal, in which case the records or information may be disclosed only to the extent necessary as determined by such legislative body or committee.

(4) PUBLICATION OF INFORMATION.—This section does not prevent or restrict the publication of a report required by federal law.

(5) PENALTY.—A person who willfully discloses information made confidential and exempt by this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. The Legislature finds that it is a public necessity to make confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution personal identifying information of the customers or prospective customers of an affiliated international trust entity which appears in the books and records of a limited service affiliate or in records relating to reports of examinations, operations, or condition of a limited service

affiliate, including working papers; any portion of a list of names of the shareholders or members of a limited service affiliate which is held by the office; and information received by the office from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

(1) An exemption from public records requirements is necessary for personal identifying information of existing and prospective customers of an affiliated international trust entity or shareholders or members of a limited service affiliate, because if such information is available for public access, such access could defame or jeopardize the personal and financial safety of those individuals. The individuals served by the affiliated international trust entity are often individuals of high net worth. Individuals of high net worth and shareholders or members of financial institutions are frequently the targets of criminal predators seeking access to their assets. It is important that the exposure of such individuals and their family members to threats of extortion, kidnapping, and other crimes not be increased. Placing the personal identifying information of these individuals within the public domain would increase the security risk that those individuals or their families could become the target of criminal activity.

(2) An exemption from public records requirements is

necessary for information received by the Office of Financial Regulation from a person from another state or country or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or country or pursuant to federal law, as public disclosure may deteriorate the office's relationships with other regulatory bodies. The office frequently engages in joint examinations with federal regulators. If such information were subject to disclosure to the public, not only would this disclosure deter other regulatory bodies from communicating vital information to the office, but the office would violate existing information-sharing agreements governing the sharing of confidential supervisory information.

Section 5. Subsections (1), (2), (5), and (9) of section 655.057, Florida Statutes, are amended, and subsection (15) is added to that section, to read:

655.057 Records; limited restrictions upon public access.—

(1) Except as otherwise provided in this section and except for such portions thereof which are otherwise public record, all records and information relating to an investigation by the office are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such investigation is completed or ceases to be active. For purposes of this subsection, an investigation is considered "active" while such investigation is being conducted by the office with a

reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the office is proceeding with reasonable dispatch, and there is a good faith belief that action may be initiated by the office or other administrative or law enforcement agency. After an investigation is completed or ceases to be active, portions of the records relating to the investigation are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution to the extent that disclosure would:

(a) Jeopardize the integrity of another active investigation;

(b) Impair the safety and soundness of the financial institution;

(c) Reveal personal financial information;

(d) Reveal the identity of a confidential source;

(e) Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or

(f) Reveal investigative techniques or procedures.

(2) Except as otherwise provided in this section and except for such portions thereof which are public record, reports of examinations, operations, or condition, including working papers, or portions thereof, prepared by, or for the use of, the office or any state or federal agency responsible for

the regulation or supervision of financial institutions in this state are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such reports or papers or portions thereof may be released to:

(a) The financial institution under examination;

(b) Any holding company of which the financial institution is a subsidiary;

(c) Proposed purchasers if necessary to protect the continued financial viability of the financial institution, upon prior approval by the board of directors of such institution;

(d) Persons proposing in good faith to acquire a controlling interest in or to merge with the financial institution, upon prior approval by the board of directors of such financial institution;

(e) Any officer, director, committee member, employee, attorney, auditor, or independent auditor officially connected with the financial institution, holding company, proposed purchaser, or person seeking to acquire a controlling interest in or merge with the financial institution; or

(f) A fidelity insurance company, upon approval of the financial institution's board of directors. However, a fidelity insurance company may receive only that portion of an examination report relating to a claim or investigation being conducted by such fidelity insurance company.

(g) Examination, operation, or condition reports of a

financial institution shall be released by the office within 1 year after the appointment of a liquidator, receiver, or conservator to the financial institution. However, any portion of such reports which discloses the identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the institution, shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Any confidential information or records obtained from the office pursuant to this paragraph shall be maintained as confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(5) This section does not prevent or restrict:

(a) Publishing reports that are required to be submitted to the office pursuant to s. 655.045(2) or required by applicable federal statutes or regulations to be published.

(b) Furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions.

(c) Disclosing or publishing summaries of the condition of financial institutions and general economic and similar statistics and data, provided that the identity of a particular financial institution is not disclosed.

(d) Reporting any suspected criminal activity, with

supporting documents and information, to appropriate law enforcement and prosecutorial agencies.

(e) Furnishing information upon request to the Chief Financial Officer or the Division of Treasury of the Department of Financial Services regarding the financial condition of any financial institution that is, or has applied to be, designated as a qualified public depository pursuant to chapter 280.

(f) Furnishing information to Federal Home Loan Banks regarding its member institutions pursuant to an information sharing agreement between the Federal Home Loan Banks and the office.

Any confidential information or records obtained from the office pursuant to this subsection shall be maintained as confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(9) Materials supplied to the office or to employees of any financial institution by other state or federal governmental agencies remain the property of the submitting agency or the corporation, and any document request must be made to the appropriate agency. Any confidential documents supplied to the office or to employees of any financial institution by other state or federal governmental agencies are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such information shall be made public only with

the consent of such agency or the corporation.

(15) Subsections (1), (2), (5), and (9) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and are repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 6. The Legislature finds that it is a public necessity to make confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution records and information relating to an investigation by the Office of Financial Regulation; portions of records relating to a completed or inactive investigation by the office which would jeopardize the integrity of another active investigation, impair the safety and soundness of the financial institution, reveal personal financial information, reveal the identity of a confidential source, defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual, or reveal investigative techniques or procedures; reports of examinations, operations, or condition, including working papers, or portions thereof, prepared by, or for the use of, the office or any state or federal agency responsible for the regulation or supervision of financial institutions in this state; any portion of such reports which discloses the identities of depositors, bondholders, members, borrowers, or stockholders, other than directors, officers, or controlling stockholders of the

institution; and materials supplied to the office or to employees of any financial institution by other state or federal governmental agencies. This exemption is necessary because:

(1) The terms "international trust entity" and "limited service affiliate" referenced in newly created parts III and IV of chapter 663, Florida Statutes, are added to the definition of the term "financial institution" in s. 655.005(1)(i) in CS/HB 435. The international trust company representative offices and limited service affiliates servicing international trust entities are thus subject to examination by the Office of Financial Regulation. As a result, the office may receive sensitive personal and financial information relating to such entities in conjunction with its duties under chapters 655 and 663, Florida Statutes. An exemption from public records requirements prevents gaps in the law by providing the same protections to international trust entities and limited services affiliates which are afforded to other financial institutions, thereby preventing any disadvantage to these similarly regulated entities in comparison to other entities currently defined as "financial institutions." An exemption from public records requirements for reports of examinations, operations, or condition, including working papers, is necessary to ensure the office's ability to effectively and efficiently administer its examination and investigation duties. Examination and investigation are essential components of financial institutions

regulation. They deter fraud and ensure the safety and soundness of the financial system. Examinations also provide a means of early detection of violations, allowing for corrective action to be taken before any harm can be done.

(2) Public disclosure of records and information relating to an examination or investigation by the office could expose the subject financial institution to unwarranted damage to its good name or reputation and impair its safety and soundness, as well as the safety and soundness of the financial system in the state. Public disclosure of records and information relating to an investigation by the office which could jeopardize the integrity of another active investigation or reveal investigative techniques or procedures of the office would impair the office's ability to effectively and efficiently administer its duties under ss. 655.032 and 655.045, Florida Statutes. Any portion of a record or information relating to an investigation or examination which reveals personal financial information or the identity of a confidential source may defame, or cause unwarranted damage to the good name or reputation of, those individuals, or jeopardize their safety.

Section 7. This act shall take effect on the same date that CS/HB 435 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 441 Court Records
SPONSOR(S): Civil Justice & Claims Subcommittee; Diamond
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 202

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	15 Y, 0 N, As CS	MacNamara	Bond
2) Oversight, Transparency & Administration Subcommittee		Toliver LT	Harrington
3) Judiciary Committee			

SUMMARY ANALYSIS

The clerks of court are responsible for maintaining court records and generally making those records available for public inspection and copying. Where such records contain confidential information, the Florida Rules of Judicial Administration require a clerk of court to keep such records confidential. So that the clerk knows that information qualifies as confidential, the rules require the filer of any document containing confidential information to file a "Notice of Confidential Information within Court Filing" along with the document. This notice must indicate that either the entire document is confidential or identify the location of the confidential information within the document being filed.

The bill provides immunity from liability for clerks of court for the release of information that is made confidential by the Florida Rules of Judicial Administration where the filer failed to disclose the existence of the confidential information to the clerk as required by court rule. The bill also amends current law to remove outdated language.

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

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[1] This right to access public records includes records made or received by legislative, executive, and judicial branches of government.[2]

A clerk of court is a custodian of public records. As custodian, clerks are required to provide access and copies of public records. Certain records are confidential or exempt[3] from disclosure under public records laws, including personal information of certain individuals such as law enforcement personnel, firefighters, justices and judges, state attorneys, magistrates, and others as specified by statute.[4] A clerk of court, as the custodian of public records, is responsible for maintaining official records and court records that may be confidential or exempt.

Court Records and Confidential Information

An official record is recorded by the clerk as part of a general series called "Official Records" and includes such documents as court orders, mortgages, deeds, notices of levy, tax warrants, and liens.[5]

Florida Rule of Judicial Administration 2.420(d) sets out procedures for determining confidentiality of court records. It requires filers and allows parties and affected non-parties to file a "Notice of Confidential Information within Court Filing," which triggers a review by the clerk of the court and a process to temporarily or permanently maintain the information as confidential.[6] Once the form notice is filed, the clerk of court must review filings identified as containing confidential information to determine whether the information is facially subject to confidentiality.[7]

For court records filed with the clerk of court on and after January 1, 2012, the clerk must maintain any social security numbers and financial account numbers in those records as confidential and exempt from disclosure under public records law.[8] Clerks are not liable for inadvertently releasing social security, bank account, charge, debit, and credit card numbers found in court records that were filed before January 1, 2012.[9] However, a person whose social security number or financial account number is contained in an older record, or his or her attorney or legal guardian, may request that the clerk redact the numbers from the record.[10]

---

[1] Fla. Const. art. I, s. 24(a).
[2] *Id.*
[3] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature designates as *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* 85-62 Fla. Op. Att'y Gen. (1985).
[4] S. 119.071(3)(d), F.S.
[5] S. 28.222(2) and (3), F.S.
[6] Fla. R. Jud. Admin. 2.420(d)(2).
[7] Fla. R. Jud. Admin. 2.420(d)(2)(B).
[8] S. 119.0714(2)(e), F.S.
[9] S. 119.0714(2)(d), F.S.
[10] *See* s. 119.0714(2), F.S.

Rule 2.420(d)(1)(B) of the Florida Rules of Judicial Administration requires the clerk of the court to designate and maintain the confidentiality of the following records or information, which are exempt from disclosure under existing law:

- Chapter 39, F.S., records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment (ss. 39.0132(3) and (4)(a), F.S).
- Adoption records (s. 63.162, F.S).
- Social Security, bank account, charge, debit, and credit card numbers (s. 119.0714(1)(i)-(j) and (2)(a)-(e), F.S.).
- HIV test results and the identity of any person upon whom an HIV test has been performed (s. 381.004(2)(e), F.S.).
- Records, including test results, held by the Department of Health or its authorized representatives relating to sexually transmissible diseases (s. 384.29, F.S.).
- Birth records and portions of death and fetal death records (ss. 382.008(6) and 382.025(1), F.S.).
- Information that can be used to identify a minor petitioning for a waiver of parental notice when seeking to terminate pregnancy (s. 390.01116, F.S.).
- Clinical records under the Baker Act (s. 394.4615(7), F.S.).
- Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individuals (s. 397.501(8), F.S.).
- Clinical records of criminal defendants found incompetent to proceed or acquitted by reason of insanity (s. 916.107(8), F.S.).
- Estate inventories and accountings (s. 733.604(1), F.S.).
- The victim's address in a domestic violence action on petitioner's request (s. 741.30(3)(b), F.S.).
- Protected information regarding victims of child abuse or sexual offenses (ss. 119.071(2)(h) and 119.0714(1)(h), F.S.).
- Gestational surrogacy records (s. 742.16(9), F.S.).
- Guardianship reports, orders appointing court monitors, and orders relating to findings of no probable cause in guardianship cases (ss. 744.1076 and 744.3701, F.S.).
- Grand jury records (ss. 905.17 and 905.28(1), F.S.).
- Records acquired by courts and law enforcement regarding family services for children (s. 984.06(3)-(4), F.S.).
- Juvenile delinquency records (ss. 985.04(1) and 985.045(2), F.S.).
- Records disclosing the identity of persons subject to tuberculosis proceedings and records held by the Department of Health or its authorized representatives relating to known or suspected cases of tuberculosis or exposure to tuberculosis (ss. 392.545 and 392.65, F.S.).
- Complete presentence investigation reports (Fla. R. Crim. P. 3.712).
- Forensic behavioral health evaluations under ch. 916, F.S. (s. 916.1065, F.S.).
- Eligibility screening, substance abuse screening, behavioral health evaluations, and treatment status reports for defendants referred to or considered for referral to a drug court program (s. 397.334(10)(a), F.S.).

Similarly, Rule 2.425, of the Florida Rules of Judicial Administration, relates to the minimization of filing sensitive information. Under this rule, designated sensitive information is formatted to limit the amount of confidential information filed with a court. In relevant part, the rule, unless authorized by statute, rule of court, or court order provides that court filings should not contain any portion of an individual's:

- Social security number,
- Bank account number,
- Credit card account number,
- Charge account number, or
- Debit account number.[11]

[11] Fla. R. Jud. Admin. 2.425(a)(3).

Rule 2.515 of the Florida Rules of Judicial Administration requires every document of a party represented by an attorney be signed by at least one attorney of record. The attorney's signature constitutes a certificate by the attorney that, among other things, the document contains no confidential or sensitive information or that any such information has been protected by identifying the confidential or sensitive information in accordance with the requirements of the Florida Rules of Judicial Administration.[12]

Clerks of Court Liability

Clerks also enjoy immunity from liability under common law. This may be in the form of either judicial immunity or qualified immunity.

The doctrine of judicial immunity insures that judges are immune from liability for damages for acts committed within their judicial jurisdiction and is essential to the preservation of an independent judiciary.[13] Judges enjoy absolute immunity for acts performed in the course of their judicial capacities unless they clearly act without jurisdiction.[14] This doctrine has been extended to quasi-judicial officials, such as a clerk of court, performing judicial acts.[15] In Florida, judicial immunity applies to all forms of suits against judicial officials, not just suits for money damages.[16]

Acts or omissions by a government official that are not protected by absolute immunity, such as judicial immunity, may be protected by qualified immunity.[17] The central purpose of qualified immunity is to protect public officials from undue interferences with their duties and from potentially disabling threats of liability. The doctrine insulates government officials from personal liability for money damages for actions taken pursuant to their discretionary authority insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

Qualified immunity applies to all except the plainly incompetent or those who knowingly violate the law and turns upon the objective legal reasonableness of the official's action assessed in light of the legal rules that were clearly established at the time when the action was taken. To abrogate or limit a government official's immunity, a statute must be clear.[18]

Effect of Proposed Changes

The bill provides that a clerk of court is not liable if confidential information is disclosed due to the filer's failure to disclose the existence of the confidential information to the clerk, as required by the Florida Rules of Judicial Administration.

The bill also removes outdated language.

B. SECTION DIRECTORY:

Section 1 amends s. 119.0714, F.S., related to court files; court records; official records.

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

---

[12] Fla. R. Jud. Admin. 2.515(a)(4).
[13] *Berry v. State*, 400 So.2d 80, 82–83 (Fla. 4th DCA 1981).
[14] *Id.* at 83.
[15] *See Zoba v. City of Coral Springs*, 189 So.3d 888 (Fla. 4th DCA 2016); *see also Fong v. Forman*, 105 So.3d 650 (Fla. 4th DCA 2013).
[16] *Fuller v. Truncale*, 50 So.3d 25, 30 (Fla. 1st DCA 2010).
[17] "Qualified Immunity" is defined to mean "[i]mmunity from civil liability for a public official who is performing a discretionary function, as long as the conduct does not violate clearly established constitutional or statutory rights." *Black's Law Dictionary* 643 (9th ed. abr., 2010).
[18] *Bates v. St. Lucie County Sheriff's Office*, 31 So.3d 210, 213 (Fla. 4th DCA 2010).

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 has the potential to result in an indeterminate positive impact for clerks through savings on legal fees.[19]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   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:

None.

[19] 2017 Clerks of Court Operations Corporation, Agency Bill Analysis for HB 411, p. 3 (February 11, 2017).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removes the term "inadvertent" from the bill and thus limits the liability of the clerk for any disclosure of confidential information where the filer fails to disclose the nature of the confidential information within the document being filed.

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

A bill to be entitled

An act relating to court records; amending s. 119.0714, F.S.; providing an exemption from liability for the release of certain information by the clerk of court; deleting obsolete language; providing an effective date.

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

Section 1. Paragraph (e) of subsection (2) of section 119.0714, Florida Statutes, is amended, and paragraph (g) is added to that subsection, to read:

119.0714 Court files; court records; official records.—

(2) COURT RECORDS.—

(e)1. ~~On January 1, 2012, and thereafter,~~ The clerk of the court must keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.

2. Section 119.071(5)(a)7. and 8. does not apply to the clerks of the court with respect to court records.

(g) The clerk of the court is not liable for the release of information that is required by the Florida Rules of Judicial Administration to be identified by the filer as confidential if the filer fails to make the required identification of the

confidential information to the clerk of the court.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 501 Pub. Rec. and Meetings/Information Technology/Postsecondary Education Institutions
SPONSOR(S): Post-Secondary Education Subcommittee; Leek and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 110

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Post-Secondary Education Subcommittee	14 Y, 0 N, As CS	McAlarney	Bishop
2) Oversight, Transparency & Administration Subcommittee		Whittaker	Harrington
3) Education Committee			

SUMMARY ANALYSIS

Records and meetings held by state universities and Florida College System institutions regarding information security incidents, such as investigations into security breaches, security technologies, processes and practices as well as security risk assessments are subject to Florida open record laws. Public disclosure of this information may present a significant security risk because such information could reveal weaknesses within the State University System and Florida College System computer networks, raising the potential for exploitation.

The bill provides that the following records held by a state university or Florida College System institution are confidential and exempt from public record requirements:

- Records that identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information or information technology resources; and
- Those portions of risk assessments, evaluations, external and internal audits, and other reports of the university's or institution's information technology security program for its data, information, and information technology resources, if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information or information technology resources.

The bill exempts from public meeting requirements those portions of a meeting that would reveal data or information that is made confidential and exempt by this bill. The meeting must be recorded and transcribed, but the recording and transcript of such a meeting must remain confidential and exempt from public disclosure. The bill provides that such confidential and exempt information must be provided to specified entities.

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

Public Meetings Law
Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.[1] The board or commission must provide reasonable notice of all public meetings.[2] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[3] Minutes of a public meeting must be promptly recorded and open to public inspection.[4]

Public Record and Public Meeting Exemptions
The Legislature, however, may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[5]

Furthermore, the Open Government Sunset Review Act[6] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

[1] Section 286.011(1), F.S.
[2] *Id.*
[3] Section 286.011(6), F.S.
[4] Section 286.011(2), F.S.
[5] Art. I, s. 24(c), Fla. Const.
[6] Section 119.15, F.S.

- Protects trade or business secrets.

State Universities and Florida College System Institutions

Records and meetings held by state universities and Florida College System institutions regarding information security incidents, such as investigations into security breaches, security technologies, processes and practices as well as security risk assessments are subject to Florida open records laws.[7,8] Public disclosure of this information presents a significant security risk and would reveal weaknesses within the State University System and Florida College System computer networks, raising the potential for exploitation.

Section 282.318, F.S., exempts from Open Meeting and Public Records laws data and information from technology systems owned, contracted, or maintained by a state agency.

However, state universities and university boards of trustees are specifically excluded from the definition of "state agency". Section 282.318(2), F.S., defines "state agency" as having the same meaning as provided in s. 282.0041, F.S. State agency is defined in s. 282.0041(23), F.S., as meaning:

> [A]ny official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities. ...

Therefore, a state university is vulnerable to the disclosure of records or information that could potentially compromise the confidentiality, integrity, and availability of a state university's information technology system which contains highly sensitive student, medical, research, and other personal data.[9]

Florida College System records at the state level, as part of the Department of Education, are protected under s. 282.318, F.S., but it is unclear the extent to which individual colleges and their boards of trustees are protected under current law.

Effect of Proposed Changes

The bill creates public record and public meeting exemptions to protect data and records pertaining to the security of the State University System and Florida College System information networks from disclosure. Certain enumerated forms of information held by a university or institution related to information technology security and potential breaches of security, as well as risk assessments, evaluations, and audits, are confidential and exempt from disclosure, including:

- Records held by the university or college which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of data or information, whether physical or virtual, or information technology resources; and
- Those portions of risk assessments, evaluations, external and internal audits, and other reports of the university's or institution's information technology security program for its data, information, and information technology resources which are held by the university or institution. These records would be exempt if their disclosure would lead to the unauthorized access to or modification, disclosure, or destruction of the data, information, or information technology resources.

[7] FLA. CONST. art. I, s. 24 (c).
[8] Chapter 119, F.S.
[9] State University System of Florida, Board of Governors, Legislative Bill Analysis (February 13, 2017).

The bill also exempts portions of otherwise public meetings where such enumerated information technology security matters are discussed. Recordings or transcripts of such closed portions of meetings must be taken. Recordings or transcripts are confidential and exempt, unless a court determines a transcript may be released to a third party, and subject to an in camera review by a judge upon challenge of a refusal to disclose.

The public record exemptions are retroactive and apply to records or portions of public meetings, recordings, and transcripts held by the university or institution before, on, or after the effective date of this act.

The bill provides for the review of such enumerated information by the Auditor General, the Board of Governors for a state university, the State Board of Education for a Florida College System institution, and the Cybercrime Office of the Department of Law Enforcement, as well as other state and federal agencies for security purposes.

The bill creates an October 2, 2022, sunset provision.

B. SECTION DIRECTORY:

Section 1. Exempts from the Sunshine Laws all specified data or information from technology systems owned, contracted, or maintained by a state university or a Florida College System institution. Also, provides an October 2, 2022, sunset of the exemption.

Section 2. Provides a public necessity statement.

Section 3. Directs Division of Law Revision and Information to replace the phrase "the effective date of this act" with the date this act becomes law.

Section 4. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   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 create a minimal fiscal impact on state universities and the Florida College System because staff responsible for complying with public record requests could require training related to the creation of the public record exemptions. In addition, state universities and the Florida College System 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 the state universities and the Florida College System.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates public record and public meeting exemptions; 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 public record exemptions for records held by a state university or Florida College System institution that identify detection, investigation, or response practices for suspected or confirmed information technology security incidents in addition to a public meeting exemption for portions of public meetings which would reveal such data and information. The exemptions do not appear to be in conflict with the constitutional requirement that the exemptions be no broader than necessary to accomplish the stated purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2017, the Post-Secondary Education Subcommittee adopted an amendment clarifying that records and portions of public meeting records and transcripts related to the Florida College System must be made available to the State Board of Education. The bill was reported favorably as a committee substitute. The bill analysis is drafted to the committee substitute as passed by the Post-Secondary Education Subcommittee.

A bill to be entitled

An act relating to public records and public meetings; creating s. 1004.055, F.S.; creating an exemption from public records requirements for certain records held by a state university or Florida College System institution which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents; creating an exemption from public records requirements for certain portions of risk assessments, evaluations, external and internal audits, and other reports of a university's or institution's information technology security program; creating an exemption from public meetings requirements for portions of public meetings which would reveal such data and information; providing an exemption from public records requirements for a specified period for the recording and transcript of a closed meeting; authorizing disclosure of confidential and exempt information to certain agencies and officers; defining the term "external audit"; providing retroactive application; providing for future legislative review and repeal of the exemptions; providing statements of public necessity; providing a directive to the Division of Law Revision and Information; providing an effective

date.

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

Section 1. Section 1004.055, Florida Statutes, is created to read:

1004.055 Security of data and information technology in state postsecondary education institutions.—

(1) All of the following data or information from technology systems owned, contracted, or maintained by a state university or a Florida College System institution are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Records held by the university or institution which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

a. Information relating to the security of the university's or institution's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or

unauthorized access; or

b. Security information, whether physical or virtual, which relates to the university's or institution's existing or proposed information technology systems.

(b) Those portions of risk assessments, evaluations, external and internal audits, and other reports of the university's or institution's information technology security program for its data, information, and information technology resources which are held by the university or institution, if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

a. Information relating to the security of the university's or institution's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the university's or institution's existing or proposed information technology systems.

(2) Those portions of a public meeting as specified in s. 286.011 which would reveal data and information described in subsection (1) are exempt from s. 286.011 and s. 24(b), Art. 1

of the State Constitution. An exempt portion of the meeting may not be off the record. All exempt portions of such a meeting must be recorded and transcribed. The recording and transcript of the meeting must remain confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution unless a court of competent jurisdiction, following an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the transcript which reveals nonexempt data and information may be disclosed.

(3) The records and portions of public meeting recordings and transcripts described in subsections (1) and (2) must be available to the Auditor General and the Cybercrime Office of the Department of Law Enforcement; for a state university, the Board of Governors; and, for a Florida College System institution, the State Board of Education. Such records and portions of meetings, recordings, and transcripts may be made available to a state or federal agency for security purposes or in furtherance of the agency's official duties. For purposes of this section, "external audit" means an audit that is conducted by an entity other than the state university or Florida College System institution that is the subject of the audit.

(4) The exemptions listed in this section apply to such records or portions of public meetings, recordings, and

transcripts held by the university or institution before, on, or after the effective date of this act.

(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1)(a) The Legislature finds that it is a public necessity that records held by a state university or Florida College System institution which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

a. Information relating to the security of the university's or institution's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the university's or institution's existing or

proposed information technology systems.

(b) Such records must be made confidential and exempt for the following reasons:

1. Records held by a state university or Florida College System institution which identify information technology detection, investigation, or response practices for suspected or confirmed information technology security incidents or breaches are likely to be used in the investigation of the incident or breach. The release of such information could impede the investigation and impair the ability of reviewing entities to effectively and efficiently execute their investigative duties. In addition, the release of such information before an active investigation is completed could jeopardize the ongoing investigation.

2. An investigation of an information technology security incident or breach is likely to result in the gathering of sensitive personal information, including identification numbers, personal financial and health information, and educational records exempt from disclosure under the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and ss. 1002.225 and 1006.52, Florida Statutes. Such information could be used to commit identity theft or other crimes. In addition, release of such information could subject possible victims of the security incident or breach to further harm.

3. Disclosure of a record, including a computer forensic

analysis, or other information that would reveal weaknesses in a state university's or Florida College System institution's data security could compromise that security in the future if such information were available upon conclusion of an investigation or once an investigation ceased to be active.

4. Such records are likely to contain proprietary information about the security of the system at issue. The disclosure of such information could result in the identification of vulnerabilities and further breaches of that system. In addition, the release of such information could give business competitors an unfair advantage and weaken the security technology supplier supplying the proprietary information in the marketplace.

5. The disclosure of such records could potentially compromise the confidentiality, integrity, and availability of state university and Florida College System institution data and information technology resources, which would significantly impair the administration of vital educational programs. It is necessary that this information be made confidential in order to protect the technology systems, resources, and data of the universities and institutions. The Legislature further finds that this public records exemption be given retroactive application because it is remedial in nature.

(2)(a) The Legislature also finds that it is a public necessity that portions of risk assessments, evaluations,

external and internal audits, and other reports of a state university's or Florida College System institution's information technology security program for its data, information, and information technology resources which are held by the university or institution be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

a. Information relating to the security of the university's or institution's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the university's or institution's existing or proposed information technology systems.

(b) The Legislature finds that it may be valuable, prudent, or critical to a state university or Florida College System institution to have an independent entity conduct a risk assessment, an audit, or an evaluation or complete a report of the university's or institution's information technology program or related systems. Such documents would likely include an

analysis of the university's or institution's current information technology program or systems which could clearly identify vulnerabilities or gaps in current systems or processes and propose recommendations to remedy identified vulnerabilities.

(3)(a) The Legislature further finds that it is a public necessity that those portions of a public meeting which could reveal information described in subsections (1) and (2) be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. It is necessary that such meetings be made exempt from the open meetings requirements in order to protect institutional information technology systems, resources, and data. The information disclosed during portions of meetings would clearly identify a state university's or Florida College System institution's information technology systems and its vulnerabilities. This disclosure would jeopardize the information technology security of the institution and compromise the integrity and availability of state university or Florida College System institution data and information technology resources, which would significantly impair the administration of educational programs.

(b) The Legislature further finds that it is a public necessity that the recording and transcript of those portions of meetings specified in paragraph (a) be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),

Article I of the State Constitution unless a court determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this act. It is necessary that the resulting recordings and transcripts be made confidential and exempt from the public record requirements in order to protect institutional information technology systems, resources, and data. The disclosure of such recordings and transcripts would clearly identify a state university's or Florida College System institution's information technology systems and its vulnerabilities. This disclosure would jeopardize the information technology security of the institution and compromise the integrity and availability of state university or Florida College System institution data and information technology resources, which would significantly impair the administration of educational programs.

(c) The Legislature further finds that this public meeting and public records exemption must be given retroactive application because it is remedial in nature.

Section 3. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 603 Publicly Funded Defined Benefit Retirement Plans
SPONSOR(S): Fischer
TIED BILLS: **IDEN./SIM. BILLS:** SB 632

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

SUMMARY ANALYSIS

The State Constitution provides that a governmental unit responsible for a retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide an increase in benefits to members or beneficiaries without concurrent provisions for funding the increase on a sound actuarial basis. Funding a pension benefit requires the use of projections, known as actuarial assumptions, about future events. As with other actuarial assumptions, projecting pension fund investment returns requires a focus on the long-term.

Beginning January 1, 2021, the bill prohibits the actuarial assumed rate of return for each public pension plan from being greater than the plan's long-range return rate. The bill defines the term "long-range return rate" to mean an actuarial assumed rate of return that is expected to be realized at least 50 percent of the time over the next 30-year period.

Beginning with the 2021 plan year, the long-range return rate is effective for each plan or system for a five-year period, and must be reevaluated and reestablished for each subsequent 5-year period thereafter. Each plan or system with an actuarial assumed rate of return greater than the long-range return rate on or after January 1, 2021, must reduce the actuarial assumed rate of return for the next plan year by at least 25 basis points. The actuarial assumed rate must continue to be reduced by at least an additional 25 basis points for each subsequent plan year until the actuarial assumed rate of return is equal to or less than the long-range return rate.

The bill also requires certain additional information to be included in the triennial actuarial reports required for public employee retirement plans and systems.

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

State Constitution Requirements
Section 14, Art. X of the State Constitution provides that a governmental unit responsible for a retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide an increase in benefits to members or beneficiaries without concurrent provisions for funding the increase on a sound actuarial basis.

The 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 State 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 Department of Management Services (department), Division of Retirement (division).

Florida Retirement System
The Florida Retirement System (FRS) is a multiple-employer, contributory plan[2] governed by the Florida Retirement System Act.[3] As of June 30, 2016, the FRS provides retirement income benefits to 630,350 active members, 394,907 retired members and beneficiaries, and 29,602 members of the Deferred Retirement Option Program.[4] It is the primary retirement plan for employees of state and county government agencies, district school boards, state colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 173 cities and 260 special districts that have elected to join the system. Members of the FRS have two primary plan options available for participation:

- The pension plan, which is a defined benefit plan;[5] and
- The investment plan, which is a defined contribution plan.[6]

Local Government Retirement Systems and Plans
The division reports that as of September 30, 2016, there are 489 defined benefit plans sponsored by 247 local governments.[7] The vast majority of the plans, 483, are local government defined benefit systems that provide benefits to 90,994 retirees and have 95,182 active employees and total plan assets of $35.9 billion. The average annual pension in these local plans is $27,414, and the average annual required contribution rate as a percentage of payroll is 33.28 percent.[8]

A unit of local government may not agree to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body and prior to the last

[1] Section 112.62, F.S.
[2] Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class members or 6 percent for Special Risk Class members. Members were again required to contribute to the system after June 30, 2011.
[3] Chapter 121, F.S.
[4] *Florida Retirement System Pension Plan And Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016*, at 6, *available at* http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports.
[5] As of June 30, 2016, the pension plan had 515,916 members. *Id.*at 120.
[6] As of June 30, 2016, the investment plan had 114,434 members. *Id.*
[7] Department of Management Services, *Florida Local Government Retirement Systems*, 2016 Annual Report, p. 4, *available at* https://www.rol.frs.state.fl.us/forms/2016_Local_Report.pdf.
[8] *Id.*

public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system and furnished a copy of such statement to the division.[9] In addition, the statement is required to indicate whether the proposed changes are in compliance with s. 14, Art. X of the State Constitution and with s. 112.64, F.S., which relates to administration of funds and amortization of unfunded liability.

Public Pension Plan Investment Return Assumptions

Funding a pension benefit requires the use of projections, known as actuarial assumptions, about future events. Actuarial assumptions fall into one of two broad categories: demographic and economic. Demographic assumptions are those pertaining to a pension plan's membership, such as changes in the number of working and retired plan participants, when participants will retire, and how long they'll live after they retire. Economic assumptions pertain to such factors as the rate of wage growth and the future expected investment return on the fund's assets. As with other actuarial assumptions, projecting pension fund investment returns requires a focus on the long-term.[10]

Because investment earnings account for a majority of revenue for a typical public pension fund, the accuracy of the return assumption has a major effect on a plan's finances and actuarial funding level. An investment return assumption that is set too low will overstate liabilities and costs, causing current taxpayers to be overcharged and future taxpayers to be undercharged. A rate set too high will understate liabilities, undercharging current taxpayers at the expense of future taxpayers. An assumption that is significantly wrong in either direction will cause a misallocation of resources and unfairly distribute costs among generations of taxpayers.[11]

Amortization of Unfunded Liability

Section 112.64, F.S., governs the amortization of unfunded liability for public employee retirement systems or plans. For those plans in existence on October 1, 1980, the total contributions to the retirement system or plan must be sufficient to meet the normal cost of the retirement system or plan and to amortize the unfunded liability, if any, within 40 years; however, this requirement does not permit a retirement system or plan to amortize its unfunded liabilities over a period longer than that which remains under its current amortization schedule.[12] For a retirement system or plan that comes into existence after October 1, 1980, the unfunded liability, if any, must be amortized within 40 years of the first plan year.[13] The net increase, if any, in unfunded liability under the plan arising from significant plan amendments adopted, changes in actuarial assumptions, changes in funding methods, or actuarial gains or losses must be amortized within 30 plan years.[14]

Reporting Requirements for Publicly-Funded Retirement Plans

To help ensure that each retirement system or plan maintains funding of retirement systems at an appropriate level, governmental entities are required to submit regularly scheduled actuarial reports to the division for its review and approval.[15]

Section 112.63, F.S., requires the plan administrators for all publicly-funded pension plans to submit an actuarial report at least every three years and requires the actuarial reports to consist of, but not be limited to, the following information:

- Adequacy of employer and employee contribution rates in meeting levels of employee benefits and changes, if any, needed in such rates to achieve or preserve a level of funding deemed adequate to enable payment through the indefinite future of the benefit amounts prescribed by the system;

---

[9] *See* s. 112.63, F.S.

[10] *NASRA Issue Brief: Public Pension Plan Investment Return Assumptions*, National Association of State Retirement Administrators, p. 1, February 2017, *available at* http://www.nasra.org/files/Issue%20Briefs/NASRAInvReturnAssumptBrief.pdf.

[11] *Id.*

[12] Section 112.62, F.S.

[13] Section 112.63, F.S.

[14] Section 112.64, F.S.

[15] Section 112.63(1), F.S., requires an enrolled actuary to certify the scheduled actuarial reports.

- A plan to amortize any unfunded liability pursuant to s. 112.64, F.S., and a description of actions taken to reduce the unfunded liability;
- A description and explanation of actuarial assumptions;
- A schedule illustrating the amortization of unfunded liabilities, if any;
- A comparative review illustrating the actual salary increases granted and the rate of investment return realized over the 3-year period preceding the actuarial report with the assumptions used in both the preceding and current actuarial reports;
- Effective January 1, 2016, the mortality tables used in either of the two most recently published actuarial valuation reports of the Florida Retirement System, including the projection scale for mortality improvement; and
- A statement by the enrolled actuary that the report is complete and accurate and that, in his or her opinion, the techniques and assumptions used are reasonable and meet the requirements and intent of the act.

The actuarial cost methods utilized for establishing the amount of the annual actuarial normal cost to support the promised benefits must only be those methods approved in the Employee Retirement Income Security Act of 1974 and as permitted under regulations prescribed by the Secretary of the Treasury.[16]

If the division determines that a governmental entity has not submitted a complete, accurate, or reasonable actuarial valuation or required reports, the division must notify the plan administrator of the deficiency and request an appropriate adjustment or the required information.[17] If after a reasonable period of time, a satisfactory adjustment has not been made, or the required report has not been provided, the department may notify DOR and the Department of Financial Services of the noncompliance and those agencies must withhold any funds not pledged for satisfaction of bonds until such adjustment is made to the report.[18] The affected governmental entity may petition the department for a hearing.[19]

Effect of the Bill

The bill defines the term "long-range return rate" to mean an actuarial assumed rate of return that is expected to be realized at least 50 percent of the time over the next 30-year period.

Beginning January 1, 2021, the bill prohibits the actuarial assumed rate of return for each public pension plan from being greater than the plan's long-range return rate. Beginning with the 2021 plan year, the long-range return rate is effective for each plan or system for a five-year period, and must be reevaluated and reestablished for each subsequent 5-year period thereafter. Each plan or system with an actuarial assumed rate of return greater than the long-range return rate on or after January 1, 2021, must reduce the actuarial assumed rate of return for the next plan year by at least 25 basis points. The actuarial assumed rate must continue to be reduced by at least an additional 25 basis points for each subsequent plan year until the actuarial assumed rate of return is equal to or less than the long-range return rate.

[16] *Id.*
[17] Section 112.63(4)(a), F.S.
[18] Section 112.63(4)(b), F.S.
[19] Section 112.63(4)(c), F.S.

The bill revises the information that must be included in the triennial actuarial report by requiring the description and explanation of actuarial assumptions to be consistent with the requirements of s. 112.64, F.S., and requiring a description of proposed adjustments to any actuarial assumptions, if required by s. 112.64, F.S. In addition, the bill requires any plan or system that, for any plan year, has an actuarial assumed rate of return greater than the long-range return rate to include at least the following information in its report:

- The total necessary adjustment required to bring the actuarial assumed rate of return in compliance with the long-range return rate currently in effect.
- The number of plan years required to bring the actuarial assumed rate of return in compliance with the long-range return rate currently in effect.
- Any change to the plan investment strategy, including, but not limited to, changes to asset class allocations, and any change to actuarial methodology which results in a change to either the long-range return rate or the actuarial assumed rate of return of the plan.
- The additional cost to the plan or system resulting from any changes required to be made to the actuarial assumed rate of return using the long-range return rate currently in effect.

The bill specifies that it fulfills an important state interest because it extends to employees and retirees of the state and its political subdivisions, and their families, the basic protections afforded by governmental retirement systems that provide fair and adequate benefits and that are managed, administered, and funded in an actuarially sound manner.

B. SECTION DIRECTORY:

Section 1. amends s. 112.625, F.S., relating to definitions.

Section 2. amends s. 112.63, F.S., relating to actuarial reports and statements of actuarial impact.

Section 3. amends s. 112.64, F.S., relating to administration of funds; amortization of unfunded liability.

Sections 4. and 5. amend ss. 175.261 and 185.221, F.S., to conform cross-references.

Section 6. provides that the act fulfills an important state interest.

Section 7. 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 impact on state government expenditures as a result of prohibiting the actuarial assumed rate of return for the FRS from being greater than the plan's long-range return rate.

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 may have an indeterminate impact on local government expenditures as a result of prohibiting the actuarial assumed rate of return for each public pension plan from being greater than the plan's long-range return rate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18 of the Florida Constitution may apply because this bill prohibits the actuarial assumed rate of return for each local government pension plan from being greater than the plan's long-range return rate. However, an exception may apply because the bill provides that it serves an important state interest and similarly situated defined benefit pension plans are required to comply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to publicly funded defined benefit retirement plans; reordering and amending s. 112.625, F.S.; defining the term "long-range return rate"; amending s. 112.63, F.S.; revising requirements for actuarial reports submitted by a retirement plan or system subject to part VII of ch. 112, F.S., to conform; amending s. 112.64, F.S.; prohibiting the actuarial assumed rate of return of a plan or system from exceeding the long-range return rate, as of a specified date; specifying the length of time that a long-range return rate is in effect; specifying the method of reducing the actuarial assumed rate of return under certain conditions; providing reporting requirements for a plan or system with an actuarial assumed rate of return in excess of the long-range return rate; amending ss. 175.261 and 185.221, F.S.; conforming cross-references; providing a declaration of important state interest; providing an effective date.

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

Section 1. Section 112.625, Florida Statutes, is reordered and amended to read:

112.625 Definitions.—As used in this act:

(9)~~(1)~~ "Retirement system or plan" means any employee pension benefit plan supported in whole or in part by public funds, provided such plan is not:

(a) An employee benefit plan described in s. 4(a) of the Employee Retirement Income Security Act of 1974, which is not exempt under s. 4(b)(1) of such act;

(b) A plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(c) A coverage agreement entered into pursuant to s. 218 of the Social Security Act;

(d) An individual retirement account or an individual retirement annuity within the meaning of s. 408, or a retirement bond within the meaning of s. 409, of the Internal Revenue Code of 1954;

(e) A plan described in s. 401(d) of the Internal Revenue Code of 1954; or

(f) An individual account consisting of an annuity contract described in s. 403(b) of the Internal Revenue Code of 1954.

(7)~~(2)~~ "Plan administrator" means the person so designated by the terms of the instrument or instruments, ordinance, or statute under which the plan is operated. If no plan

administrator has been designated, the plan sponsor shall be considered the plan administrator.

(2) ~~(3)~~ "Enrolled actuary" means an actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries.

(1) ~~(4)~~ "Benefit increase" means a change or amendment in the plan design or benefit structure which results in increased benefits for plan members or beneficiaries.

(3) ~~(5)~~ "Governmental entity" means the state, for the Florida Retirement System, and the county, municipality, special district, or district school board which is the employer of the member of a local retirement system or plan.

(6) "Pension or retirement benefit" means any benefit, including a disability benefit, paid to a member or beneficiary of a retirement system or plan as defined in subsection (9) ~~(1)~~.

(10) ~~(7)~~ "Statement value" means the value of assets in accordance with s. 302(c)(2) of the Employee Retirement Income Security Act of 1974 and as permitted under regulations prescribed by the Secretary of the Treasury as amended by Pub. L. No. 100-203, as such sections are in effect on August 16, 2006. Assets for which a fair market value is not provided shall be excluded from the assets used in the determination of annual funding cost.

(5) ~~(8)~~ "Named fiduciary," "board," or "board of trustees"

means the person or persons so designated by the terms of the instrument or instruments, ordinance, or statute under which the plan is operated.

(8)~~(9)~~ "Plan sponsor" means the local governmental entity that has established or that may establish a local retirement system or plan.

(4) "Long-range return rate" means an actuarial assumed rate of return that is expected to be realized at least 50 percent of the time over the next 30-year period.

Section 2. Paragraph (c) of subsection (1) of section 112.63, Florida Statutes, is amended, and paragraph (h) is added to that subsection, to read:

112.63 Actuarial reports and statements of actuarial impact; review.—

(1) Each retirement system or plan subject to the provisions of this act shall have regularly scheduled actuarial reports prepared and certified by an enrolled actuary. The actuarial report shall consist of, but is not limited to, the following:

(c) A description and explanation of actuarial assumptions consistent with the requirements of s. 112.64.

(h) A description of proposed adjustments to any actuarial assumptions, if required pursuant to s. 112.64.

The actuarial cost methods utilized for establishing the amount

of the annual actuarial normal cost to support the promised benefits shall only be those methods approved in the Employee Retirement Income Security Act of 1974 and as permitted under regulations prescribed by the Secretary of the Treasury.

Section 3. Present subsection (7) of section 112.64, Florida Statutes, is renumbered as subsection (9) and new subsections (7) and (8) are added to that section, to read:

112.64 Administration of funds; amortization of unfunded liability.—

(7) Beginning January 1, 2021, the actuarial assumed rate of return for each plan year may not be greater than the long-range return rate. Beginning with the 2021 plan year, the long-range return rate is effective for each plan or system for a 5-year period, and must be reevaluated and reestablished for each subsequent 5-year period thereafter and be consistent with the definition in s. 112.625(4). Each plan or system with an actuarial assumed rate of return greater than the long-range return rate on or after January 1, 2021, shall reduce the actuarial assumed rate of return for the next plan year by at least 25 basis points and shall continue to reduce the actuarial assumed rate by at least an additional 25 basis points for each subsequent plan year until the actuarial assumed rate of return is equal to or less than the long-range return rate.

(8) Any plan or system that for any plan year has an actuarial assumed rate of return greater than the long-range

return rate shall include at least the following information in any report required under s. 112.63:

(a) The total necessary adjustment required to bring the actuarial assumed rate of return in compliance with the long-range return rate currently in effect.

(b) The number of plan years required to bring the actuarial assumed rate of return in compliance with the long-range return rate currently in effect.

(c) Any change to the plan investment strategy, including, but not limited to, changes to asset class allocations, and any change to actuarial methodology which results in a change to either the long-range return rate or the actuarial assumed rate of return of the plan.

(d) The additional cost to the plan or system resulting from any changes required to be made to the actuarial assumed rate of return using the long-range return rate currently in effect.

Section 4. Paragraph (b) of subsection (2) of section 175.261, Florida Statutes, is amended to read:

175.261 Annual report to Division of Retirement; actuarial valuations.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, the board of trustees for every chapter plan and local law plan shall submit the following reports to the division:

(2) With respect to local law plans:

(b) In addition to annual reports provided under paragraph (a), an actuarial valuation of the retirement plan must be made at least once every 3 years, as provided in s. 112.63, commencing 3 years from the last actuarial valuation of the plan or system for existing plans, or commencing 3 years from issuance of the initial actuarial impact statement submitted under s. 112.63 for newly created plans. Such valuation shall be prepared by an enrolled actuary, subject to the following conditions:

1. The assets shall be valued as provided in s. 112.625(10) ~~s. 112.625(7)~~.

2. The cost of the actuarial valuation must be paid by the individual firefighters' retirement fund or by the sponsoring municipality or special fire control district.

3. A report of the valuation, including actuarial assumptions and type and basis of funding, shall be made to the division within 3 months after the date of valuation. If any benefits are insured with a commercial insurance company, the report must include a statement of the relationship of the retirement plan benefits to the insured benefits, the name of the insurer, the basis of premium rates, and the mortality table, interest rate, and method used in valuing the retirement benefits.

Section 5. Paragraph (b) of subsection (2) of section

185.221, Florida Statutes, is amended to read:

185.221 Annual report to Division of Retirement; actuarial valuations.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the board of trustees for every chapter plan and local law plan shall submit the following reports to the division:

(2) With respect to local law plans:

(b) In addition to annual reports provided under paragraph (a), an actuarial valuation of the retirement plan must be made at least once every 3 years, as provided in s. 112.63, commencing 3 years from the last actuarial valuation of the plan or system for existing plans, or commencing 3 years from issuance of the initial actuarial impact statement submitted under s. 112.63 for newly created plans. Such valuation shall be prepared by an enrolled actuary, subject to the following conditions:

1. The assets shall be valued as provided in s. 112.625(10) ~~s. 112.625(7)~~.

2. The cost of the actuarial valuation must be paid by the individual police officer's retirement trust fund or by the sponsoring municipality.

3. A report of the valuation, including actuarial assumptions and type and basis of funding, shall be made to the division within 3 months after the date of the valuation. If any benefits are insured with a commercial insurance company, the

report must include a statement of the relationship of the retirement plan benefits to the insured benefits, the name of the insurer, the basis of premium rates, and the mortality table, interest rate, and method used in valuing the retirement benefits.

Section 6. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems that provide fair and adequate benefits and that are managed, administered, and funded in an actuarially sound manner as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 7. This act shall take effect July 1, 2017.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 603 (2017)

Amendment No.

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

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

Representative Fischer offered the following:

Amendment (with directory and title amendments)

Remove lines 95-142 and insert:

(g) The plan's long-range return rate. Any plan that has an actuarial assumed rate of return greater than the long-range return rate must include:

1. The difference between the plan's actuarial assumed rate of return and long-range return rate.

2. A description of actions taken to reduce the actuarial assumed rate of return.

3. Any change to the plan investment strategy, including, but not limited to, changes to asset class allocations, and any change to actuarial methodology which results in a change to

either the long-range return rate or the actuarial assumed rate of return of the plan.

4. An estimate of the additional cost to the plan or system that would result if the plan used the long-range return rate as the plan's actuarial assumed rate of return.

D I R E C T O R Y A M E N D M E N T

Remove lines 85-87 and insert:

Section 2. Paragraph (g) of subsection (1) of section 112.63, Florida Statutes, is redesignated as paragraph (h), and a new paragraph (g) is added to that subsection to read:

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

Remove lines 8-17 and insert:

require specified information to be reported; amending ss. 175.261 and 185.221, F.S.;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

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

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

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

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Consultants' Competitive Negotiation Act

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

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

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

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

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

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

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

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

---

[1] Public Law 92-582, 86 Stat. 1278 (1972).

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

[3] Codified as s. 287.055, F.S.

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

[5] Section 287.055(4)(d), F.S.

[6] Section 287.055(3)(e), F.S.

[7] Section 287.055(3)(a)1., F.S.

[8] *Id.*

[9] Section 287.055(3)(c), F.S.

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

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

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

Effect of the Bill

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

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

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

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

---

[10] Section 287.055(3)(d), F.S.
[11] Section 287.055(3)(b), F.S.
[12] Section 287.055(4)(a), F.S.
[13] The CCNA did not prohibit discussion of compensation in the initial vendor selection phase until 1988, when the Legislature enacted a provision that allows consideration of compensation to occur only during the negotiation phase. Chapter 88-108, L.O.F.
[14] Section 287.055(5), F.S.

Finally, the bill reorganizes the section.

