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# Oversight, Transparency & Administration Subcommittee

March 8, 2017  
12:00 Noon – 3:00 PM  
Morris Hall

## Meeting Packet

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Oversight, Transparency & Administration Subcommittee

**Start Date and Time:** Wednesday, March 08, 2017 12:00 pm  
**End Date and Time:** Wednesday, March 08, 2017 03:00 pm  
**Location:** Morris Hall (17 HOB)  
**Duration:** 3.00 hrs

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

HB 11 Labor Organizations by Plakon  
CS/HB 111 Pub. Rec./Identity of Witness to a Murder by Criminal Justice Subcommittee, Stafford, McGhee  
HB 163 Public Records by Burgess  
HB 383 Pub. Rec./Former Firefighters Personal Identifying Information by Willhite  
HB 599 Public Works Projects by Williamson

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

PCB OTA 17-04 -- OGSR/Office of Insurance Regulation

Presentation by the Auditor General on state agency audits

**NOTICE FINALIZED on 03/06/2017 4:12PM by Larson.Lisa**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 11 Labor Organizations  
**SPONSOR(S):** Plakon  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1292

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

### SUMMARY ANALYSIS

Collective bargaining is a constitutional right afforded to public employees in Florida. Through collective bargaining, public employees collectively negotiate with their public employer in the determination of the terms and conditions of their employment. The Public Employees Relations Commission (commission) is responsible for assisting in resolving disputes between public employees and public employers.

Current law specifies that public employees have the right to be represented in collective bargaining by any employee organization of their own choosing or to refrain from being represented. An employee organization that is authorized to represent public employees is known as a certified bargaining agent. An employee organization seeking to become a certified bargaining agent for a unit of public employees must register with and be certified by the commission. A registration granted to an employee organization is valid for one year and must be renewed annually. The renewal application must include a current annual financial report that contains specific information.

The bill requires an employee organization to include the following information in its annual financial report for each certified bargaining unit that the organization represents:

- The number of employees in the bargaining unit who are eligible for representation by the employee organization; and
- The number of employees who are represented by the organization, specifying the number of members who pay dues and the number of members who do not pay dues.

If a registered employee organization does not submit this information for a certified bargaining unit it represents, the organization's certification for that unit is revoked. This provision does not apply to an employee organization that represents, or seeks to represent, employees who are law enforcement officers, correctional officers, or firefighters.

The bill also requires an employee organization that has been certified as the bargaining agent for a unit whose dues-paying membership is less than 50 percent of the employees eligible for representation in that unit to petition the commission for recertification as the exclusive representative of all employees in the unit within one month after the date on which the organization applies for registration renewal. The certification of an employee organization that does not comply with this requirement is revoked. This requirement does not apply to an employee organization that represents, or seeks to represent, employees who are law enforcement officers, correctional officers, or firefighters.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Collective bargaining is a constitutional right afforded to public employees<sup>1</sup> in Florida.<sup>2</sup> To implement this constitutional provision, the Legislature has enacted ch. 447, F.S., which provides that the purpose of collective bargaining is to promote cooperative relationships between the government and its employees and to protect the public by assuring the orderly and uninterrupted operations and functions of government.<sup>3</sup> Through collective bargaining, public employees collectively negotiate with their public employer in the determination of the terms and conditions of their employment.<sup>4</sup> The Public Employees Relations Commission (commission) is responsible for assisting in resolving disputes between public employees and public employers.<sup>5</sup>

Chapter 447, F.S., specifies that public employees have the right to be represented in collective bargaining by any employee organization of their own choosing or to refrain from being represented.<sup>6</sup> An employee organization is defined as a "labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, which represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer."<sup>7</sup> An employee organization that is authorized to represent public employees in collective bargaining is known as a certified bargaining agent.<sup>8</sup>

An employee organization seeking to become a certified bargaining agent for a unit of public employees must register with and be certified by the commission. To register, the employee organization must submit an application to the commission that includes the following information:

- The name and address of the organization and of any parent organization or organization with which it is affiliated.
- The names and addresses of the principal officers and all representatives of the organization.
- The amount of the initiation fee and of the monthly dues that members must pay.