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state government revenues.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

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

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

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

added to that section to read:

287.055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.—

(3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES.—

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

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

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

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

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

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

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

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

(4) COMPETITIVE SELECTION.—

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

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

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

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

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

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

(5) BEST VALUE SELECTION PROCESS ~~COMPETITIVE NEGOTIATION~~.—

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

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

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

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

(c) <u>If</u> ~~Should~~ the agency <u>is</u> ~~be~~ unable to negotiate a satisfactory contract with any of the selected firms, the agency

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

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

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

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

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

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

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

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

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 789 (2017)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Representative Ingoglia offered the following:

Amendment (with title amendment)

Between lines 193 and 194, insert:

(15) EXEMPTION.—This section does not apply to transportation projects for which federal aid funds are available. Such transportation projects must be procured in accordance with federal law.

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

Remove line 17 and insert:

Management Services to adopt rules; exempting certain projects from the act and requiring compliance with federal law; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 791 Pub. Rec./Petitions for Involuntary Assessment and Stabilization, Court Orders, Related Records, and Personal Identifying Information
SPONSOR(S): Children, Families & Seniors Subcommittee; Abruzzo
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 886

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	13 Y, 0 N, As CS	Langston	Brazzell
2) Oversight, Transparency & Administration Subcommittee		Toliver LT	Harrington
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Marchman Act addresses substance abuse through a comprehensive system of prevention, detoxification, and treatment services. It establishes methods under which substance abuse assessment, stabilization, and treatment can be obtained on a voluntary and involuntary basis. Involuntary assessment and stabilization is a court-involved procedure that provides for short-term court-ordered substance abuse treatment. After holding a hearing, the court may order the individual admitted to a hospital, licensed detoxification facility, or addictions receiving facility for involuntary assessment and stabilization for five days or for a longer period if the individual has previously been involved in other involuntary admissions procedures within a specified period. Petitions for involuntary assessment and stabilization and petitions for involuntary services contain identifying information to support the need for involuntary substance abuse treatment. Florida civil court records are generally open for public inspection unless a law or a court order specifies otherwise. Because the Marchman Act is a civil proceeding, much of the information contained in the court file is available to the public for inspection. According to Florida law, only the records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to a patient being treated for substance abuse under the Marchman Act are confidential and exempt from public disclosure.

The bill provides that all pleadings and other documents, and the images of all pleadings and other documents, in court involved involuntary admissions proceedings under the Marchman Act are confidential and exempt from s. 119.07(1) and article I, section 24 of the Florida Constitution. These pleadings and documents may only be released to specified individuals. The bill prevents the public from being able to inspect any documents filed with the court in involuntary admissions proceedings under the Marchman Act and prohibits the clerk of the court from posting personal identifying information on the court docket or in publicly accessible files. Additionally, anyone who receives such records must keep them confidential. The bill provides that the exemption applies to all documents filed with a court before, on, or after July 1, 2017.

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

The bill provides an effective date of July 1, 2017.

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

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Substance Abuse

Substance abuse affects millions of people in the United States each year. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[1] Substance abuse disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[2] It is often mistakenly assumed that individuals with substance abuse disorders lack moral principles or willpower and that they could stop using drugs simply by choosing to change their behavior.[3] In reality, drug addiction is a complex disease, and quitting takes more than good intentions or a strong will.[4] In fact, because drugs change the brain in ways that foster compulsive drug abuse, quitting is difficult, even for those who are ready to do so.[5]

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), a diagnosis of substance abuse disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[6] The most common substance use disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[7]

The Marchman Act

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.[8] The laws resulted in separate funding streams and requirements for alcoholism and drug abuse; in response to the laws, the Florida Legislature enacted Chapters 396 (alcohol) and 397, F.S. (drug abuse).[9] Each of these laws governed different aspects of addiction, and thus had different rules promulgated by the state to fully implement the respective pieces of legislation.[10] However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address the problems faced by Florida's citizens.[11] In 1993 legislation was adopted to combine Chapters 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act ("the Marchman Act").[12]

---

[1] WORLD HEALTH ORGANIZATION. *Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited March 20, 2017).
[2] SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, *Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last visited March 20, 2017).
[3] NATIONAL INSTITUTE ON DRUG ABUSE, *Understanding Drug Use and Addiction*, http://www.drugabuse.gov/publications/drugfacts/understanding-drug-abuse-addiction (last visited March 20, 2017).
[4] *Id.*
[5] *Id.*
[6] *Supra*, note 2.
[7] *Id.*
[8] Darran Duchene & Patrick Lane, *Fundamentals of the Marchman Act,* , Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Program, *available at* http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited March 21, 2017); *see also* Department of Children and Families, Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-17, p. 4-5.
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id. See* ch. 93-39, s. 2, Laws of Fla., codified in ch. 397, F.S.

The Marchman Act program is designed to support the prevention and remediation of substance abuse through the provision of a comprehensive system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

Voluntary and Involuntary Admissions

An individual may receive services under the Marchman Act through either a voluntary[13] or an involuntary admission.[14] The Marchman Act encourages persons to seek treatment on a voluntary basis and to be actively involved in planning their own services with the assistance of a qualified professional.[15] An individual who wishes to enter treatment may apply to a service provider for voluntary admission.[16] Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.[17] However, denial of addiction is a common symptom, raising a barrier to early intervention and treatment.[18] As a result, treatment often comes because a third party made the intervention needed for substance abuse services.[19]

The Marchman Act establishes a variety of methods under which substance abuse assessment, stabilization and treatment can be obtained on an involuntary basis.[20] There are five involuntary admission procedures that can be broken down into two categories depending upon whether the court is involved. Regardless of the nature of the proceedings, an individual meets the criteria for an involuntary admission under the Marchman Act when there is good faith reason to believe the individual is substance abuse impaired and, because of such impairment, has lost the power of self-control with respect to substance use; and either has inflicted, attempted or threatened to inflict, or unless admitted, is likely to inflict physical harm on himself or herself or another; or the person's judgment has been so impaired because of substance abuse that he or she is incapable of appreciating the need for substance abuse services and of making a rational decision in regard to substance abuse services.[21]

Non-Court Involved Involuntary Admissions

The three types of non-court procedures for involuntary admission for substance abuse treatment under the Marchman Act are:

- **Protective Custody**: This is used by law enforcement officers when an individual is substance-impaired or intoxicated in public and is brought to the attention of the officer. The purpose of this procedure is to allow the person to be taken to a safe environment for observation and assessment to determine the need for treatment.[22]
- **Emergency Admission**: This permits an individual who appears to meet the criteria for involuntary admission to be admitted to a hospital, an addiction receiving facility, or a detoxification facility for emergency assessment and stabilization. Individuals admitted for involuntary assessment and stabilization under this provision must have a physician's certificate

---

[13] *See* s. 397.601, F.S.
[14] *See* ss. 397.675 – 397.6978, F.S.
[15] Department of Children and Families, Marchman Act User Reference Guide 2003, p. 11, *available at* https://www.dcf.state.fl.us/programs/samh/SubstanceAbuse/marchman/marchmanacthand03p.pdf (last visited 3/23/2017).
[16] S. 397.601(1), F.S.
[17] S. 397.601(2), F.S. Additionally, under s. 397.601(4)(a), F.S., a minor is authorized to consent to treatment for substance abuse.
[18] *Supra,* note 8.
[19] *Supra,* note 8.
[20] *See* ss. 397.675 – 397.6978, F.S.
[21] S. 397.675, F.S.
[22] SS. 397.6771 – 397.6772, F.S. A law enforcement officer may take the individual to their residence, to a hospital, a detoxification center, or addiction receiving facility, or in certain circumstances, to jail. Minors, however, cannot be taken to jail.

for admission, demonstrating the need for this type of placement and recommending the least restrictive type of service that is appropriate to the needs of the individual.[23]

- **Alternative Involuntary Assessment for Minors**: This provides a way for a parent, legal guardian, or legal custodian to have a minor admitted to an addiction receiving facility to assess the minor's need for treatment by a qualified professional.[24]

Court Involved Involuntary Admissions

The two court involved Marchman Act procedures are involuntary assessment and stabilization, which provides for short-term court-ordered substance abuse treatment, and involuntary services,[25] which provides for long-term court-ordered substance abuse treatment.

Involuntary Assessment and Stabilization

Involuntary assessment and stabilization involves filing a petition with the Clerk of Court. The petition for involuntary assessment and stabilization must contain:

- The name of the applicant or applicants (the individual(s) filing the petition with the court);
- The name of the respondent (the individual whom the applicant is seeking to have involuntarily assessed and stabilized);
- The relationship between the respondent and the applicant;
- The name of the respondent's attorney, if he or she has one, and whether the respondent is able to afford an attorney; and
- Facts to support the need for involuntary assessment and stabilization, including the reason for the applicant's belief that:
    - The respondent is substance abuse impaired; and
    - The respondent has lost the power of self-control with respect to substance abuse; and either that:
    - The respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or
    - The respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.[26]

Once the petition is filed with the Clerk of Court, the court issues a summons to the respondent and the court must schedule a hearing to take place within 10 days, or can issue an ex parte order immediately.[27]

After hearing all relevant testimony, the court determines whether the respondent meets the criteria for involuntary assessment and stabilization and must immediately enter an order that either dismisses the petition or authorizes the involuntary assessment and stabilization of the respondent.[28]

If the court determines the respondent meets the criteria, it may order him or her to be admitted for a period of 5 days[29] to a hospital, licensed detoxification facility, or addictions receiving facility, for

---

[23] S. 397.679, F.S.
[24] S. 397.6798, F.S.
[25] "Involuntary services" is defined to mean "an array of behavioral health services that may be ordered by the court for a person with substance abuse impairment or co-occurring substance abuse impairment and mental health disorders." S. 397.311(22), F.S. SB 12 (2016), ch. 2016-241, Laws of Fla., renamed "involuntary treatment" as "involuntary services" in ss. 397.695 – 397.6987, F.S., however some sections of the Marchman Actcontinue to refer to "involuntary treatment." For consistency this analysis will use term involuntary services.
[26] S. 397.6814, F.S.
[27] S. 397.6815, F.S. Under the ex parte order, the court may order a law enforcement officer or other designated agent of the court to take the respondent into custody and deliver him/her to the nearest appropriate licensed service provider
[28] S. 397.6818, F.S.

involuntary assessment and stabilization.[30] During that time, an assessment is complete on the individual.[31] The written assessment is sent to the court. Once the written assessment is received, the court must either

- Release the individual and, if appropriate, refer the individual to another treatment facility or service provider, or to community services;
- Allow the individual to remain voluntarily at the licensed provider; or
- Hold the individual if petition for involuntary services has been initiated.[32]

Involuntary Services

Involuntary services allows the court to require the individual to be admitted for treatment for a longer period only if the individual has previously been involved in at least one of the four other involuntary admissions procedures within a specified period.[33] Similar to a petition for involuntary assessment and stabilization, a petition for involuntary services must contain identifying information for all parties and attorneys and facts necessary to support the petitioner's belief that the respondent is in need of involuntary services.[34]

A hearing on a petition for involuntary services must be held within five days unless a continuance is granted.[35] At the hearing, petitioner has the burden of proving by clear and convincing evidence that:

- The respondent is substance abuse impaired and has a history of lack of compliance with treatment for substance abuse; and
- Because of the respondent's impairment, he or she is unlikely to voluntarily participate in the recommended services or is unable to determine for himself or herself whether services are necessary; and either:
- The respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care; or
- Without care or treatment, is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, is likely to inflict, physical harm on himself, herself, or another.[36]

---

[29] If a licensed service provider is unable to complete the involuntary assessment and, if necessary, stabilization of an individual within 5 days after the court's order, it may, within the original time period, file a request for an extension of time to complete its assessment. The court may grant additional time, not to exceed 7 days after the date of the renewal order, for the completion of the involuntary assessment and stabilization of the individual. The original court order authorizing the involuntary assessment and stabilization, or a request for an extension of time to complete the assessment and stabilization that is timely filed, constitutes legal authority to involuntarily hold the individual for a period not to exceed 10 days in the absence of a court order to the contrary. S. 397.6821, F.S.

[30] S. 397.6811, F.S. The individual may also be ordered to a less restrictive component of a licensed service provider for assessment only upon entry of a court order or upon receipt by the licensed service provider of a petition

[31] S. 397.6819, F.S., The licensed service provider must assess the individual without unnecessary delay using a qualified professional. If an assessment is performed by a qualified professional who is not a physician, the assessment must be reviewed by a physician before the end of the assessment period.

[32] S. 397.6822, F.S. The timely of a Petition for Involuntary Services authorizes the service provider to retain physical custody of the individual pending further order of the court.

[33] S. 397.693, F.S.

[34] S. 397.6951, F.S.

[35] S. 397.6955, F.S.

[36] S. 397.6957, F.S.

Under this provision, the court finds that the conditions for involuntary substance abuse treatment have been proven, it may order the respondent to receive services for a period not to exceed 90 days.[37] However, these treatment facilities are not locked; therefore, individuals placed in treatment under the Marchman Act may voluntarily leave treatment at any time, and the only legal recourse is for a judge to issue a contempt of court charge and impose brief jail time.[38]

If the court orders involuntary services, a copy of the order must be sent to the managing entity within one working day after it is received from the court.[39]

Additionally, within one working day after filing a petition for continued involuntary services, the court shall appoint the Office of Criminal Conflict and Civil Regional Counsel to represent the respondent, unless the respondent is otherwise represented by counsel.[40] Thereafter, the Office of Criminal Conflict and Civil Regional Counsel shall represent the respondent until the petition is dismissed or the court order expires or the respondent is discharged from involuntary services.[41] This same procedure is repeated for before the expiration of each additional period of involuntary services.[42]

Confidentiality of Involuntary Hospitalization Proceedings

Confidentiality of Service Provider Records in Marchman Act Proceedings in Florida

The general rule in Florida is that civil court records are open for public inspection unless a law or a court order specifies otherwise. Because the Marchman Act is a civil proceeding, much of the information contained in the court file is available to the public for inspection. According to Florida law, only the records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to an individual being treated for substance abuse under the Marchman Act are confidential.[43] Therefore all court records, except the records of service providers, under the Marchman Act are open for public inspection, including the petition for involuntary stabilization and assessment and the petition for involuntary treatment, unless a court orders otherwise.

Some Circuit Courts in Florida have issued orders protecting the personal information of individuals for whom an involuntary admission under the Marchman Act is sought. These court orders apply not only to Marchman Act cases, but also to cases filed under Florida's Mental Health Act, the Baker Act. Typically, these orders make all documents, and the images of all documents, filed in Baker Act and Marchman Act commitment or treatment cases confidential. Circuits have taken this action because the clinical records and other protected information in these cases are so interwoven and an integral part of the court file that it is administratively impractical to maintain only portions of the file as confidential.[44] In the Eighth Judicial Circuit,[45] the parties' names and the court dockets are not confidential and are still accessible to the public, but the viewing of the documents within the court file is limited to:

---

[37] S. 397.697(1), F.S. If the need for services is longer, the court may order the respondent to receive involuntary services for a period not to exceed an additional 90 days.

[38] *Supra,* n. 9. If the respondent leaves treatment, the facility will notify the court and a status conference hearing may be set. If the respondent does not appear at this hearing, a show cause hearing may be set. If the respondent does not appear for the show cause hearing, the court may find the respondent in contempt of court.

[39] S. 397.697(4), F.S.

[40] S. 397.6975(3), F.S.

[41] *Id.*

[42] *Id.*

[43] S. 397.501(7), F.S. The records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual are confidential in accordance with the Marchman Act and with applicable federal confidentiality regulations, such as the Health Insurance Portability and Accountability Act (HIPAA), and are exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

[44] J. David Walsh, Chief Judge, Seventh Judicial Circuit, *Re: Confidentiality of Court Records REF: W-2011-104*, Jun. 6, 2011, available at https://www.clerk.org/pdf/Rule_2.420.pdf (last visited March 23, 2017).

[45] Robert E. Roundtree, Chief Judge, Eighth Judicial Circuit, *Administrative Order No. 7.12: Confidentiality of Certain Baker Act and Marchman Act Files*, Oct. 5, 2012, available at

- The parties to the case;
- The parties' attorneys;
- Any governmental agency or its representative authorized by law to view the clinical records;
- Any other person or entity authorized by law; and
- A person or entity authorized to view a record by written court order.[46]

Similarly, the Sixth Judicial Circuit has ordered that the Clerks of the Circuit Court are authorized and directed to seal and maintain as confidential the case file and every record filed in both Baker Act and Marchman Act cases, including petitions for writs of habeas corpus.[47]

Confidentiality of Involuntary Hospitalizations because of Mental Health and Substance Abuse in Other States

A number of states provide that information relating to an involuntary hospitalization for substance abuse or mental health and the related court documents are confidential and exempt. Some states provide that court records that relate only to involuntary mental health treatment are confidential,[48] while other states also protect court records relating to substance abuse treatment.[49]

Florida Firearms Law

Florida law requires federal firearms licensees (FFLs) to request background checks on individuals attempting to purchase a firearm. To comply with this requirement, FFLs in Florida contact the Florida Department of Law Enforcement's (FDLE) Firearms Purchase Program (FPP).

Created in 1989, the FPP operates 7 days a week, 363 days a year and is designed to provide FFLs immediate responses to background check inquiries.[50] Upon receiving a request, the FPP immediately reviews the potential purchaser's criminal history record to determine whether the sale or transfer of a firearm would violate state or federal law, and provides a response to the FFL.[51]

Licensed importers, manufacturers, and dealers are prohibited from selling or delivering firearms to those who have been "adjudicated mentally defective" or who have been "committed to a mental institution" by a court.[52] The term "committed to a mental institution" has been defined to include individuals who have been involuntary admitted under the Marchman Act.[53]

---

http://www.circuit8.org/web/ao/7.12%20(v1)(s)(p)%20Conf.%20of%20Certain%20Baker%20&%20Marchman%20Files.pdf (last visited March 23, 2017).

[46] *Id.*

[47] J, Thomas McGrady, Chief Judge, Sixth Judicial Circuit, Administrative Order No. 2010-065 PA/PI-CIR, *Re: Sealing of Court Orders*, Sept. 30, 2010, http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2010/2010-065.htm (last visited March 23, 2017).

[48] For example, Iowa's statutory code provides that all papers and records pertaining to any involuntary hospitalization or application for involuntary hospitalization of any person hospitalized with mental illness are confidential. Iowa Code s. 229.24(1). Similarly, an Ohio statute provides that all records, and reports, other than court journal entries or court docket entries, identifying a person and pertaining to the person's mental health condition, assessment, provision of care or treatment, or payment for assessment, care or treatment must be kept confidential and cannot be disclosed. Ohio Rev. Code. s. 5119.28(A).

[49] For example, South Carolina statutory code provides that certificates, applications, records, and reports made for specified purposes, and directly or indirectly identifying a mentally ill or alcohol and drug abuse patient or former patient or individual whose commitment has been sought, must be kept confidential, and must not be disclosed. S.C. Code s. 44-22-100.(A). Additionally, in Michigan courts cannot acknowledge the existence of records pertaining to drug and alcohol screening and assessment, additional counseling, and treatment for substance abuse. Mich. Comp. Laws. s. 330.1261; 330.1285.

[50] Section 790.065, F.S.

[51] *Id.*

[52] Section 790.065(2)(a)4., F.S.

[53] Section 790.065(2)(a)4.b.(I), F.S.

To help ensure that the above-described persons are not able to purchase a firearm, FDLE created the Mental Competency (MECOM) database.[54] The clerks of court are required to submit court records of adjudications of mental defectiveness and commitments to mental institutions to FDLE within one month of the adjudication or commitment for inclusion in MECOM.[55]

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings.[56] The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[57] The public also has a right to notice of, and access to meetings of any collegial public body of the executive branch of state government or of any local government.[58] The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.[59]

In addition to the Florida Constitution, Florida law specifies the conditions under which public access must be provided to government records and meetings.[60] The Public Records Act[61] guarantees every person's right to inspect and copy any state or local government public record.[62] The Sunshine Law[63] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be noticed and open to the public.[64]

The Legislature may create an exemption to public records or open meetings requirements.[65] An exemption must specifically state the public necessity justifying the exemption[66] and must be tailored to accomplish the stated purpose of the law.[67] There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be confidential and exempt.[68]

---

[54] Section 790.065(2)(a)4.c., F.S.
[55] *Id.*
[56] FLA. CONST., art. I, s. 24.
[57] FLA. CONST., art. I, s. 24(a).
[58] FLA. CONST., art. I, s. 24(b).
[59] FLA. CONST., art. I, s. 24(b).
[60] Ch. 119, F.S.
[61] *Id.*
[62] "Public record" means "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." S. 119.011(12), F.S. "Agency" means "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." S. 119.011(2), F.S. The Public Records Act does not apply to legislative or judicial records, *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), however, the Legislature's records are public pursuant to s. 11.0431, F.S.
[63] S. 286.011, F.S.
[64] S. 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.
[65] FLA. CONST., art. I, s. 24(c).
[66] FLA. CONST., art. I, s. 24(c).
[67] FLA. CONST., art. I, s. 24(c).
[68] 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).

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public record or open meeting exemptions.[69] The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.[70]

The OGSR provides that a public record or open meeting exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary[71] to meet one of the following purposes:

- Allow the state or its political subdivision to effectively and efficiently administer a program, the administration of which would be significantly impaired without the exemption; or
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only personal identifying information may be exempted under this provision; or
- Protect trade or business secrets.[72]

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.[73]

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[74] If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will retain their exempt status unless provided for by law.[75]

Effect of the Bill:

The bill provides that all pleadings and other documents, and the images of all pleadings and other documents, in court involved involuntary admissions proceedings under the Marchman Act are confidential and exempt from s. 119.07(1) and art. I, s. 24 of the Florida Constitution. The information in the pleadings and documents may only be released to:

- The petitioner.
- The petitioner's attorney.
- The respondent.
- The respondent's attorney.
- The respondent's guardian or guardian advocate, if applicable.
- In the case of a minor respondent, the respondent's parent, guardian, legal custodian, or guardian advocate.
- The respondent's treating health care practitioner.
- The respondent's health care surrogate or proxy.

---

[69] S. 119.15, F.S. An exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.
[70] S. 119.15(3), F.S.
[71] S. 119.15(6)(b), F.S.
[72] *Id.*
[73] *Id.*
[74] FLA. CONST., art. I, s. 24(c).
[75] S. 119.15(7), F.S.

- The Department of Corrections, if the respondent is committed or is to be returned to the custody of the Department of Corrections from the Department of Children and Families.
- A person or entity authorized to view records upon a court order for good cause.

The bill prevents the public from being able to inspect any documents filed with the court in involuntary admissions proceedings under the Marchman Act and prohibits the clerk of the court from posting personal identifying information on the court docket or in publicly accessible files. Additionally, the bill requires that anyone who receives such court records must keep the records confidential.

The bill also specifies that its provisions do not preclude the clerks of court from submitting information to FDLE for input into the MECOM database.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that the exemption protects information of a sensitive personal nature, the release of which could cause unwarranted damage to the reputation of an individual.

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

This bill provides an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1: Creates s. 397.6760, F.S., relating to court records; confidentiality.

Section 2: Provides a statement of public necessity.

Section 3: Provides an effective date.

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:

   There is an indeterminate impact on circuit courts. Currently, circuit courts are tasked with maintaining the confidentiality of clinical records within Marchman Act cases; under the bill, petitions for involuntary assessment and stabilization will also be confidential. Circuit courts may see an indeterminate insignificant increase in costs to keep additional records confidential.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill seeks to prevent the disclosure of sensitive personal information related to court involved involuntary admissions under the Marchman Act and creates a public record exemption for pleadings and other documents related to those proceedings. 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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2017, the Children, Families, and Seniors Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute exempts from Florida's public record requirements all records relating to involuntary admissions proceedings under the Marchman Act, which includes court proceedings for involuntary admission and stabilization and involuntary services. It also specifies who the clerk of court may release the pleadings and documents to and provides that

the clerk of court is still able to provide court orders relating to persons involuntarily committed for substance abuse to FDLE for entry into FDLE's MECOM database. This analysis is drafted to the committee substitute as passed by the Children, Families, and Seniors Subcommittee.

A bill to be entitled

An act relating to public records; creating s. 397.6760, F.S.; providing an exemption from public records requirements for pleadings and other documents filed in, and personal identifying information on the docket of, court proceedings under part V of chapter 397, F.S., relating to involuntary admissions procedures for substance abuse treatment services; permitting a clerk of the court to allow certain persons access to such records; providing applicability; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 397.6760, Florida Statutes, is created to read:

397.6760 Court records; confidentiality.—

(1) All pleadings and other documents, and the images of all pleadings and other documents, filed with a court pursuant to this part are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Pleadings and other documents made confidential and exempt by this section may be disclosed by the clerk of the court, upon request, to:

(a) The petitioner.

(b) The petitioner's attorney.

(c) The respondent.

(d) The respondent's attorney.

(e) The respondent's guardian or guardian advocate, if applicable.

(f) In the case of a minor respondent, the respondent's parent, guardian, legal custodian, or guardian advocate.

(g) The respondent's treating health care practitioner.

(h) The respondent's health care surrogate or proxy.

(i) The Department of Corrections, without charge, upon request if the respondent is committed or is to be returned to the custody of the Department of Corrections from the Department of Children and Families.

(j) A person or entity authorized to view records upon a court order for good cause. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the respondent.

(2) Nothing in this section shall preclude the clerk of the court from submitting the information required by s. 790.065 to the Department of Law Enforcement.

(3) The clerk of the court may not post any personal identifying information on the docket or in a publicly accessible file.

(4) A person, agency, or entity receiving information pursuant to this section shall maintain such information as confidential and exempt from s. 119.07(1).

(5) The exemption under this section applies to all documents filed with a court before, on, or after July 1, 2017.

(6) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution all pleadings and other documents, and identifying information in the corresponding dockets, for an involuntary admission pursuant to part V of chapter 397, Florida Statutes, in order to preserve the privacy of the individual alleged to suffer from substance abuse. The personal health of an individual and his or her alleged impairment by substance abuse are intensely private matters. The Legislature finds that the public disclosure of such information in the petition, order, or docket would produce undue harm to an individual alleged to be impaired from substance abuse. Making pleadings and other documents filed for involuntary admission pursuant to part V of chapter 397, Florida Statutes, confidential and exempt from disclosure will protect information of a sensitive personal nature, the release of which

could cause unwarranted damage to the reputation of an individual. Further, the knowledge that sensitive personal information is subject to disclosure could have a chilling effect on the willingness of individuals to seek substance abuse treatment services.

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

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Representative Abruzzo offered the following:

Amendment

Remove lines 36-53 and insert:

(i) The Department of Children and Families, without charge.

(j) The Department of Corrections, without charge if the respondent is committed or is to be returned to the custody of the Department of Corrections from the Department of Children and Families.

(k) A person or entity authorized to view records upon a court order for good cause. In determining if there is good cause for the disclosure of records, the court must weigh the

person or entity's need for the information against potential harm to the respondent from the disclosure.

(2) This section does not preclude the clerk of the court from submitting the information required by s. 790.065 to the Department of Law Enforcement.

(3) The clerk of the court may not publish personal identifying information on a court docket or in a publicly accessible file.

(4) A person or entity receiving information pursuant to this section shall maintain that information as confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 843 Pub. Meetings and Records/Meetings Between Two Members of Board or Commission
SPONSOR(S): Donalds and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1004

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

SUMMARY ANALYSIS

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. It requires all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public. In addition, the "Government in the Sunshine Law" or "Sunshine Law," further requires all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision at which official acts are to be taken to be open to the public at all times.

The bill authorizes two members of any board or commission, including persons elected or appointed to such board or commission who have not yet taken office, of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision with a total membership of at least five members to meet in private and discuss public business without providing notice of such meeting, recording the meeting, or making such records open to public inspection. Such meetings are exempt from open meetings requirements if:

- The members do not adopt a resolution or rule to take any other formal action, or agree to do so at a future meeting, at such meeting. A resolution or rule adopted, or any other formal action taken, in violation of this prohibition is void.
- The members do not discuss an appropriation, a contract, or any other public business that involves the direct expenditure of public funds to a private vendor.
- The meeting is not intended to frustrate or circumvent the purpose of the open meetings laws.

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

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 new public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency[1] to provide access to public records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records.

Public Meetings Law
Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. It requires all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.

Public policy regarding access to government meetings is also addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision at which official acts are to be taken to be open to the public at all times. The board or commission must provide reasonable notice of all public meetings.[2] Minutes of a public meeting must be promptly recorded and be open to public inspection.[3]

No resolution, rule, or formal action is considered binding, unless action is taken or made at a public meeting.[4] Acts taken by a board or commission in violation of this requirement are considered void,[5] though a failure to comply with open meeting requirements may be cured by independent final action by the board or commission fully in compliance with public meeting requirements.[6]

Public Record and Public Meeting Exemptions
Art. I, s. 24(c) of the State Constitution authorizes the Legislature to provide by general law for the exemption of records or meetings from the requirements of Art. I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

---

[1] Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.
[2] Section 286.011(1), F.S.
[3] Section 286.011(2), F.S.
[4] Section 286.011(1), F.S.
[5] *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010).
[6] *Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5th DCA 2008).

The Open Government Sunset Review Act[7] further 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.[8]

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.[9]

Effect of Proposed Changes

The bill authorizes two members of any board or commission, including persons elected or appointed to such board or commission who have not yet taken office, of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision with a total membership of at least five members to meet in private and discuss public business without providing notice of such meeting, recording the meeting, or making such records open to public inspection. Such meetings are exempt from open meeting requirements if:

- The members do not adopt a resolution or rule to take any other formal action, or agree to do so at a future meeting, at such meeting. A resolution or rule adopted, or any other formal action taken, in violation of this prohibition is void.
- The members do not discuss an appropriation, a contract, or any other public business that involves the direct expenditure of public funds to a private vendor.
- The meeting is not intended to frustrate or circumvent the purpose of the open meeting laws.

The bill also provides that the records of such meetings are exempt from public disclosure.

The bill provides a public necessity statement as required by the State Constitution, specifying that it is a public necessity to protect meetings between two board or commission members under certain circumstances in order to facilitate a more thorough vetting of policies and appropriations that such members are responsible for examining and understanding.

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

B. SECTION DIRECTORY:

Section 1. amends s. 286.011, F.S., relating to public meetings and records.

Section 2. provides a public necessity statement.

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

[7] *See* s. 119.15, F.S.
[8] Section 119.15(6)(b), F.S.
[9] Section 119.15(3), F.S.

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 does not appear to have an impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   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 or expanded public record or public meeting exemption. The bill creates new public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

   Public Necessity Statement
   Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new public record and public meeting exemptions; 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 public record and public meeting exemptions for meetings between two members of any

board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision if the board or commission has at least five total members and the records of such meetings. The public record and public meeting exemptions facilitate a more thorough vetting of policies and appropriations that such members are responsible for examining and understanding. The exemptions do 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: Public Record Exemption

The bill's enacting clause provides that the bill relates to public meetings and public records. Lines 43-44 of the bill provide that "such records" are exempt from public disclosure; however, it is not clear what records are protected. As drafted, the bill does not appear to require the creation of any records.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to public meetings and public records; amending s. 286.011, F.S.; exempting meetings between two members of certain boards or commissions from public meetings and public records requirements; providing restrictions on such meetings; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (9) is added to section 286.011, Florida Statutes, and subsections (1) and (2) of that section are republished, to read:

286.011 Public meetings and records; public inspection; criminal and civil penalties.—

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be

considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(9)(a) Notwithstanding subsections (1) and (2), two members of any board or commission, including persons elected or appointed to such board or commission who have not yet taken office, of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision with a total membership of at least five members may meet in private and discuss public business without providing notice of such meeting, recording such meeting, or making such records open to public inspection, and such meetings are exempt from this section, s. 119.07(1), and s. 24(a) and (b), Art. I of the State Constitution, if:

1. The members do not adopt a resolution or rule or take any other formal action, or agree to do so at a future meeting, at such meeting. A resolution or rule adopted, or any other formal action taken, in violation of this subparagraph is void.

2. The members do not discuss an appropriation, a

contract, or any other public business that involves the direct expenditure of public funds to a private vendor.

3. The meeting is not intended to frustrate or circumvent the purpose of this section.

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

Section 2. The Legislature finds that it is a public necessity that meetings between two members of any board or commission, including persons elected or appointed to such board or commission who have not yet taken office, of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision with a total membership of at least five members should be exempt from ss. 286.011 and 119.07(1), Florida Statutes, and s. 24(a) and (b), Article I of the State Constitution, and should be authorized to meet and discuss public business without providing notice of such meeting, recording such meeting, or making such records open to public inspection. Individual members of any board or commission are authorized to gather information and discuss topics, ideas, and issues in private, one-on-one meetings in order to facilitate a more thorough vetting of policies and appropriations that such members are responsible for examining and understanding. Exempting such one-on-one meetings from

public meetings and records requirements will allow such members to better serve the interests of the public which they have been elected or appointed to represent. Therefore, the Legislature finds that this exemption from public meetings and public records requirements is a public necessity.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 843 (2017)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Representative Donalds offered the following:

Amendment (with title amendment)

Remove lines 42-80 and insert:

notice of such meeting or recording such meeting, and such meetings are exempt from this section and s. 24(b), Art. I of the State Constitution, if:

1. The members do not adopt a resolution or rule or take any other formal action, or agree to do so at a future meeting, at such meeting. A resolution or rule adopted, or any other formal action taken, in violation of this subparagraph is void.

2. The members do not discuss an appropriation, a contract, or any other public business that involves the direct expenditure of public funds to a private vendor.

3. The meeting is not intended to frustrate or circumvent the purpose of this section.

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

Section 2. The Legislature finds that it is a public necessity that meetings between two members of any board or commission, including persons elected or appointed to such board or commission who have not yet taken office, of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision with a total membership of at least five members should be exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution, and should be authorized to meet and discuss public business without providing notice of such meeting or recording such meeting. Individual members of any board or commission are authorized to gather information and discuss topics, ideas, and issues in private, one-on-one meetings in order to facilitate a more thorough vetting of policies and appropriations that such members are responsible for examining and understanding. Exempting such one-on-one meetings from public meetings requirements will allow such members to better serve the interests of the public which they have been elected or appointed to represent. Therefore, the Legislature finds that

this exemption from public meetings requirements is a public necessity.

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

Remove lines 2-5 and insert:

An act relating to public meetings; amending s. 286.011, F.S.; exempting meetings between two members of certain boards or commissions from public meetings requirements;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 861 Environmental Regulation Commission
SPONSOR(S): Natural Resources & Public Lands Subcommittee and Willhite
TIED BILLS: **IDEN./SIM. BILLS:** SB 198

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Natural Resources & Public Lands Subcommittee	14 Y, 0 N, As CS	Gregory	Shugar
2) Oversight, Transparency & Administration Subcommittee		Grosso	Harrington
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Environmental Regulation Commission (ERC) exists within the Department of Environmental Protection (DEP). Seven members appointed by the Governor and approved by the Senate serve on the ERC. When making appointments, the Governor must provide reasonable representation from all sections of the state. Membership of the ERC must be representative of agriculture, the development industry, local government, the environmental community, lay citizens, and members of the scientific and technical community. The ERC members serve for four years. The Governor may fill a vacancy on the ERC at any time.

The secretary of DEP must submit any proposed rule containing a standard to the ERC for approval, modification, or disapproval. A "standard" is any DEP rule relating to air or water quality, noise, solid waste management, or electric and magnetic fields associated with electrical transmission and distribution lines and substation facilities.

The bill changes how the Governor may fill vacancies on the ERC and changes the voting requirements for certain standards approved, modified, or disapproved by the ERC. Specifically, the bill:

- Requires the Governor to fill vacancies on the ERC within 90 days, subject to confirmation by the Senate;
- Removes the Governor's power to fill vacancies on the ERC at any time for an unexpired term;
- Requires any proposed rules containing standards submitted to the ERC for approval, modification, or disapproval to receive a simple majority vote for approval or modification, except for the air quality standards, water quality standards, and water quantity standards, that must receive a supermajority of five votes for approval or modification; and
- Deems proposed rules presented to the ERC that fail to receive the votes required for approval or modification, disapproved.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Environmental Regulation Commission

The Environmental Regulation Commission (ERC) exists within the Department of Environmental Protection (DEP). Seven members appointed by the Governor and approved by the Senate serve on the ERC. When making appointments, the Governor must provide reasonable representation from all sections of the state. Membership of the ERC must be representative of agriculture; the development industry; local government; the environmental community; lay citizens; and members of the scientific and technical community who have substantial expertise in the areas of the fate and transport of water pollutants, toxicology, epidemiology, geology, biology, environmental sciences, or engineering.[1]

The Governor must appoint a chair of the ERC. The members of the ERC may then elect a vice-chair. The ERC members serve for four years.[2]

The secretary of DEP must submit any proposed rule containing a standard to the ERC for approval, modification, or disapproval.[3] A "standard" is any DEP rule relating to air or water quality, noise, solid-waste management, or electric and magnetic fields associated with electrical transmission and distribution lines and substation facilities. The term "standard" does not include rules of DEP that relate exclusively to the internal management of DEP, the procedural processing of applications, the administration of rulemaking or adjudicatory proceedings, the publication of notices, the conduct of hearings, or other procedural matters.[4] The ERC possesses the power to set standards for the following topics:

- Environmental control, including air quality standards; water quality and water quantity standards; waste regulation and cleanup, including hazardous waste regulation; power plant and transmission line siting; water supply; water treatment plants; and natural gas transmission lines;
- Consumptive use of water permitting;
- Certain aspects of water well construction;
- Criteria for wetlands that receive and treat domestic wastewater;
- Water quality for wetlands;
- Regulation of the construction, operation, alteration, maintenance, abandonment, and removal of stormwater management systems;
- Delineating the extent of wetlands;
- Phosphorus criteria in the Everglades Protection Area and water quality standards applicable to the Everglades Agricultural Area canals; and
- Water quality standards for the Everglades Protection Area.[5]

The ERC does not possess the power to set standards related to total maximum daily load calculations and allocations.[6] Further, the ERC may not establish DEP policies, priorities, plans, or directives. The ERC may adopt procedural rules governing the conduct of its meetings and hearings.[7]

---

[1] Section 20.255(6), F.S.
[2] *Id.*
[3] Section 403.805(1), F.S.
[4] Section 403.803(13), F.S.
[5] Section 403.804(1), F.S.
[6] Section 403.805(1), F.S.
[7] Section 403.804(1), F.S.

The following individuals currently serve on the ERC:[8]

Name	Term	City	Representation
Frank Gummey	12/16/16 to 07/01/17	City of New Smyrna Beach	Local Governments
Joe Joyce	10/02/15 to 07/01/19	Gainesville	Agriculture
Adam R. Gelber	10/02/15 to 07/01/19	Miami	Science & Technical
Cari Roth	03/31/10 to 07/01/17	Tallahassee	Development
Sarah S. Walton	03/07/14 to 07/01/17	Pensacola	Lay Citizens
Craig D. Varn	05/10/16 to 03/01/19	Tallahassee	Lay Citizens
Jim McCarthy	12/16/16 to 07/01/19	Jacksonville	Environmental Community

Office Vacancies filled by the Governor

Unless otherwise provided by the Florida Constitution, the Governor must fill by appointment any vacancy in a state, district, or county office for the remainder of the term of an appointed officer.[9] For any office that requires Senate confirmation, the appointee may hold an interim term until the Senate takes up their confirmation.[10] When the Senate rejects an officer, they may hold over for no more than thirty days until the Governor appoints their successor, and the successor is qualified.[11]

If the Senate votes to take no action on a confirmation or otherwise fails to consider an appointee, the seat becomes vacant and the appointee may hold over for no more than forty-five days. The Governor may reappoint this appointee.[12] If the Senate votes to take no action or for any other reason fails to consider the reappointment of the same person to the same office during the regular session immediately following the effective date of the reappointment, the reappointment of such person to such office shall be deemed to have been rejected. The office shall become vacant upon the adjournment sine die of the regular session immediately following the effective date of the reappointment and the appointee shall not hold over in that office or be eligible for reappointment in that office for one year thereafter.[13]

The Governor may fill a vacancy on the ERC at any time.[14]

Human Health Criteria Rule Changes

During the summer of 2016, the ERC took up a rule proposal to change certain human health based water quality criteria, including the establishment of a new classification of waters. DEP used a new methodology to update these standards. Some standards became more protective, while others became less protective.[15]

At the time the ERC considered the proposed rule changes, two vacancies existed on the ERC. These vacancies were meant to represent local government and the environmental community. Some groups complained the ERC should have waited to take up the proposed human health criteria until the Governor filled the two vacancies. The ERC voted 3-2 to approve the new standards.[16] The revised rules became effective on November 17, 2016.[17]

---

[8] DEP, *Environmental Regulation Commission*, http://www.dep.state.fl.us/legal/ERC/members.htm (last visited March 7, 2017).
[9] Section 114.04, F.S.
[10] *Id.*
[11] Section 114.05(1)(d), F.S.
[12] Section 114.05(1)(e), F.S.
[13] Section 114.05(1)(f), F.S.
[14] Section 20.255(6), F.S.
[15] DEP, *Surface Water Quality Standards*, http://www.dep.state.fl.us/water/wqssp/ (last visited March 16, 2017); Jeff Burlew, *ERC signs off on controversial water standards*, Tallahassee Democrat (July 26, 2016), http://www.tallahassee.com/story/news/2016/07/26/erc-signs-off-controversial-water-standards/87585308/ (last visited March 7, 2017).
[16] *Id.*
[17] Rules 62-302.400 and 62-302.530, F.A.C.

EFFECT OF THE PROPOSED CHANGES

The bill changes how the Governor must fill vacancies on the ERC and changes the voting requirements for certain standards approved, modified, or disapproved by the ERC. The bill requires the Governor to fill vacancies on the ERC within 90 days, subject to confirmation by the Senate. The bill removes the Governor's authority to fill a vacancy on the ERC at any time for an unexpired term. The Governor must fill vacancies on the ERC using the procedures of ch. 114, F.S.

The bill also requires any proposed rules containing standards submitted to the ERC for approval, modification, or disapproval to receive a simple majority vote for approval or modification, except for air quality standards, water quality standards, and water quantity standards that must receive a supermajority of five votes for approval or modification.

The bill deems proposed rules presented to the ERC that fail to receive an adequate number of votes disapproved.

B. SECTION DIRECTORY:

Section 1. Amends s. 20.255, F.S., relating to the Department of Environmental Protection.

Section 2. Amends s. 403.805, F.S., relating to the Secretary of the Department of Environmental Protection, its powers and duties, and review of specified rules.

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:

   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 require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2017, the Natural Resources and Public Lands Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed the procedures for filling vacancies on the ERC that were inconsistent with ch. 114, F.S.;
- Consolidated the list of standards that require five votes from the ERC that were duplicative; and
- Removed "hazardous standard release notification" from the list of standards requiring five votes from the ERC because "hazardous standard release notification" is not a standard within the meaning of ch. 403, F.S.

This analysis is drawn to the committee substitute reported favorably by the Natural Resources and Public Lands Subcommittee.

A bill to be entitled

An act relating to the Environmental Regulation Commission; amending s. 20.255, F.S.; requiring the Governor to make appointments to the commission within a certain time frame; amending s. 403.805, F.S.; requiring certain proposed rules submitted to the commission to receive a certain vote total for approval or modification; providing an effective date.

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

Section 1. Subsection (6) of section 20.255, Florida Statutes, is amended to read:

20.255 Department of Environmental Protection.—There is created a Department of Environmental Protection.

(6) There is created as a part of the Department of Environmental Protection an Environmental Regulation Commission.

(a) The commission shall be composed of seven residents of this state appointed by the Governor, subject to confirmation by the Senate. In making appointments, the Governor shall provide reasonable representation from all sections of the state. Membership shall be representative of agriculture, the development industry, local government, the environmental community, lay citizens, and members of the scientific and technical community who have substantial expertise in the areas

of the fate and transport of water pollutants, toxicology, epidemiology, geology, biology, environmental sciences, or engineering.

(b) The Governor shall, within 90 days after the occurrence of a vacancy on the commission, appoint a new member, subject to confirmation by the Senate.

(c) The Governor shall appoint the chair, and the vice chair shall be elected from among the membership. All appointments shall be for 4-year terms.

(d) ~~The Governor may at any time fill a vacancy for the unexpired term.~~ The members of the commission shall serve without compensation, but shall be paid travel and per diem as provided in s. 112.061 while in the performance of their official duties. Administrative, personnel, and other support services necessary for the commission shall be furnished by the department. The commission may employ independent counsel and contract for the services of outside technical consultants.

Section 2. Subsection (4) is added to section 403.805, Florida Statutes, to read:

403.805 Secretary; powers and duties; review of specified rules.—

(4) Any proposed rule containing standards to be submitted to the commission for approval, modification, or disapproval pursuant to subsection (1) shall require a simple majority for approval or modification, unless the rule pertains to any of the

following, in which case, approval or modification must be by a supermajority of 5 votes:

(a) Air quality standards.

(b) Water quality standards.

(c) Water quantity standards.

Proposed rules that fail to receive the votes required for approval or modification pursuant to this subsection are deemed disapproved.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 861 (2017)

Amendment No.

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

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

Representative Willhite offered the following:

Amendment

Remove lines 50-59 and insert:

approval or modification. All 7 members must be present to vote for approval or modification if the rule pertains to any of the following:

(a) Air quality standards.

(b) Water quality standards.

(c) Water quantity standards.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 861 (2017)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Representative Roth offered the following:

Substitute Amendment for Amendment (967999) by Representative Willhite (with title amendment)

Remove lines 43-59

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

Remove lines 5-8 and insert:

a certain time frame; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 909 Building Code Administrators & Inspectors
SPONSOR(S): Careers & Competition Subcommittee, Goodson
TIED BILLS: **IDEN./SIM. BILLS:** SB 860

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	15 Y, 0 N, As CS	Brackett	Anstead
2) Oversight, Transparency & Administration Subcommittee		Whittaker	Harrington
3) Commerce Committee			

SUMMARY ANALYSIS

Building code inspectors, plans examiners, building officials, and home inspectors are licensed and regulated by the Department of Business and Professional Regulation (DBPR). In order to sit for the exam to become an inspector or plans examiner, a person must meet one of six different qualifications. The bill adds a seventh qualification an applicant can meet in order to sit for the plans examiner or inspector exam. The bill provides that a person may sit for the plans examiner or inspector exam by completing a four year internship with a building official, while being employed full time by the city, county, or local jurisdiction; passing an exam administered by the International Code Council (ICC), passing a principles and practice exam, and passing an approved 40 hour training course; and obtaining a favorable recommendation from the supervising building official after completion of the internship.

The bill also makes various other changes to the provisions that govern building code administrators and inspectors, plans examiners, and home inspections, including:

- Requiring the Florida Building Code Administrators and Inspectors Board to establish specified rules, including rules to allow:
  - Partial completion of the internship program to be transferred between jurisdictions.
  - An inspector or plans examiner to seek additional category certifications as an inspector or plans examiner by completing additional one year internship programs, passing an exam administered by the ICC, and passing a board approved 40 hour course.
  - Reciprocity with any other state that requires an examination administered by ICC.
  - An applicant for certification as a building code inspector or plans examiner to apply for a 1 year provisional certificate before completing the internship program if the applicant has not passed the principals and practice examination or the 40 hour code training courses.
- Providing that nothing in the law governing building inspectors and building officials will prohibit a local government, school board, state agency, university, or community college from contracting with any person or entity for building inspection or building official services.
- Authorizing DBPR to certify and approve home inspector examinations if the exams meet the standards of a national examination.
- Revising definitions to authorize any person contracted with local governments and state agencies to perform building inspections or supervise building code activities.

The bill also amends the definition of "private provider" to include building code administrators in the list of persons who may perform certain building code inspection services.

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:

Present Situation

Building Code Administrators and Inspectors and Plans Examiners

Building officials, inspectors, and plans examiners are regulated by the Florida Building Code Administrators and Inspectors Board (board) within DBPR. DBPR licenses and regulates businesses and professionals in Florida. It is structured to include separate divisions and various professional boards responsible for carrying out DBPR's mission to license efficiently and regulate fairly. The board consists of nine members appointed by the Governor and subjected to confirmation by the Senate.[1]

A building code administrator, otherwise known as a building official, is a local government employee who supervises building code activities, including plans review, enforcement, and inspection.[2]

A building code inspector (inspector) is a local government employee who inspects construction that requires permits to determine compliance with building codes and state accessibility laws. Building code inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories the inspector received certificates in. The inspector categories are:

- Building inspector
- Coastal construction inspector
- Commercial electrical inspector
- Residential electrical inspector
- Mechanical inspector
- Plumbing inspector
- One and two family dwelling inspector
- Electrical inspector[3]

County or municipal governments, school boards, community college boards, state universities, or state agencies are not prohibited by the statutes governing building inspectors from entering into a contract with any person for building code inspections.[4]

A plans examiner reviews plans submitted for building permits to determine design compliance with construction codes. A plans examiner's ability to practice is limited to the category or categories the plans examiner is certified in. The plans examiner categories are:

- Building plans examiner
- Plumbing plans examiner
- Mechanical plans examiner
- Electrical plans examiner[5]

In order to sit for the plans examiner or inspector exam a person must be at least 18 years of age, be of good moral character, and meet one of the following eligibility requirements:

- Demonstrates 5 years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought.

---

[1] s. 468.605, F.S.
[2] s. 468.603(1), F.S.
[3] *See* s. 468.603(6), F.S.
[4] *See* s. 468.617(3), F.S.
[5] *See* s. 468.603(7), F.S.

- Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review.
- Demonstrates a combination of technical education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review.
- Currently holds a standard certificate issued by the board or a firesafety inspector license issued pursuant to ch. 633, F.S., has a minimum of 3 years' verifiable full-time experience in inspection or plan review, and has satisfactorily completed a building code inspector or plans examiner training program that provides at least 100 hours but not more than 200 hours of cross-training in the certification category sought.
- Currently holds a standard certificate issued by the board or a firesafety inspector license issued pursuant to ch. 633, F.S., has a minimum of 5 years' verifiable full-time experience in inspection or plans review, and satisfactorily completes a building code inspector or plans examiner training program of not less than 200 hours in the certification category sought.
- Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plans review and a minimum of 2 years' experience in the field of building code inspection; plans review; fire code inspections and fire plans review of new buildings as a firesafety inspector; or construction. The approved training portion of this requirement shall include proof of satisfactory completion of a training program of not less than 300 hours which is approved by the board in the chosen category of building code inspection or plans review in the certification category sought with not less than 20 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificate holder.[6]

In order to sit for the examination for building official certification an applicant must be at least 18 years of age, be of good moral character, and meet one of the following eligibility requirements:

- Demonstrates 10 years' combined experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least 5 years of such experience in supervisory positions.
- Demonstrates a combination of postsecondary education in the field of construction or related field, no more than 5 years of which may be applied, and experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent which totals 10 years, with at least 5 years of such total being experience in supervisory positions.[7]

Although individuals have been able to meet the above requirements for a single certification; it is difficult to earn additional certifications while employed as an inspector or plans examiner.

A newly hired or promoted inspector and plans examiner who may sit for an exam but has not taken the exam is granted provisional certificates for one year by the board. A provisional certificate allows a person to engage in the duties of an inspector or plans examiner depending on the type of certificate.[8] Once a newly hired or promoted inspector or plans examiner submits an application for a provisional certificate the person may perform the duties of an examiner or inspector for 120 days as long as they are under the direct supervision of a building official.[9]

[6] s. 468.609(2), F.S.
[7] s. 468.609(3), F.S.
[8] s. 468.609(4), F.S.
[9] s. 468.609(7), F.S.

Construction Industry Workforce Taskforce

After the recession in 2008, Florida experienced a shortage of inspectors, plans examiners, and building officials on account of many of them being laid off. In at least one county, the shortage forced the local building board to rehire retired inspectors.[10]

In 2016, the Legislature created the Construction Industry Workforce Taskforce (CIWT) in part to address the shortage of inspectors, plans examiners, and building officials in the state. The Legislature also created the CIWT to address related training issues for inspectors in order to increase the number of inspectors.[11]

The CIWT is made up of 22 members representing various construction associations in Florida as well as members representing the Florida House of Representatives and the Florida Senate.[12]

The CIWT determined the shortage is caused in part by the requirements to obtain an inspector and plans examiner license.[13] The CIWT proposed a list of recommendations to remediate the shortage of inspectors and plans examiners, and to encourage qualified people to become inspectors, plans examiners, and building code administrators. The CIWT recommended that:

- In addition to performing a plan or inspection review in the building official's jurisdiction, a building official should be able to perform plan reviews or inspections under an interagency service agreement with a jurisdiction with a population of 50,000 or less.
- Residential plans examiners and inspectors be added to the different categories of inspectors and plans examiners. A residential plans examiner is qualified to determine whether plans submitted for the purpose of obtaining permits for a residential building comply with code.
- Provisional certificates and the 120 day ability to practice after submitting an application for a provisional certificate not be limited to newly hired or promoted staff.
- Exams from any state administered by the International Code Council (ICC) be given reciprocity.[14]

The CIWT recommended a four year internship program as an inspector or plans examiner be added to the eligibility requirements to become an inspector or plans examiner. The internship program must meet the following requirements:

- The intern must pass an ICC administered examination prior to beginning the program.
- The intern must be employed full time in Florida with a city, county, or other local authority, and under the direct supervision of a building official.
- The intern must pass the state of Florida Principals & Practice Exam before completing the program.
- The intern must pass a board-approved 40 hour code training course in the certification category sought before completing the program.
- The intern must obtain a favorable recommendation from the supervising building official after completion of the program.
- The intern may show proof of graduation with a related vocational or college degree or verified work experience which may be exchanged for the four year experience requirement year-for-year. However, the experience requirement may be reduced to no less than one year.[15]

---

[10] *See* James Sullivan, Charles Kibert, Andriel Fenner, Shirley Morque, *Florida Construction Workforce Taskforce: Address training issues among building code inspectors to increase the number qualified inspectors*,(March 9, 2017) http://www.cce.ufl.edu/wp-content/uploads/2016/12/6-Florida-Construction-Workforce-Taskforce-Address-training-issues-among-building-code-inspectors-to-increase-the-number-qualified-1.pdf

[11] Ch. 2016-129, Laws of Fla.

[12] *Id.*

[13] *See* James Sullivan, Charles Kibert, Andriel Fenner, Shirley Morque, Florida Construction Workforce Taskforce: Address training issues among building code inspectors to increase the number qualified inspectors,(March 9, 2017) http://www.cce.ufl.edu/wp-content/uploads/2016/12/6-Florida-Construction-Workforce-Taskforce-Address-training-issues-among-building-code-inspectors-to-increase-the-number-qualified-1.pdf

[14] *Id.*

Private Provider
A private provider is a licensed engineer or architect who may be hired to perform building code inspection services by a property owner or contractor. Private providers are able to provide building plans, perform building code inspections within the scope of the provider's license, and prepare certificates of compliance. Private providers also include building officials, inspectors, and plans examiners. However, they are limited to inspecting alterations or additions that are a 1,000 square feet or less in a residential building.[16]

Home Inspector Exam
A home inspector provides an inspection to a buyer just prior to the sale of the home. The home inspector looks for visually obvious problems with the home and reports any problems to the buyer who may consider having them corrected by the seller before closing the sale. Home inspectors are regulated by DBPR.[17]

A building inspection is often confused with a home inspection. A building inspection is a legally required act, performed by a local governmental entity through the permitting process for the purpose of determining whether a structure complies with the appropriate building code standards. By contrast, a home inspection is a discretionary endeavor.

In order to obtain licensure as a home inspector a person must:
- Have good moral character;
- Complete a course study of at least 120 hours; and
- Pass the required examination.[18]

DBPR may review and approve home inspector exams by a nationally recognized entity. In order for a home inspector exam provider to become a nationally recognized entity it must offer programs or set standards that ensure the competence as a home inspector. The standards for approval of an examination are:
- The examination is proctored; and
- The examination covers the following components of a home: structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure.[19]

Effect of the Bill

The bill provides that building officials and inspectors may also include any contracted person in addition to a local government employee.

The bill provides that county or municipal governments, school boards, community college boards, state universities, or state agencies are not prohibited by the statutes governing building officials and inspectors from entering into a contract with any person for building code inspections and building official services.

The bill includes a residential plans examiner in the categories of plans examiners. A residential plans examiner is a person who is qualified to determine that plans submitted for purposes of obtaining building and other permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes.

---

[15] *Id.*
[16] s. 553.791(1)(i), F.S.
[17] s. 468.8314, F.S.
[18] s. 468.8313, F.S.
[19] *Id.* and Rule 61-30.103 of the F.A.C.

The bill provides for an internship certification as a qualification for the building inspector or plans examiner examination in addition to the other eligibility procedures. The requirements of the internship are:

- Passed an examination administered by the ICC in the license category sought before beginning the internship.
- A four year internship as a building code inspector or plans examiner while employed full-time by a city, county, or other governmental jurisdiction. Under the direct supervision of a building official. Proof of graduation with a related vocational or college degree or verified work experience may be exchanged for the internship experience requirement year-for-year. However, the internship experience requirement may not be reduced by less than one year.
- Passed the principles and practice examination before completing the internship program.
- Passed a board approved 40 hour code training course in the license category sought before completing the internship program.
- Obtained a favorable recommendation from the supervising building official after completion of the internship program.

The bill provides that the board shall establish by rule that:

- An applicant for certification as an inspector or plans examiner may apply for a 1 year provisional certificate before completing the internship program if the applicant has not passed the principals and practice examination or the 40 hour code training courses.
- Partial completion of the internship program may be transferred between jurisdictions.
- An applicant may apply for a standard certificate on a form prescribed by the board upon successful completion of an internship program.
- An applicant may apply for a standard certificate at least 30 days and no more than 60 days before completing the internship program.
- An inspector or plans examiner who has a standard certification may seek an additional certification in another category by completing an additional non-concurrent 1 year internship program in the category sought, and passing an exam administered by the ICC, and a board approved 40 hour code training course.

The bill provides that provisional certificates and the 120 day application period are not limited to newly hired or promoted inspectors or plans examiners. The bill provides the board to establish by rule that an applicant for certification as an inspector or plans examiner may perform related duties for the first 120 days after the applicant's initial application to the board.

The bill requires the board to establish by rule reciprocity of certification with any other state that requires an examination administered by the ICC.

The bill amends the definition of "private provider" to include building code administrators in the persons who may perform building code inspection services without being limited to inspections of alterations and additions limited to 1,000 square feet in a residential building.

The bill provides that home inspector examinations may be approved by DBPR if the exams meet the standards of a national examination as defined by rule and certified by DBPR.

B. SECTION DIRECTORY:

Section 1. Amending s. 468.603, F.S., defining terms.

Section 2. Amending s. 468.609, F.S., relating to qualifications for inspectors, plans examiner, provisional certificates, the 120 day application period, and reciprocity.

Section 3. Amending s. 468.617, F.S., adding building official to joint building code inspection department; other arrangements.

Section 4. Amending s. 468.8313, F.S., clarifying that DBPR may approve examinations meeting national standards.

Section 5. Amending s. 553.791, F.S., relating to definition of private providers.

Section 6. Amending s. 468.609, F.S., conforming terminology.

Section 7. Amending s. 471.045, F.S., conforming terminology.

Section 8. Amending s. 481.222, F.S., conforming terminology.

Section 9. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The fiscal impact on the private sector is indeterminate. The bill may result in more people being able to obtain a certification as a plans examiner and building inspector. However, certain home inspector exam providers may lose approval to administer exams if their exams do not meet national standards.

D. FISCAL COMMENTS:

The fiscal impact to the state is indeterminate. Inspectors and plans examiners pay a biennial fee of $5 if they are not government employees to DBPR. An increase in inspectors and plans examiners would result in an increase in biennial fees received by DBPR. In addition, however, DBPR may have an indeterminate negative fiscal impact associated with the rulemaking associated with the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to

raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the board to create various rules and requires DBPR to create rules pertaining to home inspector exam certifications. The board and DBPR both appear to have sufficient rulemaking authority to adopt the rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 14, 2017, the Careers and Competition Subcommittee adopted two amendments and reported the bill favorably as a subcommittee substitute. The amendments add the following elements to the original bill:

- Amends the definition of "Building code inspector" to include any person contracted for construction regulation responsibilities who conducts inspections.
- Amends the definition of "Building code administrator" to include any person contracted for building construction regulation responsibilities who conducts supervision, and removing the inclusion of a person performing a plan review or inspection under an interagency agreement with a different jurisdiction.
- Clarifying that nothing in ch. 468, F.S., (Part 12) shall prohibit a local government, school, state agency, university, or community college from contracting with any person for construction regulation responsibilities.
- Clarifying that the DBPR may review and approve home inspector exams by a nationally recognized entity provided that only exams meeting standards of a national examination as defined by rule and certified by DBPR are approved.

The analysis is drafted to the committee substitute adopted by the subcommittee.

A bill to be entitled

An act relating to building code administrators and inspectors; amending s. 468.603, F.S.; revising definitions; amending s. 468.609, F.S.; revising eligibility requirements for the examination for certification as a building code inspector or plans examiner to include an internship certification program; removing an eligibility condition from provisions related to provisional certificates; requiring the Florida Building Code Administrators and Inspectors Board to establish rules; amending s. 468.617, F.S.; authorizing specified entities to contract for the provision of building code administrator and building official services; amending s. 468.8313, F.S.; providing conditions for the department to review and approve certain examinations; amending s. 553.791, F.S.; conforming provisions; revising a definition; amending ss. 468.609, 471.045, and 481.222; conforming cross-references; providing an effective date.

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

Section 1. Section 468.603, Florida Statutes, is amended to read:

468.603 Definitions.—As used in this part:

(1)~~(3)~~ "Board" means the Florida Building Code Administrators and Inspectors Board.

(2)~~(1)~~ "Building code administrator" or "building official" means any of those employees of municipal or county governments, or any person contracted, with building construction regulation responsibilities who are charged with the responsibility for direct regulatory administration or supervision of plan review, enforcement, or inspection of building construction, erection, repair, addition, remodeling, demolition, or alteration projects that require permitting indicating compliance with building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes as required by state law or municipal or county ordinance. This term is synonymous with "building official" as used in the ~~administrative chapter of the Standard Building Code and the South~~ Florida Building Code. One person employed or contracted by each municipal or county government as a building code administrator or building official and who is so certified under this part may be authorized to perform any plan review or inspection for which certification is required by this part.

(3)~~(8)~~ "Building code enforcement official" or "enforcement official" means a licensed building code administrator, building code inspector, or plans examiner.

(4)~~(2)~~ "Building code inspector" means any of those employees of local governments or state agencies, or any person contracted, with building construction regulation responsibilities who themselves conduct inspections of building construction, erection, repair, addition, or alteration projects that require permitting indicating compliance with building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes as required by state law or municipal or county ordinance.

(5)~~(6)~~ "Categories of building code inspectors" include the following:

(a) "Building inspector" means a person who is qualified to inspect and determine that buildings and structures are constructed in accordance with the provisions of the governing building codes and state accessibility laws.

(b) "Coastal construction inspector" means a person who is qualified to inspect and determine that buildings and structures are constructed to resist near-hurricane and hurricane velocity winds in accordance with the provisions of the governing building code.

(c) "Commercial electrical inspector" means a person who is qualified to inspect and determine the electrical safety of commercial buildings and structures by inspecting for compliance with the provisions of the National Electrical Code.

(d)~~(h)~~ "Electrical inspector" means a person who is

qualified to inspect and determine the electrical safety of commercial and residential buildings and accessory structures by inspecting for compliance with the provisions of the National Electrical Code.

(e) "Mechanical inspector" means a person who is qualified to inspect and determine that the mechanical installations and systems for buildings and structures are in compliance with the provisions of the governing mechanical code.

(f) ~~(g)~~ "One and two family dwelling inspector" means a person who is qualified to inspect and determine that one and two family dwellings and accessory structures are constructed in accordance with the provisions of the governing building, plumbing, mechanical, accessibility, and electrical codes.

(g) ~~(f)~~ "Plumbing inspector" means a person who is qualified to inspect and determine that the plumbing installations and systems for buildings and structures are in compliance with the provisions of the governing plumbing code.

(h) ~~(d)~~ "Residential electrical inspector" means a person who is qualified to inspect and determine the electrical safety of one and two family dwellings and accessory structures by inspecting for compliance with the applicable provisions of the governing electrical code.

(6) ~~(5)~~ "Certificate" means a certificate of qualification issued by the department as provided in this part.

(7) ~~(4)~~ "Department" means the Department of Business and

Professional Regulation.

(8)~~(7)~~ "Plans examiner" means a person who is qualified to determine that plans submitted for purposes of obtaining building and other permits comply with the applicable building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other applicable construction codes. The term includes a residential plans examiner who is qualified to determine that plans submitted for purposes of obtaining building and other permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. Categories of plans examiners include:

(a) Building plans examiner.

(b) Plumbing plans examiner.

(c) Mechanical plans examiner.

(d) Electrical plans examiner.

Section 2. Paragraph (c) of subsection (2), paragraphs (a) and (d) of subsection (7), and subsection (10) of section 468.609, Florida Statutes, are amended to read:

468.609 Administration of this part; standards for certification; additional categories of certification.—

(2) A person may take the examination for certification as a building code inspector or plans examiner pursuant to this part if the person:

(c) Meets eligibility requirements according to one of the

following criteria:

1. Demonstrates 5 years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought;

2. Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

3. Demonstrates a combination of technical education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

4. Currently holds a standard certificate issued by the board or a firesafety inspector license issued pursuant to chapter 633, has a minimum of 3 years' verifiable full-time experience in inspection or plan review, and has satisfactorily completed a building code inspector or plans examiner training program that provides at least 100 hours but not more than 200 hours of cross-training in the certification category sought. The board shall establish by rule criteria for the development and implementation of the training programs. The board shall accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom

component of the training program;

5. Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of 2 years' experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a firesafety inspector certified under s. 633.216, or construction. The approved training portion of this requirement shall include proof of satisfactory completion of a training program that provides at least 200 hours but not more than 300 hours of cross-training that is approved by the board in the chosen category of building code inspection or plan review in the certification category sought with at least 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. The board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the training program. However, the board shall accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program; ~~or~~

6. Currently holds a standard certificate issued by the board or a firesafety inspector license issued pursuant to chapter 633 and:

a. Has at least 5 years' verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of 5 years' verifiable full-time experience as a firesafety inspector licensed pursuant to chapter 633.

b. Has satisfactorily completed a building code inspector or plans examiner classroom training course or program that provides at least 200 but not more than 300 hours in the certification category sought, except for one-family and two-family dwelling training programs, which must provide at least 500 but not more than 800 hours of training as prescribed by the board. The board shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category; or

7.a. Has completed a 4-year internship certification program as a building code inspector or plans examiner while employed full-time by a municipality, county, or other governmental jurisdiction, under the direct supervision of a certified building official. Proof of graduation with a related vocational degree or college degree or of verifiable work experience may be exchanged for the internship experience requirement year-for-year, but may reduce the requirement to no less than 1 year.

b. Has passed an examination administered by the International Code Council in the certification category sought.

Such examination must be passed before beginning the internship certification program.

c. Has passed the principles and practice examination before completing the internship certification program.

d. Has passed a board-approved 40-hour code training course in the certification category sought before completing the internship certification program.

e. Has obtained a favorable recommendation from the supervising building official after completion of the internship certification program.

(7)(a) The board shall provide for the issuance of provisional certificates valid for 1 year, as specified by board rule, to any ~~newly employed or promoted~~ building code inspector or plans examiner who meets the eligibility requirements described in subsection (2) and any newly employed or promoted building code administrator who meets the eligibility requirements described in subsection (3). The provisional license may be renewed by the board for just cause; however, a provisional license is not valid for longer than 3 years.

(d) A ~~newly employed or hired~~ person may perform the duties of a plans examiner or building code inspector for 120 days if a provisional certificate application has been submitted if such person is under the direct supervision of a certified building code administrator who holds a standard certification and who has found such person qualified for a provisional

certificate. Direct supervision and the determination of qualifications may also be provided by a building code administrator who holds a limited or provisional certificate in a county having a population of fewer than 75,000 and in a municipality located within such county.

(10)(a) The board may by rule create categories of certification in addition to those defined in s. 468.603(5) and (8) ~~468.603(6) and (7)~~. Such certification categories shall not be mandatory and shall not act to diminish the scope of any certificate created by statute.

(b) The board shall by rule establish:

1. Reciprocity of certification with any other state that requires an examination administered by the International Code Council.

2. An applicant for certification as a building code inspector or plans examiner may perform related duties during the first 120 days after such applicant's initial application to the board.

3. An applicant for certification as a building code inspector or plans examiner may apply for a 1-year provisional certificate before completing the internship certification program if the applicant has not passed the principals and practice examination or 40-hour code training course.

4. Partial completion of an internship program may be transferred between jurisdictions on a form prescribed by the

board.

5. An applicant may apply for a standard certificate on a form prescribed by the board upon successful completion of an internship certification program.

6. An applicant may apply for a standard certificate at least 30 days and no more than 60 days before completing the internship certification program.

7. A building code inspector or plans examiner who has standard certification may seek an additional certification in another category by completing an additional nonconcurrent 1-year internship program in the certification category sought and passing an examination administered by the International Code Council and a board-approved 40-hour code training course.

Section 3. Subsection (3) of section 468.617, Florida Statutes, is amended to read:

468.617 Joint building code inspection department; other arrangements.—

(3) Nothing in this part shall prohibit any county or municipal government, school board, community college board, state university, or state agency from entering into any contract with any person or entity for the provision of building code administrator, building official, or building code inspection services regulated under this part, and notwithstanding any other statutory provision, such county or municipal governments may enter into contracts.

Section 4. Subsection (4) of section 468.8313, Florida Statutes, is amended to read:

468.8313 Examinations.—

(4) The department may review and approve examinations by a nationally recognized entity that offers programs or sets standards that ensure competence as a home inspector, provided that only examinations meeting the standards of a national examination as defined by rule and certified by the department may be approved.

Section 5. Paragraphs (d) and (i) of subsection (1) of section 553.791, Florida Statutes, are amended to read:

553.791 Alternative plans review and inspection.—

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

(d) "Building code inspection services" means those services described in s. 468.603(5) and (8) ~~468.603(6) and (7)~~ involving the review of building plans to determine compliance with applicable codes and those inspections required by law of each phase of construction for which permitting by a local enforcement agency is required to determine compliance with applicable codes.

(i) "Private provider" means a person licensed as a building code administrator under part XII of chapter 468, as an engineer under chapter 471, or as an architect under chapter 481. For purposes of performing inspections under this section for additions and alterations that are limited to 1,000 square

feet or less to residential buildings, the term "private provider" also includes a person who holds a standard certificate under part XII of chapter 468.

Section 6. Subsection (10) of section 468.609, Florida Statutes, is amended to read:

468.609 Administration of this part; standards for certification; additional categories of certification.—

(10) The board may by rule create categories of certification in addition to those defined in s. 468.603(5) and (8) ~~468.603(6) and (7)~~. Such certification categories shall not be mandatory and shall not act to diminish the scope of any certificate created by statute.

Section 7. Section 471.045, Florida Statutes, is amended to read:

471.045 Professional engineers performing building code inspector duties.—Notwithstanding any other provision of law, a person who is currently licensed under this chapter to practice as a professional engineer may provide building code inspection services described in s. 468.603(5) and (8) ~~468.603(6) and (7)~~ to a local government or state agency upon its request, without being certified by the Florida Building Code Administrators and Inspectors Board under part XII of chapter 468. When performing these building code inspection services, the professional engineer is subject to the disciplinary guidelines of this chapter and s. 468.621(1)(c)-(h). Any complaint processing,

investigation, and discipline that arise out of a professional engineer's performing building code inspection services shall be conducted by the Board of Professional Engineers rather than the Florida Building Code Administrators and Inspectors Board. A professional engineer may not perform plans review as an employee of a local government upon any job that the professional engineer or the professional engineer's company designed.

Section 8. Section 481.222, Florida Statutes, is amended to read:

481.222 Architects performing building code inspection services.—Notwithstanding any other provision of law, a person who is currently licensed to practice as an architect under this part may provide building code inspection services described in s. 468.603(5) and (8) ~~468.603(6) and (7)~~ to a local government or state agency upon its request, without being certified by the Florida Building Code Administrators and Inspectors Board under part XII of chapter 468. With respect to the performance of such building code inspection services, the architect is subject to the disciplinary guidelines of this part and s. 468.621(1)(c)-(h). Any complaint processing, investigation, and discipline that arise out of an architect's performance of building code inspection services shall be conducted by the Board of Architecture and Interior Design rather than the Florida Building Code Administrators and Inspectors Board. An architect

may not perform plans review as an employee of a local government upon any job that the architect or the architect's company designed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 981 Pub. Rec./Department of Elderly Affairs
SPONSOR(S): Children, Families & Seniors Subcommittee, Gonzalez
TIED BILLS: **IDEN./SIM. BILLS:** SB 1408

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	10 Y, 0 N, As CS	Langston	Brazzell
2) Oversight, Transparency & Administration Subcommittee		Whittaker	Harrington
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Office of Public and Professional Guardians must review and, if determined legally sufficient, investigate any complaint that a professional guardian has violated the standards of practice established by the office. As of March 9, 2017, the Office of Public and Professional Guardians had received 125 complaints about public and professional guardians.

The bill makes confidential and exempt from Florida's public record laws the name or identity of a person filing a formal administrative complaint, the name and identity of a ward, all personal health and financial records of a ward, and all photographs and video recordings, when such records or information is held by the Department of Elderly Affairs (Department) in connection with a complaint filed under part II of chapter 744, F.S. The bill provides that the Department may provide the protected records to any law enforcement agency, any other regulatory agency in the performance of its official duties and responsibilities, or the clerk of the circuit court when reviewing an initial or annual guardianship report. The exemption is retroactive and applies to all documents received by the Department in connection with a complaint before, on, or after July 1, 2017.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2022, unless reviewed and saved from repeal by the Legislature.

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

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

The bill provides that the act will take effect July 1, 2017.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records Laws

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 exemption[2] 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. If a record is exempt, the specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., s. 286.011, F.S., or article I, section 24 of the Florida Constitution. If records are only exempt from the Public Records Act and not confidential, the exemption does not prohibit the showing of such information, but simply exempts them from the mandatory disclosure requirements in section 119.07(1)(a), F.S.

Furthermore, the Open Government Sunset Review Act[4] (Act) 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]

During the legislative review process, the following questions must be considered about the exemption:

- What specific records or meetings are affected by the exemption?
- What specific parties does the exemption affect?
- What is the public purpose of the exemption?
- Can the information contained in the records or meetings be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?[6]

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.[7]

---

[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(6)(a), F.S.

Public and Professional Guardians

Guardianship is a concept whereby a "guardian" acts for another, called a "ward," whom the law regards as incapable of managing his or her own affairs due to age or incapacity.[8] There are two main forms of guardianship: guardianship over the person or guardianship over the property, which may be limited or plenary.[9] For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, when an individual's mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is determined by a court appointed examination committee.[10] A person serving as a public guardian is considered a professional guardian for purposes of regulation, education, and registration.[11]

Regulation of Public and Professional Guardians

The Legislature created the Statewide Public Guardianship Office in 1999 to provide oversight for all public guardians.[12] In 2016, the Legislature renamed the Statewide Public Guardianship Office within the Department of Elder Affairs (Department) as the Office of Public and Professional Guardians (Office) and expanded the Office's responsibilities.[13] The expansion of the Office's oversight of professional guardians followed reports of abuse and inappropriate behavior by professional guardians.[14] The Office now regulates professional guardians with certain disciplinary and enforcement powers.[15] Specifically, s. 744.2004, F.S., requires the Office to review and, if determined legally sufficient, investigate any complaint that a professional guardian has violated the standards of practice established by the Office. There are currently 17 public guardian offices throughout the state and 514 professional guardians registered with the Office.[16] [17]

---

[7] Section 119.15(3), F.S.
[8] Section 744.102(9), F.S.
[9] Section 744.2005, F.S.
[10] Section 744.102(12), F.S.
[11] Section 744.102(17), F.S.
[12] Chapter 99-277 L.O.F.
[13] *See* CS/CS/CS/SB 232 (2016) and ch. 2016-40, L.O.F.
[14] *See, e.g.*, Florida Supreme Court Commission on Fairness, Committee on Guardianship Monitoring, 2003, *available at* http://flcourts.org/core/fileparse.php/260/urlt/guardianshipmonitoring.pdf (last visited March 20, 2017) (reviewed how effectively guardians were fulfilling their duties and obligations. The committee received input from citizens that there was abuse, neglect, and misuse of ward's funds. As a result, the committee stated that, though the majority of guardians are law-abiding and are diligently fulfilling their complex responsibilities, a small percentage are not properly handling guardianship matters, and as a result, monitoring is necessary.); Department of Elder Affairs, Guardianship Task Force – 2004 Final Report, *available at* http://www.flcourts.org/core/fileparse.php/539/urlt/2004-Guardianship-Task-Force-Final-Report.pdf (last visited March 20, 2017) (advocated for additional oversight of professional guardians); Michael E. Miller, *Florida's Guardians Often Exploit the Vulnerable Residents They're Supposed to Protect*, MIAMI NEWTIMES, May 8, 2014, *available at* http://www.miaminewtimes.com/2014-05-08/news/florida-guardian-elderly-fraud/full/ (last visited March 20, 2017) (provided anecdotal evidence of fraud within the guardianship system, noting that the appointed court monitor for Broward County has uncovered hundreds of thousands of dollars that guardians have misappropriated from their wards, and, over the course of two years, Palm Beach County's guardianship fraud hotline has investigated over 100 cases; and Barbara Peters Smith, *the Kindness of Strangers – Inside Elder Guardianship in Florida,* SARASOTA HERALD-TRIBUNE, December 6, 2014, *available at* http://guardianship.heraldtribune.com (last visited March 20, 2017) (three-part series published in December 2014 details abuses occurring in guardianships based on an evaluation of guardianship court case files and interviews with wards, family and friends caught in the system against their will.).
[15] Section 744.2004, F.S.
[16] Department of Elder Affairs; 2017 Agency Legislative Bill Analysis for HB 981; February 28, 2017; on file with the Children, Families & Seniors Subcommittee.
[17] According to the Department, there have been 125 complaints filed against public and professional guardians. The Office has received one public records request relating to such complaints. Email received by professional staff from the Department of Elderly Affairs on March 9, 2017.

Confidentiality of Records Held by the Office of Public and Professional Guardians

Section 744.2104, F.S., requires any medical, financial, or mental health records held by an agency, or the court and its agencies, or financial audits of guardianship records prepared by the clerk of the court to be provided to the Office upon its request, if such records or financial audits are necessary to investigate a guardian as a result of a complaint filed with the Office, to evaluate the public guardianship system, to assess the need for additional public guardianship, or to develop required reports. Any confidential or exempt information provided to the Office must continue to be held confidential or exempt as otherwise provided by law.

All records held by the Office relating to the medical, financial, or mental health of vulnerable adults,[18] persons with a developmental disability,[19] or persons with a mental illness,[20] are confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a) of the State Constitution.[21]

Effect of the Bill

The bill makes confidential and exempt[22] from Florida's public record laws the name or identity of a person filing a formal administrative complaint, the name and identity of a ward, all personal health and financial records of a ward, and all photographs and video recordings, when such records or information is held by the Department in connection with a complaint filed under part II of chapter 744, F.S.

The bill provides that the Department may provide the protected records to any law enforcement agency, any other regulatory agency in the performance of its official duties and responsibilities, or the clerk of circuit court when reviewing an initial or annual guardianship report. The exemption applies to any records received by the department regardless of the date they were received.

The bill includes a public necessity statement, whereby the Legislature finds that it is necessary to exempt information about a complainant and ward held by the Department, which is related to a complaint or obtained during an investigation of a professional guardian, to prevent unwarranted damage to the reputation of the complainant or ward and to protect the safety of such individuals from retaliation. Furthermore, the bill provides that it is necessary to exempt such information, because the release of the information could obstruct an investigation and impair the ability of the Department to effectively and efficiently administer the Office or impair the ability of a law enforcement agency, regulatory agency in the performance of its official duties and responsibilities, or the clerk of circuit court to carry out their statutory duties.

---

[18] "Vulnerable adult" is defined as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. Section 415.102(28), F.S.

[19] "Developmental disability" is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. Section 393.063(12), F.S.

[20] "Mental illness" is defined as an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person's ability to meet the ordinary demands of living. The term does not include a developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse. Section 394.455(28), F.S.

[21] Section 744.2104(2), F.S.

[22] 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).

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

B. SECTION DIRECTORY:

Section 1. Creates s. 744.211, F.S., relating to confidentiality.

Section 2. Provides a public necessity statement.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   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 create a minimal fiscal impact on the Department because staff responsible for complying with public record requests could require training related to the creation of the public record exemption. In addition, the Department could incur costs associated with redacting the exempt information prior to releasing the record. Such costs should be absorbed as they are part of the day-to-day operation of the agency.

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:

   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 records or public meetings 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; and accordingly, 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 protects certain identifying information, health and financial information, and photographs and recordings of complainants and wards in connection with a complaint filed with the Department. The bill provides that releasing such information could cause unwarranted damage to the reputation of the individual and jeopardize the safety of such individuals. In addition, releasing such information may jeopardize investigations of the agency. As such, it 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:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2017, the Children, Families, and Seniors Subcommittee adopted an amendment that provides for retroactive applicability of the public records exemption to records held by the department prior to the effective date of the bill. The bill now exempts records held by the department prior to as well as on and after the bill's effective date. The bill was reported favorably as a committee substitute. This analysis is drafted to the committee substitute.

A bill to be entitled

An act relating to public records; creating s. 744.2111, F.S.; providing an exemption from public records requirements for certain identifying information of complainants and wards held by the Department of Elderly Affairs; providing applicability; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 744.2111, Florida Statutes, is created to read:

744.2111 Confidentiality.—

(1) The following are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, when held by the Department of Elderly Affairs in connection with a complaint filed and any subsequent investigation conducted pursuant to this part, unless the disclosure is required by court order:

(a) The names or identities of a complainant and ward.

(b) All personal health and financial records of a ward.

(c) All photographs and video recordings.

(2) Except as otherwise provided in this section,

information held by the department, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation is completed or ceases to be active, unless the disclosure is required by court order.

(3) This section does not prohibit the department from providing such information to any law enforcement agency, any other regulatory agency in the performance of its official duties and responsibilities, or the clerk of the circuit court pursuant to s. 744.368.

(4) The exemption under this section applies to all documents received by the department in connection with a complaint before, on, or after July 1, 2017.

(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that information about a complainant and ward held by the Department of Elderly Affairs related to a complaint or obtained during the course of an investigation conducted pursuant to part II of Chapter 744, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

(2)(a) The Legislature finds that the release of identifying information about a complainant and ward could cause

unwarranted damage to the reputation of such individual, especially if the information associated with the individual is inaccurate. Furthermore, if the complainant and ward are identifiable, public access to such information could jeopardize the safety of such individuals by placing them at risk for retaliation by the professional guardian against whom a complaint has been made.

(b) Additionally, the investigation of a complaint conducted by the Department of Elderly Affairs may lead to the filing of an administrative, civil, or criminal proceeding or may affect the department's decision regarding a registration. The release of identifying information could obstruct an investigation and impair the ability of the Department of Elderly Affairs to effectively and efficiently administer part II of Chapter 744, Florida Statutes. The release of identifying information could jeopardize the integrity of the investigation and impair the ability of a law enforcement agency, regulatory agency in the performance of its official duties and responsibilities, or the clerk of the circuit court, to carry out their statutory duties.

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

HB 997

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 997 Florida Equal Access to Justice Act
SPONSOR(S): Killebrew
TIED BILLS: **IDEN./SIM. BILLS:** SB 996

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

SUMMARY ANALYSIS

Florida courts abide by the "American Rule" which states that absent a clear statutory provision, parties to a controversy must pay their own attorney fees. The Florida Equal Access to Justice Act is a statutory provision granting fee-shifting, with the intention of diminishing the deterrent effect of seeking review of, or defending against governmental actions. The act is based on the federal Equal Access to Justice Act, both of which were designed to allow those with limited resources to engage in the legal process when the government violated its own rules. Under the Florida Equal Access to Justice Act, a small business that prevails in a legal action or administrative proceeding initiated by a state agency is entitled to attorney fees and costs unless the actions of the agency were substantially justified or special circumstances exist which would make the award unjust. An agency action is reasonably justified if it had a reasonable basis in law and fact at the time it was initiated by a state agency. The cap for the award of attorney fees is $50,000.

The bill amends the Florida Equal Access to Justice Act to permit attorney fee-shifting from a nonprevailing party to the prevailing party in administrative proceedings in which a petitioner challenges an agency permit or license granted to a third party. The bill provides that such fee-shifting should occur because the financial consequences of the delay on projects authorized by permits and other orders are much greater than the consequences faced by plaintiffs in such proceedings. The bill expands the Florida Equal Access to Justice Act to award attorney fees to any party that prevails in an agency proceeding that seeks to challenge a permit, and appears to allow for fee-shifting in any direction.

The bill will 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:

Present Situation

Equal Access to Justice Act

The Federal Equal Access to Justice Act (EAJA)[1] provides for the award of attorney fees and other expenses to eligible individuals and small entities who are parties to certain adversary adjudications in administrative proceedings. An eligible party may receive an award when the party prevails over the government, unless the government's position was substantially justified or special circumstances make an award unjust.[2] The EAJA was designed to allow those with limited resources to engage in the legal process when government agencies violate their own rules.[3] The EAJA reimburses litigation costs for groups that traditionally lack the resources to challenge the government.[4]

Florida Equal Access to Justice Act

The Florida Equal Access to Justice Act (act)[5] is similar to the EAJA and is intended to diminish the deterrent effect of seeking review of, or defending against governmental actions.[6] Under the act, a small business that prevails in a legal action initiated by a state agency is entitled to attorney fees and costs unless the actions of the agency were substantially justified or special circumstances exist which would make the award unjust. An agency action is reasonably justified if it had a reasonable basis in law and fact at the time it was initiated by a state agency.

The act defines the term "small business party" to mean:

- a Florida sole proprietor of an unincorporated business with not more than 25 full-time employees or a net worth of not more than $2 million;
- a Florida partnership or corporation with not more than 25 full-time employees or a net worth of not more than $2 million; or
- an individual whose net worth is not more than $2 million.[7]

Under the act, the prevailing small business party must submit an application for an award of attorney fees within 60 days, and this application is reviewed by the court or administrative law judge through an evidentiary hearing.[8] The court has discretion to award additional attorney fees and costs in the event of an appeal.[9] The act's fee-shifting provision is one-way -- it only permits attorney fees to be shifted from the government to the small business or individual in the event the small business or individual prevails.

The current cap for the award of attorney fees under the act is $50,000.[10]

---

[1] 5 U.S.C. § 504; 28 U.S.C. § 2412

[2] USLEGAL, *Equal Access to Justice Act*, https://administrativelaw.uslegal.com/administrative-agency-adjudications/equal-access-to-justice-act/ (last visited March 12, 2017)

[3] Lofthouse, Yonk, and Simmons, Equal Access to Justice, STRATA POLICY, available online at: http://www.strata.org/wp-content/uploads/ipePublications/Final-Print.pdf (last visited May 21, 2017).

[4] *Id.*

[5] Chapter 84-78, Laws of Florida; codified as s. 57.111, F.S.

[6] Section 57.111, F.S.

[7] Section 57.111(4)(d), F.S.

[8] Section 57.111(3)(d), F.S.

[9] *Id.*

[10] *See* ss 120.595 and 57.111, F.S.

Fee-Shifting and the "American Rule"

Florida courts abide by the "American Rule" with respect to awarding attorney fees, which provides that "in the absence of legislation providing otherwise, litigants must pay their own attorney fees."[11] Absent a statutory entitlement or contractual agreement between parties, each party must bear its own attorney fees and costs. The policy is named the American Rule due to its contrast with the English Rule, often called the "loser-pays rule." The English Rule mandates that the prevailing party automatically be awarded attorney fees and costs from the losing party.[12] One policy reason for fee-shifting provisions is to put the prevailing party in the position it would have been in had the matter been resolved without litigation, or in other words, to make the party whole again.[13]

There is staunch disagreement over which rule is better, with proponents of the English Rule claiming it deters frivolous lawsuits[14] while opponents to the English Rule argue that it "deters middle-income persons from pursuing reasonable claims or defenses" and create "an unfair disadvantage in disputes."[15]

U.S. courts have also applied the English Rule as punishment when bad faith on the part of the plaintiff exists. Case law supports the conclusion that such fee-shifting for cause is an "inherent equitable power" of the court.[16] In reaching this decision, a court must first determine that the losing party had acted in "bad faith, vexatiously, wantonly, or for oppressive reasons."[17] These awards are used as punishments for conduct that unnecessarily prolongs or delays the litigation or is malicious in nature.[18]

Fees for Fees

After determining the existence of a valid right to attorney fees, the court is responsible for assessing the value of the awardable fees. This process typically involves additional litigation, and the prevailing party usually attempts to recover attorney fees used to litigate the fee award amount. This issue is referred to as the "fees for fees" problem. In *State Farm Fire & Casualty Co. v. Palma,* the Florida Supreme Court held that fees incurred in determining the prevailing party's entitlement to fees are

---

[11] *See State Firm Fire & Cas. Co. v. Palma*, 629 So. 2d 830, 832 (Fla. 1993); *Moakley v. Smallwood*, 826 So. 2d 221, 223-24 (Fla. 2002); *See also Talbott v. American Isuzu Motors, Inc.,* 934 So.2d 643, 650 (Fla. 2d DCA 2006); *Buckhannon Board and Care Home, Inc., et al. v. West Virginia Department of Health And Human Resources, et al.*, 532 U.S. 598, 602 (2001) (finding that "In the United States, parties are ordinarily required to bear their own attorney's fees—the prevailing party is not entitled to collect from the loser."); *See Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 247, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975). Under this "American Rule," we follow "a general practice of not awarding fees to a prevailing party absent explicit statutory authority." *Key Tronic Corp. v. United States,* 511 U.S. 809, 819, 114 S.Ct. 1960, 128 L.Ed.2d 797 (1994)

[12] *See* Theodore Eisenberg, *The English Versus the American Rule on Attorney Fees: An Empirical Study of Public Company Contracts*, 98 CORNELL LAW REV. 327 (2013).

[13] *Grider-Garcia v. State Farm Mut. Auto.*, 14 So. 3d 1120, 1121 (Fla. 5th DCA 2009); See also Mikes v. City of Hollywood, 687 So. 2d 1381, 1384 (Fla. 4th DCA 1997)(finding that "Costs, a compensatory monetary award to the winning party, is a judicial attempt to make the winning party as whole as he was prior to the litigation. The theory being that the prevailing party should not lose anything, at least financially, by virtue of having established the righteousness of his claim").

[14] *See* CONTRACT WITH AMERICA: THE BOLD PLAN By Rep. Newt Gingrich, Rep. Dick Armey and The House Republicans to Change the Nation 143, 145-46 (Ed Gillespie & Bob Schellhas eds., 1994) (claiming that the House Republicans' reform bill "penalizes frivolous lawsuits by making the loser pick up the winner's legal fees"); ROBERT A. KAGAN, ADVERSARIAL LEGALISM: THE AMERICAN WAY OF LAW 239 (2001); Albert W. Alschuler, Mediation with a Mugger: The Shortage of Adjudicative Services and the Need for a Two-Tier Trial System in Civil Cases, 99 HARv. L. REV. 1808, 1831 (1986).

[15] From House Report 104-63of the Judiciary Committee relating to the Attorney Accountability Act of 1995 "We have a serious problem, however, with provisions that deter middle-income persons from pursuing reasonable claims or defenses, and place them at an unfair disadvantage in disputes with risk-neutral parties--such as large corporations for whom the risk of fee-shifting will become just a cost of doing business" H.R. REP. No. 104-62, at 28 (1995)(available online at: https://www.congress.gov/congressional-report/104th-congress/house-report/62/1)

[16] John F. Vargo, *The American Rule on Attorney Fee Allocation: The Injured Person's Access to Justice*, 42 AM. U. LAW. REV. 1567, 1584.

[17] *Id.* (citing F.D. Rich Co. v. United States ex rel. Indus. Lumber Co., 417 U.S. 116, 129-30 (1974) (discussing various fee-shifting doctrines recognized by Court, including bad faith and substantial benefit)).

[18] *See*, e.g., *Chambers v. NASCO, Inc.*, 111 S. Ct. 2123, 2146-47 (1991) (upholding district court's award of attorney's fees to plaintiff because defendant's actions sought to defeat plaintiff's claim by "harassment, repeated and endless delay, mountainous expense and waste of financial resources").

properly recoverable, but that fees incurred in litigating or quantifying the amount of fees due are not recoverable absent a clear statutory permission to the contrary.[19] This conclusion was reached through a narrow reading of the relevant statute finding that the legislature had not spoken on whether fees for determining award amounts should be included.[20]

Fee-Shifting in the Administrative Procedure Act (APA)
The APA authorizes the recovery of attorney fees when:

- A non-prevailing party has participated for an improper purpose;
- An agency's actions are not substantially justified;
- An agency relies upon an unadopted rule and is successfully challenged after 30 days' notice of the need to adopt rules; or
- An agency loses an appeal in a proceeding challenging an unadopted rule.

Improper purpose is defined as participation "primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity."[21] The administrative law judge is required to determine if the non-prevailing party participated for improper purpose. Fee-shifting under the APA for "improper purpose" is one-way, permitting attorney fees to be shifted from a nonprevailing party to the prevailing party when certain circumstances exist to justify fee-shifting as a punishment.

Fee-Shifting as Sanctions in Civil and Administrative Proceedings
Section 57.105, F.S., provides that the court or administrative law judge must award attorney fees as a sanction when:

- The losing party knew or should have known that an asserted claim or defense was not supported by the material facts or existing law; or
- When a party acted with the primary purpose of unreasonable delay.[22]

Monetary sanctions are impermissible if the court determines a claim or act was made in good faith.[23] If the losing party is an agency in an administrative proceeding, the award to the prevailing party must be against and paid by the agency.[24]

Effect of the Bill

The bill amends the Florida Equal Access to Justice Act to add additional attorney fee-shifting provisions for certain administrative proceedings. Specifically, the bill provides that the nonprevailing party should pay the attorney fees of the prevailing party in an administrative proceeding to challenge permits and orders issued by the state. The bill creates a process in which fees could shift between one of three involved parties, the government, the petitioner, and the third-party permit holder in any direction.

The bill provides the following definitions:

- "Division" means the Division of Administrative Hearings within the Department of Management Services.
- "Initiated by a party seeking to challenge a permit" means an administrative proceeding filed pursuant to ch. 120, F.S., requesting the cancellation or modification of a permit.
- "Party" means a party to an administrative proceeding pursuant to ch. 120, F.S., that has been initiated by a party to cancel or modify a permit.

---

[19] 629 So. 2d 830, 832 (Fla. 1993).
[20] *Id.*; *see also Whitten v. Progressive Cas. Ins. Co.*, 410 So. 2d 501, 505 (Fla. 1982) (recognizing that "[s]tatutes authorizing an award of attorneys' fees are in derogation of the common law" and, "[t]herefore, such statutes must be strictly construed").
[21] Section 120.5959(1)(e), F.S.
[22] Section 57.105(2), F.S.
[23] Section 57.105(3), F.S.
[24] Section 57.105(5), F.S.

- "Permit" means any permit or other official action of state government having the effect of permitting the development of land.
- "Prevailing party" is a party when:
    - A final judgment or order has been entered in favor of the party and such judgment or order has not been reversed on appeal or the time for seeking judicial review of the judgment or order has expired;
    - A settlement has been obtained by the party which is favorable to the party on the majority of issues which such party raised during the course of the proceeding; or
    - The party initiating the administrative proceeding has sought a voluntary dismissal of its complaint or petition more than 30 days after that party initiated the proceeding.

The bill expands the act to provide fees for more than just small businesses and individuals by including a new definition of prevailing party. In addition, the bill expands the act to allow fee-shifting in multiple directions, such as petitioner to the state, or from the petitioner to the third-party permit holder.

The bill provides that an award of attorney fees and costs must be made to the prevailing party in any administrative proceeding initiated by a party seeking to challenge the permit unless the challenge was substantially justified or special circumstances exist making the award unjust. The prevailing party must submit an application within 60 days and an administrative law judge must make the determination of award through an evidentiary hearing. No award of attorney fees and costs may exceed $50,000. The bill does not appear to specify how the court will determine if the agency or third-party permit holder receives the attorney fees in the event the agency action in question is found to be substantially justified.

B. SECTION DIRECTORY:

Section 1. Amends s. 57.111, F.S., creating and revising definitions; revising terminology; providing legislative intent concerning certain persons who may be unjustly affected by delay and expense caused by challenges to permits or other orders issued by government agencies initiated through administrative proceedings; providing for an award of attorney fees and costs to a prevailing party in an administrative proceeding initiated by a party seeking to challenge a permit in certain circumstances; providing procedures for applying for such award; limiting such award.

Section 2. Amends s. 379.502, conforming provisions to changes made by the act.

Section 3. Amends s. 403.121, conforming provisions to changes made by the act.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The fiscal impact of this bill on the private sector and state is indeterminate. A prevailing party would be entitled to recover its costs including attorney fees at a maximum amount of $50,000 when a challenge is initiated against an individual exercising its private property rights. A nonprevailing petitioner may be required to pay attorney fees at a maximum amount of $50,000 when bringing a challenge to an agency permit or action.

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:

Definition of Substantially Justified
Line 113 of the bill defines the term "substantially justified" from the perspective of agency action in that it is determined at the time the proceeding is initiated by the agency. Because the bill expands the act to include proceedings initiated by a petitioner, it may need to define when a petitioner's claim is considered substantially justified.

Mandatory Award of Attorney Fees
Lines 177-182 of the bill provides that attorney fees must be awarded unless the challenge from the petitioner was substantially justified. As such, administrative law judges do not have discretion to refuse to award attorney fees. Further, this language appears to bar recovery of attorney fees for the petitioner if they should prevail since the bill provides for attorney fees UNLESS the challenge was substantially justified.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to the Florida Equal Access to Justice Act; amending s. 57.111, F.S.; creating and revising definitions; revising terminology; providing legislative intent concerning certain persons who may be unjustly affected by delay and expense caused by challenges to permits or other orders issued by government agencies initiated through administrative proceedings; providing for an award of attorney fees and costs to a prevailing party in an administrative proceeding initiated by a party seeking to challenge a permit in certain circumstances; providing procedures for applying for such award; limiting such award; amending ss. 379.502, and 403.121, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 57.111, Florida Statutes, is amended to read:

57.111 Civil actions and administrative proceedings initiated by state agencies <u>and administrative proceedings initiated to challenge permits and orders issued by state agencies</u>; <u>attorney</u> ~~attorneys'~~ fees and costs.—

(1) This section may be cited as the "Florida Equal Access to Justice Act."

(2) The Legislature finds that certain persons may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense of civil actions and administrative proceedings. Because of the greater resources of the state, the standard for an award of attorney ~~attorney's~~ fees and costs against the state should be different from the standard for an award against a private litigant. The purpose of this section is to diminish the deterrent effect of seeking review of, or defending against, governmental action by providing in certain situations an award of attorney ~~attorney's~~ fees and costs against the state.

(3) As used in this section, the term:

(a) ~~The term~~ "Attorney ~~attorney's~~ fees and costs" means the reasonable and necessary attorney ~~attorney's~~ fees and costs incurred for all preparations, motions, hearings, trials, and appeals in a proceeding.

(b) "Division" means the Division of Administrative Hearings within the Department of Management Services.

(c) "Initiated by a party seeking to challenge a permit" means an administrative proceeding filed pursuant to chapter 120 requesting the cancellation or modification of a permit as defined herein.

(d) ~~(b)~~ ~~The term~~ "Initiated by a state agency" means that

the state agency:

1. Filed the first pleading in any state or federal court in this state;

2. Filed a request for an administrative hearing pursuant to chapter 120; or

3. Was required by law or rule to advise a small business party of a clear point of entry after some recognizable event in the investigatory or other free-form proceeding of the agency.

(e) "Party" means a party to an administrative proceeding pursuant to chapter 120 that has been initiated by a party to cancel or modify a permit as defined in this subsection.

(f) "Permit" means any permit or other official action of state government having the effect of permitting the development of land.

(g) "Prevailing party" is a party when:

1. A final judgment or order has been entered in favor of the party and such judgment or order has not been reversed on appeal or the time for seeking judicial review of the judgment or order has expired;

2. A settlement has been obtained by the party which is favorable to the party on the majority of issues which such party raised during the course of the proceeding; or

3. The party initiating the administrative proceeding has sought a voluntary dismissal of its complaint or petition more than 30 days after that party initiated the proceeding.

(h) ~~(c) A small business party is a~~ "Prevailing small business party" means a small business party when:

1. A final judgment or order has been entered in favor of the small business party and such judgment or order has not been reversed on appeal or the time for seeking judicial review of the judgment or order has expired;

2. A settlement has been obtained by the small business party which is favorable to the small business party on the majority of issues which such party raised during the course of the proceeding; or

3. The state agency has sought a voluntary dismissal of its complaint.

(i) ~~(d) The term~~ "Small business party" means:

1.a. A sole proprietor of an unincorporated business, including a professional practice, whose principal office is in this state, who is domiciled in this state, and whose business or professional practice has, at the time the action is initiated by a state agency, not more than 25 full-time employees or a net worth of not more than $2 million, including both personal and business investments;

b. A partnership or corporation, including a professional practice, which has its principal office in this state and has at the time the action is initiated by a state agency not more than 25 full-time employees or a net worth of not more than $2 million; or

c. An individual whose net worth did not exceed $2 million at the time the action is initiated by a state agency when the action is brought against that individual's license to engage in the practice or operation of a business, profession, or trade; or

2. Any small business party as defined in subparagraph 1., without regard to the number of its employees or its net worth, in any action under s. 72.011 or in any administrative proceeding under that section to contest the legality of any assessment of tax imposed for the sale or use of services as provided in chapter 212, or interest thereon, or penalty therefor.

(j) ~~(e) A proceeding is~~ "Substantially justified" when applied to a proceeding means ~~if~~ it had a reasonable basis in law and fact at the time it was initiated by a state agency.

(k) ~~(f) The term~~ "State agency" has the meaning described in s. 120.52(1).

(4)(a) Unless otherwise provided by law, an award of attorney ~~attorney's~~ fees and costs shall be made to a prevailing small business party in any adjudicatory proceeding or administrative proceeding pursuant to chapter 120 initiated by a state agency, unless the actions of the agency were substantially justified or special circumstances exist which would make the award unjust.

(b)1. To apply for an award under this subsection ~~section,~~

the attorney for the prevailing small business party must submit an itemized affidavit to the court which first conducted the adversarial proceeding in the underlying action, or by electronic means through the division's website to the division ~~of Administrative Hearings~~ which shall assign an administrative law judge, in the case of a proceeding pursuant to chapter 120, which affidavit shall reveal the nature and extent of the services rendered by the attorney as well as the costs incurred in preparations, motions, hearings, and appeals in the proceeding.

2. The application for an award of attorney ~~attorney's~~ fees must be made within 60 days after the date that the small business party becomes a prevailing small business party.

(c) The state agency may oppose the application for the award of attorney ~~attorney's~~ fees and costs by affidavit.

(d) The court, or the administrative law judge in the case of a proceeding under chapter 120, shall promptly conduct an evidentiary hearing on the application for an award of attorney ~~attorney's~~ fees and shall issue a judgment, or a final order in the case of an administrative law judge. The final order of an administrative law judge is reviewable in accordance with ~~the provisions of~~ s. 120.68. If the court affirms the award of attorney ~~attorney's~~ fees and costs in whole or in part, it may, in its discretion, award additional attorney ~~attorney's~~ fees and costs for the appeal.

1. No award of attorney ~~attorney's~~ fees and costs shall be made in any case in which the state agency was a nominal party.

2. No award of attorney ~~attorney's~~ fees and costs for an action initiated by a state agency shall exceed $50,000.

(e) ~~(5)~~ If the state agency fails to tender payment of the award of attorney ~~attorney's~~ fees and costs within 30 days after the date that the order or judgment becomes final, the prevailing small business party may petition the circuit court where the subject matter of the underlying action arose for enforcement of the award by writ of mandamus, including additional attorney ~~attorney's~~ fees and costs incurred for issuance of the writ.

(5)(a) The Legislature also finds that certain persons may be unjustly affected by the delay and expense caused by challenges to permits or other orders issued by government agencies initiated through administrative proceedings. Because the financial consequences of the delay on projects authorized by permits and other orders are much greater than the consequences faced by plaintiffs in such proceedings, the standard for an award of attorney fees and costs in an administrative proceeding should be different from the standard for an award in other proceedings. The purpose of this subsection is to diminish the imbalance of consequences when seeking review of, or defending against, such challenges in administrative proceedings and to provide an award of attorney

fees and costs against the nonprevailing party.

(b) Unless otherwise provided by law, an award of attorney fees and costs shall be made to a prevailing party in any administrative proceeding initiated by a party seeking to challenge a permit unless the challenge was substantially justified or special circumstances exist which would make the award unjust.

1.a. To apply for an award under this section, the attorney for the prevailing party must submit an itemized affidavit to the court that first conducted the adversarial proceeding in the underlying action, or to the division by electronic means through the division's website. The affidavit shall reveal the nature and extent of the services rendered by the attorney as well as the costs incurred in preparations, motions, hearings, and appeals in the proceeding. In the case of a proceeding pursuant to chapter 120, the division shall assign an administrative law judge.

b. The application for an award of attorney fees must be made within 60 days after the date the party becomes a prevailing party.

2. The administrative law judge shall promptly conduct an evidentiary hearing on the application for an award of attorney fees and shall issue a final order. The final order of an administrative law judge is reviewable in accordance with s. 120.68. If a court affirms the award of attorney fees and costs

in whole or in part, it may, in its discretion, award additional attorney fees and costs for the appeal.

3. No award of attorney fees and costs under this subsection shall exceed $50,000.

(6) This section does not apply to any proceeding involving the establishment of a rate or rule or to any action sounding in tort.

Section 2. Paragraph (f) of subsection (2) of section 379.502, Florida Statutes, is amended to read:

379.502 Enforcement; procedure; remedies.—The commission has the following judicial and administrative remedies available to it for violations of s. 379.501:

(2)

(f) In any administrative proceeding brought by the commission, the prevailing party shall recover all costs as provided in ss. 57.041 and 57.071. The costs must be included in the final order. The respondent is the prevailing party when an order is entered awarding no penalties to the commission and the order has not been reversed on appeal or the time for seeking judicial review has expired. The respondent is entitled to an award of attorney's fees if the administrative law judge determines that the notice of violation issued by the commission was not substantially justified as defined in s. 57.111(3)(j) ~~57.111(3)(e)~~. An award of attorney's fees as provided by this subsection may not exceed $15,000.

Section 3. Paragraph (f) of subsection (2) of section 403.121, Florida Statutes, is amended to read:

403.121 Enforcement; procedure; remedies.—The department shall have the following judicial and administrative remedies available to it for violations of this chapter, as specified in s. 403.161(1).

(2) Administrative remedies:

(f) In any administrative proceeding brought by the department, the prevailing party shall recover all costs as provided in ss. 57.041 and 57.071. The costs must be included in the final order. The respondent is the prevailing party when an order is entered awarding no penalties to the department and such order has not been reversed on appeal or the time for seeking judicial review has expired. The respondent shall be entitled to an award of attorney's fees if the administrative law judge determines that the notice of violation issued by the department seeking the imposition of administrative penalties was not substantially justified as defined in s. 57.111(3)(j) ~~57.111(3)(e)~~. No award of attorney's fees as provided by this subsection shall exceed $15,000.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1025 Firefighters' Relief and Pension Fund of the City of Pensacola, Escambia County
SPONSOR(S): Ingram
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 0 N	Darden	Miller
2) Oversight, Transparency & Administration Subcommittee		Moore	Harrington
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Firefighters' Relief and Pension Fund of the City of Pensacola (Fund) was established by the Legislature in 1941. Each firefighter employed by the City of Pensacola is a Fund participant.

The bill removes certain limitations on the types of pay included in determining a firefighter's compensation for firefighters entering the Fund after June 10, 2015, placing those members on the same footing as other Fund members, except that overtime pay is not included. The bill revises the treatment of partial years in calculating years of service.

The bill prohibits cost of living increases for Fund participants entering the Deferred Retirement Option Plan on or after June 10, 2015. The bill also removes a provision enabling the Civil Service Board of the City of Pensacola to determine if a firefighter has reached the mandatory retirement age of 70.

Lastly, the bill updates references to city departments and incorporates the date a previous revision was signed into law.

The bill will take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Firefighter Pensions: Marvin B. Clayton Firefighters Pension Trust Fund Act

Local firefighter pension plans are governed by ch. 175, F.S., the Marvin B. Clayton Firefighters Pension Trust Fund Act (Clayton Firefighters Pension Act).[1] Originally enacted in 1939, the Clayton Firefighters Pension Act encouraged cities to create firefighter pension plans by providing access to premium tax revenues. The Clayton Firefighters Pension Act sets forth minimum benefits and standards for municipal firefighter pensions, which cannot be reduced by municipalities; however, the benefits provided by a local law plan may vary from the provisions in the Clayton Firefighters Pension Act so long as the minimum standards are met.

Local firefighter pension plans created pursuant to the Clayton Firefighters Pension Act are funded by four sources:

- Net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the premium tax);[2]
- Employee contributions;[3]
- Other revenue sources; [4] and
- Mandatory payments by the city of the normal cost of the plan.[5]

The premium tax is an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or special fire control district.[6] It is payable by the insurers to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Department of Management Services, Division of Retirement (Division). In 2015, premium tax distributions to municipalities and special fire control districts from the Firefighters' Pension Trust Fund amounted to $73.8 million.[7]

To qualify for insurance premium tax dollars, plans must meet requirements found in ch. 175, F.S. Responsibility for overseeing and monitoring these plans is assigned to the Division; however, the day-to-day operational control rests with the local boards of trustees.[8] The board of trustees must invest and reinvest the assets of the fund according to s. 175.071, F.S., unless specifically authorized to vary from the law. If the Division deems that a firefighter pension plan created pursuant to ch. 175, F.S., is not in compliance, the sponsoring municipality could be denied its insurance premium tax revenues.[9]

The default employee contribution under the Clayton Firefighters Pension Act is five percent of salary, but the percentage may be adjusted.[10] A municipality or special fire control district may elect to make an employee's contributions, but the employee must still contribute at least 0.5 percent of his or her

[1] Section 175.025, F.S.
[2] Section 175.091(1)(a), F.S.
[3] Section 175.091(1)(b), F.S.
[4] Section 175.091(1)(c), (e)-(g), F.S.
[5] Section 175.091(1)(d), F.S.
[6] Section 175.101, F.S.
[7] Department of Management Services, *Firefighters' 2015 Premium Tax Distribution Calculation*, available at http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans/facts_and_figures (last accessed March 6, 2017).
[8] *See* s. 175.071, F.S.
[9] *See* s. 175.341(1), F.S.
[10] Section 175.091(1)(b), F.S.

salary.[11] Rates may also be increased above five percent, subject to the consent of members' collective bargaining representative or, if none, by a majority consent of the firefighter members of the fund.[12]

Florida Protection of Public Employee Retirement Benefits Act

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.[13] The Florida Protection of Public Employee Retirement Benefits Act (Benefits Act), Part VII of ch. 112, F.S., implements the provisions of Art. X, s. 14, Florida Constitution.[14] The Benefits Act applies to all retirement or pension plans for public employees that are funded in whole or in part by public funds.[15]

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.[16] This statement must also be furnished to the Division before the local government can agree to the change.[17] The statement must indicate whether the proposed change complies with Art. X, s. 14, Florida Constitution and with s. 112.64, F.S. (concerning the administration of pension funds and the amortization of any unfunded actuarial liability).[18]

Firefighters' Relief and Pension Fund of the City of Pensacola

The Firefighters' Relief and Pension Fund of the City of Pensacola (Fund) was established by the Legislature in 1941.[19] The act governing the Fund was most recently amended in 2015.[20] As of September 30, 2016, the Fund has 86 active members, 161 retired members, and 30 members in the Deferred Retirement Option Plan (DROP).[21] As of October 1, 2015, the Fund had $108,697,588 in total assets and $15,297,740 in unfunded actuarial accrued liability.[22] Normal retirement age is 52 years of age for those with at least ten years of service and any age for those with at least twenty-five years of service.[23]

The Fund currently assumes 7.75 percent annual growth of its assets.[24] During the 2015-16 fiscal year, the Fund saw a 7.54 percent growth in the actuarial value of its assets and a 1.56 percent decline in the market value of its assets.

Cost of Living Increases

The Fund provides for a cost of living increase for:[25]

---

[11] Section 175.091(2)(a), F.S.
[12] Section 175.091(2)(b), F.S.
[13] Art. X, s. 14, Fla. Const.
[14] Section 112.61, F.S.
[15] Section 112.62, F.S.
[16] Section 112.63(3), F.S.
[17] *Id.*
[18] *Id.*
[19] Chapter 41-21483, Laws of Fla.
[20] Chapter 2015-206, Laws of Fla.
[21] Department of Management Services, *Florida Local Government Retirement Systems 2016 Annual Report*, p. 12 of Appendix F, available at http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/local_retirement_section/local_government_annual_reports (last assessed March 6, 2017) (herein DMS Local Government Reports).
[22] DMS Local Government Reports, p. 15 of Appendix A.
[23] DMS Local Government Reports, p. 50 of Appendix B.
[24] DMS Local Government Reports, p. 16 of Appendix E.
[25] Chapter 41-21483, s. 6, Laws of Fla., as amended.

- The lesser of CPI-U[26] or 3 percent, for Fund participants who retired before June 10, 2015;
- The lesser of CPI-U or 2 percent, for Fund participants hired before June 10, 2015, but retiring after June 10, 2015; or
- The lesser of CPI-U or 1.25 percent, for Fund participants hired on or after June 10, 2015.

Fund members participating in DROP may receive cost of living increases while participating.

Mandatory Retirement

All firefighters employed by the City of Pensacola are required to retire upon reaching 70 years of age.[27] If there is any dispute over the firefighter's age, the Civil Service Board of the City of Pensacola is responsible for making the determination subject to a hearing requirement.

Definitions

"Actuarial equivalent" is defined for the purpose of the Fund as:[28]

- An equality in value computed based on the 1971 Group Annuity Mortality Table and an interest rate equal to eight percent per year, for plan years before October 1, 2013, except for disability retirement payments;
- An equality in value computed based on the SSA-74 Mortality Table and an interest rate equal to eight percent per year for disability retirement payments for plan years before October 1, 2013;
- An equality in value computed based on the RP 2000 Combined Healthy Mortality Table and an interest rate equal to eight percent per year, for plan years beginning on or after October 1, 2013.

"Compensation," "salary," and "earnings" are defined as the wages paid to a firefighter, including:[29]

- Up to 300 hours per year of annual overtime pay for firefighters with ten or more years of service as of June 10, 2015; and
- Up to 200 hours per year of annual overtime pay for firefighters with less than ten years of service as of June 10, 2015.

For firefighters hired on or after June 10, 2015, overtime pay, station or watch captain pay, special duty pay, in-service sick leave redemption pay, bonuses, and lump-sum payments not paid at termination are not considered compensation for the purpose of calculating benefits.

The term "years of service" is defined as the aggregate number of years of service, including fractional parts of a year.[30] Military service is included in the calculation of years of service under certain conditions.

Effect of Proposed Changes

Cost of Living Increases

The bill states that Fund participants entering DROP on or after June 10, 2015, may not receive cost of living benefit increases during the period for which they are in DROP. The bill replaces the phrase "the

[26] "CPI-U" is the Consumer Price Index for All Urban Consumers, issued by the United States Department of Labor on a monthly basis. For additional information, *see* https://www.bls.gov/cpi/ (last accessed Mar. 6, 2017).
[27] Chapter 41-21483, s. 8, Laws of Fla., as amended.
[28] Chapter 41-21483, s. 30(b), Laws of Fla., as amended.
[29] Chapter 41-21483, s. 30(d), Laws of Fla., as amended.
[30] Chapter 41-21483, s. 30(n), Laws of Fla., as amended.

effective date of the Act," added by revisions in 2015, with the date those revisions became law (June 10, 2015).

Mandatory Retirement

The bill removes the authority of the Civil Service Board of the City of Pensacola to determine if a firefighter has reached the mandatory retirement age of 70.

Definitions

The bill revises the definition of "actuarial equivalent" for fund years beginning on and after October 1, 2013, by requiring the equality in value to be calculated based on "the most recent actuarial valuation."

The bill amends the definition of "compensation," "salary," and "earnings" to expressly include overtime pay, station or watch captain pay, special duty pay, in-service sick leave redemption pay, bonuses, lump-sum payments not paid at termination, and any other payments required by law to be included in pension calculations. However, overtime pay is not included in compensation for firefighters hired on or after June 10, 2015, but all other types of compensation are included.

The bill amends the definition of "years of service" to only include fractional parts of a year if those portions are "major." The bill defines a "major fractional part of a year" as six months and one day.

Other Changes

The bill removes references to the City of Pensacola's Director of Finance and replaces them with the Chief Financial Officer of the city, reflecting a change in title.

B. SECTION DIRECTORY:

Section 1: Amends provisions of ch. 1941-21483, Laws of Florida, governing the Firefighters' Relief and Pension Fund of the City of Pensacola.

Section 2: Provides that the bill takes effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? October 26, 2016.

WHERE? The *Pensacola News Journal*, a daily newspaper published in Escambia County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the Firefighters' Relief and Pension Fund of the City of Pensacola, Escambia County; amending chapter 21483, Laws of Florida (1941), as amended; correcting and updating terminology and dates; prohibiting certain participants from receiving a cost-of-living increase in benefits while they are participants in the Deferred Retirement Option Plan; revising and providing definitions; providing the maximum number of hours per plan year of annual overtime pay for certain firefighters; providing an effective date.

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

Section 1. Sections 2, 3, and 6, subsection (a) of section 8, section 23, and subsections (b), (d), and (n) of section 30 of chapter 21483, Laws of Florida (1941), as amended by chapters 2000-468 and 2015-206, Laws of Florida, are amended to read:

Section 2. Board to act as trustees of fund; records.—The Pension Board of the City of Pensacola shall act as trustees of the Firefighters' Relief and Pension Fund and shall perform the duties herein required. The secretary of the board shall keep a separate and complete minute book of proceedings of the board in reference to the business and affairs relating to the

Firefighters' Relief and Pension Fund. Said minute book shall at all times be kept in the office of the Chief Financial Officer ~~Director of Finance~~ of the City of Pensacola and be open to the public for inspection.

Section 3. Powers of the board.—

(1) In addition to the other powers and authorities granted to it under Florida law, that the pension board shall have power and authority:

(a) To invest and reinvest the assets of the Firefighters' Relief and Pension Fund, as provided by Florida law.

(b) To cause to be issued payments from the Firefighters' Relief and Pension Fund pursuant to this act and rules and regulations prescribed by the board. All such payments shall be made in the manner now provided by law for the disbursement of city funds. The Chief Financial Officer ~~Director of Finance~~ shall maintain an accounting of payments made, and no money shall be otherwise drawn from the fund.

(c) To finally decide all claims to relief under this act and under the board's rules and regulations.

(d) To convert into cash any securities of the fund.

(e) To keep a complete record of all receipts and disbursements and of the board's acts and proceedings. Said records shall at all times be kept in the office of the Chief Financial Officer ~~Director of Finance~~ of the City of Pensacola and be open to the public for inspection; and a statement and

audit of the receipts and disbursements shall be made and a copy furnished to each contributor and each pensioner not less than annually.

(2) Any and all acts and decisions of the pension board shall be effectuated by vote of a majority of the members of such board; however, no trustee shall take part in any action in connection with such trustee's own participation in the fund.

Section 6. Increase in benefits due to consumer price index increases.—

(a) A cost-of-living increase in benefits paid pursuant to this act shall be given effective July 1, 1999, for those retired before June 10, 2015, ~~the effective date of this act~~ and shall be paid annually thereafter. Each annual increase shall have an effective date of July 1. All such increases shall be equal to but no greater than the annual increase in the Consumer Price Index (U) issued by the United States Department of Labor, provided that such increase shall in no event be greater than 3 percent per year. The annual CPI (U) period to be used for calculation of any increase shall end in March of the year of the July 1 increase. The increase in the CPI (U) shall be the change in the values from April 1 to March 31. In the event the United States Department of Labor ceases to issue a CPI (U), the board shall utilize a current CPI index that is the functional equivalent.

(b) A cost-of-living increase in benefits paid pursuant to this act shall be given to those participants hired before June 10, 2015, and who retire after June 10, 2015, ~~the effective date of this act and who retire on or after the effective date of this act~~ and shall be paid annually thereafter. Each annual increase shall have an effective date of July 1. All such increases shall be equal to but no greater than the annual increase in the Consumer Price Index (U) issued by the United States Department of Labor, provided that such increase shall in no event be greater than 2 percent per year. The annual CPI (U) period to be used for calculation of any increase shall end in March of the year of the July 1 increase. The increase in the CPI (U) shall be the change in the values from April 1 to March 31. In the event the United States Department of Labor ceases to issue a CPI (U), the board shall utilize a current CPI index that is the functional equivalent.

(c) A cost-of-living increase in benefits paid pursuant to this act shall be given for those hired on or after June 10, 2015, ~~the effective date of this act~~ and shall be paid annually thereafter. Each annual increase shall have an effective date of July 1. All such increases shall be equal to but no greater than the annual increase in the Consumer Price Index (U) issued by the United States Department of Labor, provided that such increase shall in no event be greater than 1.25 percent per year. The annual CPI (U) period to be used for calculation of

any increase shall end in March of the year of the July 1 increase. The increase in the CPI (U) shall be the change in the values from April 1 to March 31. In the event the United States Department of Labor ceases to issue a CPI (U), the board shall utilize a current CPI index that is the functional equivalent.

(d) After June 22, 1974, no person shall transfer creditable service from another retirement system into the Firefighters' Relief and Pension Fund.

(e) The City of Pensacola, by ordinance, may permit but not require members of the Firefighters' Relief and Pension Fund who are eligible, to participate in a Deferred Retirement Option Plan (DROP). A participant entering DROP on or after June 10, 2015, shall not receive a cost-of-living increase in benefits while he or she is a participant in DROP. The ordinance may include members who are eligible to retire and to receive retirement benefits to remain in the active service of the city until a contractually fixed termination date and to have accumulated for the employee's account from the date the contract is made all benefits which the employee would be eligible to begin receiving on that date and to have those accumulated benefits held for the benefit of the employee until the employee separates from active service. Such ordinance may provide for forfeiture of the accumulated benefits or other penalty if the employee does not comply with the contract. However, if the employee complies in all respects with the terms

of the contract, the employee shall receive all retirement benefits the employee would be entitled to under this act upon the employee's actual retirement from the active service of the city.

Section 8. Automatic retirement.—

(a) Any firefighter subject to the provisions of this act attaining the age of seventy (70) years shall be automatically retired and shall cease to draw his or her compensation as such employee, but shall become immediately entitled to the pension or benefits provided hereby. ~~In the event of doubt as to the attainment of such age, the Civil Service Board shall make inquiry and determine such fact after due notice to interested parties; provided that the provisions of this section shall not become operative until January 1, 1960, the former law remaining in effect until such date.~~

Section 23. Depositing of funds and securities.—All funds and securities of the Firefighters' Relief and Pension Fund may be deposited by the Board of Trustees with the Chief Financial Officer ~~Director of Finance~~ of the city, acting in a ministerial capacity only, who shall keep the same in a separate fund, and he or she shall be liable for the safekeeping of the same, under the bond given by him or her to the city, and he or she shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of the funds of the city.

Section 30. Definitions.—The following words and phrases have the following meanings:

(b) "Actuarial equivalent" means, for Plan Years before October 1, 2013, the equality in the value of the aggregate amount to be received under different forms of payment, computed on the basis of the 1971 Group Annuity Mortality Table and an interest rate equal to 8 percent per annum. Notwithstanding the foregoing, with respect to disability retirement, "actuarial equivalent" means equality in the value of the aggregate amount to be received under different forms of payment, computed on the basis of the SSA-74 Mortality Table and an interest rate equal to 8 percent per annum. For Plan Years beginning on and after October 1, 2013, "actuarial equivalent" means, unless otherwise specified herein, the equality in the value of the aggregate amount to be received under different forms of payment computed using the most recent actuarial valuation ~~on the basis of the RP 2000 Combined Healthy Mortality Table and an interest rate equal to 8 percent per annum~~.

(d) "Compensation," "salary," and "earnings" mean the wages paid to a firefighter as overtime pay, station or watch captain pay, special duty pay, in-service sick leave redemption pay (when paid), bonuses, lump-sum payments not paid at termination, including employee-elective salary reductions to deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity programs authorized under the Internal

Revenue Code if the firefighter would receive those reductions or deferrals if he or she were not participating in such programs, and any other payments required by law to be included in pension calculations. However:

(1) For those firefighters with 10 or more years of service as of June 10, 2015, a maximum of 300 hours per plan year of annual overtime pay shall be included in compensation.

(2) For those firefighters with fewer than 10 years of service as of June 10, 2015, a maximum of 200 hours per plan year of annual overtime pay shall be included in compensation.

(3) For those firefighters hired on or after June 10, 2015, no overtime pay shall be included in compensation ~~for those with 10 or more years of service as of the effective date of this act a maximum of 300 hours annual overtime pay, for those with less than 10 years of service as of the effective date of this act a maximum of 200 hours annual overtime pay, for those hired on or after the effective date of this act no longevity pay, overtime pay, station or watch captain pay, special duty pay, in-service sick leave redemption pay (when paid), bonuses, lump-sum payments not paid at termination, inclusive of employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code if the firefighter would receive those reductions or deferrals if he or she were not participating in such program, and any other~~

~~payments required by law to be included in pension calculations~~. Compensation for any plan year shall not exceed the annual compensation limit under section 401(a)(17) of the Code, as in effect on the first day of the plan year. This limit shall be adjusted by the Secretary of the Treasury to reflect increases in the cost of living, as provided in section 401(a)(17)(B) of the Code; however, the dollar increase in effect on January 1 of any calendar year is effective for the plan year beginning in such calendar year. If a Plan determines compensation over a plan year that contains less than 12 calendar months (a "short plan year"), then the compensation limit for such short plan year is equal to the compensation limit for the calendar year in which the short plan year begins multiplied by the ratio obtained by dividing the number of full months in the short plan year.

(n) "Years of service" means the aggregate number of years of service, and major fractional parts of a year of service after becoming vested, of any firefighter, omitting intervention years and major fractional parts of a year ~~years~~ when such firefighter may not have been employed by the City of Pensacola as a firefighter. Service shall include military service, as provided in paragraph (1) below, and shall not include credit for any other type of service. "Major fractional parts of a year" means 6 months and 1 day.

(1) In determining the creditable service of any

firefighter, credit for up to 5 years of the time spent in the military service of the Armed Forces of the United States shall be added to the years of actual service if:

a. The firefighter is in the active employ of the city before such service and leaves a position, other than a temporary position, for the purpose of voluntary or involuntary service in the Armed Forces of the United States.

b. The firefighter is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act.

c. The firefighter returns to his or her employment as a firefighter of the city within 1 year after the date of his or her release from such active service.

(2) In addition to service credits awarded for military service leave under subsection (1) above, any member of the Plan who served in the Armed Forces of the United States as described under chapter 2009-97, Laws of Florida, shall be entitled to purchase service credits for such service or employment by contributing as provided in 2. below an amount which is determined to be the full actuarial cost of the service credits purchased. Once the member is vested but not yet retired or entered into DROP, the member may purchase a maximum of 5 years of any combination of the aforementioned qualifying noncity service.

1. The contribution required of the employee to purchase

service credits for prior military service or prior employment as a firefighter may be made in one lump sum installment or by rollover from a qualified plan.

2. The contribution is an actuarially determined amount of the employee's pensionable current annual compensation at the time of the buy-back for each year purchased.

A member who is receiving or will receive a pension benefit for military or prior firefighter service in any other pension plan supported by public funds, excluding a military pension, may not use or buy back credited service for the City of Pensacola Firefighters' Relief and Pension Fund.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1079 Pub. Rec. and Meetings/Comprehensive Emergency Management Plan for Public Postsecondary Institutions
SPONSOR(S): Rommel
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1224

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Post-Secondary Education Subcommittee	14 Y, 0 N	McAlarney	Bishop
2) Oversight, Transparency & Administration Subcommittee		Moore	Harrington
3) Education Committee			

SUMMARY ANALYSIS

The bill creates an exemption from public record and public meeting requirements for information associated with a campus emergency response of a public postsecondary educational institution. "Campus emergency response" is defined as a public postsecondary education institution's response to or plan for responding to an act of terrorism or other public safety crisis or emergency.

The bill provides that any portion of a campus emergency response held by a public postsecondary institution, a state or local law enforcement agency, a county or municipal emergency management agency, the Executive Office of the Governor, the Department of Education, the Board of Governors of the State University System, or the Division of Emergency Management is exempt from public record requirements. This exemption applies to plans held by a custodial agency before, on, or after the effective date of the bill.

The bill also provides that the portion of a public meeting which would reveal information related to a campus emergency response is exempt from public meeting requirements.

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

Public Meetings Law
Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district at which official acts are to be taken or at which public business of such body is to be transacted or discussed be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.[1] The board or commission must provide reasonable notice of all public meetings.[2] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[3] Minutes of a public meeting must be promptly recorded and open to public inspection.[4]

Public Record and Public Meeting Exemptions
The Legislature may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[5]

Furthermore, the Open Government Sunset Review Act[6] 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:[7]

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

[1] Section 286.011(1), F.S.
[2] *Id.*
[3] Section 286.011(6), F.S.
[4] Section 286.011(2), F.S.
[5] Art. I, s. 24(c), Fla. Const.
[6] Section 119.15, F.S.
[7] Section 119.15(6)(b), F.S.

- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[8]

Current Security Plans

Section 119.071(3), F.S. provides that "security system plans" for any property owned by or leased to the state or any of its political subdivisions or any privately owned or leased property held by an agency are confidential and exempt from public record requirements. Security system plans include:[9]

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;[10]
- Threat assessments conducted by any agency or any private entity;[11]
- Threat response plans;[12]
- Emergency evacuation plans;[13]
- Sheltering arrangements;[14] or
- Manuals for security personnel, emergency equipment, or security training.[15]

In addition, a portion of a meeting that would reveal a security system plan or portion thereof is exempt from public meeting requirements.[16]

Assuming that Florida public universities are considered "owned by or leased to the state," there is an open question as to whether a discussion or record concerning a campus emergency plan would be exempt. Courts would likely decide the applicability of the security exception to state universities on a case-by-case basis.

Effect of Proposed Changes

The bill creates an exemption from public record requirements for information associated with the campus emergency response of a public postsecondary educational institution.

"Campus emergency response" is defined as a public postsecondary educational institution's response to or plan for responding to an act of terrorism or other public safety crisis or emergency. Specifically, the term includes:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof.
- Threat assessments conducted by any agency or private entity.
- Threat response plans.

[8] Section 119.15(3), F.S.
[9] Section 119.071(3)(a) 1., F.S.
[10] Section 119.071(3)(a)1.a, F.S.
[11] Section 119.071(3)(a)1.b., F.S.
[12] Section 119.071(3)(a)1.c., F.S.
[13] Section 119.071(3)(a)1.d., F.S.
[14] Section 119.071(3)(a)1.e., F.S.
[15] Section 119.071(3)(a)1.f., F.S.
[16] Section 286.0113, F.S.

- Emergency evacuation plans.
- Sheltering arrangements.
- Manuals for security personnel, emergency equipment, or security training.
- Security systems or plans.
- Vulnerability analyses.
- Post-disaster activities, including provisions for emergency power, communications, food, and water.
- Post-disaster transportation.
- Supplies, including drug caches.
- Staffing.
- Emergency equipment.
- Individual identification of students, faculty, and staff; the transfer of records; and methods of responding to family inquiries.

The bill provides that any portion of a campus emergency response held by a public postsecondary institution, a state or local law enforcement agency, a county or municipal emergency management agency, the Executive Office of the Governor, the Department of Education, the Board of Governors of the State University System, or the Division of Emergency Management is exempt[17] from public record requirements. The bill is remedial in nature in that the public record exemptions apply to plans held by a custodial agency before, on, or after the bill's effective date.

The bill also addresses public meetings. The portion of a public meeting which would reveal information related to a campus emergency response is exempt from the open meeting laws.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1. Creates s. 1004.0962, F.S., to provide public record and public meeting exemptions associated with campus emergency response plans of a public postsecondary educational institution.

Section 2. Provides a statement of public necessity as required by the State Constitution.

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

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

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 create a minimal fiscal impact on state universities and FCS institutions because staff responsible for complying with public record requests could require training related to creation of the public record exemption. In addition, state universities and FCS institutions 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 the universities and institutions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

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

Public Necessity Statement
Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates public record and public meeting exemptions; 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 information associated with campus emergency responses of a public postsecondary educational institution, in addition to a public meeting exemption for any portion of a meeting wherein such information is discussed. The exemptions do not appear to be in conflict with the constitutional requirement that the exemptions be no broader than necessary to accomplish the stated purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

On line 26 of the bill, the term "postsecondary education institution" should be "postsecondary educational institution." In addition, on line 52, the term "postsecondary institution" should be "postsecondary educational institution."

On line 63 of the bill, the term "plans" should be "campus emergency responses."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to public records and public meetings; creating s. 1004.0962, F.S.; providing an exemption from public records requirements for those portions of a campus emergency response which address the response of a public postsecondary educational institution to an act of terrorism or other public safety crisis or emergency; providing an exemption from public meeting requirements for any portion of a public meeting which would reveal those portions of a campus emergency response which address the response of a public postsecondary educational institution to an act of terrorism or other public safety crisis or emergency; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 1004.0962, Florida Statutes, is created to read:

1004.0962 Campus emergency response of a public postsecondary educational institution; public records exemption; public meetings exemption.—

(1) As used in this section, the term "campus emergency

response" means a public postsecondary education institution's response to or plan for responding to an act of terrorism, as defined by s. 775.30, or other public safety crisis or emergency, and includes information relating to:

(a) Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof.

(b) Threat assessments conducted by any agency or private entity.

(c) Threat response plans.

(d) Emergency evacuation plans.

(e) Sheltering arrangements.

(f) Manuals for security personnel, emergency equipment, or security training.

(g) Security systems or plans.

(h) Vulnerability analyses.

(i) Postdisaster activities, including provisions for emergency power, communications, food, and water.

(j) Postdisaster transportation.

(k) Supplies, including drug caches.

(l) Staffing.

(m) Emergency equipment.

(n) Individual identification of students, faculty, and staff; the transfer of records; and methods of responding to family inquiries.

(2)(a) Any portion of a campus emergency response held by a public postsecondary institution is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Any portion of a campus emergency response held by a state or local law enforcement agency, a county or municipal emergency management agency, the Executive Office of the Governor, the Department of Education, the Board of Governors of the State University System, or the Division of Emergency Management is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) The public records exemptions provided by this section are remedial in nature, and it is the intent of the Legislature that the exemptions apply to plans held by a custodial agency before, on, or after the effective date of this section.

(4) That portion of a public meeting which would reveal information related to a campus emergency response is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that those portions of a campus emergency response held by a public postsecondary educational institution which address the response of a public postsecondary educational institution to an act of terrorism and

those portions of a campus emergency response of a public postsecondary institution which are filed or shared with a state or local law enforcement agency, a county or municipal emergency management agency, the Executive Office of the Governor, the Department of Education, the Board of Governors of the State University System, or the Division of Emergency Management must be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. It is also the finding of the Legislature that any portion of a public meeting which would reveal information related to a campus emergency response be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Art. I of the State Constitution. A campus emergency response affects the health and safety of the students, faculty, staff, and the public at large. If campus emergency responses were made publicly available for inspection or copying, they could be used to hamper or disable the response of a public postsecondary educational institution to an act of terrorism, or other public safety crisis or emergency. If a public postsecondary educational institution's response to these events were hampered or disabled, an increase in the number of Floridians subjected to fatal injury would occur. There is ample existing evidence of the capabilities of terrorists and other criminals to plot, plan, and coordinate complicated acts of terror and violence on university and college campuses all over the country. The aftermath of these events has also showed the importance of

viable plans by which public postsecondary educational institutions can respond to terrorist attacks and other public safety crises or emergencies.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1079 (2017)

Amendment No.

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

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

Representative Rommel offered the following:

Amendment

Remove lines 26-77 and insert:

response" means a public postsecondary educational institution's response to or plan for responding to an act of terrorism, as defined by s. 775.30, or other public safety crisis or emergency, and includes information relating to:

(a) Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof.

(b) Threat assessments conducted by any agency or private entity.

(c) Threat response plans.

(d) Emergency evacuation plans.

(e) Sheltering arrangements.

(f) Manuals for security personnel, emergency equipment, or security training.

(g) Security systems or plans.

(h) Vulnerability analyses.

(i) Postdisaster activities, including provisions for emergency power, communications, food, and water.

(j) Postdisaster transportation.

(k) Supplies, including drug caches.

(l) Staffing.

(m) Emergency equipment.

(n) Individual identification of students, faculty, and staff; the transfer of records; and methods of responding to family inquiries.

(2)(a) Any portion of a campus emergency response held by a public postsecondary educational institution is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Any portion of a campus emergency response held by a state or local law enforcement agency, a county or municipal emergency management agency, the Executive Office of the Governor, the Department of Education, the Board of Governors of the State University System, or the Division of Emergency Management is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) The public records exemptions provided by this section are remedial in nature, and it is the intent of the Legislature that the exemptions apply to campus emergency responses held by a custodial agency before, on, or after the effective date of this section.

(4) Information made exempt by this section may be disclosed:

(a) To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; or

(b) Upon a showing of good cause before a court of competent jurisdiction.

(5) That portion of a public meeting which would reveal information related to a campus emergency response is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(6) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that those portions of a campus emergency response held by a public postsecondary educational institution which address the response of a public postsecondary educational institution to an act of terrorism and those portions of a campus emergency response of a public postsecondary educational institution which are filed or shared

67 with a state

68

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1107 Pub. Rec./Workers' Compensation
SPONSOR(S): Insurance & Banking Subcommittee; Albritton
TIED BILLS: **IDEN./SIM. BILLS:** SB 1008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Lloyd	Luczynski
2) Oversight, Transparency & Administration Subcommittee		Toliver	Harrington
3) Commerce Committee			

SUMMARY ANALYSIS

The Department of Financial Services (department), the Agency for Health Care Administration (AHCA), and the Division of Administrative Hearing (DOAH) are charged by the workers' compensation law with the administration and oversight of workers' compensation insurers and health care providers. Each of these entities receives records concerning injured or deceased workers.

The bill provides that personal identifying information of an injured or deceased worker filed with the department, AHCA, and DOAH is confidential and exempt from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill allows the disclosure of this information in the following circumstances:

- To an injured employee or the dependents of a deceased employee;
- In an aggregate reporting format, subject to content and time limitations;
- To participants in workers' compensation claims litigation at DOAH;
- Pursuant to a court order; or
- To other agencies in the furtherance of such agency's official duties and responsibilities who must maintain the confidentiality of the information.

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

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

The bill has an effective date of July 1, 2017.

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 or expanded public record or public meeting exemption. The bill creates a public record exemption for personal identifying information of an injured or deceased worker; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.[1] The Legislature, however, may by general law exempt records from the constitutional requirements.[2] An exemption must state with specificity the public necessity justifying the exemption and may 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]

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly-created or substantially-amended public records or open meetings exemptions.[5] A public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served, if the exemption:

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

The Act requires the automatic repeal of an exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[7]

Confidential & Exempt Treatment of Workers' Compensation Records

The Workers' Compensation Law[8] charges the Department of Financial Services (department), Agency for Health Care Administration (AHCA), and Division of Administrative Hearings (DOAH) with various roles in the administration and oversight of Florida's workers' compensation system.[9] Those entities each receive records concerning injured or deceased workers.[10] Employers are required to report every injury or death to their workers' compensation insurance carrier (carrier).[11] Information in the report of injury or death, as required by statute, includes:

- The name and address of the employer;
- The name, social security number, street, mailing address, telephone number, and occupation of the injured worker;
- The cause and nature of the injury or death;
- The year, month, day, and hour when, and the particular locality where, the injury or death occurred; and

[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(c).
[3] *Id.*
[4] *Id.*
[5] S. 119.15, F.S.
[6] S. 119.15(6)(b), F.S.
[7] S. 119.15(3), F.S.
[8] Ch. 440, F.S., may be cited as the "Workers' Compensation Law." S. 440.01, F.S.
[9] The Office of Insurance Regulation is also charged with a role in administering the workers' compensation system, but they do not receive personal identifying information of injured or deceased workers.
[10] *See* s. 440.185(2), F.S.
[11] S. 440.185(2), F.S.

- Such other information as the department may require.[12]

By rule,[13] the report must also include:

- The address of the accident location; and
- Employee's:
  - Date of birth;
  - Date of death;
  - Sex;
  - Description of accident;
  - Part of body affected;
  - Rate of pay;
  - Date first employed; and
  - Date last employed.

Carriers are required to report to the department every injury that results in payment of lost wages.[14] Additionally, reports of every medical bill for treatment of an injured worker are required to be filed with the department.[15] Information in the medical reports, include:

- The name and address of the injured worker;
- Date of accident; and
- Procedure and diagnosis codes describing the treatment provided and nature of the injury or ongoing need for treatment.

When a dispute arises between an injured worker and carrier over benefits and the injured worker wishes to enforce their entitlement to the benefit(s), the law requires the injured worker to file a petition for benefits with DOAH's Office of the Judges of Compensation Claims.[16] Among other things, the petition must include:

- Name, address, telephone number, and social security number of the employee;
- A detailed description of the injury and cause of the injury, including the location of the occurrence and the date or dates of the accident; and
- The type or nature of treatment care or attendance sought and the justification for such treatment.[17]

There are two public records exemptions directly related to an injured or deceased injured worker. The first, s. 440.125, F.S., provides that any medical records and medical reports of an injured employee and any information identifying an injured employee in medical bills which are provided to the department, pursuant to s. 440.13, F.S., are confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The exemption allows the department to share the records with ACHA

The second public record exemption, s. 440.102(8)(a), F.S., protects all information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced as a result of a drug-testing program.

From 1998 until 2003, the Workers' Compensation Law contained an exemption related to personal identifying information in reports of injury that protected any information in a report of injury or illness that would identify an ill or injured employee.

---

[12] S, 440.185(2), F.S.
[13] Rule 69L-3.025, F.A.C. incorporating form DFS-F2-DWC-1 by reference.
[14] Rule 69L-56, F.S.
[15] S. 440.13(4)(b), F.S.;Rules 69L-7.710-7.750, F.A.C.
[16] S. 440.192, F.S.
[17] S. 440.192(2), F.S.

The exemption was subject to the Open Government Sunset Review Act and was allowed to repeal in 2003. This occurred during the same period as the passage of the most recent major workers' compensation reform bill, SB 50-A(2003).[18] A Florida Senate interim report, issued in November 2002, recommended the exemption be repealed or amended.[19] The recommendation was founded on the observation that the protected information was readily available from other sources, including department and DOAH databases that were not sourced from reports of injury.[20]

The department reports that it receives approximately 90 requests monthly for the names and contact information of injured or deceased workers reported to the department during the previous month.[21] Once received, the requestor can use and share the information in any manner to anyone. On average, the list of names, addresses and phone numbers provided to the public monthly include about 4,750 injured or deceased workers.[22] The department reports that the requests are primarily from law firms.[23]

Effect of the Bill

The bill provides that personal identifying information of an injured or deceased worker filed with the department, AHCA, or DOAH is confidential and exempt from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill allows the disclosure of this information only in the following ways:

- To an injured employee or the dependents of a deceased employee;
- In an aggregate reporting format, subject to population and time limitations;
- To participants in workers' compensation claims litigation at DOAH;
- Pursuant to a court order; or
- To other agencies in the furtherance of such agency's official duties and responsibilities who must maintain the confidentiality of the information.

The bill provides a statement of public necessity and provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature. The public necessity statement cites the sensitive and personal nature of the individual's workers' compensation claims information and potential use of that information to harm the injured worker or the survivors of the injured workers.

B. SECTION DIRECTORY:

Section 1. Creates s. 440.1851, F.S., relating to personal identifying information of an injured or deceased employee; public records exemption.

Section 2. Provides a statement of public necessity as required by the State Constitution.

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.

---

[18] Ch. 2003-412, L.O.F.
[19] Florida Senate, *Interim Project Report 2003-203*, Nov. 2002, *available at* http://archive.flsenate.gov/data/Publications/2003/Senate/reports/interim_reports/pdf/2003-203bi.pdf (last visited 3/22/17).
[20] *Id.*
[21] Florida Department of Financial Services, Agency Analysis of 2017 HB 1107, p. 1, (Mar. 8, 2017). PCS for HB 1107 is substantively similar to HB 1107.
[22] *Id.*
[23] *Id.*

2. Expenditures:

   Indeterminate, but likely minimal. The bill could create a minimal fiscal impact on the department, AHCA, and the DOAH because of software redesign or training of those responsible for complying with public record requests regarding the new public records exemption. The department noted that HB 1107 is estimated to require non-recurring expenditures of $400 in fiscal year 2017-2018.[24]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The bill may reduce attorney involvement in workers' compensation litigation, which could lead to more efficient claims processing and lower workers' compensation premiums.

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

On March 14, 2017, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute reflects multiple changes, as follows:

- Creates s. 440.1851, F.S., rather than amending s. 440.185, F.S.
- Expands the proposed exemption from only personal identifying information contained in reports filed under s. 440.185, F.S., to all personal identifying information held pursuant to ch. 440, F.S.

[24] *Id.* at 2.

- Applies the exemption to the department, ACHA, and DOAH, instead of only the Division of Workers' Compensation.
- Expands the exceptions to the exemption to allow otherwise exempt information to be provided to:
  - The injured worker or his or her dependent(s), and
  - Party litigants in a matter pending before the Office of the Judges of Compensation Claims.
- Places certain conditions on the release of aggregated information.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to public records; creating s. 440.1851, F.S.; providing an exemption from public records requirements for personal identifying information filed with the Department of Financial Services, the Agency for Health Care Administration, or the Division of Administrative Hearings pursuant to the Workers' Compensation Law; specifying persons to whom and circumstances in which such confidential information may be disclosed; providing for future legislative review and repeal of the exemption; providing a finding of public necessity; providing an effective date.

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

Section 1. Section 440.1851, Florida Statutes, is created to read:

440.1851 Personal identifying information of an injured or deceased employee; public records exemption.—

(1) Personal identifying information of an injured or deceased employee filed with the department, the agency, or the Division of Administrative Hearings pursuant to this chapter is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) Information made confidential and exempt under this section may be disclosed only:

(a) To the injured employee or the dependents of the deceased employee;

(b) In an aggregate reporting format that does not reveal the personal identifying information of any employee, if the aggregation includes the records of at least 10 employees and does not include records related to a date of accident occurring in the 90 days before a public records request;

(c) To a party litigant, or his or her authorized representative, in matters pending before the Office of the Judges of Compensation Claims;

(d) Pursuant to a court order; or

(e) To an administrative or law enforcement agency in the furtherance of such agency's official duties and responsibilities. An administrative or law enforcement agency receiving such information shall maintain the confidentiality of the information as provided in this section.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to make confidential and exempt from disclosure any information filed with the Department of Financial Services, the

Agency for Health Care Administration, or the Division of Administrative Hearings pursuant to chapter 440, Florida Statutes, that would identify an injured or deceased employee. Such information is of a sensitive, personal nature. Disclosure of such sensitive, personal information about an injured or deceased employee is an invasion of the injured employee's privacy or the privacy of the deceased employee's family. Further, the release of such information could lead to discrimination against the injured employee by coworkers, potential employers, and others. The harm caused to an injured employee or a deceased employee's family by the release of such information outweighs any public benefit derived from its release.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1135 West Palm Beach Police Pension Fund of the City of West Palm Beach, Palm Beach County
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee; Willhite
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	11 Y, 0 N	Darden	Miller
2) Oversight, Transparency & Administration Subcommittee		Moore	Harrington
3) Government Accountability Committee			

SUMMARY ANALYSIS

The West Palm Beach Police Pension Fund (Fund) was established by the Legislature in 1947. Each police officer employed by West Palm Beach is a Fund participant.

The bill modifies the special act creating the Fund to:

- Revise formulas for calculating retirement benefits to provide a uniform method of calculating benefits based on dates of service;
- Specify powers for the Board of Trustees of the Fund;
- Require a pre-employment physical to screen for pre-existing conditions;
- Provide for the repayment of withdrawn funds in the event an officer is rehired or reinstated;
- Establish an alternative benefit payment method known as a ten year certain option;
- Revise the payment of death benefits for members in the Deferred Retirement Option Plan;
- Add an actuarial equivalence calculation to the death benefit received by a surviving spouse who was not married to the Fund member on the member's date of retirement; and
- Limit the purchase of service for prior police or military service to five years.

The bill implements an agreement reached by the City of West Palm Beach and the union representing the city's police officers.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Police Pensions: Marvin B. Clayton Police Officers Pension Trust Fund Act
Local police pension plans are governed by ch. 185, F.S., the Marvin B. Clayton Police Officers Pension Trust Fund Act (Clayton Police Pension Act).[1] Originally enacted in 1939, the Clayton Police Pension Act encouraged cities to create police pension plans by providing access to premium tax revenues. The Clayton Police Pension Act sets forth minimum benefits and standards for municipal police pensions, which cannot be reduced by municipalities; however, the benefits provided by a local plan may vary from the provisions in the Clayton Police Pension Act so long as the minimum standards are met.

Local police pension plans created pursuant to the Clayton Police Pension Act are funded by four sources:

- Net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the premium tax);[2]
- Employee contributions;[3]
- Other revenue sources;[4] and
- Mandatory payments by the city of the normal cost of the plan.[5]

The premium tax is an excise tax of 0.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality.[6] It is payable by the insurers to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Department of Management Services, Division of Retirement (Division). In 2015, premium tax distributions to municipalities from the Police Officers' Pension Trust Fund amounted to $72.6 million.[7]

To qualify for insurance premium tax dollars, plans must meet the requirements found in ch. 185, F.S. Responsibility for overseeing and monitoring these plans is assigned to the Division; however, the day-to-day operational control rests with the local boards of trustees.[8] The board of trustees must invest and reinvest the assets of the fund according to s. 185.06, F.S., unless specifically authorized to vary from the law. If the Division determines that a police pension plan created pursuant to ch. 185, F.S., is not in compliance, the sponsoring municipality could be denied its insurance premium tax revenues.[9]

The default employee contribution under the Clayton Act is five percent of salary, but the percentage may be adjusted.[10] A municipality may elect to make an employee's contributions, but the employee must still contribute at least 0.5 percent of his or her salary.[11] Rates may also be increased above five

---

[1] Section 185.015, F.S.
[2] Section 185.07(1)(a), F.S.
[3] Section 185.07(1)(b), F.S.
[4] Section 185.07(1)(c), (e)-(g), F.S.
[5] Section 185.07(1)(d), F.S.
[6] Section 185.08, F.S.
[7] Department of Management Services, *Municipal Police and Fire Plans*, available at http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans (last accessed Mar. 6, 2017) .
[8] *See* s. 185.06, F.S.
[9] Section 185.23(1), F.S.
[10] Section 185.07(1)(b), F.S.
[11] Section 185.07(2)(a), F.S.

percent, subject to the consent of members' collective bargaining representative or, if none, by a majority consent of the firefighter members of the fund.[12]

Florida Protection of Public Employee Retirement Benefits Act

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.[13] The Florida Protection of Public Employee Retirement Benefits Act (Benefits Act), Part VII of ch. 112, F.S., implements the provisions of Art. X, s. 14, Florida Constitution.[14] The Benefits Act applies to all retirement or pension plans for public employees that are funded in whole or in part by public funds.[15]

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.[16] This statement must also be furnished to the Division before the local government can agree to the change.[17] The statement must indicate whether the proposed change complies with Art. X, s. 14, Florida Constitution and with s. 112.64, F.S. (concerning the administration of pension funds and the amortization of any unfunded actuarial liability).[18]

West Palm Beach Police Pension Fund

The West Palm Beach Police Pension Fund (Fund or Plan) was established by the Legislature in 1947.[19] The act governing the Fund was most recently amended in 2012.[20] As of September 30, 2016, the Fund has 241 active members, 214 retired members, and 36 members in the Deferred Retirement Option Plan (DROP).[21] As of October 1, 2015, the Fund had $263,834,220 in total assets and $56,666,324 in unfunded actuarial accrued liability.[22] Normal retirement age is 55 years of age for those with at least ten years of service, 50 years of age for those with at least twenty years of service, and any age for those with at least twenty-five years of service.[23]

The Fund currently assumes 8 percent annual growth of its assets.[24] During the 2015-16 fiscal year, the Fund saw a 10.40 percent growth in the actuarial value of its assets and a 2.10 percent decline in the market value of its assets.

Actuarial Equivalent Value Calculation

Present Situation

The Plan calculates the "actuarial equivalent value" using an interest rate of 8.25 percent per year and the 1983 Group Annuity Mortality Table.[25]

---

[12] Section 185.07(2)(b), F.S.
[13] Article X, s. 14, Fla. Const.
[14] Section 112.61, F.S.
[15] Section 112.62, F.S.
[16] Section 112.63(3), F.S.
[17] *Id.*
[18] *Id.*
[19] Chapter 47-24981, Laws of Fla.
[20] Chapter 2012-259, Laws of Fla.
[21] Department of Management Services, *Florida Local Government Retirement Systems 2016 Annual Report*, p. 16 of Appendix F, available at http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/local_retirement_section/local_government_annual_reports (last assessed March 6, 2017) (herein DMS Local Government Reports).
[22] DMS Local Government Reports, p. 19 of Appendix A.
[23] DMS Local Government Reports, p. 67 of Appendix B.
[24] DMS Local Government Reports, p. 21 of Appendix E.
[25] Chapter 47-24981, s. 16(2)(a), Laws of Fla., as amended.

Effect of Proposed Changes
The bill revises the calculation of the "actuarial equivalent value" to use an interest rate of 8 percent per year and the RP-2000 Mortality Table for annuitants with future improvements in mortality projected to 2017 using Scale BB, blending 90 percent male rates and 10 percent female rates for the member and 10 percent male rates and 90 percent female rates for the beneficiary. The base mortality rates are also subject to adjustment, with a 100 percent white collar adjustment for women and a 90 percent blue collar/10 percent white collar adjustment for men.

Final Average Salary

Present Situation
Final average salary for Plan members is calculated using the average monthly salary paid to a member in the member's three best years of employment.[26] Overtime may be included in the calculation with the following limits:

- Before January 1, 2005, no limit;
- Between January 1, 2005 and January 1, 2013, up to 400 hours per year;
- After January 1, 2013, up to 300 hours per year.

Effect of Proposed Changes
The bill provides that as of the effective date of the bill, for purposes of determining final average salary, any lump sum payment made to a Plan member for retroactive pay may not be treated as a lump sum payment, but instead treated as if it was paid during the retroactive pay period.

Police Pension Fund Board of Trustees

Present Situation
The Fund is administered by a five-member Board of Trustees (Board).[27] The Board consists of two residents appointed by the city, two police officers elected by a majority of police officers who are Fund members, and a member chosen by a majority vote of the other four board members. Members of the Board serve two-year terms. The powers of the Board are not specified.

Effect of Proposed Changes
The bill extends the term of Board members to four years. The bill also provides a list of duties and responsibilities for the Board, including, but not limited to:

- Construing the provisions of the Plan and determining all questions arising thereunder;
- Determining all questions relating to eligibility and participation;
- Determining or having determined and certified the amount of all retirement allowances or other benefits;
- Receiving and processing all applications for participation and benefits and, where necessary, conducting hearings;
- Authorizing all payments whatsoever from the fund, and notifying the disbursing agent, in writing, or approving benefit payments and other expenditures arising through operation of the Plan;
- Making recommendations to the city commission and union regarding changes in the provisions of the Plan;
- Reviewing reports of and having meetings with the custodian and investment agents or advisors; requiring written reports from the custodian on fund assets and transactions on a monthly basis; requiring written and oral reports from the investment agents or advisors on at least an annual basis, such reports to reflect fund investment, performance, investment recommendations, and overall review of fund investment policies;

[26] Chapter 47-24981, s. 16(2)(g), Laws of Fla., as amended.
[27] Chapter 47-24981, s. 16(3), Laws of Fla., as amended.

- Maintaining the minutes and records of the proceedings and meetings of the Board;
- Making uniform rules and regulations and taking action as may be necessary to carry out the provisions of the Plan; and all decisions of the Board made in good faith must be final, binding, and conclusive on all parties; and
- Taking such other action as the Board deems necessary for the efficient management of the Plan.

Plan Membership

Present Situation
All police officers employed by West Palm Beach are members of the Fund.[28] A newly hired police officer is a member of the Fund from the date of the officer's employment. If an officer leaves the department, the officer's credited service is forfeited. If the officer later rejoins the department, the officer's service is restored if the officer returns to the Fund any amount the officer withdrew, with "regular interest" from the date of withdrawal to the date of repayment.

Effect of Proposed Changes
The bill requires new members of the Fund to undergo a physical examination to determine if the officer has any preexisting conditions. This examination must occur as part of the post-offer, pre-employment physical examination required by the city. The Board's medical director must provide the Board with any abnormal findings discovered during the examination. The examination is used to establish a "physical profile" for the Plan member, determining preexisting conditions and presumptive illnesses. If additional physical examination is required by the Board after reviewing the findings, the examination must occur at the Board's expense.

The bill requires any member who rejoins the department to begin the process of returning withdrawals within one year of the date of rehire. If the member fails to do so, the credited service is forfeited and the time may only be eligible for purchase under other credit of service provisions. If a member made a withdrawal due to termination from employment and the member is later reinstated through the grievance and arbitration process, the member has the same time period for beginning to return withdrawals, but does not owe interest if the repayment process is started within one year of the date of reinstatement.

Retirement Pension Calculation

Present Situation
Retirement benefits under the Plan are calculated using several methods based on both the member's years of service and dates of employment.[29] A member's benefit under the Plan must be at least 2 percent of final average salary for each year of service.

For service after October 1, 2011, retirement benefits are calculated using 2.68 percent of the Plan member's final average salary per year and fractional parts of the years of service up to a total of 26 years, plus 1 percent of the final average salary multiplied by the number of years of service in excess of 26 years.

Credit for service earned before October 1, 2011, is calculated as follows:

- For members with at least 12 years and 6 months of service as of October 1, 1999, and who were actively employed by the department on or after October 1, 1999, the greatest of:
    - 3 percent of final average salary multiplied by years of service[30] earned between April 1, 1987 and September 30, 2011, plus 2.5 percent of the final average salary multiplied by

[28] Chapter 47-24981, s. 16(6), Laws of Fla., as amended.
[29] Chapter 47-24981, s. 16(9)(a), Laws of Fla., as amended.

years of service earned prior to April 1, 1987, up to a total of 26 years, plus 1 percent of the final average salary multiplied by the number of years in excess of 26 years;
  - 2.5 percent of final average salary multiplied by years of service up to 26 years, plus 1 percent of final average salary multiplied by years of service exceeding 26 years; or
  - The sum of 2.5 percent of final average salary multiplied by years of service for credited service earned through September 30, 1988, and 2 percent of the final average salary multiplied by years of service earned on or after October 1, 1988.

- For members with more than 12 years and 6 months of service, who had entered DROP on or before October 1, 1999, and who were actively employed with the department as of October 1, 1999, the greatest of:

  - 3 percent of final average salary multiplied by years of service earned in the 12 years and 6 months period to entering DROP, plus 2.5 percent of the final average salary multiplied by years of service prior to the date that was 12 years and 6 months prior to entering DROP, up to a total of 26 years, plus 1 percent of the final average salary multiplied by the number of years in excess of 26 years;
  - 2.5 percent of final average salary multiplied by years of service up to 26 years, plus 1 percent of final average salary multiplied by years of service exceeding 26 years; or
  - The sum of 2.5 percent of final average salary multiplied by years of service for credited service earned through September 30, 1988, and 2 percent of the final average salary multiplied by years of service earned on or after October 1, 1988.

- For members who had less than 12 years and 6 months of service and were actively employed by the department on or after October 1, 1999, the greatest of:

  - 3 percent of final average salary multiplied by years of service, earned up to September 30, 2011, plus 1 percent of the final average salary multiplied by the number of years in excess of 26 years;
  - 2.5 percent of final average salary multiplied by years of service up to 26 years, plus 1 percent of final average salary multiplied by years of service exceeding 26 years; or
  - The sum of 2.5 percent of final average salary multiplied by years of service for credited service earned through September 30, 1988, and 2 percent of the final average salary multiplied by years of service earned on or after October 1, 1988.

- For members who terminated employment, retired on a vested deferred benefit, or retired on or before October 1, 1999, the greater of:

  - 2.5 percent of final average salary multiplied by years of service, up to a total of 26 years, plus 1 percent of final average salary multiplied by the number of years in excess of 26 years.
  - The sum of 2.5 percent of final average salary multiplied by years of service for credited service earned through September 30, 1988, and 2 percent of the final average salary multiplied by years of service earned on or after October 1, 1988.

Effect of Proposed Changes

The bill amends two formulas for calculating credited service occurring before October 1, 2011. The bill requires credited service to be calculated as follows:

- For members with greater than or equal to twelve years and six months of service as of October 1, 1999, and who were actively employed by the department on or after October 1, 1999, 3 percent of final average salary multiplied by years of service earned between April 1, 1987, and September 30, 2011, plus 2.5 percent of the final average salary multiplied by years of service

[30] Unless otherwise noted, the term "years of service" for the purpose of this section includes fractional years of service.

earned prior to April 1, 1987, up to a total of 26 years, plus 1 percent of the final average salary multiplied by the number of years in excess of 26 years.[31]
- For members who had less than 12 years and 6 months of service and were actively employed by the department on or after October 1, 1999, 3 percent of final average salary multiplied by years of service, earned up to September 30, 2011, plus 1 percent of the final average salary multiplied by the number of years in excess of 26 years.[32]

The bill eliminates a separate formula for members with more than 12 years and 6 months of service who had entered DROP on or before October 1, 1999, and were actively employed with the department as of October 1, 1999. The bill does not change the formula for a member who terminated employment, retired on a vested deferred benefit, or retired on or before October 1, 1999.

Optional Forms of Retirement Income

Present Situation
In addition to standard retirement benefit and the death benefit offered under the Plan, a member may submit a written request to the Board to receive an authorized alternative payment of equivalent actuarial value.[33] The request is subject to approval by the Board. The Plan currently features two authorized alternative payments:

- A larger monthly payment, payable to the member for the member's lifetime (lifetime option).
- A modified monthly amount, payable to the member during the joint lifetime of the member and a dependent joint pensioner designated by the member, in which the death of either the member or the dependent joint pensioner results in monthly payments of 50 percent, 66 2/3 percent, 75 percent, or 100 percent to the surviving party (joint and survivor option).

Effect of Proposed Changes
The bill creates a third authorized alternative payment known as a ten year certain option. If the ten year certain option is selected, the member receives normal retirement benefits, but the death benefit is replaced by payments to a designated beneficiary equal to 120 minus the number of payments received by the member at the time of the member's death. If the member has received 120 or more payments at the time of death, the beneficiary receives no benefit.

Deferred Retirement Option Plan (DROP)

Present Situation
Any member of the Plan who is eligible to receive a normal retirement pension may participate in DROP if the member meets the eligibility requirements and submits a form approved by the Board for that purpose.[34] A member may not participate in DROP beyond the time of attaining 30 years of service or for more than 5 years. Upon electing to enter DROP, a member no longer accrues additional benefits under the Plan, except for share account benefits under ch. 185, F.S.

When a member enters DROP, monthly retirement benefits that would have been payable to the member if the member had terminated employment on that date are paid into a DROP account and credited to the member. For deposits after October 1, 2002, a member may make an annual election to invest his or her DROP account funds with other assets of the Plan, receiving the same rate of return as those assets, or to receive a fixed interest rate.[35]

---

[31] This is the first formula listed for this class under current law.
[32] This is the first formula listed for this class under current law.
[33] Chapter 47-24981, s. 16(9)(d), Laws of Fla., as amended.
[34] Chapter 47-24981, s. 16(13), Laws of Fla., as amended.
[35] For Plan members who reached normal retirement age on or before October 1, 2012, the fixed interest rate is 8.25 percent. For Plan members who reached normal retirement age after October 1, 2012, the fixed interest rate is 8 percent. If payment of the fixed interest rate results in a deficiency compared to the Plan's gross earnings, the fixed interest rate is reduce to 4 percent for that year.

Once a member leaves employment, the balance of the DROP account may be paid as:

- A lump sum;
- Installments over three years; or
- An annuity, paid until the death of the member or the account balance is zero.

Members may elect to defer payment, but must take a distribution by age 70 ½ as required by section 401(A)(9) of the Internal Revenue Code.

A beneficiary of a DROP participant who dies before payments from the DROP account are disbursed is treated in the same manner as a beneficiary receiving death benefits.

Effect of Proposed Changes
The bill removes the provision treating the beneficiary of a DROP participant who dies before payments from the DROP account are disbursed in the same manner as a beneficiary receiving death benefits. Instead, the entire balance of the DROP account must be paid out in a lump sum to the beneficiary, at the discretion of the beneficiary. However, if the beneficiary is the surviving spouse, the beneficiary may choose to not receive the distribution before the age of 70 ½. If the member has failed to designate a beneficiary, the entire balance of the DROP account will be converted to the name(s) of:

- Member's surviving children on a pro rata basis;
- If the member has no surviving children, the member's spouse;
- If the member has no surviving spouse, the member's surviving parents on a pro rata basis; or
- If none of the above are alive, the estate of the member.

A beneficiary who has received a converted account has the right to name a successor beneficiary. Any designated beneficiary, except a member's surviving spouse, must take a distribution of the entire share account balance within 5 years.

Death Benefits

Present Situation
Upon the death of a Plan member, a death benefit may be paid to the member's surviving beneficiaries.[36] If the member has a surviving spouse, the spouse receives a pension equal to two-thirds of the member's pension for the remainder of his or her life. If the member does not have a surviving spouse, or if the surviving spouse dies and leaves an unmarried child under the age 18, each child receives a pro rata share of two-thirds of the member's pension until the child is adopted, marries, dies, or reaches the age of 18. If the member does not have a surviving spouse or children, but provides more than 50 percent of the support for a parent or parents, the parent may receive a pro rata share of two-thirds of the member's pension until death or remarriage.

The Board may choose to pay the equivalent actuarial value of any of the above monthly benefits as a lump sum to the beneficiary.

Effect of Proposed Changes
The bill clarifies that the death after retirement benefit is not available to Plan members who choose to receive an optional form of retirement income. The bill also states that for years of service earned after the effective date of the bill, a surviving spouse who was not married to the member at the time of the member's retirement may receive an actuarially reduced death benefit that takes into account the age of the surviving spouse.

Service Credit for Other Law Enforcement or Military Service

[36] Chapter 47-24981, s. 16(17), Laws of Fla., as amended.

Present Situation
Members may receive service credit for time spent as a police officer for another municipal, county, state, or federal law enforcement agency or as a member of the United States military, as long as the member contributes to the Fund the sum of:[37]

- The amount the member would have been contributed, based on the member's salary and employee contribution rate in effect at the time the credited service is requested, had the member been a member of the system for the years to be credited;
- The amount actuarially determined, such that the crediting of service does not result in a cost to the fund; and
- The share of costs for all professional services rendered to the Board in connection with the purchase of the years of credited service.

The member may make a lump sum payment within 6 months after the request for credit, or payments may be made over the greater of the length of time being purchased or 5 years at an interest rate equal to the Fund's actuarial assumption. Years of service purchased in this matter may not be used for vesting and purchase is not allowed if the years of service in another system serve as the basis for a benefit or pension from that system. If a member becomes disabled and is awarded a benefit from the Plan, the member is not required to complete the buyback of years of service, but money already paid into the Plan is not refunded. If a member terminates employment before vesting, contributions must be refunded, including buyback contributions.

Effect of Proposed Changes
The bill places a 5 year cap on the years of service for prior police or military service which may be purchased.

Other Changes

The bill defines the term "accrued benefit" as the amount of a member's pension as of a specified date determined in accordance with the terms of the plan, whether or not the member is eligible to access it.

The bill removes a section concerning actuarial assumptions and makes conforming changes elsewhere in the act.

The bill clarifies that "Normal Retirement Age" for an officer with 25 years of credited service is whatever age the officer is when he or she reaches 25 years of credited service.

B. SECTION DIRECTORY:

Section 1: Amends ch. 1947-24981, Laws of Fla, concerning the West Palm Beach Police Pension Fund.

Section 2: Provides that the bill takes effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? December 28, 2016

WHERE? The *Palm Beach Post*, a daily newspaper published in Palm Beach County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

[37] Chapter 47-24981, s. 16(35), Laws of Fla., as amended.

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 809-811 state that a Plan member may make payments for years of service of the greater of 5 years or the number of years to be purchased. Since the bill places a 5 year cap on the purchase of credit for years of service, this provision is no longer necessary.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted a technical amendment and reported the bill favorably as a committee substitute. The amendment clarifies several provisions of the act that take effect upon the bill becoming a law.

This analysis is drawn to the bill as amended by the Local, Federal & Veterans Affairs Subcommittee.

A bill to be entitled

An act relating to the West Palm Beach Police Pension Fund of the City of West Palm Beach, Palm Beach County; amending chapter 24981 (1947), Laws of Florida, as amended; revising definitions; revising trustee terms; clarifying powers of the board of trustees; adding provision for physical for determining preexisting conditions; adding procedure for returning withdrawn contributions upon rehire or reinstatement to employment; adding normal retirement age for retirement based on years of service; deleting obsolete retirement calculations; clarifying survivor language for normal form of benefit; adding 10-year certain benefit to optional forms; adding a death benefit provision to the DROP account; clarifying the retiree's option to elect an optional form at the time of retirement; adding an actuarial equivalent calculation for survivor benefits paid to a spouse other than the one to whom the retiree was married at the time of retirement; deleting the section actuarial assumptions; clarifying the purchase of service is limited to 5 years; providing an effective date.

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

Section 1. Subsection (2), paragraph (a) of subsection(3), paragraph (b) of subsection (5), subsection (6), paragraph (a) of subsection (8), subsection (9), paragraph (b) of subsection (13), paragraph (c) of subsection (17), and subsections (34)-(37) of section 16 of chapter 24981 (1947), Laws of Florida, as amended by chapter 2012-259, Laws of Florida, are amended, and paragraph (g) is added to subsection (3), to read:

Section 16. West Palm Beach Police Pension Fund.—

(2) Definitions.—The following words or phrases, as used in this act, shall have the following meanings, unless a different meaning is clearly indicated by the context:

(a) "Accrued benefit" means the amount of a member's pension as of a specified date determined in accordance with the terms of the pension plan, whether or not the member is eligible to access it.

(b) ~~(a)~~ "Actuarial equivalent value," "actuarial equivalence," or "single sum value" means the stated determination using an interest rate of 8.00 ~~8.25~~ percent per year and the RP-2000 Mortality Table for annuitants with future improvements in mortality projected to 2017 using Scale BB, blending 90 percent male rates and 10 percent female rates for the member and 10 percent male rates and 90 percent female rates for the beneficiary. For females, the base mortality rates include a 100 percent white collar adjustment. For males, the base mortality rates include a 90 percent blue collar adjustment

and a 10% white collar adjustment ~~1983 Group Annuity Mortality Table~~.

(c) ~~(b)~~ "Beneficiary" means any person, except a retirant, who is entitled to receive a benefit from the West Palm Beach Police Pension Fund or the West Palm Beach Police Pension and Relief Fund, as applicable.

(d) ~~(c)~~ "Board of Trustees" or "Board" means the Board of Trustees provided for in this act.

(e) ~~(d)~~ "City" means the City of West Palm Beach, Florida.

(f) ~~(e)~~ "Department" means the Police Department in the City of West Palm Beach.

(g) ~~(f)~~ "Enrolled actuary" means an actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries.

(h) ~~(g)~~ "Final average salary" means the average of the monthly salary paid a member in the 3 best years of employment. In no event shall any one year, beginning January 1, 2005, include more than 400 hours of overtime. Prior to January 1, 2005, individual years may include more than 400 hours of overtime. Effective prospectively from January 1, 2013, the overtime will be limited to 300 hours in any one year. As of the effective date of this act, for purposes of determining final average salary, any lump sum payment made to a member for retroactive pay, such amounts shall not be considered as a lump

sum but will be treated as if paid during the retroactive pay periods.

(i) ~~(h)~~ "Fund" or "Pension Fund" means the West Palm Beach Police Pension Fund or the West Palm Beach Pension and Relief Fund, as applicable.

(j) ~~(i)~~ "Member" or "participant" means any person who is included in the membership of the Fund in accordance with subsection (6).

(k) ~~(j)~~ "Pension" means a monthly amount payable from the Fund throughout the future life of a person, or for a limited period of time, as provided in this act.

(l) ~~(k)~~ "Police officer" means any person who is elected, appointed, or employed full time by the City, who is certified or required to be certified as a law enforcement officer in compliance with section 943.14, Florida Statutes, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are

defined in subsections (6) and (8) of section 943.10, Florida Statutes.

(m) ~~(l)~~ "Qualified health professional" means a person duly and regularly engaged in the practice of his or her profession who holds a professional degree from a university or college and has special professional training or skill regarding the physical or mental condition, disability, or lack thereof, upon which he or she is to present evidence to the Board.

(n) ~~(m)~~ "Qualified public depository" means any bank or savings association organized and existing under the laws of Florida and any bank or savings association organized under the laws of the United States that has its principal place of business, or a branch office, in Florida which is authorized under the laws of Florida or the United States to receive deposits in Florida; that meets all of the requirements of chapter 280, Florida Statutes; and that has been designated by the Treasurer of the State of Florida as a qualified public depository.

(o) ~~(n)~~ "Retirant" means any member who retires with a pension from the Fund.

(p) ~~(o)~~ "Retirement" means a member's withdrawal from Police Department employment as a police officer with a pension payable from the Fund.

(q) ~~(p)~~ "Salary" means the fixed monthly compensation paid to a member; compensation shall include those items as have been

included as compensation in accordance with past practice. However, the term shall not be construed to include lump sum payments for accumulated leave. On and after January 1, 2003, salary shall mean total cash remuneration paid by the City to a police officer for services rendered excluding lump sum payments for accumulated leave such as accrued vacation leave, accrued sick leave, and accrued personal leave. Effective January 1, 2005, overtime hours earned and paid in excess of 400 hours in any 26 consecutive pay periods shall be excluded from the definition of salary. Effective prospectively from January 1, 2013, overtime hours earned and paid in excess of 300 hours in any 26 consecutive pay periods shall be excluded from the definition of salary.; Prior to January 1, 2005, all overtime hours earned and paid shall be included in the definition of salary and shall not be limited by any cap. This definition of compensation shall not include off-duty employment performed for vendors other than the City of West Palm Beach per Article 30, Pension Plan and Section 5 of the collective bargaining agreement between the Palm Beach County Police Benevolent Association and the City of West Palm Beach. Beginning with salary paid after December 31, 2008, and pursuant to s. 414(u)(7) of the Internal Revenue Code, "salary" includes amounts paid by the City as differential wages to members who are absent from employment while in qualified military service.

(r) ~~(q)~~ "Service" or "service credit" means the total number of years, and fractional parts of years, of employment of any police officer, omitting intervening years, and fractional parts of years, when such police officer was not employed by the City. No member shall receive credit for years, or fractional parts of years, of service for which the member has withdrawn his or her contributions to the Fund. It is further provided that a member may voluntarily leave his or her contributions in the Fund for a period of 5 years after leaving the employ of the Department, pending the possibility of being rehired by the Department, without losing credit for the time he or she has participated actively as a police officer. Should he or she not be re-employed as a police officer with the Department within 5 years, his or her contributions shall be returned without interest. In determining the aggregate number of years of service of any member, years of service for prior police officer or military service, as well as intervening military service, may be added, provided the member meets the requirements of subsection (34) ~~(35)~~.

(s) ~~(r)~~ The masculine gender includes the feminine and words in the singular with respect to persons shall include the plural and vice versa.

(3) Board of Trustees of Police Pension Fund.—

(a) Board of Trustees created.—There is hereby created a Board of Trustees, which shall be solely responsible for

administering the West Palm Beach Police Pension Fund. The Board shall be a legal entity, with the power to bring and defend lawsuits of every kind, nature, and description and shall be independent of the City to the extent required to accomplish the intent, requirements, and responsibilities provided for in this act. The Board shall consist of five trustees, as follows:

1. Two legal residents of the City, who shall be appointed by the City. Each resident trustee shall serve as a trustee for a period of 4 ~~2~~ years, unless sooner replaced by the City, at whose pleasure he or she shall serve, and may succeed himself or herself as a trustee.

2. Two police officers, who shall be elected by a majority of the police officers who are members of the Fund. Elections shall be held under such reasonable rules and regulations as the Board shall from time to time adopt. Each member-trustee shall serve as trustee for a period of 4 ~~2~~ years, unless he or she sooner ceases to be a police officer in the employ of the Department, whereupon the members shall choose his or her successor in the same manner as the original appointment. Each member-trustee of the Fund may succeed himself or herself as a trustee.

3. A fifth trustee, who shall be chosen by a majority of the other four trustees. This fifth person's name shall be submitted to the City, which shall, as a ministerial duty, appoint such person to the Board as a fifth trustee. The fifth

person shall serve as trustee for a period of 4 ~~2~~ years, and may succeed himself or herself as a trustee.

(g) Powers of the Board of Trustees.-The duties and responsibilities of the Board shall include, but are not limited to, the following:

1. To construe the provisions of the plan and determine all questions arising thereunder.

2. To determine all questions relating to eligibility and participation.

3. To determine or have determined and certified the amount of all retirement allowances or other benefits hereunder.

4. To receive and process all applications for participation and benefits and, where necessary, conduct hearings thereon.

5. To authorize all payments whatsoever from the fund, and to notify the disbursing agent, in writing, or approve benefit payments and other expenditures arising through operation of the plan and fund.

6. To make recommendations to the city commission and union regarding changes in the provisions of the plan.

7. To review reports of and have meetings with the custodian and investment agents or advisors; to require written reports from the custodian on fund assets and transactions on a monthly basis; to require written and oral reports from the investment agents or advisors on at least an annual basis, such

reports to reflect fund investment, performance, investment recommendations, and overall review of fund investment policies.

8. To maintain a minute book containing the minutes and records of the proceedings and meetings of the Board.

9. To make uniform rules and regulations and to take action as may be necessary to carry out the provisions of the plan and all decisions of the Board made in good faith shall be final, binding, and conclusive on all parties.

10. To take such other action as the Board shall deem, in their sole and exclusive discretion, as being necessary for the efficient management of the plan.

(5) Reports; experience tables; regular interest.—

(b) Experience tables; regular interest; adoption of same.—The Board shall, from time to time, adopt such mortality and other tables of experience, and a rate or rates of interest, as required to operate the Fund on an actuarial basis~~, except as provided in subsection (34)~~.

(6) Membership.—All police officers in the employ of the Department shall be included in the membership of the Fund, and all persons who hereafter become police officers in the employ of the City shall thereupon become members of the Fund. New members to the Fund are required to undergo a physical examination for purposes of determining preexisting conditions. This physical examination shall be conducted in conjunction with the City's postoffer, preemployment physical examination. The

Board's medical director shall review the results of this physical examination and provide notice to the Board and the member of any abnormal findings of the examination. This physical examination will be used for the purposes of establishing a physical profile of the member for determining preexisting conditions and presumptive illnesses as provided for in subsections (14) and (15). After review, if further physical examination is required by the Board, such examination shall be conducted at Board expense. Except as otherwise provided in this act, should any member cease to be a police officer in the employ of the Department, he or she shall thereupon cease to be a member and his or her credited service at that time shall be forfeited. In the event such person is re-employed in the Department as a police officer, he or she shall again become a member. His or her forfeited service shall be restored to the member's credit, provided that he or she returns to the Fund the amount he or she might have withdrawn, together with regular interest from the date of withdrawal to the date of repayment. Members must begin the process of returning the withdrawn contributions within 1 year after date of rehire or the time will only be eligible for purchase within the provisions of subsection (34). Should a member have withdrawn their contributions due to a termination from employment and the member is subsequently reinstated through the grievance and arbitration process, such member must also begin the process of

returning the withdrawn contributions within 1 year after the date of reinstatement or the time will only be eligible for purchase within the provisions of subsection (34); however, a member who is reinstated through the grievance and arbitration process may repay the withdrawn contributions without interest if the repayment process is started within 1 year after the date of reinstatement. Upon the member's retirement or death, he or she shall thereupon cease to be a member.

(8) Age and service requirements for retirement.—

(a) Normal retirement.—Upon written application filed with the Board, any member may retire and receive the applicable pension provided for in paragraph (9)(a), provided that the member has attained age 50 and has at least 20 years of credited service, has attained age 55 and has at least 10 years of credited service, or has at least 25 years of continuous credited service, regardless of age. In the case of a retirement with 25 years of service, Normal Retirement Age is whatever age a member has attained when retired at 25 years of service.

(9) Retirement pension calculation.—

(a) Upon retirement eligibility as provided in subsection (8), a member shall receive a monthly pension. The pension shall be the following, as applicable:

1. For all years of service earned after October 1, 2011, the benefit is calculated using 2.68 percent of final average salary per year and fractional parts of the years of service up

to a total of 26 prospective years, plus 1 percent of the final average salary multiplied by the number of years, and fraction of a year, of credited service in excess of 26 years. This change in the multiplier was ~~is~~ due to the change in assumptions in a prior version of this special act ~~set forth in subsection (34)~~. This reduction is required by this paragraph. For years of service earned before October 1, 2011, the benefit will be calculated under the provisions of the applicable subparagraphs 2.-4. ~~2.-5.~~ For purposes of determining the 26-year limitation, the member's total number of years of credited service are used. In no event shall the benefit be less than 2 percent per year of credited service.

2. A member who has more than or equal to 12 years and 6 months of service at October 1, 1999, and who was actively employed by the Department on or after October 1, 1999, shall receive a benefit equal to ~~the greater of the following:~~

~~a.~~ three percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned from April 1, 1987, to September 30, 2011, plus 2.5 percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned prior to April 1, 1987, up to a total of 26 years, plus 1 percent of the final average salary multiplied by the number of years, and fraction of a year, of credited service which is in excess of 26 years.~~;~~

~~b. Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of credited service, not to exceed 26 years, plus 1 percent of the final average salary multiplied by the number of years, and fraction of a year, of credited service which is in excess of 26 years; or~~

~~c. The sum of the following:~~

~~(I) Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned through September 30, 1988; and~~

~~(II) Two percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned on and after October 1, 1988.~~

However, in no event shall the benefit be less than 2 percent per year of credited service. For all years of service after October 1, 2011, the benefit will be calculated in accordance with subparagraph 1.

~~3. A member who has more than 12 years and 6 months of service and who has entered the DROP on or before October 1, 1999, and who was actively employed by the Department on October 1, 1999, shall receive a benefit equal to the greater of the following:~~

~~a. Three percent of final average salary multiplied by the number of years, and fraction of a year, of credited service~~

~~earned in the 12 years and 6 months prior to entering the DROP, plus 2.5 percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned prior to that date which is 12 years and 6 months prior to entering the DROP, up to a total of 26 years, plus 1 percent of the final average salary multiplied by the number of years, and fraction of a year, of credited service which is in excess of 26 years. The one-half percent enhancement to the accrual rate shall also be applied retroactively to the date of entering the DROP, or 2 years, whichever is less, provided that the retroactive application shall include principal only and not any earnings thereon. An example of the calculation described in this sub-subparagraph is set forth in the collective bargaining agreement between the City of West Palm Beach and the Police Benevolent Association, Certified Unit No. 825, October 1, 1998-September 30, 2001;~~

~~b. Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of credited service, not to exceed 26 years, plus 1 percent of the final average salary multiplied by the number of years, and fraction of a year, of credited service which is in excess of 26 years; or~~

~~c. The sum of the following:~~

~~(I) Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned through September 30, 1988; and~~

~~(II) Two percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned on and after October 1, 1988.~~

~~However, in no event shall the benefit be less than 2 percent per year of credited service. For all years of service after October 1, 2011, the benefit will be calculated in accordance with subparagraph 1.~~

3.~~4.~~ A member who has less than 12 years and 6 months of service on October 1, 1999, and who was actively employed by the Department on or after October 1, 1999, shall receive a benefit equal to ~~the greater of the following:~~

~~a.~~ three percent of final average salary multiplied by the number of years, and fraction of a year, of credited service up to September 30, 2011, plus 1 percent of the final average salary multiplied by the number of years, and fraction of a year, of credited service which is in excess of 26 years.~~;~~

~~b. Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of credited service, not to exceed 26 years, plus 1 percent of the final average salary multiplied by the number of years, and~~

~~fraction of a year, of credited service which is in excess of 26 years; or~~

~~c. The sum of the following:~~

~~(I) Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned through September 30, 1988; and~~

~~(II) Two percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned on and after October 1, 1988.~~

However, in no event shall the benefit be less than 2 percent per year of credited service. For all years of service after October 1, 2011, the benefit will be calculated in accordance with subparagraph 1.

4.~~5.~~ A member who terminated employment, retired on a vested deferred benefit, or retired on or before October 1, 1999, shall receive a benefit equal to the greater of the following:

a. Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of credited service not to exceed 26 years, plus 1 percent of the final average salary multiplied by the number of years, and fraction of a year, of credited service which is in excess of 26 years; or

b. The sum of the following:

(I) Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned through September 30, 1988; and

(II) Two percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned on and after October 1, 1988.

~~The 3-percent benefit accrual factor for active employees in subparagraphs (a) 2., 3., and 4. is contingent on and subject to the adoption and maintenance of the assumptions set forth in subsection (34). If such assumptions are modified by legislative, judicial, or administrative agency action and the modification results in increased City contributions to the Pension Fund, the 3-percent benefit accrual factor for active employees in subparagraphs (a) 2., 3., and 4. shall be automatically decreased prospectively from the date of the action, to completely offset the increase in City contributions. However, in no event shall the benefit accrual factor in subparagraphs (a)1., 2., 3., 4., and 5. be adjusted below 2.5 percent.~~

To the extent that the benefit accrual factor is less than 3 percent for active members with less than 12 years and 6 months of service on October 1, 1999, the supplemental pension distribution calculation under subparagraph (12)(a)2. shall be

adjusted for employees who retire or enter the DROP after October 1, 1999. The adjustment shall be to decrease the minimum return of 8.25 percent needed to afford the supplemental pension distribution, where the amount of the reduction is zero if an employee has been credited with 12 years and 6 months of service or more with the 3-percent benefit accrual factor or 1.25 percent if an employee has been credited with no more than a 2.5-percent benefit accrual factor. If an employee has been credited with less than 12 years and 6 months of service at the 3-percent benefit accrual factor, then the accumulated amount over 2.5 percent for each year of service divided by one-half percent divided by 12.5 subtracted from 1 multiplied by 1.25 percent is the reduction from 8.25 percent. An example of the calculation of the minimum return for the supplemental pension distribution as herein described is set forth in the collective bargaining agreement between the City of West Palm Beach and the Police Benevolent Association, Certified Unit No. 145 and Certified Unit No. 825, October 1, 1998-September 30, 2001.

Effective October 1, 2011, the assumed investment rate of return was lowered from 8.25 percent to 8 percent, which resulted in a reduction in the benefit multiplier to 2.68 percent for all prospective years of service, up to 26 years of service in total, and 1 percent for each year of service after 26. Additionally, for any supplemental pension distributions

subsequent to October 1, 2011, the revised factors in this paragraph will be applied.

(b) Payment of benefits.—

1. First payment.—Service pensions shall be payable on the first day of each month. The first payment shall be payable the first day of the month coincident with or next following the date of retirement or death, provided the member has completed the applicable age and service requirements.

2. Last payment.—The last payment shall be the payment due next preceding the member's death, except that payments shall be continued to the designated beneficiary (or beneficiaries) if a 10-year certain benefit, a joint and survivor option, or beneficiary benefits, as applicable, are payable.

(c) Normal form of retirement income; 10-year certain benefit.—

1. Married member.—The normal form of retirement benefit for a married member or for a member with dependent children or parents shall be a pension and death benefits. The pension benefit shall provide monthly payments for the life of the member. Thereafter, death benefits shall be paid to the ~~beneficiary~~ designated survivor ~~by the member~~ as provided in subsection (17).

2. Unmarried member.—The normal form of retirement benefit for an unmarried member without dependent children or parents shall be a 10- year certain benefit. This benefit shall pay

monthly benefits for the member's lifetime. In the event the member dies after his or her retirement but before receiving retirement benefits for a period of 10 years, the same monthly benefit shall be paid to the beneficiary (or beneficiaries) as designated by the member for the balance of such 10-year period or, if no beneficiary is designated, to heirs at law, or estate of the member, as provided in section 185.162, Florida Statutes.

(d) Optional forms of retirement income.—

1.a. In the event of normal, early, or disability retirement, in lieu of the normal form of retirement income payable as specified in paragraph (c), and in lieu of the death benefits as specified in subsection (17), a member, upon written request to the Board and subject to the approval of the Board, may elect to receive a retirement income of equivalent actuarial value payable in accordance with one of the following options:

(I) Lifetime option.—A retirement income of a larger monthly amount, payable to the member for his or her lifetime only.

(II) Joint and survivor option.—A retirement income of a modified monthly amount, payable to the member during the joint lifetime of the member and a dependent joint pensioner designated by the member, and following the death of either of them, 100 percent, 75 percent, 66- 2/3 percent, or 50 percent of such monthly amounts, payable to the survivor for the lifetime of the survivor.

(III) 10-year certain option.-A retirement income of the normal form of benefit but in lieu of the survivor benefits as provided for in subsection (17), the member may elect to designate a beneficiary to receive the remainder of 120 payments, in the event that the member dies before receiving 120 payments. In the event that the member/retiree receives 120 or more payments, no benefit is ever paid to a beneficiary.

b. The member, upon electing any option of this paragraph, shall designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefit, if any, payable in the event of his or her death, and shall have the power to change such designation from time to time; but any such change shall be deemed a new election and shall be subject to approval by the Board. Such designation shall name a joint pensioner or one or more primary beneficiaries where applicable. If a member has elected an option with a joint pensioner or beneficiary and his or her retirement income benefits have commenced, he or she may thereafter change the designated joint pensioner or beneficiary only twice. Any retired member who desires to change his or her joint pensioner or beneficiary shall file with the Board a notarized notice of such change. Upon receipt of a completed change of joint pensioner form or such other notice, the Board shall adjust the member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the

benefit paid is the actuarial equivalent of the present value of the member's current benefit and there is no impact to the Plan.

c. The consent of a member's joint pensioner or beneficiary to any such change shall not be required.

d. For any other changes of beneficiaries, the Board may request such evidence of the good health of the joint pensioner who is being removed as it may require; and the amount of the retirement income payable to the member upon the designation of a new joint pensioner shall be actuarially redetermined, taking into account the ages and sex of the former joint pensioner, the new joint pensioner, and the member. Each such designation shall be made in writing on a form prepared by the Board, and, on completion, shall be filed with the Board. In the event that no designated beneficiary survives the member, such benefits as are payable in the event of the death of the member subsequent to his or her retirement shall be paid as provided in subparagraph (c)2.

2. Retirement income payments shall be made under the option elected in accordance with the provisions of this paragraph and shall be subject to the following limitations:

a. If a member dies prior to his or her normal retirement date or early retirement date, whichever first occurs, retirement benefits shall be paid in accordance with subsection (17).

b. If the designated beneficiary (or beneficiaries) or joint pensioner dies before the member's retirement, the option elected shall be canceled automatically and a retirement income of the normal form and amount shall be payable to the member upon his or her retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this paragraph or a new beneficiary is designated by the member prior to his or her retirement.

c. If a member continues in the employ of the Department after meeting the age and service requirements set forth in paragraph (8)(a) and dies prior to retirement and while an option provided for in this paragraph is in effect, monthly retirement income payments shall be paid, under the option, to a beneficiary (or beneficiaries) designated by the member in the amount or amounts computed as if the member had retired under the option on the date on which his or her death occurred.

3. No member may make any change in his or her retirement option after the date of cashing or depositing the first retirement check.

(e) Designation of beneficiary.—

1. Each member may, on a form provided for that purpose, signed and filed with the Board, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of the member's death; and each designation may be revoked by such member by signing and filing with the

Board a new designation of beneficiary form. However, after the benefits have commenced, a retirant may change his or her designation of a joint annuitant or beneficiary only twice. If the retirant desires to change his or her joint annuitant or beneficiary, he or she shall file with the Board a notarized notice of such change either by registered letter or on a form as provided by the Board. Upon receipt of a completed change of joint annuitant form or such other notice, the Board shall adjust the member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit.

2. Absence or death of beneficiary.—If a deceased member failed to name a beneficiary in the manner prescribed in subparagraph 1., or if the beneficiary (or beneficiaries) named by a deceased member predeceases the member, death benefits, if any, which may be payable under this act on behalf of such deceased member may be paid, in the discretion of the Board, to:

a. The spouse or dependent child or children of the member;

b. The dependent living parent or parents of the member; or

c. The estate of the member.

(13) Deferred Retirement Option Plan (DROP).—

(b) Amounts payable upon election to participate in DROP.—

1. Monthly retirement benefits that would have been payable had the member terminated employment with the Department and elected to receive monthly pension payments shall be paid into the DROP and credited to the retirant. Payments into the DROP shall be made monthly over the period the retirant participates in the DROP, up to a maximum of 60 months.

2. Effective October 1, 2002, DROP Participants have the option to select between two methods to credit investment earnings to their account. The method may be changed each year effective October 1; however, the method must be elected prior to October 1. The methods are:

a. Earnings using the rate of investment return earned (or lost) on Pension Fund assets as reported by the Fund's investment monitor. DROP assets are commingled with the Pension Fund assets for investment purposes.

b. A fixed rate of 8.25 percent for members who reached normal retirement age on or before October 1, 2012. Effective October 1, 2012, the fixed rate is 8 percent for members who retire or enter the DROP on or after October 1, 2012. In any fiscal year, if the amount paid in investment earnings under this paragraph creates a deficiency as compared to the gross earnings of the pension fund as a whole (using the rate determined by the Fund's investment monitor), then the rate will be reduced to 4 percent effective the next October 1 until the deficiency is satisfied. When the deficiency is satisfied, the

rate will return to 8 percent, effective the next October 1. Beginning October 1, 2012, the cumulative amounts paid in earnings for the fixed rate will be maintained in the actuarial valuation.

However, if a police officer does not terminate employment at the end of participation in the DROP, interest credits shall cease on the balance.

3. No payments shall be made from the DROP until the member terminates employment with the Department.

4. Upon termination of employment, participants in the DROP shall receive the balance of the DROP account in accordance with the following rules:

a. Members may elect to begin to receive payment upon termination of employment or defer payment of the DROP until the latest day as provided under sub-subparagraph c.

b. Payments shall be made in either:

(I) Lump sum.—The entire account balance shall be paid to the retirant upon approval of the Board of Trustees.

(II) Installments.—The account balance shall be paid out to the retirant in three equal payments paid over 3 years, the first payment to be made upon approval of the Board of Trustees.

(III) Annuity.—The account balance shall be paid out in monthly installments over the lifetime of the member or until the entire balance is exhausted. Monthly amount paid shall be

determined by the Fund's actuary in accordance with selections made by the member on a form provided by the Board of Trustees.

c. Any form of payment selected by a police officer must comply with the minimum distribution requirements of s. 401(A)(9) of the Internal Revenue Code and is subject to the requirements of subsection (30) of this act; e.g., payments must commence by age 70- 1/2.

d. If a member dies and is eligible for benefits from the DROP account, the entire balance of the DROP account shall be converted to the name of the beneficiary designated in accordance with subsection (9)(e). The entire balance shall be paid out in a lump sum to the beneficiary, at the discretion of the beneficiary. If the designated beneficiary is the surviving spouse, the account may remain with the Fund until the latest period specified under subsection (30). These DROP accounts shall not be eligible for any further DROP distributions but are eligible for earnings. If a member fails to designate a beneficiary, or if the beneficiary predeceases the member, the entire balance shall be converted, in the following order, to the name or names of:

1. The member's surviving children on a pro rata basis;

2. If no children are alive, the member's spouse;

3. If no spouse is alive, the member's surviving parents on a pro rata basis; or

4. If none are alive, the estate of the member.

The accounts which are converted to the names of the beneficiaries shall have the right to name a successor beneficiary. Any designated beneficiary, other than the surviving spouse of the member, must take a distribution of the entire share account balance by the end of 5 years after the death of the member. Installment distributions which begin in the calendar year of the member's death shall be treated as complying with this 5-year distribution requirement, even though the installments are not completed within 5 years after the member's death. ~~The beneficiary of the DROP participant who dies before payments from the DROP begin shall have the same right as the participant in accordance with subsection (17).~~

e. Costs, fees, and expenses of administration shall be debited from the individual member accounts on a proportionate basis, taking the cost, fees, and expenses of administration of the Fund as a whole, multiplied by a fraction, the numerator of which is the total assets in all individual member accounts and the denominator of which is the total assets of the Fund as a whole.

(17) Death benefits.—

(c) Death after retirement.—Upon the death of a retirant, the following applicable pensions shall be paid, subject to the provisions of subsection (18). This paragraph is not applicable if a retiree chose an optional form of benefit at the time of

retirement or if the retiree was not entitled at the time of retirement under paragraph (9)(c).÷

1. The surviving spouse of the retirant shall receive a pension of two-thirds of the retirant's pension, provided that the retirant was receiving a pension under paragraph (9)(a). Upon the surviving spouse's death, the pension shall terminate. Effective for years of service earned after the effective date of this act, if the retiree leaves a surviving spouse that he or she was not married to on the date of retirement, then the survivor benefit may be actuarially reduced to take into account the age of the substituted survivor.

2. In the event the deceased retirant does not leave a surviving spouse eligible to receive a pension, or if the surviving spouse dies and he or she leaves an unmarried child or children under age 18, each child shall receive a pension of an equal share of two-thirds of the deceased retirant's pension. Upon any child's adoption, marriage, death, or attainment of age 18, the child's pension shall terminate and it shall be apportioned to the pensions payable to the deceased retirant's remaining eligible children under age 18. In no case shall the pension payable to any such child exceed 20 percent of the deceased retirant's pension, or be less than $15 per month.

3. In the event the deceased retirant does not leave a surviving spouse or children eligible to a pension provided for in subparagraphs 1. and 2. above, and he or she leaves a parent

or parents who the Board finds are dependent upon the retirant for at least 50 percent of his, her, or their financial support, each parent shall receive a pension of an equal share of two-thirds of the deceased retirant's pension. Upon any parent's remarriage or death, his or her pension shall terminate.

4. In the event the deceased member does not leave a surviving spouse, children, or parents eligible to receive a pension, then the death benefit, if any, shall be paid to the estate of the deceased member. Any retirement income payments due after the death of a vested member may, in the discretion of the Board, be paid to the member's designated beneficiary or beneficiaries.

In any of the above cases, the Board, in its discretion, may direct that the actuarial value of the monthly benefit be paid as a lump sum.

~~(34) Actuarial assumptions.—The following actuarial assumptions shall be used for all purposes in connection with this Fund, effective October 1, 1999:~~

~~(a) The assumed investment rate of return shall be 8.25 percent. Effective October 1, 2011, the Board of Trustees changed the assumed rate of return to 8 percent.~~

~~(b) The period for amortizing current, future, and past actuarial gains or losses shall be 20 years, except that in order to smooth existing gains and losses which are expected to create volatile swings in the unfunded actuarial liability~~

~~contribution rate, the trustees may combine amortization bases to re-amortize the unfunded actuarial liability contribution rate. This re-amortization will not impact member benefits as provided by subsection (9).~~

~~The consequences of the change in assumptions in paragraphs (a) and (b) shall first take effect during the October 1, 1999-September 30, 2000, fiscal year of the City of West Palm Beach. To the extent that effective dates or legislative delays might influence the direct application to the October 1, 1999-September 30, 2000, fiscal year of the actuarial cost estimate dated March 24, 2000, there shall be a minimum contribution reserve established by the Pension Fund for the City of West Palm Beach. The reserve shall be credited with any amounts contributed to the Pension Fund by the City of West Palm Beach during the October 1, 1999-September 30, 2000, fiscal year in excess of $1,462,965. This amount has been determined by combining the contribution requirement from the September 30, 1998, actuarial valuation report dated May 7, 1999, with the subsequent actuarial cost estimate dated March 24, 2000, both of which were prepared by the Fund's actuary.~~

(34)~~(35)~~ Other police officer or military service.—

(a) Prior police officer or military service.—Unless otherwise prohibited by law, the years, or fractional parts of years, that a member served as a police officer for any other municipal, county, state, or federal law enforcement office or

any time served in the military service of the Armed Forces of the United States shall be added to the years of credited service, provided that the member contributes to the fund the sum that would have been contributed, based on the member's salary and the employee contribution rate in effect at the time that the credited service is requested, had the member been a member of this system for the years, or fractional parts of years, for which the credit is requested, plus the amount actuarially determined, such that the crediting of service does not result in any cost to the fund, plus payment of costs for all professional services rendered to the Board in connection with the purchase of years of credited service.

1. Payment by the member of the required amount may be made within 6 months after the request for credit and in one lump sum payment, or the member may buy back this time over a period equal to the length of time being purchased or 5 years, whichever is greater, at an interest rate which is equal to the Fund's actuarial assumption. A member may request to purchase some or all years of service.

2. The credit purchased under this subsection shall count for all purposes, except vesting.

3. In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipal, county, state, or federal law enforcement office, if

such prior service forms or will form the basis of a retirement benefit or pension from another retirement system or plan.

4. In the event that a member who is in the process of purchasing service suffers a disability and is awarded a benefit from the plan, the member shall not be required to complete the buyback. However, contributions made prior to the date the disability payment begins will be retained by the Fund.

5. If a member who has either completed the purchase of service or is in the process of purchasing service terminates before vesting, the member's contributions shall be refunded, including the buyback contributions.

6. A request to purchase service may be made at any time during the course of employment; however, the buyback is a one-time opportunity.

7. A member who previously served as a police officer with the City during a period of employment and for which accumulated contributions were withdrawn from the Fund may recontribute such withdrawn contributions plus interest from the date of withdrawal to the date of repayment in accordance with subsection (6).

8. A member may purchase up to 5 years of credited service total for prior police or military service.

(b) Intervening military service.—In determining the creditable service of any police officer, credit for up to 5 years of the time spent in the military service of the Armed

Forces of the United States shall be added to the years of actual service without employee contribution, if:

1. The police officer is in the active employ of the municipality prior to such service and leaves a position, other than a temporary position, for the purpose of voluntary or involuntary service in the Armed Forces of the United States.

2. The police officer is entitled to reemployment under the provisions of the federal Uniformed Services Employment and Reemployment Rights Act.

3. The police officer returns to his or her employment as a police officer of the municipality within 1 year after the date of his or her release from such active service, except that, effective January 1, 2007, members who die or become disabled while on active duty military service shall be entitled to the rights of this section even though such member was not reemployed by the City. A member who dies or becomes disabled while on active duty military service shall be treated as though he or she were reemployed the day before he or she became disabled or died, were credited with the service he or she would have been entitled to under this section, and then either died a nonduty death while employed or became disabled from a nonduty disability.

(35) ~~(36)~~ Reemployment after retirement.—

(a) Reemployment by public or private employer.—Any retiree who is retired under this Plan, except for disability

retirement as previously provided for, may be reemployed by any public or private employer, except the City, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this Plan. Reemployment by the City on or after August 1, 2008, shall be subject to the limitations set forth in this section.

(b) Reemployment after normal retirement outside Police Department.—Any retiree who is retired under normal retirement pursuant to this Plan and who is reemployed by the City after that retirement shall, upon being reemployed, continue receipt of benefits, provided the retiree is not hired into the Police Department. Upon reemployment, the retiree is eligible to participate in the plan offered to new employees of that department, and the retiree shall be deemed a new employee subject to any vesting and contribution requirements of that plan. The benefit paid under this Plan shall not be changed in any way.

(c) Reemployment after normal retirement in Police Department.—Any retiree who is retired after normal retirement pursuant to this Plan shall not be reemployed by the Police Department as a police officer or in any position that supervises police officers. The pension of a retiree who is reemployed by the Police Department as a police officer or in any position that supervises police officers shall stop until the member terminates employment. However, a retiree who is

reemployed by the Police Department neither as a police officer nor in any position that supervises police officers is eligible to participate in the plan offered to new employees of that employee classification, and the retiree shall be deemed a new employee subject to any vesting and contribution requirements of that plan. The benefit paid under this Plan shall not be changed in any way.

(d) Reemployment of terminated vested persons.—Reemployed terminated vested persons shall not be subject to the provisions of this section until such time as they begin to actually receive benefits but shall be subject to paragraph (9)(c). Upon receipt of benefits, terminated vested persons shall be treated as normal retirees for purposes of applying the provisions of this section.

(e) DROP participants.—Members or retirees who were in the deferred retirement option plan shall have the options provided for in this section for reemployment after termination of employment as if the retiree were a retiree under normal retirement.

(36) ~~(37)~~ Termination of the Plan.—Upon termination of the Plan by the City for any reason, or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in chapter 121, Florida Statutes, or upon written notice to the Board by the City that contributions under the Plan are being permanently discontinued, the rights of all

employees to benefits accrued to the date of such termination or discontinuance and the amounts credited to the employees' accounts are nonforfeitable. The Fund shall be distributed in accordance with the following procedures:

(a) The Board shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits after taking into account the expenses of such distribution. The Board shall inform the City if additional assets are required, in which event the City shall continue to financially support the Plan until all nonforfeitable benefits have been funded.

(b) The Board shall determine the method of distribution of the asset value and whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise for each police officer entitled to benefits under the Plan, as specified in paragraph (c).

(c) The Board shall distribute the asset value as of the date of termination in the manner set forth in this subsection on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under paragraph (b) involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less

than the employee's accumulated contributions to the Plan, with interest if provided by the Plan, less the value of any Plan benefits previously paid to the employee.

(d) If there is asset value remaining after the full distribution specified in paragraph (c), and after payment of any expenses incurred with such distribution, such excess shall be returned to the City, less the return to the state of the state's contributions, provided that if the excess is less than the total contributions made by the City and the state to date of termination of the Plan, such excess shall be divided proportionately to the total contributions made by the City and the state.

(e) The Board shall distribute, in accordance with the manner of distribution determined under paragraph (b), the amounts determined under paragraph (c).

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1151 Lehigh Acres Fire Control and Rescue District and Alva Fire Protection and Rescue Service District, Lee County
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee; Caldwell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N, As CS	Miller	Miller
2) Oversight, Transparency & Administration Subcommittee		Moore	Harrington
3) Government Accountability Committee			

SUMMARY ANALYSIS

The Alva Fire Protection and Rescue Service District (Alva District) and Lehigh Acres Fire Control and Rescue District (Lehigh Acres FCRD) are 2 of the 16 independent fire control districts in Lee County. Currently, an area under the Lehigh Acres FCRD extends north to State Road 80 and then to the Caloosahatchee River. This area has some development but is separated from the main developed area of the Lehigh Acres subdivision by an undeveloped area. As an Alva District fire station is much closer to this area, emergency services for the subject area are more readily dispatched from the Alva District.

The bill transfers the above described area from the Lehigh Acres FCRD to the Alva District. The bill provides for its liberal construction to act in the interest of the health, welfare, and safety of the people served by the respective districts.

The economic impact statement submitted with the bill shows an expected increase in revenues for the Alva District as a result of receiving the new lands.

The act takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Independent Special Fire Control Districts

An independent special fire control district is a type of independent special district[1] created by the Legislature for the purpose of providing fire suppression and related activities within the territorial jurisdiction of the district.[2] Chapter 191, F.S., the "Independent Special Fire Control District Act," is intended to provide standards, direction, and procedures for greater uniformity in the operation and governance of these districts, including financing authority, fiscally-responsible service delivery, and election of members to the governing boards for greater public accountability.[3] Chapter 191, F.S., controls over more specific provisions in any special act or general law of local application creating an independent fire control district's charter.[4] The statute requires every independent fire control district to be governed by a five-member board[5] and provides for:

- General powers;[6]
- Special powers;[7]
- Authority and procedures for the assessment and collection of ad valorem taxes;[8]
- Authority and procedures for the imposition, levy, and collection of non-ad valorem assessments, charges, and fees;[9] and
- Issuance of district bonds and evidences of debt.[10]

As a type of independent special district,[11] independent special fire control districts are also subject to applicable provisions of ch. 189, F.S., the "Uniform Special District Accountability Act."[12] That Act prohibits special laws or general laws of local application that:[13]

---

[1] A "special district" is a local government unit of "special purpose, as opposed to general purpose, operat[ed] within a limited boundary and created by general law, special act, local ordinance, or by rule of the Governor and Cabinet." S. 189.012(6), F.S. An "independent special district" is any special district that is not a "dependent special district," which is defined as a special district in which: the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the special district's governing body are removable at will during their unexpired terms by the governing body of a single county or municipality, **or** the district's budget is subject to the approval of the governing body of a single county or municipality. S. 189.012(3), F.S.

[2] Section 191.003(5), F.S.

[3] Section 191.002, F.S.

[4] Section 191.004, F.S. Provisions in other laws pertaining to district boundaries or geographical sub-districts for electing members to the governing board are excepted from this section. *Id.*

[5] Section 191.005(1)(a), F.S. A fire control district may continue to be governed by a three-member board if authorized by special act adopted in or after 1997.

[6] Section 191.006, F.S. (such as the power to sue and be sued in the name of the district, the power to contract, and the power of eminent domain).

[7] Section 191.008, F.S.

[8] Sections 191.006(14) and 191.009(1), F.S.

[9] Sections 191.006(11), (15), 191.009(2)-(4), and 191.011, F.S.

[10] Section 191.012, F.S.

[11] Section 191.014(1), F.S., providing that new districts are created by the Legislature pursuant to s. 189.031, F.S.

[12] Section 189.031, F.S.

[13] Article III, s. 11(a)(21), Fla. Const. (enabling the prohibition of any special law or general law of local application on a subject, if such prohibition is passed as a general law approved by three-fifths vote of the membership of each house. A general law passed in this manner may be amended or repealed by "like vote." The "Uniform Special District Accountability Act" (ch. 89-169, s. 67, Laws of Fla.) was originally passed by a three-fifths majority in both the House and the Senate.

- Create special districts which do not conform with the minimum requirements for district charters under s. 189.031(3), F.S.;[14]
- Exempt district elections from the requirements of s. 189.04, F.S.;[15]
- Exempt a district from the requirements for bond referenda under s. 189.042, F.S.;[16]
- Exempt a district from the requirements for reporting, notice, or public meetings under ss. 189.015, 189.016, 189.051, or 189.08, F.S.;[17]
- Create a district for which a statement documenting the following is not submitted to the Legislature:
  - The purpose of the proposed district;
  - The authority of the proposed district;
  - An explanation of why the district is the best alternative; and
  - A resolution or official statement from the local general-government jurisdiction where the proposed district will be located stating that the proposed district is consistent with approved local government plans and the local government does not object to creation of the district.[18]

An independent special district, as an entity created by the Legislature, only possesses the powers granted by the authorizing law.[19] Therefore, any boundary expansion must be approved by the Legislature.[20] A special district may not levy ad valorem taxes without approval by the affected voters in a referendum.[21]

Alva Fire Protection and Rescue Service District

The Alva Fire Protection and Rescue Service District (Alva District) was created in 1976 to provide fire protection and other services in an area of northeast Lee County.[22] The charter of the Alva District was recodified in 2000[23] and provides for the district to levy special assessments as well as ad valorem taxes not to exceed 2 mills annually, except as otherwise provided in ch. 191, F.S.,[24] ch. 97-340, Laws of Florida,[25] or other applicable general law.[26] The maximum millage rate authorized in general law is 3.75 mills.[27] According to a budget amendment the Alva District posted for its fiscal year ending 2015, the district levied ad valorem taxes at the rate of 3.0 mills.[28]

Lehigh Acres Fire Control and Rescue District

The Lehigh Acres Fire Control and Rescue District (Lehigh Acres FCRD) was created in 1963 to provide fire protection and related services in the Lehigh Acres subdivision lying within Lee County.[29] The charter of Lehigh Acres FCRD also was recodified in 2000[30] and provides for the district to levy

---

[14] Section 189.031(2)(a), F.S.
[15] Section 189.031(2)(b), F.S.
[16] Section 189.031(2)(c), F.S.
[17] Section 189.031(2)(d), F.S.
[18] Section 189.031(2)(e), F.S.
[19] *Bd. of Comm'rs of Jupiter Inlet Dist. v. Thibadeau*, 956 So. 2d 529, 531 (Fla. 4th DCA 2007).
[20] Section 191.014(2), F.S. ("The territorial boundaries of [an independent special fire control] district may be modified, extended, or enlarged with the approval or ratification of the Legislature.").
[21] Article VII, s. 9(b), Fla. Const.
[22] Ch. 76-413, Laws of Fla.
[23] Ch. 2000-455, Laws of Fla.
[24] Enacted as ch. 97-256, Laws of Fla.
[25] This local law standardized practices and powers for all 16 fire control districts in Lee County.
[26] Ch. 2000-455, s. 6, Laws of Fla.
[27] Section 191.009(1), F.S.
[28] At http://alvafirecontrol.webs.com/apps/blog/entries/show/24506735-budget-amendment-1-fiscal-year-end-2015 (last accessed 3/12/2017).
[29] Ch. 63-1546, Laws of Fla.
[30] Ch. 2000-406, Laws of Fla.

special assessments as well as ad valorem taxes not to exceed 3.5 mills annually except as otherwise provided by ch. 191, F.S., ch. 97-340, Laws of Florida, or other applicable general law.[31]
Lehigh Acres FCRD currently does not levy ad valorem taxes but instead imposes an annual assessment on each parcel of real property in the district, subject to certain exemptions.[32] Apparently based in part on a decline in ad valorem tax revenues from fiscal year 2013 – 2014 to fiscal year 2014 – 2015,[33] the district projected the conversion would raise an estimated $13,428,352 in assessments alone, eliminating a potential revenue shortfall of $7 million from ad valorem taxes.[34]

Current Status of Area Described in the Bill

The Alva District and Lehigh Acres FCRD are 2 of the 16 independent fire control districts in Lee County. Currently, an area under the Lehigh Acres FCRD extends north to State Road 80 and then to the Caloosahatchee River. This area has some development but is separated from the main developed area of the Lehigh Acres subdivision by an undeveloped area. As an Alva District fire station is much closer to this area, emergency services for the subject area are more readily dispatched from the Alva District.

The area described in the bill is comprised in large part of land owned by Lee County and forms part of Hickey Creek Park. That part of the area requiring fire protection and emergency response services already receives such services from the Alva District because of its location. At its meeting on January 17, 2017, the Board of Fire Commissioners for Lehigh Acres FCRD concurred that the boundary change was logical and would have a minimal effect on district revenues, and the board supported transferring the area to the Alva District.[35]

The boundaries of a fire control district may be modified, extended, or enlarged upon approval or ratification by the Legislature.[36]

Effect of Proposed Changes

The bill adjusts the boundary between the Alva District and the Lehigh Acres FCRD by removing land from the Lehigh Acres FCRD and transferring the described area to the Alva District. The bill requires its provisions to be liberally construed in the interests of the public health, welfare, and safety of the people served in the Alva District and those served in the Lehigh Acres FCRD. The bill also provides that in the event of a conflict with any other act, the provisions of the bill must control to the extent of such conflict.

B. SECTION DIRECTORY:

---

[31] Ch. 2000-406, s. 9, Laws of Fla.
[32] In 2014, the electors in the district approved a referendum for the district to cease imposing ad valorem taxes and instead begin imposing a special assessment. *See* Presentation in Support of Assessment at http://www.lehighfd.com/wp-content/uploads/2015/05/Fire-Fee-Assessment-Presentation.pdf (last accessed 3/12/2017). Prior to the conversion to special assessments the district imposed ad valorem taxes at a rate of 3.0 mills. *See* "Lehigh Acres Fire Control and Rescue District Basic Financial Statements Together with Reports of Independent Auditor, Year Ended September 30, 2015," pg. i, at http://www.lehighfd.com/wp-content/uploads/2012/04/FY-2014-2015-Audit-Report-LAFCRD.pdf (last accessed 3/12/2017).
[33] Total revenues, including grants, reported by Lehigh Acres FCRD to Dept. of Financial Services for FY 2013-2014 were $13,952,984 and for FY 2014-2015 were $12,429,195. *See* annual local government reports at https://apps.fldfs.com/LocalGov/Reports/AdHoc.aspx (last accessed 3/12/2017).
[34] *See* Presentation in Support of Assessment at http://www.lehighfd.com/wp-content/uploads/2015/05/Fire-Fee-Assessment-Presentation.pdf (last accessed 3/12/2017).
[35] Board of Commissioners Meeting Packet for January 17, 2017. Action item 2017-7 for the boundary change and area transfer to the Alva District is on pages 67-68. As of the date of this bill analysis the minutes for the January 17 meeting have not yet been approved and finalized. *See* at http://www.lehighfd.com/wp-content/uploads/2010/10/January-17-2017-Agenda-Packet.pdf (last accessed 3/12/2017).
[36] Section 191.014(2), F.S.

Section 1: Amends section 1 of section 3 of ch. 2000-406, Laws of Florida, by removing certain described lands from the Lehigh Acres Fire Control and Rescue District.

Section 2: Amends section 1 of section 1 of ch. 2000-455, Laws of Florida, by annexing certain described lands into the Alva Fire Protection and Rescue Service District.

Section 3: Requires the provisions of the act to be created by the bill to be liberally construed to carry out the purposes of the act for the benefit of the health, welfare, and safety of the people served by the Lehigh Acres Fire Control and Rescue District and by the Alva Fire Protection and Rescue Service District.

Section 4: Provides that in the event of a conflict between the act to be created by the bill and any other act, the provisions in the act created by the bill must prevail to the extent of such conflict.

Section 5: Provides the act is effective upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? January 26, 2017

WHERE? Ft. Myers News-Press in Lee County, Florida

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Special districts authorized to impose ad valorem taxes may do so only at the millage authorized by law approved by the electors in the district.[37]

Those in the area to be transferred to the Alva District may see a reduction in the annual imposition of taxes or assessments by the district on their property, as the Alva District has been levying ad valorem taxes at the rate of 3.0 mills. The current amount of non-ad valorem assessments imposed by the Lehigh Acres FCRD apparently exceeds what would be the amount of ad valorem taxes levied at 3.0 mills. In both districts, the electors previously approved maximum millage rates as provided in ch. 191, F.S., which would be up to 3.75 mills. The tax payers in the area to be transferred thus previously approved the imposition of ad valorem taxes up to a millage rate of 3.75 mills.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[37] Art. VII, s. 9(b), Fla. Const.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment corrected several technical errors in the boundary description recited in the bill and entered the correct name for the Alva District.

This analysis is drawn to the bill as amended.

A bill to be entitled

An act relating to the Lehigh Acres Fire Control and Rescue District and the Alva Fire Protection and Rescue Service District, Lee County; amending ch. 2000-406, Laws of Florida; amending the geographic boundaries of the Lehigh Acres Fire Control and Rescue District; ch. 2000-455, Laws of Florida, amending the geographic boundaries of Alva Fire Protection and Rescue Service District; providing construction; providing that the act shall take precedence over any conflicting law to the extent of such conflict; providing an effective date.

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

Section 1. Section 1 of section 3 of chapter 2000-406, Laws of Florida, is amended to read:

Section 1. Creation; Boundaries.—There is hereby created and established the Lehigh Acres Fire Control and Rescue District, hereinafter referred to as the district, which shall include the following described lands, to wit:

~~TOWNSHIP 43 SOUTH, RANGE 26 EAST~~

~~The Southeast quarter of the Northeast quarter of the Northeast quarter and Northeast quarter of the Southeast quarter of the Northeast quarter of Section 25, Township 43 South, Range 26 East.~~

~~The Northeast quarter of the Northeast quarter of the Northeast quarter in Section 25, Township 43 South, Range 26 East.~~

~~TOWNSHIP 43 SOUTH, RANGE 27 EAST~~

~~From the Southeast corner of Government Lot 5, Section 19, Township 43 South, Range 27 East, which is also the South one-quarter corner of said Section 19, go North 89°32'09" West 941.16 feet along the South boundary of said Section 19 to the point of beginning of the lands hereinafter described: From said point of beginning go North 00°33'49" West 961.01 feet to the Southerly U. S. Government easement line of the Caloosahatchee River; thence North 00°33'48" West 90.00 feet, more or less, to the actual South shore of the Caloosahatchee River; thence Southerly and Westerly along the meanders of said river to a point which lies North 00°33'48" West of a point on the South boundary of Section 19, said latter point being~~

~~623.7 feet from the point of beginning as measured along the South boundary of Section 19; thence South 00°33'48" East 50.00 feet to the Southerly U. S. Government easement line of the Caloosahatchee River; thence South 00°33'48" East 578.75 feet to the South line of Section 19; thence South 89°32'09" East along the South line of Section 19 to the point of beginning.~~

~~West half of: Beginning at the Northwest corner of Section 30, Township 43 South, Range 27 East; thence running South 654 feet to center of State Road No. 25 (now known as State Road No. 80) thence Southerly 82°15'00" East 3,342 feet; thence Southerly 84°15'00" East 694.00 feet; thence North 1,239 feet to the Northwest corner of the Northeast quarter of the Northeast quarter of said Section 30; thence West to the point of beginning.~~

~~Less: The East 35.8 feet of the parcel in Section 19, Township 43 South, Range 27 East, and the West 118.4 feet of the parcel in Section 30, Township 43 South, Range 27 East, said parcels as described in Deed recorded in Official Record Book 95, page 135-136, of the public records of Lee County, Florida.~~

~~A tract or parcel of land lying in the West half of Section 30, Township 43 South, Range 27 East, in Lee County, Florida, described as follows: From a concrete monument marking the Southeast corner of Lot 5 of Unit No. 2 Pine Creek Acres, as recorded in Plat Book 10 at page 74 of the public records of Lee County, Run South 00°56'00" East parallel to and 2,418.00 feet, measured on a perpendicular, from the West line of said Section 30 for 2,531.80 feet to the point of beginning, said point of beginning being 710.00 feet, measured on a perpendicular from the center line of the former Seaboard Airline Railroad, from said point of beginning run North 00°56'00" West for 468.7 feet; thence run West parallel to said center line for 678.0 feet more or less to the waters of Hickey's Creek; thence run Southerly and Easterly along the meanders of said creek to an intersection with a line parallel to and 710.00 feet, measured on a perpendicular, from said center line of said railroad; thence run East on said parallel line for 567.00 feet more or less to a point of beginning.~~

~~The following described lands in the West half of Section 30, Township 43 South, Range 27 East: From~~

~~concrete monument marking the Southeast corner of Lot 5, Unit 2, Pine Creek Acres, according to plat thereof as recorded in Plat Book 10 at page 74, public records of Lee County, Florida, run West along the South line of said Lot 5 to the Southwest corner of said lot; thence North along the West line of said Lot 5 to the South line of Pine Boulevard, as shown on aforesaid plat of Pine Creek Acres; thence Northwesterly along the South line of said Pine Boulevard to a concrete monument marking the Northeast corner of Lot 92 of said Unit 2, Pine Creek Acres; thence Southerly along the East line of said Pine Creek Acres Unit 2 to the center of Hickey's Creek; thence Southeasterly following the center line of said Hickey's Creek to a point which is 1,178.7 feet North of the center line of the former SAL Railway and said point being the Northwest corner of lands conveyed to Paul W. Grubbs and wife, Naomi G. Grubbs, by deed recorded in Deed Book 274 at page 463, public records of Lee County, Florida; thence East parallel to the center line of SAL Railway 678.00 feet, more or less, to a point which is 2,418.00 feet East, measured on a perpendicular from the West line of said Section 30; thence North 00°56'00" West 2,063.10 feet to the point of beginning.~~

~~The Northeast quarter of the Northeast quarter of the Northeast quarter, and the Southwest quarter of the Northwest quarter of the Northeast quarter of Section 31, Township 43 South, Range 27 East;~~

~~Begin at the Southwest corner of Section 30, Township 43 South, Range 27 East, for a point of beginning and run North 00°53'00" West, along the West line of said Section 30 to its intersection with the centerline of Hickey's Creek; thence Easterly and Southerly along the centerline of said Creek to its intersection with the Northerly right of way line of the old SAL Railroad (100 foot right of way); thence Easterly along said Northerly right of way line, 660.00 feet; thence Northerly 660.00 feet; thence Westerly and parallel to the said Railroad right of way line to the intersection with a line parallel to and 2,418.00 feet from the West line of the Northwest quarter of the said Section 30; thence North 00°56'00" West along the said line parallel to the West line of the Northwest quarter Section 30 to a point that is South 00°56'00" East, 223.86 feet from the Southerly right of way line of State Road 80; thence North 89°35'20" East, 166.20 feet; thence North 00°24'40" West, 203.00 feet to the**

~~Southerly right-of-way line of said State Road 80; thence South 82°54'00" East, along said right-of-way line 137.61 feet; thence South 00°24'40" East, 237.58 feet; thence North 89°35'20" East, 209.19 feet; thence South 00°24'40" East, 918.16 feet; thence North 89°35'20" East, 420.00 feet; thence North 00°24'40" West, 1,069.39 feet to the Southerly right-of-way line of State Road 80; thence Southeasterly along the arc of a curve to the right, having a radius of 17,113.74 feet and a delta angle of 01°46'00"; an arc distance of 188.21 feet to the end of said curve; thence continue along said right-of-way line South 81°08'00" East, 456.59 feet to its intersection with the East line of the Northwest quarter of the Northeast quarter of said Section 30; thence South 00°24'40" East along the East line of the West one-half of the Northeast quarter of said Section 30 to a point 129.00 feet South 00°24'40" East from the Northwest corner of the Southeast quarter of the Northeast quarter; thence South 89°41'55" East, and parallel to the North line of the said Southeast quarter of the Northeast quarter of said Section 30, 337.00 feet; thence North 00°24'40" West to the right of way line of State Road 80; thence South 81°08'00" East along said right of way line to its intersection with the East line of**

~~said Section 30; thence South 00°08'33" East, along the East line of said Section 30 to the Southeast corner of the Northeast quarter; thence continue South 00°32'10" East, 2,643.68 feet to the Southeast corner of said Section; thence South 89°58'04" West, along the South line of Section 30, 2,637.54 feet to the Southwest corner of the Southeast quarter; thence continue North 89°55'20" West, 2,643.03 feet to the Southwest corner of said Section 30 and the point of beginning, less a strip of land 100.00 feet wide and lying in the South one-half of said Section 30, and being the old SAL Railroad right-of-way, less the West 200.00 feet of said Section 30 lying South of Hickey's Creek, plus the following described parcel; in Section 30, Township 43 South, Range 27 East, begin at the intersection of the centerline of Hickey's Creek with the North line of SAL Railroad right-of-way; thence Easterly, 660.00 feet along the North line of said right of way; thence Northerly 660.00 feet; thence Westerly and parallel to the said Railroad right of way line to the intersection with a line parallel to and 2,418.00 feet from the West line of the Northwest quarter of said Section 30; thence South 00°56'00" East, along said line parallel to the West line of the Northwest quarter of Section 30 to its intersection~~

~~with the centerline of Hickey's Creek; thence Southeasterly along said centerline to the Point of Beginning.~~

~~Lots 9, 10, 11, 12, 13, 14, 15, 16, 17, 29, 30, 33, 34 35, 36, 39, and 40, Unit No. 1, Pine Creek Acres, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 10, at page 13.~~

~~Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 29, 30, 31, 32, 33 and 34, Unit No. 2, Pine Creek Acres, according to the map or plat thereof on file and recorded in the office of the Clerk of Circuit Court of Lee County, Florida, in Plat Book 10, at page 74.~~

~~Beginning at the point of intersection of the south right of way line of State Road No. 80 (Palm Beach Boulevard) with the West line of said Section 30 run South 82°54'00" East along said South right of way line (75 feet from the center line) for 450.2 feet to the northwesterly corner of Lot 9 of said Unit No. 1; thence run South 07°06'00" West along the westerly~~

~~line of said Lot 9 for 200.00 feet; thence run South 82°54'00" East along the southerly line of Lots 9 and 10 for 100 feet; thence run South 07°06'00" West along the westerly line of Lot 11 for 200.00 feet to the Southwest corner of said lot; thence run South 57°38'00" West for 60.73 feet on a straight line to an intersection with a line 421.8 feet easterly from and parallel with the West line of said Section 30, said point of intersection being the Northeast corner of Lot 92 of Unit No. 2, Pine Creek Acres; thence run South 00°56'00" East along said parallel line and the East boundary of said Unit No. 2 for 997.36 feet; thence run South 85°36'00" East for 29.13 feet; thence run South 04°24'00" West for 310.00 feet more or less to the waters of Hickey's Creek; thence run westerly along said creek to a point on the West line of said Section 30; thence run North 00°56'00" West along said section line for 1,902 feet more or less to the point of beginning.~~

~~Beginning at the intersection of the centerline of Hickey's Creek and a Southerly extension of the East boundary of the property conveyed to Paul W. and Naomi G. Grubbs by deed recorded in Deed Book 274, at page 463, public records of Lee County, Florida, thence~~

~~North and West along the centerline of Hickey's Creek to the intersection of said centerline with the South boundary of the property conveyed to the Grubbs, thence East along said South boundary to the Southeast corner of the Grubbs property, thence South to the point of beginning, said parcel being in Section 30, Township 30 South, Range 27 East.~~

~~That parcel known as the old Seaboard Airline Railroad right of way in Section 30, Township 43 South, Range 27 East, said right of way being 100.00 feet wide and having a centerline parallel to an 599.26 feet from the South boundary of said section.~~

TOWNSHIP 45 SOUTH, RANGE 27 EAST

Commencing at the Northeast corner Government Lot 4 of Section 3, Township 45 ~~25~~ South, Range 27 East in Lee County, Florida, thence run South 631.60 feet to the point of beginning of the tract herein described, thence continue South 315.90 feet, thence West 660.00 feet, thence run North 315.90 feet, thence East 660.00 feet to the point of beginning.

Commencing at the Northwest corner Government Lot 4 of Section 3, Township 45 South, Range 27 East in Lee County, Florida, thence run South 631.60 feet to the point of beginning of tract hereby described, thence continue East 660.00 feet, thence South 315.90 feet, thence West 660.00 feet, thence North 315.90 feet to the point of beginning.

Starting at the Northeast corner of Government Lot 4 of Section 3, Township 45 South, Range 27 East, in Lee County, Florida, thence run South 157.9 feet to the point of beginning of the tract herein described, thence continue South 315.80 feet, thence West 330.00 feet, thence North 315.80 feet, thence East 330.00 feet to the point of beginning.

~~West half of Southwest quarter of Section 31.~~

~~The Southwest quarter of the Northeast quarter, the Northwest quarter, the East half of the Southwest quarter and the West half of the Southeast quarter, the Southeast quarter of the Southeast quarter of Section 31.~~

TOWNSHIP 44 SOUTH, RANGE 26 EAST

Lots 1 and 3, Block 38, and also that tract known as "E" of that certain subdivision known as BUCKINGHAM PARK recorded in Plat Book 9 at pages 99-101, public records of Lee County, Florida, said land all being in Section 21, Township 44 South, Range 26 East, Lee County, Florida. Subject, however, to an easement for a drainage canal recorded in Misc. Book 32 at page 335 of the public records of Lee County, Florida.

All that part of Section 22, Township 44 South, Range 26 East, lying South of Homestead Road as shown on Plat of Buckingham Park Entrance Roads recorded in Plat Book 9 at pages 97 and 98 of the public records of Lee County, and lying South and East of Block 37, Buckingham Park South section according to plat recorded in Public Records, Plat Book 9, pages 99 to 101, inclusive, subject, however, to an easement for drainage canal recorded in Misc. Book 32, at page 335 of said public records.

1. All that part of the East Half of Section 20, Township 44 South, Range 26 East, Lee County, Florida, lying South of South right of way of Buckingham Road, less and except that tract or parcel lying Northeast

of the center line of the existing drainage canal, also

2. That part of Section 21, Township 44 South, Range 26 East, Lee County, Florida, Southwesterly of the center line of the existing drainage canal, also

3. The Northeast quarter of Section 29, Township 44 South, Range 26 East, Lee County, Florida, less the Southerly 100 feet thereof,

All of the above containing 412.50 acres, more or less, together with all improvements located thereon.

Parcel D and Lot 28, and the Northerly 40 feet of Lot 29, Block 39 Buckingham Park, according to Plat Book 9, pages 99-101, of the public records of Lee County, Florida, together with that portion of the East half of Section 20, Township 44 South, Range 26 East lying South of right of way of Buckingham Road and Northeast of the center line of the existing drainage canal, containing 129.30 acres, more or less,

Tract B and Lots 8-A, 9 and 16, Block 36, Buckingham Park, according to Plat Book 9, pages 92 and 93, of

the public records of Lee County, Florida, containing 214.29 acres, more or less,

Lot 3, Block 40, Buckingham Park Subdivision, South Section, as shown in Plat Book 9, pages 99 to 101, inclusive, of the public records of Lee County, Florida containing 1.8 acres, more or less,

Lot 4, Block 40, Buckingham Park Subdivision, South Section, as shown in Plat Book 9, pages 99 to 101, inclusive, of the public records of Lee County, Florida, containing 1.5 acres, more or less,

Lot 5, Block 40, Buckingham Park Subdivision, South Section, as shown in Plat Book 9, pages 99 to 101, inclusive, of the public records of Lee County, Florida, containing 1.5 acres, more or less, together with all improvements located thereon.

Lot 6, Block 40, Buckingham Park Subdivision, South Section, as shown in Plat Book 9, pages 99 to 101, inclusive, of the public records of Lee County, Florida, containing 1.55 acres, more or less,

Lot 7, Block 40, Buckingham Park Subdivision, South Section as shown in Plat Book 9, pages 99 to 101, inclusive, of the public records of Lee County, Florida, containing 1.55 acres, more or less,

Lot 8, Block 40, Buckingham Park Subdivision, South Section, as shown in Plat Book 9, pages 99 to 101, inclusive, of the public records of Lee County, Florida, containing 1.55 acres, more or less.

Lot 9, Block 40, Buckingham Park Subdivision, South Section, as shown in Plat Book 9, pages 99 to 101, inclusive, of the public records of Lee County, Florida, containing 1.53 acres, more or less, together with all improvements thereon,

Lot 10, Block 40, Buckingham Park Subdivision, South Section, as shown in Plat Book 9, pages 99 to 101, inclusive, of the public records of Lee County, Florida containing 1.55 acres, more or less.

The Northwest quarter of Section 29, the Northeast quarter of Section 30, and that part of the East half of Section 19, and the West half of Section 20, lying South of Buckingham Road, all in Township 44 South,

Range 26 East, Lee County, Florida containing 664.09 acres, more or less.

West half of Section 23, containing 324.82 acres, more or less.

Northwest quarter of Section 26, containing 161.22 acres, more or less.

North half of Section 27, containing 325.56 acres, more or less.

North half of Section 28, east of Buckingham Government Road and the South 100 feet of the North half of Section 28 West of Buckingham County Road, containing 88.74 acres, more or less.

South 100 feet of the North half of Section 29, containing 12.12 acres, more or less.

The South half and the South 100 feet of the North half of Section 30, containing 319.74 acres, more or less.

All of Section 31, North of Highway 82, containing 393.58 acres, more or less.

All of Section 32, containing 637.87 acres, more or less.

All of Section 33, lying West of Buckingham County Road, containing 508.88 acres, more or less.

All of Sections 1 and 2; the Northwest quarter of Southeast quarter of Section 10; all of Sections 11, 12 and 13; the East half of Section 14 and 23; all of Sections 24 and 25; the Northeast quarter and the South half of Section 26; the South half of Sections 27, 28 and 29; that part lying East of the R/W of existing U. S. Government road in Section 33; and all of Section 34, 35 and 36.

TOWNSHIP 44 SOUTH, RANGE 27 EAST

West three-eighths of Northwest quarter of Section 9.

Northwest quarter of Section 5.

South half of Southwest quarter of Section 4.

West half of Northwest quarter and Southeast quarter of Northwest quarter and Southwest quarter of Northeast quarter of Section 7.

The North half of the Northeast quarter of the Northeast quarter of the Northwest quarter and the Southwest quarter of Section 31.

All the above containing 740.00 acres more or less.

TOWNSHIP 44 SOUTH, RANGE 28 EAST

The North half of the Southwest quarter of Section 18, Township 44 South, Range 28 East, and the Northwest quarter of Section 19, Township 44 South, Range 28 East, less the right of way of Hendry Canal in both sections.

TOWNSHIP 45 SOUTH, RANGE 27 EAST

The North half of the Northeast quarter of the Northeast quarter of the Southeast quarter of Section 4, Township 45 South, Range 27 East.

The Northeast quarter of the Northeast quarter of the Northwest quarter in Section 6, Township 45 South, Range 27 East.

The Northwest quarter of the Northwest quarter; and the South half of the Northeast quarter of the Northwest quarter of Section 6, Township 45 South, Range 27 East.

The North half of the Northwest quarter of the Northwest quarter of the Northeast quarter of Section 6, Township 45 South, Range 27 East.

The East half of the Northeast quarter of Section 8, Township 45 South, Range 27 East.

All of Sections 23 and 26 and all of Section 35 lying North of a line 100.00 feet North of and parallel to the survey line of State Road 82 in Township 45 South, Range 27 East.

All of Section 3 except the West half of the Northwest quarter; all of Sections 10, 15 and 22; that part of Sections 27 and 34 lying North of State Highway 82.

The South half of the South half of the Northwest quarter of the Northeast quarter of Section 4.

The East half of the Northwest quarter; the Northwest quarter of the Northwest quarter; the Northwest quarter of the Southwest quarter; the East half of the Northeast quarter of the Southwest quarter; the Southwest quarter of the Northeast quarter of the Southwest quarter; the East half of the Northeast quarter; the Southwest of the Northeast quarter all in Section 4.

The Northwest quarter of the Northeast quarter of Section 4, Less the South half of the South half of the Northwest quarter of the Northeast quarter.

The Northwest quarter of the Northeast quarter of the Northwest quarter of Section 6.

The Northeast quarter of the Southwest quarter; the East half of the Northwest quarter of the Southwest quarter; and the South half of the Northwest quarter, excepting therefrom the following described parcel: Beginning at the Southwest corner of Government Lot 5, thence running North 466.7 feet to a point; thence

East 466.7 feet to a point; Thence South 466.7 feet to a point; thence West 466.7 feet to the point of beginning, all in Section 6.

The North half of the Northeast quarter of the Southwest quarter of the Northeast quarter of Section 6.

The North half of the Southwest quarter of the Northwest quarter of the Northeast quarter of Section 6.

All of Sections 1, 12, 13, 24 and 25; and all of Section 36, except that portion thereof constituting the right-of-way for State Road 82.

The Southeast quarter of the Northeast quarter and the Southeast quarter of Section 9; all of Sections 16 and 21; and all of Sections 28 and 29 lying North of State Road 82.

All of the above containing 9,193.87 acres more or less.

TOWNSHIP 45 SOUTH, RANGE 26 EAST

All of Section 4 North of Highway 82, and West of Buckingham County Road, containing 520.04 acres, more or less.

All of Section 5, North of Highway 82, containing 318.83 acres, more or less.

All of Section 6 North of Highway 82, containing 3.92 acres, more or less.

All of Section 9 North of Highway 82, and west of Buckingham County Road, containing 25.86 acres, more or less.

All of Sections 1, 2 and 3; that part lying East of R/W of existing U. S. Government road in Section 4; that part lying East of R/W of the existing U. S. Government road and North of State Road #82 in Section 9; that part lying North of State Road #82 in Sections 10 and 11; all except the R/W of the County Road in Section 12; all that part lying North of the State Road #82 less the R/W of the County Road in Section 13; and all that part lying North of State Road #82 in Section 14.

TOWNSHIP 44 SOUTH, RANGE 27 EAST

The Southwest quarter of Section 2, containing 159.67 acres, more or less.

The North 854 feet of the East 466 feet of the Southeast quarter of the Northeast quarter of Section 7, containing 9.14 acres, more or less.

The Northeast quarter of the Southwest quarter of the Southeast quarter of Section 10, containing 10 acres, more or less.

South half of Northwest quarter and South quarter of Northeast quarter and Southeast quarter of Section 31, containing 320 acres, more or less.

The Northwest quarter of the Northeast quarter and the East five-eighths of the Northwest quarter of Section 9, containing 140 acres, more or less.

The South half of the North half of Section 1, containing 160 acres, more or less.

The Northwest quarter of the Northwest quarter of Section 31, containing 40 acres, more or less.

The South half and the North half of the North half of Section 1; the East half and the East half of the Northwest quarter and the Southwest quarter of the Northwest quarter of Section 2; Southeast quarter and the Southwest quarter and the West half of the Northwest quarter of Section 3; all of Section 4 except the South half of the Southwest quarter; the East half and the Southwest quarter of Section 5; all of Section 6; the South half and the North half of the Northeast quarter and the Northeast quarter of the Northwest quarter of Section 7; and the South half and the Northwest quarter of the Northwest quarter of Section 8; South half and East half of the Northeast quarter of Section 9; the West half and the East half less Northeast quarter of the Southwest quarter of the Southeast quarter of Section 10; and all of Sections 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35 and 36.

TOWNSHIP 45 SOUTH, RANGE 27 EAST

The West half of the Northwest quarter of the Southwest quarter and the Southeast quarter of the Southwest quarter and the Southeast quarter of Section 6, containing 220.00 acres, more or less.

East half and Southwest quarter and the Southeast quarter of Northwest quarter of Section 7, containing 520 acres, more or less.

West half and the West half of the Northeast quarter and the Northwest quarter of the Southeast quarter of Section 8, containing 440 acres, more or less.

All of Section 2, containing 640 acres, more or less.

All of Section 11, containing 640 acres, more or less.

All of Section 14, containing 640 acres, more or less.

The Southeast quarter of the Northwest quarter and the East three-quarters of the North half of the Southwest quarter and the North half of the Southwest quarter, of the Southwest quarter, and the East three-quarters of the South quarter of the Southwest quarter of the Southwest quarter, and the West half of the Southwest

quarter of the Southwest quarter of the Southwest quarter, and the Northwest quarter of the Northwest quarter and the Northeast quarter of the Northwest quarter and the Southwest quarter of the Northwest quarter of Section 5; and the East half of the Northeast quarter of Section 6.

TOWNSHIP 43 SOUTH, RANGE 27 EAST

The Northeast quarter of the Northeast quarter and the Southwest quarter of the Northeast quarter and the Southeast quarter of the Southeast quarter of the Northeast quarter, of Section 36, containing 90 acres, more or less.

The Southeast quarter, and the West quarter of the Southeast quarter of the Northeast quarter, and the Northeast quarter of the Southeast quarter of the Northeast quarter of Section 36.

TOWNSHIP 44 SOUTH, RANGE 26 EAST

All of Section 3 Township 44 South, Range 26 East, less the South 25 feet thereof and less the North 5 feet of the South 30 feet of the East 3965.10 feet.

TOWNSHIP 44 SOUTH, RANGE 27 EAST

A parcel of land in Sections 7 and 8, Township 44 South, Range 27 East as described: The Southeast quarter of the Northeast quarter less the North 854 feet (N-854') of the East 466 feet (E-466') of the Southeast quarter of the Northeast quarter all lying in Section 7, and the Northeast quarter, and the South half of the Northwest quarter and the Northeast quarter of the Northwest quarter all lying in Section 8. The Southwest quarter of the Northeast quarter of Section 9.

A parcel of land in Section 31, Township 44 South, Range 27 East as described: The north half (N 1/2) of the Northeast quarter (NE 1/4), and the Northeast quarter (NE 1/4) of the Northwest quarter (NW 1/4), and the south half (S 1/2) of the Northeast quarter (NE 1/4) less the south quarter (S 1/4) of the northeast quarter (NE 1/4) of Section 31.

TOWNSHIP 45 SOUTH, RANGE 27 EAST

The Northwest quarter of the Northeast quarter of the Southwest quarter of Section 4, Township 45 South, Range 27 East.

The Northwest quarter of the southeast quarter section 4, Township 45 South, Range 27 East.

The Southwest quarter of the Northwest quarter, and the Southeast quarter of the Southwest quarter, and the Southwest quarter of the Southeast quarter, all of Section 4, Township 45 South, Range 27 East.

The West half of the Northwest quarter of the Southwest quarter of Section 5, Township 45 South, Range 27 East less the Westerly 25 feet thereof.

The West half of the Northeast quarter of Section 5.

The southwest quarter of the southwest quarter of Section 6, Township 45 South, Range 27 East.

The North half of the Northwest quarter and the Southwest quarter of the Northwest quarter of section 7, Township 45 South, Range 27 East.

The West half of the Northeast quarter of Section 9, Township 45 South, Range 27 East.

All of Section 17, Township 45 South, Range 27 East.

All of Section 18 less the Westerly 25 feet North of State Road No. 82, and less the 200 foot right-of-way for State Road No. 82 in Section 18.

All of Section 19 less the following: Beginning at the Northeast corner of Section 19; thence South 00°-39'-42" East a distance of 2643.48 feet; thence South 89°-47'-5811" West a distance of 1479.38 feet; thence North 00°-45'-2" West a distance of 2243.18 feet; to the Northerly right-of-way line of State Road No. 82; thence along the same North 64°-11'-45" West a distance of 225.74 feet; thence North 49°-25'-17" East a distance of 446.04 feet to the North line of Section 19, thence North 89°-49'-27" East along said section line, a distance of 1327.50 feet to the Point of Beginning, and the 200 foot right-of-way for State Road No. 82 in Section 19.

All of Section 20 less a strip of land 227.46 feet in width along the Westerly line of Section 20, North of

State Road No. 82 and the 200 foot right-of-way for State Road No. 82 in Section 20 and less the following: beginning at a Point in the Southerly line of Section 20 and the Westerly right-of-way of State Road No. 82; thence South 89°-34'-53" West a distance of 1000 feet; thence North 32°-18'-43" East, a distance of 1081.37 feet to State Road No. 82; thence along the same South 24°-57'-27" East a distance of 1000 feet to the Point of Beginning.

A parcel of land in Section 6, Township 45 South, Range 27 East, as described: Beginning at the Southwest corner of Government Lot 5, thence running North 466.7 feet to a point; thence East 466.7 feet to a point; thence South 466.7 feet to a point; thence West 466.7 feet to the Point of Beginning.

A parcel of land in Section 6, Township 45 South, Range 27 East, as described: The West half (W 1/2) of the Northeast quarter (NE 1/4) less the following: the North half (N 1/2) of the Northwest quarter (NW 1/4) of the Northwest quarter (NW 1/4) of the Northeast quarter (NE 1/4); and the North half (N 1/2) of the Northeast quarter (NE 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4); and the

North half (N 1/2) of the Southwest quarter (S W 1/4) of the Northwest quarter (NW 1/4) of the Northeast quarter (NE 1/4).

A parcel of land in Section 3, Township 45 South, Range 27 East, as described: The West half (W 1/2) of the Northwest quarter (NW 1/4) less the following described parcels: Commencing at the Northeast (NE) corner of Government lot 4 of Section 3, Township 45 South, Range 27 East; thence run South 631.6 feet to the Point of Beginning; thence West 1,320.0 feet; thence South 315.9 feet; thence East 1,320.0 feet; thence North 315.9 feet to the Point of Beginning; and commencing at the Northeast (NE) corner of Government Lot 4 of Section 3, Township 45 South, Range 27 East; thence run South 157.9 feet to the Point of Beginning; thence continue South 315.8 feet; thence West 330.0 feet; thence North 315.8 feet; thence East 330.0 feet to the Point of Beginning.

A parcel of land in Sections 19 and 20, Township 45 South, Range 27 East as described: Beginning at the Northeast (NE) corner of Section 19; thence South 00°-39'-42" East a distance of 2643.48 feet; thence South 89°-47'-58" West a distance of 1479.38 feet; thence

North 00°-45'-02" West a distance of 2243.18 feet to the Northerly right-of-way line of State Road No. 82; thence along the same North 64°-11'-45" West a distance of 225.74 feet; thence North 49°-25'-17" East a distance of 446.04 feet to the North line of Section 19; thence North 89°-49'-27" East along said Section line a distance of 1327.50 feet to the Point of Beginning; less the 200 foot right-of-way for State Road No. 82, all lying in section 19, Township 45 South, Range 27 East; and a strip of land 227.46 feet in width along the Westerly line of Section 20, North of State Road No. 82.

A parcel of land in Section 20, Township 45 South, Range 27 East as described: Beginning at a Point in the Southerly line of Section 20 and the Westerly right-of-way of State Road No. 82; thence South 89°-34'-53" West a distance of 1000.0 feet; thence North 32°-18'-43" East, a distance of 1081.37 feet to State Road No. 82; thence along the same South 24°-57'-27" East a distance of 1000.0 feet to the Point of Beginning.

A parcel of land in Section 4 and 9, Township 45 South, Range 27 East as described: The East half of

the Southeast quarter less the North half of the Northeast quarter of the Northeast quarter of the Southeast quarter lying in Section 4; and the Northeast quarter of the Northeast quarter lying in Section 9.

A parcel of land in Section 5, Township 45 South, Range 27 East as described: The East half of the northeast quarter of Section 5.

A parcel of land in Section 5, Township 45 South, Range 27 East as described: The East three-quarters (E 3/4) of the South half (S 1/2) of the Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) less the East three quarters (E 3/4) of the South quarter (S 1/4) of the southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of Section 5.

A parcel of land in Section 36, Township 43 South, Range 27 East as described: The West half (W 1/2) of the Southeast quarter (SE 1/4) of the Northeast quarter (NE 1/4) less the West quarter (1/4) of the Southeast quarter (SE 1/4) of the Northeast quarter (NE 1/4) of Section 36.

The Southwest quarter of the Southwest quarter of Section 4, Township 45 South, Range 27 East.

The Southeast quarter of the Southwest quarter of Section 5, Township 45 South, Range 27 East.

The Northwest quarter and East half of the Southwest quarter of Section 9, Township 45 South, Range 27 East.

The East half of the Southeast quarter and the Southwest quarter of the Southeast quarter of Section 8, Township 45 South, Range 27 East.

The West half of the Southwest quarter of Section 9, Township 45 South, Range 27 East.

The following lands south of State Road 82:

In TOWNSHIP 45 SOUTH, RANGE 27 EAST:

All of Sections 27, 28, 29, 30, 31, 32, 33, 34, 35, 36.

In TOWNSHIP 46 SOUTH, RANGE 27 EAST:

All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18.

In TOWNSHIP 45 SOUTH, RANGE 26 EAST:

All of Sections 4, 9, 10, 11, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 32, 33, 34, 35, 36.

Section 2. Section 1 of section 3 of chapter 2000-455, Laws of Florida, is amended to read:

Section 1. Creation.—There is hereby made, created and established the Alva Fire Protection and Rescue Service District, an independent special district, hereinafter referred to as the district, through the codification and reenactment of the district's several legislative enactments, which shall include the following described lands:

In Township 43 South, Range 27 East, all of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 and that portion of Section ~~Sections 30, 31 and~~ 36 that does not lie in the Lehigh Acres Fire Control and Rescue District, and in Township 43 South, Range 26 East all of Sections 1, 2,

3, 10, 11, 12, 13, 14, 15, and that portion of Sections 22 and 23 lying North of the Caloosahatchee River and that portion of Section 24 lying North of the Caloosahatchee River or lying South of the Caloosahatchee River and East of Hickeys Creek, and that portion of Section 25 lying North and East of Hickeys Creek, and that portion of the Southeast quarter of the Northeast quarter of the Northeast quarter of Section 25 lying south of Hickeys Creek. ~~and~~ Any portion of Township 44 South, Range 27 East contiguous to the South Township line of Township 43 South that does not lie in the Lehigh Acres Fire Control and Rescue District. ~~All the above is less all properties within the Lehigh Acres Fire Control and Rescue District.~~

The above description includes the following described parcels formerly in Lehigh Acres Fire Control and Rescue District:

TOWNSHIP 43 SOUTH, RANGE 26 EAST

The Southeast quarter of the Northeast quarter of the Northeast quarter and Northeast quarter of the

Southeast quarter of the Northeast quarter of Section 25, Township 43 South, Range 26 East.

The Northeast quarter of the Northeast quarter of the Northeast quarter in Section 25, Township 43 South, Range 26 East.

TOWNSHIP 43 SOUTH, RANGE 27 EAST

From the Southeast corner of Government Lot 5, Section 19, Township 43 South, Range 27 East, which is also the South one quarter corner of said Section 19, go North 89°32'09" West 941.16 feet along the South boundary of said Section 19 to the point of beginning of the lands hereinafter described: From said point of beginning go North 00°33'49" West 961.01 feet to the Southerly U. S. Government easement line of the Caloosahatchee River: thence North 00°33'48" West 90.00 feet, more or less, to the actual South shore of the Caloosahatchee River: thence Southerly and Westerly along the meanders of said river to a point which lies North 00°33'48" West of a point on the South boundary of Section 19, said latter point being 623.7 feet from the point of beginning as measured along the South boundary of Section 19: thence South

00°33'48" East 50.00 feet to the Southerly U. S. Government easement line of the Caloosahatchee River: thence South 00°33'48" East 578.75 feet to the South line of Section 19: thence South 89°32'09" East along the South line of Section 19 to the point of beginning.

West half of: Beginning at the Northwest corner of Section 30, Township 43 South, Range 27 East: thence running South 654 feet to center of State Road No. 25 (now known as State Road No. 80) thence Southerly 82°15'00" East 3,342 feet: thence Southerly 84°15'00" East 694.00 feet: thence North 1,239 feet to the Northwest corner of the Northeast quarter of the Northeast quarter of said Section 30: thence West to the point of beginning.

Less: The East 35.8 feet of the parcel in Section 19, Township 43 South, Range 27 East, and the West 118.4 feet of the parcel in Section 30, Township 43 South, Range 27 East, said parcels as described in Deed recorded in Official Record Book 95, page 135-136, of the public records of Lee County, Florida.

A tract or parcel of land lying in the West half of Section 30, Township 43 South, Range 27 East, in Lee County, Florida, described as follows: From a concrete monument marking the Southeast corner of Lot 5 of Unit No. 2 Pine Creek Acres, as recorded in Plat Book 10 at page 74 of the public records of Lee County, Run South 00°56'00" East parallel to and 2,418.00 feet, measured on a perpendicular, from the West line of said Section 30 for 2,531.80 feet to the point of beginning, said point of beginning being 710.00 feet, measured on a perpendicular from the center line of the former Seaboard Airline Railroad, from said point of beginning run North 00°56'00" West for 468.7 feet: thence run West parallel to said center line for 678.0 feet more or less to the waters of Hickey's Creek: thence run Southerly and Easterly along the meanders of said creek to an intersection with a line parallel to and 710.00 feet, measured on a perpendicular, from said center line of said railroad: thence run East on said parallel line for 567.00 feet more or less to a point of beginning.

The following described lands in the West half of Section 30, Township 43 South, Range 27 East: From concrete monument marking the Southeast corner of Lot

5, Unit 2, Pine Creek Acres, according to plat thereof as recorded in Plat Book 10 at page 74, public records of Lee County, Florida, run West along the South line of said Lot 5 to the Southwest corner of said lot: thence North along the West line of said Lot 5 to the South line of Pine Boulevard, as shown on aforesaid plat of Pine Creek Acres: thence Northwesterly along the South line of said Pine Boulevard to a concrete monument marking the Northeast corner of Lot 92 of said Unit 2, Pine Creek Acres: thence Southerly along the East line of said Pine Creek Acres Unit 2, to the center of Hickey's Creek: thence Southeasterly following the center line of said Hickey's Creek to a point which is 1,178.7 feet North of the center line of the former SAL Railway and said point being the Northwest corner of lands conveyed to Paul W. Grubbs and wife, Naomi G. Grubbs, by deed recorded in Deed Book 274 at page 463, public records of Lee County, Florida: thence East parallel to the center line of SAL Railway 678.00 feet, more or less, to a point which is 2,418.00 feet East, measured on a perpendicular from the West line of said Section 30: thence North 00°56'00" West 2,063.10 feet to the point of beginning.

The Northeast quarter of the Northeast quarter of the Northeast quarter, and the Southwest quarter of the Northwest quarter of the Northeast quarter of Section 31, Township 43 South, Range 27 East:

Begin at the Southwest corner of Section 30, Township 43 South, Range 27 East, for a point of beginning and run North 00°53'00" West, along the West line of said Section 30 to its Intersection with the centerline of Hickey's Creek: thence Easterly and Southerly along the centerline of said Creek to its intersection with the Northerly right of way line of the old SAL Railroad (100 foot right of way): thence Easterly along said Northerly right of way line, 660.00 feet: thence Northerly 660.00 feet: thence Westerly and parallel to the said Railroad right of way line to the intersection with a line parallel to and 2,418.00 feet from the West line of the Northwest quarter of the said Section 30: thence North 00°56'00" West along the said line parallel to the West line of the Northwest quarter Section 30 to a point that is South 00°56'00" East, 223.86 feet from the Southerly right of way line of State Road 80: thence North 89°35'20" East, 166.20 feet: thence North 00°24'40" West, 203.00 feet to the Southerly right of way line of said State Road 80:

thence South 82°54'00" East, along said right of way line 137.61 feet: thence South 00°24'40" East, 237.58 feet: thence North 89°35'20" East, 209.19 feet: thence South 00°24'40" East, 918.16 feet: thence North 89°35'20" East, 420.00 feet: thence North 00°24'40" West, 1,069.39 feet to the Southerly right of way line of State Road 80: thence Southeasterly along the arc of a curve to the right, having a radius of 17,113.74 feet and a delta angle of 01°46'00": an arc distance of 188.21 feet to the end of said curve: thence continue along said right-of-way line South 81°08'00" East, 456.59 feet to its intersection with the East line of the Northwest quarter of the Northeast quarter of said Section 30: thence South 00°24'40"East along the East line of the West one-half of the Northeast quarter of said Section 30 to a point 129.00 feet South 00°24'40" East from the Northwest corner of the Southeast quarter of the Northeast quarter: thence South 89°41'55" East, and parallel to the North line of the said Southeast quarter of the Northeast quarter of said Section 30, 337.00 feet: thence North 00°24'40" West to the right of way line of State Road 80: thence South 81°08'00" East along said right of way line to its intersection with the East line of said Section 30: thence South 00°08'33" East, along

the East line of said Section 30 to the Southeast corner of the Northeast quarter: thence continue South 00°32'10" East, 2,643.68 feet to the Southeast corner of said Section: thence South 89°58'04" West, along the South line of Section 30, 2,637.54 feet to the Southwest corner of the Southeast quarter: thence continue North 89°55'20" West, 2,643.03 feet to the Southwest corner of said Section 30 and the point of beginning, less a strip of land 100.00 feet wide and lying in the South one-half of said Section 30, and being the old SAL Railroad right-of-way, less the West 200.00 feet of said Section 30 lying South of Hickey's Creek, plus the following described parcel: in Section 30, Township 43 South, Range 27 East, begin at the intersection of the centerline of Hickey's Creek with the North line of SAL Railroad right-of-way: thence Easterly, 660.00 feet along the North line of said right of way: thence Northerly 660.00 feet: thence Westerly and parallel to the said Railroad right of way line to the intersection with a line parallel to and 2,418.00 feet from the West line of the Northwest quarter of said Section 30: thence South 00°56'00" East, along said line parallel to the West line of the Northwest quarter of Section 30 to its intersection with the centerline of Hickey's Creek: thence

Southeasterly along said centerline to the Point of Beginning.

Lots 9, 10, 11, 12, 13, 14, 15, 16, 17, 29, 30, 33, 34 35, 36, 39, and 40, Unit No. 1, Pine Creek Acres, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 10, at page 13.

Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25,26,29,30,31, 32, 33 and 34, Unit No. 2, Pine Creek Acres, according to the map or plat thereof on file and recorded in the office of the Clerk of Circuit Court of Lee County, Florida, in Plat Book 10, at page 74.

Beginning at the point of intersection of the south right of way line of State Road No. 80 (Palm Beach Boulevard) with the West line of said Section 30 run South 82°54'00" East along said South right of way line (75 feet from the center line) for 450.2 feet to the northwesterly corner of Lot 9 of said Unit No. 1; thence run South 07°06'00" West along the westerly line of said Lot 9 for 200.00 feet: thence run South

82°54'00" East along the southerly line of Lots 9 and 10 for 100 feet: thence run South 07°06'00" West along the westerly line of Lot 11 for 200.00 feet to the Southwest corner of said lot: thence run South 57°38'00" West for 60.73 feet on a straight line to an intersection with a line 421.8 feet easterly from and parallel with the West line of said Section 30, said point of intersection being the Northeast corner of Lot 92 of Unit No. 2, Pine Creek Acres: thence run South 00°56'00" East along said parallel line and the East boundary of said Unit No. 2 for 997.36 feet: thence run South 85°36'00" East for 29.13 feet: thence run South 04°24'00" West for 310.00 feet more or less to the waters of Hickey's Creek: thence run westerly along said creek to a point on the West line of said Section 30: thence run North 00°56'00" West along said section line for 1,902 feet more or less to the point of beginning.

Beginning at the intersection of the centerline of Hickey's Creek and a Southerly extension of the East boundary of the property conveyed to Paul W. and Naomi G. Grubbs by deed recorded in Deed Book 274, at page 463, public records of Lee County, Florida, thence North and West along the centerline of Hickey's Creek

to the intersection of said centerline with the South boundary of the property conveyed to the Grubbs, thence East along said South boundary to the Southeast corner of the Grubbs property, thence South to the point of beginning, said parcel being in Section 30, Township 30 South, Range 27 East.

That parcel known as the old Seaboard Airline Railroad right of way in Section 30, Township 43 South, Range 27 East, said right of way being 100.00 feet wide and having a centerline parallel to an 599.26 feet from the South boundary of said section.

West half of Southwest quarter of Section 31.

The Southwest quarter of the Northeast quarter, the Northwest quarter, the East half of the Southwest quarter and the West half of the Southeast quarter, the Southeast quarter of the Southeast quarter of Section 31.

Section 3. The provisions of this act shall be liberally construed in order to effectively carry out the purposes of this act in the interest of the public health, welfare, and safety of

the citizens served by Lehigh Acres Fire Control and Rescue District and Alva Fire Protection and Rescue Service District.

Section 4. In the event of a conflict between a provision of this act and the provisions of any other act, the provisions of this act shall control to the extent of such conflict.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1203 Pub. Rec./DOC/Health Information
SPONSOR(S): Gonzalez
TIED BILLS: CS/HB 1201 **IDEN./SIM. BILLS:** SB 1526

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 0 N	Merlin	White
2) Oversight, Transparency & Administration Subcommittee		Whittaker	Harrington
3) Judiciary Committee			

SUMMARY ANALYSIS

Federal law provides a right to privacy for health and medical records under the Health Insurance Portability and Accountability Act ("HIPAA"). The HIPPA Privacy Rule sets national standards for the use and disclosure of individuals' health information, called protected health information ("PHI"), by covered entities. Although an individual's health and medical records are generally private under HIPPA, there are exceptions which allow disclosure for purposes of promoting health and safety, protecting law enforcement, and assisting in criminal and other types of investigations. The HIPPA Privacy Rule establishes a baseline or floor of privacy protections for PHI, not a ceiling. Where state laws are more protective of privacy than HIPPA, the state requirements will remain in effect.

The bill, which is linked to the passage of CS/HB 1201, expands the types of inmate health information held by DOC, which are confidential and exempt from disclosure. It also expands the entities to which the DOC may disclose such information. Under the bill, state attorneys, law enforcement agencies, the Executive Office of the Governor, the Correctional Medical Authority, the Division of Risk Management of the Department of Financial Services, the Department of Legal Affairs, the Department of Children and Families, and other entities may receive such confidential and exempt information if specified requirements are met. The bill provides for disclosure of a deceased inmate's PHI and other health records under specified circumstances.

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 1201 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. HB 1201 takes effect on July 1, 2017.

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

Article I, s. 24(c) of the State 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 a 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 Law

Article I, s. 24(a), of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.[1] The Legislature, however, may exempt records from the requirements of Article I, s. 24 of the Florida Constitution, provided the exemption is passed by two-thirds vote of each chamber and:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.[2]

The Florida Statutes also address the public policy regarding access to government records through a variety of statutes in ch. 119, F.S. Currently, s. 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act[3] provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose *and* the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."[4] However, the exemption may be no broader than is necessary to meet one of the following purposes:

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

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.[6] The Act also requires specified questions to be considered during the review process.[7]

---

[1] FLA. CONST. art 1, s. 24(a).
[2] FLA. CONST. art 1, s. 24(c).
[3] s. 119.15, F.S.
[4] *Id.*
[5] *Id.*
[6] s. 119.15(3), F.S.
[7] Section 119.15(6)(a), F.S., states that the specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Medical Privacy under Federal Law

Federal law provides a right to privacy for health and medical records. In 1996, Congress passed the Health Insurance Portability and Accountability Act ("HIPAA").[8] Among its purposes are the following:

- To provide the ability to transfer and continue health insurance coverage for workers and their families when they change or lose their jobs;
- To reduce health care fraud and abuse;
- To mandate industry-wide standards for health care information on electronic billing and other processes; and
- To require the protection and confidential handling of protected health information.

Under HIPPA, the Secretary of Health and Human Services ("HHS") is required to publicize national standards for the electronic exchange, privacy, and security of health information. These standards are collectively known as the Administrative Simplification provisions. HIPPA also required the Secretary of HHS to issue privacy regulations governing individually identifiable health information if Congress did not enact privacy legislation within three years of the Act's passage.[9]

As Congress did not enact the privacy legislation within three years of HIPPA's passage, the Secretary of HHS developed the HIPPA Privacy Rule, which was first published in 2000 and modified in 2002.[10] The Privacy Rule sets national standards for the use and disclosure of individuals' health information, called protected health information ("PHI"), by three types of covered entities: health plans, health care clearinghouses, and health care providers who conduct the standard health care transactions electronically.[11] A state agency or department which performs functions that make it a "covered entity," must comply with the HIPPA Privacy Rule.

The HIPPA Privacy Rule defines PHI as individually identifiable health information,[12] held or maintained by a covered entity or its business associates acting for the covered entity, which is transmitted or maintained in any form or medium. This includes identifiable demographic and other information relating to the past, present, or future physical or mental health or condition of an individual, or the provision or payment of health care to an individual that is created or received by a health care provider, health plan, employer, or health care clearinghouse.

Although many disclosures about an individual's health and medical records are private under HIPPA, there are also exceptions which are applicable to health and safety. This includes things such as the protection of the public and members of law enforcement, as well as the furtherance of investigative functions, judicial proceedings, food safety investigation, crime prevention, disease prevention, child abuse, neglect, and domestic violence investigations, school-related health and safety concerns, medical examinations, research, and national security.[13] These exceptions also specifically include correctional facilities,[14] where disclosure of PHI for inmates and other covered individuals is permitted if it is necessary for:

---

[8] Pub. L. 104-91, 110 Stat. 1936 (1996).

[9] *Summary of HIPPA Privacy Rule*, United States Department of Health and Human Services, May 2003, *available at* https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html (Last viewed Mar. 22, 2017); *see also HIPPA for Professionals*, United States Department of Health and Human Services, *available at* https://www.hhs.gov/hipaa/for-professionals/ (Last viewed Mar. 22, 2017).

[10] *See* 45 C.F.R. Parts 160 and 164, Subparts A and E.

[11] As defined in 45 C.F.R. 160.103, a "[h]ealth plan means an individual or group plan that provides, or pays the cost of, medical care..." *Id.* "Healthcare clearinghouse means a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and 'value-added' networks and switches, that [performs one or another function described in the rule]." *Id.* "Health care provider means a provider of services..., a provider of medical or health services..., and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business." *Id.*

[12] "Personal health information" or "PHI" is defined in 45 CFR 160.103, along with the related definitions of "individually identifiable health information" and "health information."

[13] *See generally* 45 C.F.R. 164.512.

[14] 45 C.F.R. 164.512(k)(5)(i)(A)-(F).

- The provision of health care to such individuals;
- The health and safety of such individual or other inmates;
- The health and safety of the officers or employees of or others at the correctional institution;
- The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
- Law enforcement on the premises of the correctional institution; or
- The administration and maintenance of the safety, security, and good order of the correctional institution.

Under HIPPA, a covered entity that is a correctional institution may use the PHI of individuals who are inmates for any purpose for which such information may be disclosed.[15]

If a state law is contrary to HIPPA, then the latter preempts it and is controlling. However, where state laws are more protective of privacy than HIPPA, the state requirements will remain in effect. HIPPA sets a floor, not a ceiling.[16]

Right to Privacy in Medical Records in Florida

In Florida, citizens have a fundamental right to privacy, as provided in the Florida Constitution.[17] This includes information about a patient's medical records, health condition, treatment, and care, and imposes a high burden on a member of the public or a government agency to obtain this information or permit it to be disclosed.[18]

Along with the constitutional right to privacy, there are also specific statutory provisions which protect an individual's health and medical records. For example, s. 456.057, F.S., involves the confidentiality of both medical records and communications between a person and his doctor, who is the "record owner."[19] Consistent with the constitutional right of privacy, s. 456.057, F.S., indicates that medical records may not be furnished, and discussions about a patient's medical condition may not be disclosed, to any person other than the patient or the patient's legal representative or other health care practitioners and providers involved in the patient's care or treatment, except upon written authorization from the patient, and subject to limited exceptions.[20]

Likewise, there is a statutory right to privacy in medical records held by the Florida Department of Corrections ("DOC"). Section 945.10(1), F.S., states that mental, medical, and substance abuse

---

[15] 45 C.F.R. 164.512(k)(5)(ii).

[16] 45 C.F.R. 160.201-05.

[17] FLA. CONST., art. I, s. 23 ("Every natural person has the right to be let alone and free from governmental intrusion into the person's private life. . .").

[18] *State v. Johnson*, 814 So. 2d 390, 393 (Fla. 2002) (noting, "[a] patient's medical records enjoy a confidential status by virtue of the right to privacy contained in the Florida Constitution, and any attempt on the part of the government to obtain such records must first meet constitutional muster."); *Fla. Dep't of Corrs. v. Abril*, 969 So. 2d 201, 205-06 (Fla. 2007); *State v. Strickling*, 164 So. 3d 727, 731 (Fla. 3d DCA 2015); *Johnson*, 814 So. 2d 393 (noting, "The right to privacy is not absolute and will yield to compelling governmental interests.").

[19] Chapter 456, F.S., generally governs health professions and occupations, while s. 456.057, F.S., pertains to ownership and control of patient records; reports or copies of records to be furnished; and disclosure of information. Section 456.057(1), F.S., defines a "record owner" as "any health care practitioner who generates a medical record after making a physical or mental examination of, or administering treatment or dispensing legend drugs to, any person; any health care practitioner to whom records are transferred by a previous records owner; or any health care practitioner's employer, including, but not limited to, group practices and staff-model health maintenance organizations, provided the employment contract or agreement between the employer and the health care practitioner designates the employer as the records owner." *Id.*

[20] s. 456.057(7)(a), F.S. (providing a list of exceptions where records can be furnished, including a patient's consent for care or treatment; compulsory physical examination in a civil case where records are furnished to both the plaintiff and defendant; issuance of a subpoena in a civil action or criminal proceeding; statistical and scientific research; or treatment of poison control). *See also State v. Sun*, 82 So. 3d 866 (Fla. 4th DCA 2011).

records of inmates and offenders held by DOC are confidential and exempt.[21] Section 945.10, F.S., also requires DOC to adopt rules to prevent disclosure of such records or information to unauthorized persons.[22] Presently, s. 945.10(2)(g), F.S., only allows record sharing of an inmate or offender's mental, medical, and substance abuse information in one circumstance – to the Department of Health and the county health department where an inmate plans to reside if he or she has tested positive for the presence of the antibody or antigen to human immunodeficiency virus infection ("HIV").[23] The definition of an HIV test is set forth in the public health chapter of the Florida Statutes, s. 381.004, F.S.[24]

DOC is a "covered entity" for purposes of the HIPPA Privacy Rule.[25] Further, because DOC creates and maintains hospital records through its licensed hospital, the Reception Medical Center, DOC is a "record owner" subject to ss. 456.057 and 945.10, F.S. Section 945.10, F.S., provides greater privacy protection than, and is more restrictive than, the HIPPA Privacy Rule.

Effect of the Bill

The bill amends s. 945.10(1), F.S., so that the following additional information held by DOC is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- PHI of an inmate or an offender; and
- The identity of an inmate or offender upon whom an HIV test has been performed and the inmate or offender's test results.

The bill provides the following definitions:

- PHI has the same meaning as provided in 45 C.F.R. 160.103, the HIPPA Privacy Rule.
- HIV test has the same meaning as provided in s. 381.004, F.S.

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

The bill amends s. 945.10(2), F.S., to add clarifying language in conformity with the changes to s. 945.10(1), F.S.

The bill also amends s. 945.10(2), F.S., so that PHI and mental health, medical, or substance abuse records of an inmate or offender may be released to the following persons or groups unless expressly prohibited by federal law:

- To the Executive Office of the Governor, the Correctional Medical Authority, and the Department of Health for health care oversight activities authorized by state or federal law, including:
    - Audits;
    - Civil, Administrative, or Criminal Investigations; or
    - Inspections relating to the provision of health services, in accordance with 45 C.F.R. part 164, subpart E.

---

[21] s. 945.10(1)(a), F.S. (noting, "Except as otherwise provided by law or in this section, the following records and information held by the Department of Corrections are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution: Mental health, medical, or substance abuse records of an inmate or an offender.").

[22] Section 945.10(4), F.S., requires DOC to "adopt rules to prevent disclosure of confidential records or information to unauthorized persons." *Id.* The corresponding provisions of the Florida Administrative Code are Rule 33.601.901, F.A.C. (Confidential Records) and Rule 33-401.701, F.A.C. (Medical and Substance Abuse Clinical Files).

[23] *See* s. 945.10(2)(g), F.S., which involves an exception for positive testing of the Human Immunodeficiency Virus ("HIV"). This is consistent with HIV testing under s. 381.004(2), F.S., providing exceptions for disclosure due to risk of exposure, health, and treatment.

[24] s. 381.004(1)(b), F.S. (indicating that an "HIV test" means "a test ordered after July 6, 1988, to determine the presence of the antibody or antigen to human immunodeficiency virus or the presence of human immunodeficiency virus infection.").

[25] *See Christie v. Dep't of Corr.*, Case No. 09-2312RP, at 9, 2009 WL 3663682, at *4 (Fla. DOAH, Nov. 2, 2009).

- To a state attorney, a state court, or a law enforcement agency ("LEA") conducting an ongoing criminal investigation if:
    - The inmate agrees to the disclosure and provides written consent; or
    - The inmate refuses to provide written consent, in response to:
        - An order of a court of competent jurisdiction;
        - A subpoena, including a grand jury, investigative, or administrative subpoena;
        - A court-ordered warrant; or
        - A statutorily authorized investigative demand or other process as authorized by law in accordance with 45 C.F.R. part 164, subpart E, provided that:
            - The PHI and records sought are relevant and material to a legitimate law enforcement inquiry;
            - There is a clear connection between the investigated incident and the inmate whose PHI and records are sought;
            - The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information or records are sought; and
            - De-identified information could not reasonably be used.
- To a state attorney or LEA, regarding an inmate who is suspected of being the victim of a crime, if:
    - The inmate agrees to the disclosure and provides written consent; or
    - The inmate is unable to agree because of incapacity or other emergency circumstance in accordance with 45 C.F.R. part 164, subpart E, provided that:
        - The PHI and records are needed to determine whether a violation of law by a person other than the inmate victim has occurred;
        - The PHI or records are not intended to be used against the inmate victim;
        - The immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the inmate is able to agree with the disclosure; and
        - The disclosure is in the best interests of the inmate victim, as determined by DOC.
- To a state attorney or LEA if DOC believes in good faith that the information and records constitute evidence of criminal conduct that occurred in a correctional institution or facility, in accordance with 45 C.F.R. part 164, subpart E, provided that:
    - The PHI and records disclosed are specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information or records are sought;
    - There is a clear connection between the criminal conduct and the inmate whose PHI and records are sought; and
    - De-identified information could not reasonably be used.
- To the Division of Risk Management ("DRM") of the Department of Financial Services, in accordance with 45 C.F.R. part 164, subpart E, upon certification by DRM that such information and records are necessary to investigate and provide legal representation for a claim against DOC.
- To the Department of Legal Affairs or to an attorney retained to represent DOC in a legal proceeding, by an inmate who is bringing a legal action against DOC, in accordance with 45 C.F.R. part 164, subpart E.
- To another correctional institution or facility or law enforcement official having lawful custody of the inmate, in accordance with 45 C.F.R. part 164, subpart E, if the PHI or records are necessary for:
    - The provision of health care to the inmate;
    - The health and safety of the inmate or other inmates;
    - The health and safety of the officers, employees, or others at the correctional institution or facility;
    - The health and safety of the individuals or officers responsible for transporting the inmate from one correctional institution, facility, or setting to another;
    - Law enforcement on the premises of the correctional institution or facility; or

    - The administration and maintenance of the safety, security, and good order of the correctional institution or facility.
- To the Department of Children and Families and the Florida Commission on Offender Review, in accordance with 45 C.F.R. part 164, subpart E, if the inmate received mental health treatment while in the custody of DOC and becomes eligible for release under supervision or upon the end of his or her sentence.

The bill also permits persons who have authority to act on behalf of a deceased inmate, upon request, to have access to the deceased inmate's PHI, mental health, medical, or substance abuse records. This request applies notwithstanding s. 456.057, F.S., and in accordance with 45 C.F.R. Part 164, subpart E. The bill provides that the following individuals have authority to make such requests:

- A person appointed by a court to act as the personal representative, executor, administrator, curator, or temporary administrator of the deceased inmate's or offender's estate;
- If a judicial appointment has not been made by the court, then a person designated by the inmate or offender to act as his or her personal representative in a last will that is self-proved; or
- If no judicial appointment has been made, or if no person has been designated in a last will, then the section would apply to:
    - A surviving spouse;
    - If there is no surviving spouse, to a surviving adult child of the inmate or offender; or
    - If there is no surviving spouse or adult child, to a parent of the inmate or offender.

The bill provides that all requests for access to a deceased inmate or offender's PHI or mental health, medical, or substance abuse records must be in writing and must include the following:

- If there was an appointment by the court, the requestor must provide a copy of the letter of administration and a copy of the court order appointing such person as the representative of the inmate or offender's estate; or
- If there was a designation in a self-proved will, the requestor must provide a copy of the self-proved last will designating the person as the inmate or offender's representative; or
- If there was no judicial appointment or designation in a will, the requestor must provide a letter from the person's attorney verifying the person's relationship to the inmate or offender and the absence of a court-appointed representative and self-proved last will.

The bill also provides that it does not limit any rights to obtain records by subpoena or other court process.

In the bill's public necessity statement, it provides legislative findings relating to PHI and HIV testing information held by DOC. Specifically, the bill finds:

- It is a public necessity that an inmate or offender's PHI and HIV testing information held by DOC pursuant to s. 945.10, F.S., remain confidential and exempt from public disclosure "as envisioned by the Legislature in this statute and as provided in department rules."
- Allowing PHI to be publicly disclosed would in some cases cause a conflict with existing federal law and would be a violation of an inmate or offender's privacy under the state constitution.
- Maintaining the confidentiality of an inmate or offender's HIV testing information is essential to his or her participation in such testing. Thus, the harm from disclosure would outweigh the public benefit derived from it.
- Appropriate records and PHI are available to various governmental entities in order for them to perform their duties.
- It is mandatory that prisons function as effectively, efficiently, and nonviolently as possible and to release such information to the public would severely impede that function and would jeopardize the health and safety of those within and outside the prison system.

Finally, the bill provides that it will take effect on the same date as that of HB 1201 or similar legislation, if such legislation is passed during the same session, or an extension of that session, and becomes law.

B. SECTION DIRECTORY:

Section 1. Amends s. 945.10, F.S., relating to confidential information.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date that is the same as that of HB 1201 or similar legislation, if such legislation is passed during the same session, or an extension of that session, and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This 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:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may create a minimal fiscal impact on the Department of Corrections because staff responsible for complying with public record requests could require training related to the expansion of the public record exemption. In addition, the Department of Corrections could incur costs associated with redacting the exempt information prior to the releasing the record.

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 or expanded public record or public meeting exemption. The bill expands a 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 a 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 expands a public record exemption to protect certain inmate and offender health information and HIV testing information to maintain the confidentiality of such personal health records and to facilitate the operation of prison functions. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

Section 945.10(4), F.S., currently requires DOC to adopt rules to prevent the disclosure of confidential records or information to unauthorized persons. This bill will require DOC to amend its existing rules set forth in Rules 33-401.701 and 33.601.901, F.A.C.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to public records; amending s. 945.10, F.S.; providing that certain protected health information held by the Department of Corrections is confidential and exempt from public records requirements; authorizing the release of protected health information and other records of an inmate to certain entities, subject to specified conditions and under certain circumstances; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 945.10, Florida Statutes, is amended, present paragraph (h) of that subsection is redesignated as paragraph (i), a new paragraph (h) is added to that subsection, subsection (2) of that section is amended, and subsection (6) is added to that section, to read:

945.10 Confidential information.—

(1) Except as otherwise provided by law or in this section, the following records and information held by the Department of Corrections are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a)1. Mental health, medical, or substance abuse records of an inmate or an offender; and

2. Protected health information of an inmate or an offender. Protected health information, as used in this section, has the same meaning as provided in 45 C.F.R. s. 160.103. This subparagraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

(h) The identity of any inmate or offender upon whom an HIV test has been performed and the inmate's or offender's test results, in accordance with s. 381.004. The term "HIV test" has the same meaning as provided in s. 381.004. This paragraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

(2) The records and information specified in paragraphs (1)(a)-(i) ~~(1)(a)-(h)~~ may be released as follows unless expressly prohibited by federal law:

(a) Information specified in paragraphs (1)(b), (d), and (f) to the Executive Office of the Governor, the Legislature, the Florida Commission on Offender Review, the Department of Children and Families, a private correctional facility or program that operates under a contract, the Department of Legal

Affairs, a state attorney, the court, or a law enforcement agency. A request for records or information pursuant to this paragraph need not be in writing.

(b) Information specified in paragraphs (1)(c), (e), and (i) ~~(h)~~ to the Executive Office of the Governor, the Legislature, the Florida Commission on Offender Review, the Department of Children and Families, a private correctional facility or program that operates under contract, the Department of Legal Affairs, a state attorney, the court, or a law enforcement agency. A request for records or information pursuant to this paragraph must be in writing and a statement provided demonstrating a need for the records or information.

(c) Information specified in paragraph (1)(b) to an attorney representing an inmate under sentence of death, except those portions of the records containing a victim's statement or address, or the statement or address of a relative of the victim. A request for records of information pursuant to this paragraph must be in writing and a statement provided demonstrating a need for the records or information.

(d) Information specified in paragraph (1)(b) to a public defender representing a defendant, except those portions of the records containing a victim's statement or address, or the statement or address of a relative of the victim. A request for records or information pursuant to this paragraph need not be in writing.

(e) Information specified in paragraph (1)(b) to state or local governmental agencies. A request for records or information pursuant to this paragraph must be in writing and a statement provided demonstrating a need for the records or information.

(f) Information specified in paragraph (1)(b) to a person conducting legitimate research. A request for records and information pursuant to this paragraph must be in writing, the person requesting the records or information must sign a confidentiality agreement, and the department must approve the request in writing.

(g) Protected health information and records specified in paragraphs ~~paragraph~~ (1)(a) and (h) to the Department of Health and the county health department where an inmate plans to reside if he or she has tested positive for the presence of the antibody or antigen to human immunodeficiency virus infection or as authorized in s. 381.004.

(h) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) to the Executive Office of the Governor, the Correctional Medical Authority, and the Department of Health for health care oversight activities authorized by state or federal law, including audits; civil, administrative, or criminal investigations; or inspections relating to the provision of health services, in accordance with 45 C.F.R. part 164, subpart

E.

(i) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) to a state attorney, a state court, or a law enforcement agency conducting an ongoing criminal investigation, if the inmate agrees to the disclosure and provides written consent or, if the inmate refuses to provide written consent, in response to an order of a court of competent jurisdiction, a subpoena, including a grand jury, investigative, or administrative subpoena, a court-ordered warrant, or a statutorily authorized investigative demand or other process as authorized by law, in accordance with 45 C.F.R. part 164, subpart E, provided that:

1. The protected health information and records sought are relevant and material to a legitimate law enforcement inquiry;

2. There is a clear connection between the investigated incident and the inmate whose protected health information and records are sought;

3. The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information or records are sought; and

4. De-identified information could not reasonably be used.

(j) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) of an inmate who is or is suspected of being the victim of a crime, to a state attorney or a law enforcement agency if

the inmate agrees to the disclosure and provides written consent or if the inmate is unable to agree because of incapacity or other emergency circumstance, in accordance with 45 C.F.R. part 164, subpart E, provided that:

1. Such protected health information and records are needed to determine whether a violation of law by a person other than the inmate victim has occurred;

2. Such protected health information or records are not intended to be used against the inmate victim;

3. The immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the inmate victim is able to agree to the disclosure; and

4. The disclosure is in the best interests of the inmate victim, as determined by the department.

(k) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) to a state attorney or a law enforcement agency if the department believes in good faith that the information and records constitute evidence of criminal conduct that occurred in a correctional institution or facility, in accordance with 45 C.F.R. part 164, subpart E, provided that:

1. The protected health information and records disclosed are specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information or

records are sought;

2. There is a clear connection between the criminal conduct and the inmate whose protected health information and records are sought; and

3. De-identified information could not reasonably be used.

(l) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) to the Division of Risk Management of the Department of Financial Services, in accordance with 45 C.F.R. part 164, subpart E, upon certification by the Division of Risk Management that such information and records are necessary to investigate and provide legal representation for a claim against the Department of Corrections.

(m) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) of an inmate who is bringing a legal action against the department, to the Department of Legal Affairs or to an attorney retained to represent the department in a legal proceeding, in accordance with 45 C.F.R. part 164, subpart E.

(n) Protected health information and mental health, medical, or substance abuse records of an inmate as specified in paragraph (1)(a) to another correctional institution or facility or law enforcement official having lawful custody of the inmate, in accordance with 45 C.F.R. part 164, subpart E, if the protected health information or records are necessary for:

1. The provision of health care to the inmate;

2. The health and safety of the inmate or other inmates;

3. The health and safety of the officers, employees, or others at the correctional institution or facility;

4. The health and safety of the individuals or officers responsible for transporting the inmate from one correctional institution, facility, or setting to another;

5. Law enforcement on the premises of the correctional institution or facility; or

6. The administration and maintenance of the safety, security, and good order of the correctional institution or facility.

(o) Protected health information and mental health, medical, or substance abuse records of an inmate as specified in paragraph (1)(a) to the Department of Children and Families and the Florida Commission on Offender Review, in accordance with 45 C.F.R. part 164, subpart E, if the inmate received mental health treatment while in the custody of the Department of Corrections and becomes eligible for release under supervision or upon the end of his or her sentence.

(p) Notwithstanding s. 456.057 and in accordance with 45 C.F.R. part 164, subpart E, protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) of a deceased inmate or offender to an individual with authority to act on behalf of the deceased

inmate or offender, upon the individual's request. For purposes of this section, the following individuals have authority to act on behalf of a deceased inmate or offender only for the purpose of requesting access to such protected health information and records:

1. A person appointed by a court to act as the personal representative, executor, administrator, curator, or temporary administrator of the deceased inmate's or offender's estate;

2. If a court has not made a judicial appointment under subparagraph 1., a person designated by the inmate or offender to act as his or her personal representative in a last will that is self-proved under s. 732.503; or

3. If a court has not made a judicial appointment under subparagraph 1. or if the inmate or offender has not designated a person in a self-proved last will as provided in subparagraph 2., only the following individuals:

a. A surviving spouse.

b. If there is no surviving spouse, a surviving adult child of the inmate or offender.

c. If there is no surviving spouse or adult child, a parent of the inmate or offender.

(q) All requests for access to a deceased inmate's or offender's protected health information or mental health, medical, or substance abuse records specified in paragraph (1)(a) must be in writing and must be accompanied by the

following:

1. If made by a person authorized under subparagraph (p)1., a copy of the letter of administration and a copy of the court order appointing such person as the representative of the inmate's or offender's estate.

2. If made by a person authorized under subparagraph (p)2., a copy of the self-proved last will designating the person as the inmate's or offender's representative.

3. If made by a person authorized under subparagraph (p)3., a letter from the person's attorney verifying the person's relationship to the inmate or offender and the absence of a court-appointed representative and self-proved last will.

Records and information released under this subsection remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution when held by the receiving person or entity.

(6) This section does not limit any right to obtain records by subpoena or other court process.

Section 2. The Legislature finds that it is a public necessity that an inmate or offender's protected health information and HIV testing information held by the Department of Corrections pursuant to s. 945.10, Florida Statutes, remain confidential and exempt from public disclosure as the Legislature envisioned in this statute and as provided in

department rules. Allowing protected health information to be publicly disclosed would in some cases cause a conflict with existing federal law and would be a violation of an inmate or offender's privacy under the state constitution. Maintaining the confidentiality of an inmate or offender's HIV testing information is essential to his or her participation in such testing. Thus, the harm from disclosure would outweigh any public benefit derived therefrom. Appropriate records and protected health information are available, however, to various governmental entities in order for them to perform their duties. It is mandatory that prisons function as effectively, efficiently, and nonviolently as possible. To release such information to the public would severely impede that function and would jeopardize the health and safety of those within and outside the prison system.

Section 3. This act shall take effect on the same date that HB 1201 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1281 Department of Management Services
SPONSOR(S): Oversight, Transparency & Administration Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1540

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee		Moore	Harrington

SUMMARY ANALYSIS

Current law regulates state agency procurement of personal property and services. The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology. DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power. Where state laws don't apply to local governments, such entities may develop their own policies regarding procurement.

The bill creates the Statewide Procurement Efficiency Task Force for the purpose of evaluating the effectiveness and value of state and local procurement laws and policies to the taxpayers of the state and determining where inconsistencies in such laws and policies exist. The bill requires the task force to submit a final report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2018. Such report must, at a minimum, include recommendations for consideration by the Legislature to promote procurement efficiency, streamline procurement policies, establish best management practices, and encourage increased use of state term contracts.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency[1] procurement of personal property and services. The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.[2] DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.[3]

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:[4]

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

For contracts for commodities or services in excess of $35,000, agencies must utilize a competitive solicitation process;[5] however, certain contractual services and commodities are exempt from this requirement.[6]

State Term Contracts

Current law authorizes DMS to establish purchasing agreements and procure state term contracts for commodities and contractual services using the procurement methods described above.[7] These contracts are generally developed for purchases of commodities and services that are ongoing and common to multiple state agencies. State agencies are required to use state term contracts when they are available.[8] Other eligible users, such as counties, cities, and school districts may also utilize state term contracts.[9]

---

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

[2] *See* ss. 287.032 and 287.042, F.S.

[3] *Id.*

[4] *See ss.* 287.012(6) and 287.057, F.S.

[5] Section 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold contained in s. 287.017, F.S., to be competitively bid.

[6] *See* s. 287.057(3), F.S.

[7] Section 287.042(2)(a), F.S.

[8] Section 287.056(1), F.S.

[9] *Id.*

Other Procurement Policies
Chapter 287, F.S., includes various other requirements and policies applicable to procurement for state or local government entities, including:

- Requiring state agencies, municipalities, political subdivisions, school districts, and school boards to procure professional architectural, engineering, landscape architectural, or survey and mapping services using a qualifications-based procedure when such services exceed a certain cost;[10]
- Requiring state agencies, universities, colleges, school districts, or other political subdivisions of the state (except counties and cities) to provide a preference to Florida businesses;[11]
- Allowing counties, cities, community colleges, and district school boards to set aside up to 10 percent or more of procurement funds for the purpose of entering into contracts with minority business enterprises;[12]
- Prohibiting state agencies and political subdivisions from accepting bids from or awarding contracts to a person or entity convicted of a public entity crime under certain circumstances;[13] and
- Prohibiting state agencies from accepting bids from or awarding contracts to a person or entity that has been found by a court to have committed discrimination on the basis of race, gender, national origin, disability, or religion under certain circumstances.[14]

Where state laws don't apply to local governments, such entities may develop their own policies regarding procurement.

Effect of Proposed Changes

The bill creates the Statewide Procurement Efficiency Task Force for the purpose of evaluating the effectiveness and value of state and local procurement laws and policies to the taxpayers of the state and determining where inconsistencies in such laws and policies exist. The task force must be composed of the following 11 members:

- The Secretary of DMS or his or her designee, who must serve as chair.
- Six members appointed by the Governor, as follows:
  - One county government official.
  - One municipal government official.
  - One district school board member.
  - Three representatives of the business community.
- Two members appointed by the Speaker of the House of Representatives, as follows:
  - A member of the House of Representatives.
  - An attorney who is a member in good standing of The Florida Bar and has expertise in procurement law.
- Two members appointed by the President of the Senate, as follows:
  - A member of the Senate.
  - An attorney who is a member in good standing of The Florida Bar and has expertise in procurement law.

The bill requires the task force members to be appointed by July 31, 2017. The task force must meet to establish procedures for the conduct of its business and to elect a vice chair by August 31, 2017. The task force must meet at the call of the chair. A majority of the members of the task force constitutes a quorum, and a quorum is necessary for the purpose of voting on any action or recommendation of the task force. All task force meetings must be held in Tallahassee, unless otherwise decided by the task force. No more than two meetings may be held in other locations for the purpose of taking public

[10] Consultants' Competitive Negotiation Act, s. 287.055, F.S.
[11] Section 287.084(1)(a), F.S.
[12] Section 287.093, F.S.
[13] Section 287.133(2)(b), F.S.
[14] Section 287.134(2)(b), F.S.

testimony. DMS is required to provide administrative and technical support for the task force, and task force members must serve without compensation or reimbursement for per diem or travel expenses.

The bill requires the task force to submit a final report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2018. Such report must, at a minimum, include recommendations for consideration by the Legislature to promote procurement efficiency, streamline procurement policies, establish best management practices, and encourage increased use of state term contracts.

The task force is terminated on December 31, 2018.

B. SECTION DIRECTORY:

Section 1. amends s. 287.057, F.S., relating to procurement of commodities or contractual services.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on DMS because the agency is required to provide administrative and technical support to the task force.

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. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to

raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to the Department of Management Services; amending s. 287.057, F.S.; creating a task force to evaluate procurement laws and policies and make specified recommendations; specifying membership of the task force; providing meeting requirements; providing for administrative and technical support of the task force; providing that task force members shall serve without compensation or reimbursement of expenses; requiring the task force to submit a report to the Governor and the Legislature by a certain date; providing for the termination of the task force; providing an effective date.

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

Section 1. Subsection (24) is added to section 287.057, Florida Statutes, to read:

287.057 Procurement of commodities or contractual services.—

(24) There is created the Statewide Procurement Efficiency Task Force for the purpose of evaluating the effectiveness and value of state and local procurement laws and policies to the taxpayers of this state and determining where inconsistencies in such laws and policies exist.

(a) The task force shall be composed of the following 11 members:

1. The Secretary of Management Services or his or her designee, who shall serve as chair of the task force.

2. Six members appointed by the Governor, as follows:

a. One county government official.

b. One municipal government official.

c. One district school board member.

d. Three representatives of the business community.

3. Two members appointed by the Speaker of the House of Representatives, as follows:

a. A member of the House of Representatives.

b. An attorney who is a member in good standing of The Florida Bar and has expertise in procurement law.

4. Two members appointed by the President of the Senate, as follows:

a. A member of the Senate.

b. An attorney who is a member in good standing of The Florida Bar and has expertise in procurement law.

(b) Task force members must be appointed by July 31, 2017. By August 31, 2017, the task force shall meet to establish procedures for the conduct of its business and to elect a vice chair. The task force shall meet at the call of the chair. A majority of the members of the task force constitutes a quorum, and a quorum is necessary for the purpose of voting on any

action or recommendation of the task force. All meetings shall be held in Tallahassee, unless otherwise decided by the task force, and then no more than two such meetings may be held in other locations for the purpose of taking public testimony. Administrative and technical support shall be provided by the department. Task force members shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

(c) The task force must submit a final report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2018. Such report must, at a minimum, include recommendations for consideration by the Legislature to promote procurement efficiency, streamline procurement policies, establish best management practices, and encourage increased use of state term contracts.

(d) The task force is terminated December 31, 2018.

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

Amendment No.

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

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

Representative Albritton offered the following:

Amendment

Remove lines 26-44 and insert:

(a) The task force shall be composed of the following 12 members:

1. The Secretary of Management Services or his or her designee, who shall serve as chair of the task force.

2. Six members appointed by the Governor, as follows:

a. One county government official.

b. One municipal government official.

c. One district school board member.

d. Three representatives of the business community.

3. Two members appointed by the Speaker of the House of Representatives, as follows:

a. A member of the House of Representatives.

b. An attorney who is a member in good standing of The Florida Bar and has expertise in procurement law.

4. Two members appointed by the President of the Senate, as follows:

a. A member of the Senate.

b. An attorney who is a member in good standing of The Florida Bar and has expertise in procurement law.

5. The Chief Financial Officer, or his or her designee who must be an employee of the Department of Financial Services.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1295 Monroe County
SPONSOR(S): Raschein
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 0 N	Miller	Miller
2) Oversight, Transparency & Administration Subcommittee		Toliver LT	Harrington
3) Government Accountability Committee			

SUMMARY ANALYSIS

The bill authorizes the Monroe County School Board, or the Board of County Commissioners, or any political subdivision thereof, to conduct public meetings, hearings, and workshops by means of communications media technology if the board adopts uniform rules authorizing the use of communications media technology and **no final action** is taken at the meeting. "Communications media technology" is defined as the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

The rules adopted by the School Board or by the County Commission must provide procedures for using communications media technology for purposes of conducting public meetings, hearings, and workshops, as well as for taking evidence, testimony, and argument at public meetings. The rules must also provide that evidence, testimony, and argument must be afforded equal consideration, regardless of the method of communication.

The bill requires a notice to state that the meeting will be conducted by means of communications media technology.

Lastly, the bill does not limit a person's right to inspect public records.

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Constitution guarantees to every person the right to inspect or copy public records[1] and the right for all meetings of government collegial bodies, including those in any county, municipality, school district, or special district, at which official acts are taken or public business is transacted or discussed, to be noticed and open to the public.[2] The constitutional requirement is self-executing but the Legislature is required to enact laws for the enforcement of the section.[3]

Government in the Sunshine Law

Section 286.011, F.S., also known as the "Government in the Sunshine Law," enforces the requirement that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken must be open to the public at all times.[4] The board or commission must provide reasonable notice of all public meetings.[5] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[6] Minutes of a public meeting must be promptly recorded and be open to public inspection.[7]

Notices of Meetings and Hearings

Each board, commission, or agency must include in the notice of any meeting or hearing the advice that, if a person decides to appeal any decision made by the board, agency, or commission he or she will need a record of the proceedings, and that he or she may need to ensure that a verbatim record of the proceeding is made, which includes the testimony and evidence upon which the appeal is to be based.[8]

"Reasonable notice" is defined neither by the Constitution nor the statute. Florida courts have held that the reasonable notice may vary depending on the facts but its purpose is "to apprise the public of the pendency of matters that might affect their rights, afford them the opportunity to appear and present their views, and afford them a reasonable time to make an appearance if they wished."[9] The Office of the Attorney General recommends notice of the time and place of the meeting be provided at least 7 days before the meeting except in instances of emergency or special meetings.[10]

Conducting Public Meetings by Telecommunications

Currently, Florida law provides for state agencies to conduct public meetings or hearings using communications media technology, defined as "the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available."[11] The

[1] Art. I, s. 24(a), Fla. Const.
[2] Art. I, s. 24(b), Fla. Const.
[3] Art. I, s. 24(c), Fla. Const.
[4] Section 286.011(1), F.S.
[5] *Id.*
[6] Section 286.011(6), F.S.
[7] Section 286.011(2), F.S.
[8] Section 286.0105, F.S.
[9] *Rhea v. Gainesville*, 574 So. 2d 221, 222 (Fla. 1st DCA 1991) *citing* Op. Atty. Gen. Fla., 73-170 (1973).
[10] Office of the Attorney General, *Government-in-the-Sunshine Manual*, 40 (2017 ed.).
[11] Section 120.54(5)(b)2., F.S.

Administration Commission (Commission)[12] is required to adopt uniform rules of procedure including " rules for use by each state agency that provide procedures for conducting public meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such public meetings, hearings, and workshops, in person and by means of communications media technology. . . ."[13] The rules must provide the following:

- All evidence, testimony, and argument presented must be afforded equal consideration, regardless of the method of communication.
- The notice must state if a public meeting, hearing, or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means.
- The notice for public meetings, hearings, and workshops utilizing communications media technology must state how persons interested in attending may do so and name locations, if any, where communications media technology facilities will be available.[14]

The adoption of the uniform rules by the Commission does not diminish the right to inspect public records under ch. 119, F.S.[15] If any agency limits points of access to public meetings, hearings and workshops subject to s. 286.011, F.S., to places not normally open to the public, any official action taken therein is void.[16] All other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, apply to public meetings, hearings, and workshops conducted by means of communications media technology.[17]

The Commission adopted uniform rules governing proceedings by communications technology, currently codified as ch. 28-109, F.A.C. Separate rules provide definitions,[18] application,[19] notice,[20] and for taking evidence and testimony.[21]

While state agencies may conduct meetings, hearings, or workshops by communications media technology, there is no similar statute providing such authorization for local governments.[22] Additionally, the requirements for public meetings and other aspects of the Government in the Sunshine Law must be interpreted most favorably to the public, having been enacted for the public benefit.[23]

The Attorney General has concluded that where a quorum of membership is required for a collegial body to discuss or transact relevant public business, including taking final action, in a properly noticed public meeting, that quorum of members must be present physically at the meeting place in order to constitute a proper quorum.[24]

Florida's Voting Requirement Law

Pursuant to s. 286.012, F.S., no member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such

[12] The Administration Commission is comprised of the Governor and Cabinet. Section 14.202, F.S. Affirmative action by the Commission requires the approval of the Governor and at least two other members.
[13] Section 120.54(5)(b)2., F.S.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] Rule 28-109.002, F.A.C.
[19] Rule 28-109.003, F.A.C.
[20] Rule 28-109.005, F.A.C.
[21] Rule 28-109.006, F.A.C.
[22] Op. Att'y. Gen. Fla. 98-28;*see* Office of the Attorney General, *Government-in –the-Sunshine Manual*, 35 (2017 ed.).
[23] *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260, 263 (Fla. 1973); *Zorc v. City of Vero Beach*, 722 So. 2d 891, 897 (Fla. 4th DCA 1999).
[24] Op. Att'y. Gen. Fla. 2001-66;*see* Office of the Attorney General, *Government-in-the-Sunshine Manual*, 35 (2017 ed.).

decision, ruling, or act. A vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest.[25] In such cases, the member must comply with the disclosure requirements in the Code of Ethics for Public Officers and Employees.[26]

School Boards and Board of County Commissioners

The legislative and governing body of a county has the power to perform any acts not inconsistent with general or special law, which are in the common interest of the people of the county, and may exercise all powers and privileges not specifically prohibited by law.[27]

Similarly, a district school board may adopt policies and procedures necessary for the daily business operation of the district school board.[28] These include, but are not limited to, district school board policy development, adoption, and repeal; district school board meeting procedures, including participation via telecommunications networks, use of technology at meetings, and presentations by nondistrict personnel.[29] School board policies and procedures may also address citizen communications with the district school board and with individual district school board members; collaboration with local government and other entities as required by law; and organization of the district school board, including special committees and advisory committees.[30]

Monroe County

Monroe County's Board of County Commissioners (Board) is composed of five members serving staggered terms of four years.[31] The Board meets on the third Wednesday and Thursday of every month at one of the three following locations: the Murray E. Nelson Government Center in Key Largo, the Marathon Government Center in Marathon, or the Harvey Government Center in Key West.[32] Meeting in various locations in part is due to Monroe County's length and limited road access.[33]

Effect of the Bill

Notwithstanding s. 286.011, F.S., the bill authorizes the School Board of Monroe County or the Board of County Commissioners of Monroe County, or any political subdivision thereof, to conduct public meetings, hearings, and workshops by means of communications media technology if the board adopts uniform rules authorizing the use of communications media technology and **no final action** is taken at the meeting.

The rules must provide procedures for using communications media technology for purposes of conducting public meetings, hearings, and workshops, as well as for taking evidence, testimony, and argument at public meetings. The rules must also provide that evidence, testimony, and argument must be afforded equal consideration, regardless of the method of communication.

---

[25] Section 286.012, F.S.
[26] *Id*; *see also* s. 112.3143, F.S.
[27] Section 125.01(1), F.S.
[28] Section 1001.43(10), F.S.
[29] *Id.*
[30] *Id.*
[31] Art. VIII, s. 1, Fla. Const.
[32] Monroe County Board of County Commissioners website, available at http://www.monroecounty-fl.gov/index.aspx?nid=27 (last visited March 21, 2017).
[33] According to the Florida Dept. of Transportation, the distance from Key Largo to Key West alone is 98 miles. *See* http://fdotewp1.dot.state.fl.us/CityToCityMileage/viewera.aspx (last accessed 3/21/2017).

A notice stating a public meeting, hearing, or workshop will be conducted by means of communications media technology must also state how persons interested in attending may do so and name locations, if any, where communications media technology facilities will be available.

The bill does not limit a person's right to inspect public records under ch. 119, F.S. Additionally, limiting points of access to public meetings, hearings, and workshops subject to the "Government in the Sunshine Law," to places not normally open to the public is presumed to violate the right of access of the public and will result in any official action taken under such circumstances being void. Any other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, will apply to public meetings, hearings, and workshops conducted by means of communications media technology and must be liberally construed in their application.

Pursuant to House Rule 5.5(b), a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. The provisions of House Rule 5.5(b) appear to apply to this bill.

B. SECTION DIRECTORY:

Section 1 Authorizes the School Board of Monroe County, Board of County Commissioners of Monroe County, or any political subdivision thereof, to conduct public meetings, hearings, and workshops by means of communications media technology; provides for meeting notices.

Section 2 Provides the bill is effective upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? February 1, 2017

WHERE? *Key West Citizen*, a daily newspaper published in Key West, in Monroe County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to Monroe County; providing definitions; providing an exception to general law; authorizing the School Board of Monroe County or the Board of County Commissioners of Monroe County, or any political subdivision thereof, to conduct public meetings, hearings, and workshops by means of communications media technology; authorizing the adoption of rules; providing for notices of public meetings, hearings, and workshops conducted by means of communications media technology; providing applicability and construction; providing an effective date.

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

Section 1. (1) As used in this act, the term "communications media technology" has the same meaning as provided in s. 120.54(5)(b)2., Florida Statutes.

(2) Notwithstanding s. 286.011, Florida Statutes, the School Board of Monroe County or the Board of County Commissioners of Monroe County, or any political subdivision thereof, may authorize public meetings, hearings, and workshops to be conducted by means of communications media technology if the board adopts uniform rules authorizing the use of

communications media technology and no final action is taken at such meeting. The rules must provide procedures for conducting public meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such public meetings, hearings, and workshops, in person and by means of communications media technology. The rules must provide that all evidence, testimony, and argument presented shall be afforded equal consideration, regardless of the method of communication.

(3) If a public meeting, hearing, or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means, the notice shall so state. The notice for public meetings, hearings, and workshops using communications media technology shall state how persons interested in attending may do so and shall name locations, if any, where communications media technology facilities will be available.

(4) This act does not limit a person's right to inspect public records under chapter 119, Florida Statutes. Limiting points of access to public meetings, hearings, and workshops subject to s. 286.011, Florida Statutes, to places not normally open to the public is presumed to violate the right of access of the public, and any official action taken under such circumstances is void. Other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, apply to public meetings, hearings, and workshops

conducted by means of communications media technology, and shall be liberally construed in their application to such public meetings, hearings, and workshops.

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

HB 1325

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1325 Elections
SPONSOR(S): Renner
TIED BILLS: **IDEN./SIM. BILLS:** SB 1160

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

SUMMARY ANALYSIS

The bill makes several changes to the Florida Election Code.

Current law only allows the use of voter interface devices to be used to aid persons with disabilities. The bill appears to expand the use of voter interface devices to permit all individuals to use such devices.

Current law allows an elector to cast a ballot by mail, called a vote-by-mail ballot. If the elector omits his or her signature from the vote-by-mail ballot or the signature is determined to not match the registration records, the ballot will not be counted. The bill requires the Supervisor of Elections (Supervisor) to immediately notify each elector whose vote-by-mail ballot has been rejected of the existence of the process to cure the ballot. The bill provides a cure for an elector who submits a vote-by-mail ballot that is rejected because of a difference between the signature on the voter's certificate or ballot affidavit and the registration books or precinct register.

Current law requires polls to be open from 7 am to 7 pm on the day of the election. The bill prohibits a court from extending the official closing time of the polls unless extraordinary circumstances exist.

Current law allows the designation of poll watchers by political parties, candidates, and certain political committees. The bill requires polling rooms and early voting areas to be laid out in such a manner as to not impede a poll watcher from observing the operations of a polling place. Additionally, the bill prohibits an election official from obstructing a poll watcher's good faith performance of his or her functions. The bill also prohibits elected officials from being poll watchers.

Current law requires a candidate to pay his or her qualification fee with a properly executed check. The bill requires a candidate to pay his or her qualification fee with a money order or cashier's check drawn from the candidate's campaign account.

Current law requires the Supervisor to publish a sample ballot in a newspaper of general circulation in the county. The bill allows the Supervisor to forego publication of a sample ballot if the Supervisor mails a sample ballot to each registered elector, or to each household in which there is a registered elector at least seven days prior to an election.

Current law allows any elector requiring assistance to vote by reason of blindness, disability, or inability to read or write to request the assistance of two election officials or some other person of his or her choosing to assist in casting a vote. The bill specifies that a person assisting an elector may read the contents of the ballot in its entirety. The bill revises penalties for violating certain prohibitions relating to assisting voters and adds a prohibition on giving anything of value for providing assistance.

The bill may have a negative fiscal impact on the state and an indeterminate fiscal impact on local governments. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Voting Systems

Background

The Florida Election Code[1] requires certain specifications for voting systems[2] and ballots.[3] The term "ballot" is divided into two sub-categories:

- "Marksense ballots" means that printed sheet of papers, used in conjunction with an electronic or electromechanical vote tabulation voting system, containing the names of candidates, or a statement of proposed constitutional amendments or other questions or propositions submitted to the electorate at any election, on which sheet of paper an elector casts his or her vote.[4]
- "Electronic or electromechanical devices" means a ballot that is voted by the process of electronically designating, including by touchscreen, or marking with a marking device[5] for tabulation by automatic tabulating equipment or data processing equipment.[6]

The Electronic Voting Systems Act (act)[7] was established "to authorize the use of electronic and electromechanical voting systems in which votes are registered electronically or are tabulated on automatic tabulating equipment or data processing equipment."[8] The act requires all voting to be by marksense ballot utilizing a marking device for the purpose of designating ballot selections.[9] However, persons with disabilities may vote on a voter interface device that meets the voting system accessibility requirements for individuals with disabilities pursuant to the federal Help America Vote Act of 2002 and s. 101.56062, F.S.[10] The term "voter interface device" means any device that communicates voting instructions and ballot information to a voter and allows the voter to select and vote for candidates and issues.[11]

The Department of State must publicly examine all makes of electronic or electromechanical voting systems submitted to it and determine whether the systems comply with s. 101.5606, F.S., which establishes requirements for approval of systems.[12] Any person owning or interested in an electronic or electromechanical voting system may submit it to the department for examination.[13] Each certified voting system must include the capability to install accessible voter interface devices in the system

---

[1] Chapters 97-106, F.S., are known as The Florida Election Code.

[2] The term "voting system" is defined to mean a method of casting and processing votes that functions wholly or partly by use of electromechanical or electronic apparatus or by use of marksense ballots and includes, but is not limited to, the procedures for casting and processing votes and the programs, operating manuals, supplies, printouts, and other software necessary for the system's operation. Section 97.021(44), F.S.

[3] Section 101.015(1), F.S., sets the standards for voting systems. The Department of State is required to adopt rules establishing the minimum standards for hardware and software for electronic and electromechanical voting systems. Section 101.015(1), F.S.; *see also* Fla. Admin. Rule 1S-5.001. Sections 101.151 and 101.161, F.S., set the specifications for ballots. The Department of State is required to adopt rules prescribing a uniform primary and general election ballot for each certified voting system in accordance with The Florida Election Code. Section 101.151(9), F.S.; *see also* Fla. Admin. Rule 1S-2.032.

[4] Section 97.021(4)(a), F.S.

[5] The term "marking device" is defined to mean any approved device for marking a ballot with ink or other substance that will enable the ballot to be tabulated by means of automatic tabulating equipment. Section 101.5603(5), F.S.

[6] Section 97.021(4)(b), F.S.

[7] Sections 101.5601-101.5614, F.S., are cited as the "Electronic Voting Systems Act."

[8] Section 101.5602, F.S.

[9] Section 101.56075(1), F.S.

[10] Section 101.56075(2), F.S.

[11] Section 97.021(40), F.S.

[12] Section 101.5605(1), F.S.

[13] Section 101.5605(2)(a), F.S.

configuration that will allow the system to meet certain minimum standards to aid persons with disabilities in the voting process.[14]

By 2020, all persons with disabilities must vote on a voter interface device that meets the voter accessibility requirements for individuals with disabilities under the Help America Vote Act of 2002 and s. 101.56062, F.S.[15]

Effect of the Bill
The bill appears to expand the use of voter interface devices to all individuals instead of persons with disabilities only.

The bill revises the definition of "marksense ballot" to include sheets of paper used indirectly to designate the elector's ballot selections through the use of a voter interface device.

With respect to any voting system that uses a voter interface device, the bill provides that ss. 101.151, 101.161, 101.2512, 101.2515 101.252, 101.254, F.S., which relate to ballot layout, only apply to the display of candidates and issues on such devices.

The bill amends the Electronic Voting Systems Act to include voter interface devices within the definition of "marking device."

Vote-by-Mail Ballots

Background
Florida law allows an elector to cast his or her ballot by mail.[16] Those ballots, termed "vote-by-mail ballots," are subject to specific requirements and procedures set in statute.[17] In brief, an elector may request a vote-by-mail ballot from his or her Supervisor of Elections (Supervisor).[18] Thereafter, the Supervisor mails the elector a letter containing a ballot, instructions for completing the ballot,[19] and a secrecy envelope for returning the ballot.[20] Once the elector has completed the ballot and placed it in the secrecy envelope, the elector must complete a voter's certificate affixed to the back of the envelope.[21] The voter's certificate reads as follows:

VOTER'S CERTIFICATE

I, _____, do solemnly swear or affirm that I am a qualified and registered voter of _____ County, Florida, and that I have not and will not vote more than one ballot in this election. I understand that if I commit or attempt to commit any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I can be convicted of a felony of the third degree and fined up to $5,000 and/or imprisoned for up to 5 years. I also understand that failure to sign this certificate will invalidate my ballot.

(Date) _____ (Voter's Signature)[22] _____

[14] *See* s. 101.56062, F.S.
[15] Section 101.56075(3), F.S.
[16] Section 101.62, F.S.
[17] *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.
[18] Section 101.62, F.S.
[19] Section 101.65, F.S.
[20] Section 101.64(1), F.S.
[21] *Id.*
[22] The Supervisor must create the secrecy envelope so that the voter's signature portion of the certificate crosses the seal of the envelope. Section 101.64(2), F.S.

Upon receipt of the vote-by-mail ballot, the Supervisor compares the signature on the voter's certificate to the signature of the elector in the registration books or the precinct register "to determine whether the elector is duly registered in the county."[23] A vote-by-mail ballot is considered illegal if the voter's certificate does not include the signature of the elector, as shown by the registration records or the precinct register.[24]

If a vote-by-ballot is rejected as illegal, the Supervisor must notify the elector that his or her ballot was rejected and provide the reason for the rejection.[25] If the ballot was rejected due to a difference between the elector's signature on the voter's certificate or vote-by-mail affidavit and the signature in the registration books or precinct register, then the Supervisor must mail a voter registration application to that elector for purposes of updating his or her signature.[26]

The Florida Election Code[27] allows an elector voting by mail to update their signature for verification purposes at any time before the county canvassing board begins canvassing the ballots. After canvassing begins, an elector may not update his or her signature for this purpose.[28] County canvassing boards may begin canvassing vote-by-ballots 15 days before the election but must begin canvassing those ballots by noon the day after the election.[29]

An elector's vote-by-mail ballot may be invalidated based upon two deficiencies in signing the voter's certificate: signature omission and signature mismatch. If an elector's signature is omitted from the certificate,[30] the elector may cure the illegal ballot.[31] If, by 5 p.m. on the day before the election, the elector completes a vote-by-mail affidavit[32] and provides identification[33] to the Supervisor, the ballot will be legitimized and counted.[34] However, no analogous cure process exists when the Supervisor or the County Canvassing Board determines that the signature on the voter's certificate does not match the signature on record for that elector. In that circumstance, the ballot is deemed illegal.[35]

Recent Litigation

The U.S. District Court for the Northern District of Florida declared "Florida's statutory scheme as it relates to mismatched-signature [vote-by-mail] ballots" unconstitutional.[36] The plaintiffs in the case, the

---

[23] Section 101.68(1), F.S. If the Supervisor fails to compare the signatures, the County Canvassing Board will do so. Section 101.68(2)(c)1., F.S.
[24] Section 101.68(2)(c)1., F.S.
[25] Section 101.68(4)(a), F.S.
[26] *Id.*
[27] Section 97.011, F.S. Chapters 97-106, F.S., inclusive shall be known and may be cited as "The Florida Election Code."
[28] Section 98.077(4), F.S.; *see also* s. 97.055(1)(b), F.S.
[29] Section 101.68(2)(a), F.S.; *see also* s. 98.077, F.S., requiring each Supervisor to publish a notice in each year in which a general election occurs specifying how an elector can update his or her voter registration signature in a newspaper in the county.
[30] The instructions accompanying the vote-by-mail ballot warn the elector that a signature is required for the ballot to be counted. "In order for your vote-by-mail ballot to be counted, you must sign your name on the line above (Voter's Signature)." Section 101.65, F.S.
[31] Section 101.68(4), F.S.; *see also* s. 98.077(4), F.S., an elector may not update his or her signature for purposes of verifying a vote-by-mail ballot once the canvassing of vote-by mail ballots begins.
[32] The form of the affidavit is prescribed by statute, s. 101.68(4)(c), F.S., and the Department of State, Division of Elections, has created a standardized form for the affidavit, DS-DE-139. The Department of State and each Supervisor is required to post the affidavit online and accept the elector's affidavit and identification by mail, fax, or email. Section 101.68(4)(d), F.S.
[33] Section 101.68(4)(c), F.S. Current acceptable forms of identification include the following: United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; public assistance identification; veteran health identification card issued by the United States Department of Veterans Affairs; a Florida license to carry a concealed weapon or firearm; or an employee identification card issued by any branch, department, agency, or entity of the Federal Government, the state, a county, or a municipality; or identification that shows your name and current residence address: current utility bill, bank statement, government check, paycheck, or government document (excluding voter identification card).
[34] Section 101.68(4)(b), F.S.
[35] Section 101.68(2)(c)1., F.S.
[36] *Fla. Democratic Party v. Detzner*, 4:16cv607-MW/CAS (N.D. Fla. 2016).

Florida Democratic Party, sought an injunction enjoining the state "and anyone under their supervision from rejecting mismatch-signature ballots without first affording those voters an opportunity to cure in the same election cycle."[37] The court granted the injunction noting that Florida's statutory scheme threatens the constitutional right of each voter to cast his or her vote and have it counted "by subjecting vote-by-mail voters to an unreasonable risk that their ballot will be tossed without any opportunity to cure, let alone any form of notice."[38] The court therefore ordered "mismatched-signature ballots to be cured in precisely the same fashion as currently provided for non-signature ballots."[39] To that end, the court ordered the Secretary of State to give each Supervisor an altered affidavit that includes references to vote-by-mail voters whose ballots have been invalidated because of a signature mismatch. On December 12, 2016, the court issued an order staying the case until May 5, 2017.

Effect of the Bill

The bill provides a cure for an elector who submits a vote-by-mail ballot that is rejected because of a difference between the signature on the voter's certificate or ballot affidavit and the registration books or precinct register. The bill creates a process for a voter to cure a vote-by-mail ballot with a mismatched signature. The voter must submit a signed "cure" affidavit along with a copy of a valid picture ID. Once a Supervisor receives a vote-by-mail ballot that contains no signature or that contains a signature that does not match the voter's signature in the registration book or precinct register. The supervisor must immediately notify the voter and provide an opportunity to cure the defect by submission of a signed cure affidavit no later than 5:00 p.m. on the day before the election — the current deadline for correcting a ballot with no signature. The cure affidavit requires a copy of certain specified photo IDs for curing these defective ballots. However, the bill allows ballots rendered defective because of a lack of signature to use specified non-photo forms of identification to cure the ballot if those persons lack photo ID, while a cure affidavit for a mismatched signature ballot must only use a photo ID.

Polls and Poll Watchers

Background

Current law requires polls to be open at 7:00 am on the morning of the election and kept open until 7:00 pm that night.[40]

Poll watchers are persons unaffiliated with the administration of the election who monitor the election by observing the conduct of electors and officials at polling places.[41] The following entities may designate one poll watcher for each polling room:

- Political parties;
- Political committees formed for the specific purpose of expressly advocating the passage or defeat of an issue on the ballot; and
- Candidates.[42]

To designate a poll watcher, the listed entities must submit a designation form[43] to the Supervisor within a prescribed timeframe prior to the election.[44] Once accepted and approved by the Supervisor, the list of poll watchers is submitted to each election board[45] and the poll watcher will receive an identification badge to wear in the polling area.[46]

---

[37] *Id.* at 9.
[38] *Id.*
[39] *Id.* at 29.
[40] Section 100.011(1), F.S.
[41] Section 101.131, F.S.
[42] Section 101.131(1), F.S.
[43] *See* DS-DE 125, incorporated by reference by Fla. Admin. Code. R. 1S-2.054.
[44] Section 101.131(2), F.S.
[45] *Id.*
[46] Section 101.131(5), F.S.

Each poll watcher must be allowed within the polling room[47] or early voting site[48] to perform their duties.[49] Poll watchers must be qualified and registered electors of the county in which they serve.[50] A poll watcher is prohibited from:

- Coming closer to the election officials' table or the voting booths than is reasonably necessary to perform his or her function;
- Obstructing the orderly conduct of any election;
- Interacting with voters.[51]

Candidates, sheriffs, deputy sheriffs, police officers, or law enforcement officers are prohibited from being poll watchers.[52]

A poll watcher may challenge the right of a person to vote by submitting an oath that sets forth the reasons for the poll watcher's belief that the elector is casting a vote illegally.[53]

Effect of the Bill

The bill prohibits a court from extending the official closing time of the polls unless there is a specific showing or finding of fact that extraordinary circumstances exist to justify the extension.

The bill requires polling rooms and early voting areas to be laid out in such a manner as to not impede a poll watcher from observing the operations of a polling place. Additionally, the bill prohibits an election official from obstructing a poll watcher's good faith performance of his or her functions, so long as that poll watcher is not disrupting the operations of the polling place.

The bill adds elected officials to the list of persons prohibited from being poll watchers.

Payment of Candidate Qualification Fee

Current Situation

Current law requires a person seeking to become a candidate for public office to either pay a qualification fee or qualify by petition.[54] If the person opts for the former, he or she must pay the qualification fee with a "properly executed check drawn upon the candidate's campaign account."[55] If the check is returned by the bank for any reason, the filing officer must immediately notify the candidate.[56] The candidate then has until the end of the qualification period[57] to pay the fee with a cashier's check purchased from funds of the campaign account.[58]

Recent Litigation

The Florida Supreme Court, in *Wright v. City of Miami Gardens,*[59] recently declared the statutory requirement that a candidate has until the end of the qualification period to rectify a check returned by a

---

[47] The term "polling room" is defined to mean "the actual room in which ballots are cast on election day and during early voting." Section 97.021(28), F.S.

[48] The term "early voting site" is defined to mean "those locations specified in s. 101.657 and the building in which early voting occurs." Section 97.021(11), F.S.

[49] Section 101.131(1), F.S.

[50] *Id.*

[51] Section 101.111, F.S.

[52] Section 101.131(3), F.S.

[53] *Id.*

[54] Section 99.061, F.S.

[55] Sections 99.051(7)(a)1. and 105.031(5)(a)1., F.S.; The Division of Elections in the Department of State has interpreted that phrase to prohibit the use of cashier's checks. *See* 2016 State Qualification Handbook, Division of Elections, Department of State, at pg. 5. *available at* http://dos.myflorida.com/media/695458/state-qualifying-handbook.pdf (last visited 3/20/17).

[56] Section 99.061(7)(a)1., F.S.

[57] Section 99.061(1)-(2), F.S.

[58] Section 99.061(7)(a)1., F.S.

[59] *Wright v. City of Miami Gardens,* 200 So. 3d 765 (Fla. 2016).

bank unconstitutional. In that case, a candidate for mayor of the City of Miami Gardens had the check he used to pay his qualification fee returned by the bank due to banking error. The candidate was not notified of the bank's erroneous action in time to remedy the defective instrument. The candidate was thereafter disqualified and his name withheld from the ballot. The Court held that the statute "unconstitutionally erects a barrier that is an unnecessary restraint on one's right to seek elective office" and severed the portion of the 2011 law that created that process. In so doing, the court reverted the statute back to its pre-2011 form, which allows a candidate 48 hours, notwithstanding the end of the qualification period, after notification of the returned check to pay the qualification fee with a cashier's check.[60]

Effect of the Bill
The bill requires a candidate to pay his or her qualification fee with a money order or cashier's check drawn upon funds from the candidate's campaign account. The bill eliminates the portion of the law that the Florida Supreme Court severed in *Wright v. City of Miami Gardens*.[61]

Sample Ballots

Background
Current law requires the Supervisor to publish a sample ballot in a newspaper of general circulation in the county prior to the day of the election.[62] The sample ballot must be in the form of the official ballot as it will appear on election day.[63] A Supervisor may send a sample ballot via email to each elector who has provided their email and opted for that service.[64]

Effect of the Bill
The bill allows the Supervisor to forego publication of a sample ballot in a newspaper of general circulation if the Supervisor mails a sample ballot to each registered elector, or to each household in which there is a registered elector at least seven days prior to an election.

Disabled Voters

Background
Current law allows any elector requiring assistance to vote by reason of blindness, disability, or inability to read or write to request the assistance of two election officials or some other person of his or her choosing to assist in casting a vote.[65] However, the person assisting the elector may not be the elector's employer, an agent thereof, or an officer or agent of the elector's union.[66] Before the elector enters the voting booth, he or she may request that the person or persons assisting him or her read aloud the titles of the offices to be filed, the candidates therefor, and the issues on the ballot without suggestion or interference.[67] The elector and anyone assisting him or her may then enter the voting booth to help in the voting process.[68]

It is currently a first degree misdemeanor for a person to do the following:

- Be physically in the voting booth with any elector unless assisting an elector who by reason of blindness, disability, or inability to read or write requests such assistance; or
- Solicit any elector in an effort to provide assistance to vote at a polling place, early voting site, or within 100 feet of those locations.

---

[60] *Id.*
[61] *Id.*
[62] Section 101.20(2), F.S.
[63] Section 101.20(1), F.S.
[64] Section 101.20(2), F.S.
[65] Section 101.051(1), F.S.
[66] *Id.*
[67] *Id.*
[68] *Id.*

Effect of the Bill

The bill specifies that a person assisting an elector must read the contents of the ballot in their entirety. The bill prohibits a person from giving anything of value to any elector in an effort to provide assistance to vote. It also, increases the penalties associated with violating the prohibitions relating to assisting certain voters from a first degree misdemeanor to a third degree felony. In sum, the bill makes it a third degree felony to do any of the following:

- Be physically in the voting booth with any elector unless assisting an elector who by reason of blindness, disability, or inability to read or write requests such assistance;
- Solicit any elector in an effort to provide assistance to vote at a polling place, early voting site, or within 100 feet of those locations; or
- Give an elector anything of value, redeemable in cash, to any elector in any attempt to provide assistance.

B. SECTION DIRECTORY:

Section 1 amends s. 97.021, F.S., relating to definitions for the Florida Election Code.

Section 2 amends s. 99.061, F.S., relating to the method of qualifying for nomination or election to federal, state, county, or district office.

Section 3 amends s. 100.011, F.S., relating to the opening and closing of polls.

Section 4 amends s. 101.051, F.S., relating to electors seeking assistance in casting ballots.

Section 5 amends s. 101.131, F.S., relating to watchers at polls.

Section 6 amends s. 101.151, F.S., relating to specifications for ballots.

Section 7 amends s. 101.20, F.S., relating to publication of ballot form; sample ballots.

Section 8 amends s. 101.5603, F.S., relating to definitions to the Electronic Voting Systems Act.

Section 9 amends s. 101.56075, F.S., relating to voting methods.

Section 10 amends s. 101.68, F.S., relating to the canvassing of vote-by-mail ballots.

Section 11 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:

Companies offering voter interface devices may see an increase in requests for such devices due to the authorized expansion of the use of such devices.

D. FISCAL COMMENTS:

The bill may cause a minimal fiscal impact to the Department of State, Division of Elections, because the division may need to alter form DS-DE-139, the Omitted Signature Affidavit for Vote-By-Mail Ballots, and form DS-DE 125, Designation of Poll Watchers. Each Supervisor and the Division of Elections is required to place the vote-by-mail signature affidavit online; as such, there might be a minimal fiscal impact associated with replacing the current affidavit with the updated affidavit.

Additionally, there might be fiscal impact to local governments associated with locating or altering polling rooms and early voting areas so that those areas would not impede poll watchers from observing the operations of those places.

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.

A bill to be entitled

An act relating to elections; amending s. 97.021, F.S.; revising the definition of the term "marksense ballots" for purposes of the Florida Election Code; amending s. 99.061, F.S.; revising qualification requirements for a candidate; amending s. 100.011, F.S.; prohibiting a court from extending the official time of closing of the polls except under certain circumstances; amending s. 101.051, F.S.; specifying the manner in which a person providing assistance to an elector in casting a ballot must read the ballot's contents; increasing penalties for being in a voting booth with an elector or soliciting an elector in an effort to provide assistance to vote; providing a penalty for giving certain things of value to an elector in an effort to provide assistance to vote; amending s. 101.131, F.S.; specifying a layout requirement for a polling room or an early voting area; prohibiting an election official from obstructing a poll watcher under certain circumstances; prohibiting an elected official from being designated as a poll watcher; amending s. 101.151, F.S.; providing applicability of specified ballot requirements to a voter interface device; amending s. 101.20, F.S.; providing an exception to

the requirement that a sample ballot be published by the supervisor of elections in a newspaper of general circulation in the county; amending ss. 101.5603 and 101.56075, F.S.; conforming provisions to changes made by the act; amending s. 101.68, F.S.; deleting an obsolete date; revising provisions governing the canvassing of vote-by-mail ballots; providing conditions by which a vote-by-mail ballot may be counted; authorizing use of the vote-by-mail ballot cure affidavit if an elector's signature does not match the signature in the registration books or precinct register; requiring the supervisor of elections to immediately notify an elector upon receipt of a vote-by-mail ballot with a missing or mismatched signature; revising terminology; revising the cure affidavit instructions with respect to acceptable forms of identification; specifying that a Florida driver license or Florida identification card are acceptable forms of identification for purposes of curing a vote-by-mail ballot; expanding the scope of post-election signature update requests to include electors who cured a vote-by-mail ballot with a mismatched signature; providing an effective date.

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

Section 1. Paragraph (a) of subsection (5) of section 97.021, Florida Statutes, is amended to read:

97.021 Definitions.—For the purposes of this code, except where the context clearly indicates otherwise, the term:

(5) "Ballot" or "official ballot" when used in reference to:

(a) "Marksense ballot ~~ballots~~" means the ~~that~~ printed sheet of paper, used in conjunction with an electronic or electromechanical vote tabulation voting system, containing the names of candidates, or a statement of proposed constitutional amendments or other questions or propositions submitted to the electorate at an ~~any~~ election, or the selections made by the elector of candidates or other questions or propositions at an election, on which ~~sheet of paper~~ an elector casts his or her vote either directly by using a marking device to designate his or her ballot selections on the sheet of paper or indirectly through the use of a voter interface device used to designate his or her ballot selections on the sheet of paper.

Section 2. Paragraph (a) of subsection (7) of section 99.061, Florida Statutes, is amended to read:

99.061 Method of qualifying for nomination or election to federal, state, county, or district office.—

(7)(a) In order for a candidate to be qualified, the following items must be received by the filing officer by the

end of the qualifying period:

1. A money order or cashier's ~~properly executed~~ check drawn upon funds from the candidate's campaign account payable to the person or entity as prescribed by the filing officer in an amount not less than the fee required by s. 99.092, unless the candidate obtained the required number of signatures on petitions pursuant to s. 99.095. The filing fee for a special district candidate is not required to be drawn upon the candidate's campaign account. ~~If a candidate's check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall have until the end of qualifying to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate.~~

2. The candidate's oath required by s. 99.021, which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable; and the signature of the candidate, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a).

3. If the office sought is partisan, the written statement of political party affiliation required by s. 99.021(1)(b).

4. The completed form for the appointment of campaign treasurer and designation of campaign depository, as required by s. 106.021.

5. The full and public disclosure or statement of financial interests required by subsection (5). A public officer who has filed the full and public disclosure or statement of financial interests with the Commission on Ethics or the supervisor of elections prior to qualifying for office may file a copy of that disclosure at the time of qualifying.

Section 3. Subsections (3) and (4) of section 100.011, Florida Statutes, are renumbered as subsections (4) and (5), respectively, and a new subsection (3) is added to that section to read:

100.011 Opening and closing of polls, all elections; expenses.—

(3) A court may not extend the official time of closing of the polls unless there is a specific showing or finding of fact that extraordinary circumstances exist to justify the extension.

Section 4. Subsections (1) and (2) of section 101.051, Florida Statutes, are amended to read:

101.051 Electors seeking assistance in casting ballots; oath to be executed; forms to be furnished.—

(1) Any elector applying to vote in any election who requires assistance to vote by reason of blindness, disability, or inability to read or write may request the assistance of two election officials or some other person of the elector's own choice, other than the elector's employer, an agent of the employer, or an officer or agent of his or her union, to assist

the elector in casting his or her vote. Any such elector, before retiring to the voting booth, may have one of such persons read over to him or her, without suggestion or interference, the titles of the offices to be filled and the candidates therefor and the issues on the ballot fully and in their entirety. After the elector requests the aid of the two election officials or the person of the elector's choice, they shall retire to the voting booth for the purpose of casting the elector's vote according to the elector's choice.

(2) It is unlawful for any person to be in the voting booth with any elector except as provided in subsection (1). A person at a polling place or early voting site, or within 100 feet of the entrance of a polling place or early voting site, may not solicit any elector in an effort to provide assistance to vote pursuant to subsection (1). A person may not give anything of value that is redeemable in cash to any elector in an effort to provide assistance to vote pursuant to subsection (1). Any person who violates this subsection commits a felony ~~misdemeanor~~ of the third ~~first~~ degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

Section 5. Subsections (1) and (3) of section 101.131, Florida Statutes, are amended to read:

101.131 Watchers at polls.—

(1) Each political party and each candidate may have one watcher in each polling room or early voting area at any one

time during the election. A political committee formed for the specific purpose of expressly advocating the passage or defeat of an issue on the ballot may have one watcher for each polling room or early voting area at any one time during the election. No watcher shall be permitted to come closer to the officials' table or the voting booths than is reasonably necessary to properly perform his or her functions, but each shall be allowed within the polling room or early voting area to watch and observe the conduct of electors and officials. The polling room or early voting area shall be laid out in a manner so as to not impede a poll watcher from observing the operations of the polling place. An official may not obstruct a poll watcher's good faith performance of his or her functions so long as the poll watcher is not disrupting the operations of the polling place. The poll watchers shall furnish their own materials and necessities and may ~~shall~~ not obstruct the orderly conduct of any election. The poll watchers shall pose any questions regarding polling place procedures directly to the clerk for resolution. They may not interact with voters. Each poll watcher shall be a qualified and registered elector of the county in which he or she serves.

(3) Any elected official, ~~No~~ candidate, ~~or~~ sheriff, deputy sheriff, police officer, or other law enforcement officer may not be designated as a poll watcher.

Section 6. Subsection (10) is added to section 101.151,

Florida Statutes, to read:

101.151 Specifications for ballots.—

(10) With respect to any certified voting system that uses a voter interface device to designate the elector's ballot selections on a printed sheet of paper, this section, s. 101.161, and ss. 101.2512-101.254 that prescribe the ballot layout apply only to the display of candidates and issues on the voter interface device.

Section 7. Subsection (2) of section 101.20, Florida Statutes, is amended to read:

101.20 Publication of ballot form; sample ballots.—

(2) Upon completion of the list of qualified candidates and before the day of an election, a sample ballot shall be published by the supervisor of elections in a newspaper of general circulation in the county unless the supervisor mails a sample ballot to each registered elector or to each household in which there is a registered elector at least 7 days~~,~~ before the day of an election. A supervisor may send a sample ballot to each registered elector by e-mail at least 7 days before the day of an election if an e-mail address has been provided and the elector has opted to receive a sample ballot by electronic delivery. ~~If an e-mail address has not been provided, or if the elector has not opted for electronic delivery, a sample ballot may be mailed to each registered elector or to each household in which there is a registered elector at least 7 days before an~~

~~election.~~

Section 8. Subsection (5) of section 101.5603, Florida Statutes, is amended to read:

101.5603 Definitions relating to Electronic Voting Systems Act.—As used in this act, the term:

(5) "Marking device" means any approved device for marking a ballot with ink or other substance, including through a voter interface device, which will enable the ballot to be tabulated by means of automatic tabulating equipment.

Section 9. Subsection (1) of section 101.56075, Florida Statutes, is amended to read:

101.56075 Voting methods.—

(1) Except as provided in subsection (2), all voting shall be by marksense ballot using ~~utilizing~~ a marking device for the purpose of designating ballot selections.

Section 10. Section 101.68, Florida Statutes, is amended to read:

101.68 Canvassing of vote-by-mail ballot.—

(1) The supervisor of the county where the absent elector resides shall receive the voted ballot, at which time the supervisor shall compare the signature of the elector on the voter's certificate with the signature of the elector in the registration books or the precinct register to determine whether the elector is duly registered in the county and may record on the elector's registration certificate that the elector has

voted. ~~However, effective July 1, 2005,~~ An elector who dies after casting a vote-by-mail ballot but on or before election day shall remain listed in the registration books until the results have been certified for the election in which the ballot was cast. The supervisor shall safely keep the ballot unopened in his or her office until the county canvassing board canvasses the vote. Except as provided in subsection (4), after a vote-by-mail ballot is received by the supervisor, the ballot is deemed to have been cast, and changes or additions may not be made to the voter's certificate.

(2)(a) The county canvassing board may begin the canvassing of vote-by-mail ballots at 7 a.m. on the 15th day before the election, but not later than noon on the day following the election. In addition, for any county using electronic tabulating equipment, the processing of vote-by-mail ballots through such tabulating equipment may begin at 7 a.m. on the 15th day before the election. However, notwithstanding any such authorization to begin canvassing or otherwise processing vote-by-mail ballots early, no result shall be released until after the closing of the polls in that county on election day. Any supervisor of elections, deputy supervisor of elections, canvassing board member, election board member, or election employee who releases the results of a canvassing or processing of vote-by-mail ballots prior to the closing of the polls in that county on election day commits a felony of the third

degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) To ensure that all vote-by-mail ballots to be counted by the canvassing board are accounted for, the canvassing board shall compare the number of ballots in its possession with the number of requests for ballots received to be counted according to the supervisor's file or list.

(c)1. The canvassing board must ~~shall~~, if the supervisor has not already done so, compare the signature of the elector on the voter's certificate or on the vote-by-mail ballot cure affidavit as provided in subsection (4) with the signature of the elector in the registration books or the precinct register to see that the elector is duly registered in the county and to determine the legality of that vote-by-mail ballot. A vote-by-mail ballot may only be counted if:

a. The signature on the voter's certificate or the cure affidavit matches the elector's signature in the registration books or precinct register; however, in the case of a cure affidavit, the supporting identification listed in subsection (4) must also confirm the identity of the elector; or

b. The cure affidavit contains a signature that does not match the elector's signature in the registration books or precinct register, but the elector has submitted a current and valid Tier 1 identification pursuant to subsection (4) which confirms the identity of the elector.

2. The ballot of an elector who casts a vote-by-mail ballot shall be counted even if the elector dies on or before election day, as long as, before ~~prior to~~ the death of the voter, the ballot was postmarked by the United States Postal Service, date-stamped with a verifiable tracking number by a common carrier, or already in the possession of the supervisor of elections. ~~A vote-by-mail ballot is considered illegal if the voter's certificate or vote-by-mail ballot affidavit does not include the signature of the elector, as shown by the registration records or the precinct register. However,~~

3. A vote-by-mail ballot is not considered illegal if the signature of the elector does not cross the seal of the mailing envelope. ~~If the canvassing board determines that any ballot is illegal, a member of the board shall, without opening the envelope, mark across the face of the envelope: "rejected as illegal." The vote-by-mail ballot affidavit, if applicable, the envelope, and the ballot contained therein shall be preserved in the manner that official ballots voted are preserved.~~

4.~~2.~~ If any elector or candidate present believes that a vote-by-mail ballot is illegal due to a defect apparent on the voter's certificate or the cure ~~vote-by-mail ballot~~ affidavit, he or she may, at any time before the ballot is removed from the envelope, file with the canvassing board a protest against the canvass of that ballot, specifying the precinct, the ballot, and the reason he or she believes the ballot to be illegal. A

challenge based upon a defect in the voter's certificate or cure ~~vote-by-mail ballot~~ affidavit may not be accepted after the ballot has been removed from the mailing envelope.

5. If the canvassing board determines that a ballot is illegal, a member of the board must, without opening the envelope, mark across the face of the envelope: "rejected as illegal." The cure affidavit, if applicable, the envelope, and the ballot therein shall be preserved in the manner that official ballots are preserved.

(d) The canvassing board shall record the ballot upon the proper record, unless the ballot has been previously recorded by the supervisor. The mailing envelopes shall be opened and the secrecy envelopes shall be mixed so as to make it impossible to determine which secrecy envelope came out of which signed mailing envelope; however, in any county in which an electronic or electromechanical voting system is used, the ballots may be sorted by ballot styles and the mailing envelopes may be opened and the secrecy envelopes mixed separately for each ballot style. The votes on vote-by-mail ballots shall be included in the total vote of the county.

(3) The supervisor or the chair of the county canvassing board shall, after the board convenes, have custody of the vote-by-mail ballots until a final proclamation is made as to the total vote received by each candidate.

(4)(a) ~~The supervisor of elections shall, on behalf of the~~

~~county canvassing board, notify each elector whose ballot was rejected as illegal and provide the specific reason the ballot was rejected. The supervisor shall mail a voter registration application to the elector to be completed indicating the elector's current signature if the elector's ballot was rejected due to a difference between the elector's signature on the voter's certificate or vote-by-mail ballot affidavit and the elector's signature in the registration books or precinct register. This section does not prohibit the supervisor from providing additional methods for updating an elector's signature.~~

~~(b) Until 5 p.m. on the day before an election,~~ The supervisor shall, on behalf of the county canvassing board, immediately notify ~~allow~~ an elector who has returned a vote-by-mail ballot that does not include the elector's signature or contains a signature that does not match the elector's signature in the registration books or precinct register. The supervisor shall allow such an elector to complete and submit an affidavit in order to cure the ~~unsigned~~ vote-by-mail ballot until 5 p.m. on the day before the election.

(b) ~~(c)~~ The elector ~~shall provide identification to the supervisor and~~ must complete a cure ~~vote-by-mail ballot~~ affidavit in substantially the following form:

VOTE-BY-MAIL BALLOT CURE AFFIDAVIT

I, ..., am a qualified voter in this election and registered voter of .... County, Florida. I do solemnly swear or affirm that I requested and returned the vote-by-mail ballot and that I have not and will not vote more than one ballot in this election. I understand that if I commit or attempt any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I may be convicted of a felony of the third degree and fined up to $5,000 and imprisoned for up to 5 years. I understand that my failure to sign this affidavit means that my vote-by-mail ballot will be invalidated.

...(Voter's Signature)...

...(Address)...

(c) ~~(d)~~ Instructions must accompany the cure ~~vote-by-mail ballot~~ affidavit in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE AFFIDAVIT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR BALLOT NOT TO COUNT.

1. In order to ensure that your vote-by-mail ballot will be counted, your affidavit should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no

later than 5 p.m. on the ~~2nd~~ day before the election.

2. You must sign your name on the line above (Voter's Signature).

3. You must make a copy of one of the following forms of identification:

a. Tier 1 identification.—Current and valid identification that includes your name and photograph: Florida driver license; Florida identification card issued by the Department of Highway Safety and Motor Vehicles; United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; public assistance identification; veteran health identification card issued by the United States Department of Veterans Affairs; a Florida license to carry a concealed weapon or firearm; or an employee identification card issued by any branch, department, agency, or entity of the Federal Government, the state, a county, or a municipality; or

b. Tier 2 identification.—ONLY IF YOU DO NOT HAVE A TIER 1 FORM OF IDENTIFICATION, identification that shows your name and current residence address: current utility bill, bank statement, government check, paycheck, or government document (excluding voter identification card).

4. Place the envelope bearing the affidavit into a mailing envelope addressed to the supervisor. Insert a copy of your identification in the mailing envelope. Mail, deliver, or have

delivered the completed affidavit along with the copy of your identification to your county supervisor of elections. Be sure there is sufficient postage if mailed and that the supervisor's address is correct.

5. Alternatively, you may fax or e-mail your completed affidavit and a copy of your identification to the supervisor of elections. If e-mailing, please provide these documents as attachments.

(d) ~~(e)~~ The department and each supervisor shall include the affidavit and instructions on their respective websites. The supervisor must include his or her office's mailing address, e-mail address, and fax number on the page containing the affidavit instructions; the department's instruction page must include the office mailing addresses, e-mail addresses, and fax numbers of all supervisors of elections or provide a conspicuous link to such addresses.

(e) ~~(f)~~ The supervisor shall attach each affidavit received to the appropriate vote-by-mail ballot mailing envelope.

(f) After all election results on the ballot have been certified, the supervisor shall, on behalf of the county canvassing board, notify each elector whose ballot has been rejected as illegal and provide the specific reason the ballot was rejected. In addition, the supervisor shall mail a voter registration application to the elector to be completed indicating the elector's current signature if the signature on

the voter's certificate or cure affidavit did not match the elector's signature in the registration books or precinct register. This section does not prohibit the supervisor from providing additional methods for updating an elector's signature.

Section 11. This act shall take effect July 1, 2017.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1325 (2017)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Representative Renner offered the following:

Amendment (with title amendment)

Remove lines 216-430

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

Remove lines 30-48 and insert:

by the act; providing an effective date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1325 (2017)

Amendment No.

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

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

Representative Slosberg offered the following:

Amendment (with title amendment)

Between lines 430 and 431, insert:

Section 11. Subsection (3) is added to section 104.047, Florida Statutes, to read:

104.047 Vote-by-mail ballots and voting; violations.—

(3) Any candidate, person acting on behalf of a candidate, or member of a political committee, group, or organization who is present in the residence of an elector while he or she marks or designates a choice on a vote-by-mail ballot for the purpose of intimidating the elector or soliciting a vote by giving anything of value that is redeemable in cash to any elector in an effort to provide assistance to that elector is guilty of a

felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

Remove line 48 and insert:
mismatched signature; amending s. 104.047, F.S.; prohibiting certain persons from being present in the residence of an elector while he or she marks or designates a choice on a vote-by-mail ballot for the purpose of intimidating an elector or soliciting such an elector by offering anything of value to provide assistance; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1417 Pub. Rec./Identifying Information of Human Trafficking Victims
SPONSOR(S): Civil Justice & Claims Subcommittee, Spano and others
TIED BILLS: CS/HB 1165 **IDEN./SIM. BILLS:** SB 1788

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

SUMMARY ANALYSIS

Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor. Victims of human trafficking are able to bring a cause of action against the human trafficker; however, given the nature of human trafficking, victims may be cautious of bringing such actions so as to keep their victimization private.

The bill, which is linked to the passage of CS/HB 1165, creates a public record exemption for court documents related to human trafficking victim identification. Upon the request of a victim, hearings conducted during civil actions brought pursuant to CS/HB 1165 may be closed and any information identifying victims of human trafficking must be redacted or sealed in the court file and online docket. The bill provides that the redacted or sealed information is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if the victim requests.

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

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

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 or expanded public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background and Current Law

Public Records

Article I, s. 24(a), of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.[1] The Legislature, however, may exempt records from the requirements of Article I, s. 24 of the Florida Constitution, provided the exemption is passed by two-thirds vote of each chamber and:

- States with specificity the public necessity justifying the exemption; and
- Is no broader than necessary to meet the public purpose.[2]

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in chapter 119, F.S. Section 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act[3] does not apply to exemptions regarding the State Courts System.[4] However, the act is informative as to the general legislative intent regarding public records. The act provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose *and* the legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption." The Act also provides general framework for public records exemptions and requires the necessity of the exemption to meet one of the following purposes:[5]

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

Human Trafficking

Florida law defines human trafficking as "soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person."[6] Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor.[7]

Victims of human trafficking often face difficulties hiding their identities from their former captors and often fear retaliation or the risk of being enslaved again. Moreover, victims of human trafficking often wish to keep the nature of their victimization private given the social stigmas associated with such

[1] Art. I, s. 24(a), Fla. Const.
[2] Art. I, s. 24(c), Fla. Const.
[3] s. 119.15, F.S.
[4] s. 119.15(2)(b), F.S.
[5] s. 119.15(6)(b), F.S.
[6] s. 787.06(2)(d), F.S.
[7] s. 787.06(1)(a), F.S.

victimization in society. This generally comes in the form of defamation or damage to their name after being associated with human trafficking, despite their status as a victim.[8]

The state has created the Statewide Council on Human Trafficking for the purpose of enhancing the development and coordination of law enforcement and social services. The Council seeks to fight commercial sexual exploitation as a form of human trafficking and to support victims.[9] Current law allows victims of human trafficking to file a civil action against the captor under s. 772.104, F.S. In such actions, victims may be awarded damages in an amount threefold of the amount gained from the sex trafficking, and are entitled to minimum damages in the amount of $200 and reasonable attorney fees and court costs.

Moreover, s. 119.071(2), F.S., provides public record exemptions for various types of criminal investigative or intelligence information that reveals identifying information of specified parties involved in the investigation of a crime. This exemption applies to a victim of a human trafficking or child abuse offense under the age of 18.[10]

CS/HB 1165, a companion bill, creates a civil cause of action for a victim of human trafficking and creates a civil forfeiture action related to civil trafficking.

Effect of the Bill

The bill creates a public record exemption to provide for closed hearings for civil actions brought pursuant to the statute created in CS/HB 1165. The exemption provides that any information identifying such victims of human trafficking in a civil action brought pursuant to CS/HB 1165 is confidential and exempt at the victim's request. The information must be redacted or sealed in the court file and online docket for such action.

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

B. SECTION DIRECTORY:

Section 1 amends s. 787.061, F.S., relating to human trafficking civil actions.

Section 2 provides a public necessity statement.

Section 3 provides an effective date to be the same as that of CS/HB 1165, if such legislation is passed during the same session 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 government revenues.

2. Expenditures:

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

---

[8] *See* United Nations Office on Drug and Crime Report, *An Introduction to Human Trafficking: Vulnerability, Impact and Action* (2008), available online at: http://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf (accessed on March 17, 2017).
[9] *See* s. 16.617, F.S.
[10] s. 119.071(2)(h)1.a., F.S.

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

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

Breadth of Exemption
Article I, s. 24(c) of the Florida Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a limited public record exemption for the personal identifying information of human trafficking victims in court proceedings at the victim's request. This does not appear to be in conflict with the constitutional requirement that the exemption be no broad than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment added to the statement of public necessity and removed the future repeal of the section. This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.

A bill to be entitled

An act relating to public records; amending s. 787.061, F.S.; providing for closed hearings in certain civil actions by victims of human trafficking in certain circumstances; providing for redaction and sealing of information identifying victims of human trafficking; providing an exemption from public records requirements for such sealed and redacted information; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (7) is added to section 787.061, Florida Statutes, as created by CS/HB 1165, to read:

(7) CLOSED HEARINGS.—At the victim's request, court hearings conducted pursuant to this section shall be closed to the public and any information identifying victims of human trafficking redacted or sealed in the court file and online docket for such action. Such redacted information and sealed files are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Section 2. The Legislature finds that hearings conducted pursuant to s. 787.061, Florida Statutes, for victims of human trafficking should be closed and be made confidential and exempt

from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution at the victim's request. Providing an exemption for such hearings will allow victims of human trafficking to seek relief in the courts of the state without exposing their victimization to the public and protecting their identity as they continue to recover from their time as a victim of human trafficking. For these reasons the Legislature finds that it is a public necessity that hearings conducted pursuant to s. 787.061, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution upon the victim's request in such hearings. The Legislature further finds that any information identifying victims of human trafficking redacted or sealed in the court files and online dockets of civil actions by victims of human trafficking under s. 787.061, Florida Statutes, should be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution at the victim's request. Providing an exemption for such information will protect the identity of a victim of human trafficking from her or his captor and will allow the victim to move back into daily life without fear of retaliation or risk of being enslaved again. The identity of these victims and details of their victimization is information of a sensitive personal nature. As such, this exemption serves to minimize the trauma to victims because the release of such information would compound

the tragedy already visited upon their lives and would be defamatory to or cause unwarranted damage to the good name and reputation of the victims. For these reasons, the Legislature finds that it is a public necessity that any information identifying victims of human trafficking redacted or sealed in the court files and online dockets of civil actions by victims of human trafficking under s. 787.061, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution upon request of the plaintiff in such an action.

Section 3. This act shall take effect on the same date that s. 787.061, Florida Statutes, as created by CS/HB 1165 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.