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<sup>1</sup> The term "public employee" means any person employed by a public employer except:

- (a) Persons appointed by the Governor or elected by the people, agency heads, and members of boards and commissions.
- (b) Persons holding positions by appointment or employment in the organized militia.
- (c) Individuals acting as negotiating representatives for employer authorities.
- (d) Persons who are designated by the Public Employees Relations Commission (commission) as managerial or confidential employees pursuant to specific criteria.
- (e) Persons holding positions of employment with the Florida Legislature.
- (f) Persons who have been convicted of a crime and are inmates confined to institutions within the state.
- (g) Persons appointed to inspection positions in federal/state fruit and vegetable inspection service whose conditions of appointment are affected by the following:
  1. Federal license requirement.
  2. Federal autonomy regarding investigation and disciplining of appointees.
  3. Frequent transfers due to harvesting conditions.
- (h) Persons employed by the commission.
- (i) Persons enrolled as undergraduate students in a state university who perform part-time work for the state university.

The term "public employer" means the state or any county, municipality, or special district or any subdivision or agency thereof which the commission determines has sufficient legal distinctiveness properly to carry out the functions of a public employer. Section 447.203, F.S.

<sup>2</sup> Art. I, s. 6, FLA. CONST.

<sup>3</sup> Section 447.201, F.S.

<sup>4</sup> Section 447.301(2), F.S.

<sup>5</sup> Section 447.201(3), F.S.

<sup>6</sup> Section 447.301(2), F.S.

<sup>7</sup> Section 447.203(11), F.S.

<sup>8</sup> Section 447.203(12), F.S.

- The current annual financial statement of the organization.
- The name of its business agent, if any; if different from the business agent, the name of its local agent for service of process; and the addresses where such person or persons can be reached.
- A pledge, in a form prescribed by the commission, that the employee organization will conform to the laws of the state and that it will accept members without regard to age, race, sex, religion, or national origin.
- A copy of the current constitution and bylaws of the employee organization.
- A copy of the current constitution and bylaws of the state and national groups with which the employee organization is affiliated or associated.<sup>9</sup>

A registration granted to an employee organization is valid for one year and must be renewed annually.<sup>10</sup> The renewal application must reflect any changes to the information provided to the commission in the preceding application and must also include a current annual financial report that contains the following information:

- Assets and liabilities at the beginning and end of the fiscal year.
- Receipts of any kind and the sources thereof.
- Salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and each employee who, during such fiscal year, received more than \$10,000 in the aggregate from the employee organization and any other affiliated employee organization.
- Direct and indirect loans made to any officer, employee, or member that aggregated more than \$250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangements for repayment.
- Direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment.<sup>11</sup>

After registering with the commission, an employee organization may begin the certification process. In order to be certified, an employee organization that is selected by a majority of the employees in an appropriate unit as their representative must first request recognition by the public employer.<sup>12</sup> If the public employer recognizes the employee organization as the collective bargaining representative for that unit, the employee organization must then petition the commission for certification.<sup>13</sup> If the unit proposed by the employee organization is deemed appropriate, the commission must immediately certify the employee organization as the exclusive representative of all employees in the unit.<sup>14</sup>

However, if the employer refuses to recognize the employee organization, the employee organization must file a petition with the commission that is accompanied by dated statements signed by at least 30 percent of the employees in the proposed unit, indicating that such employees desire to be represented by the employee organization.<sup>15</sup> If the commission determines the petition to be sufficient, it must order an election by secret ballot to determine whether the employee organization will be certified.<sup>16</sup> The petitioning employee organization is placed on the ballot along with any other registered employee organization that submits dated statements signed by at least 10 percent of the employees in the proposed unit, indicating their desire to be represented by that employee organization.<sup>17</sup> When an employee organization is selected by a majority of the employees voting in an election, the commission must certify the employee organization as the exclusive collective bargaining representative of all employees in the unit.<sup>18</sup>

<sup>9</sup> Section 447.305(1), F.S.

<sup>10</sup> Section 447.305(2), F.S.

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

<sup>12</sup> Section 447.307(1)(a), F.S.

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

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

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

<sup>16</sup> Section 447.307(3)(a), F.S.

<sup>17</sup> Section 447.307(2), F.S.

<sup>18</sup> Section 447.307(3)(b), F.S.

## Effect of Proposed Changes

The bill requires an employee organization to include the following information in its annual financial report for each certified bargaining unit that the organization represents:

- The number of employees in the bargaining unit who are eligible for representation by the employee organization; and
- The number of employees who are represented by the organization, specifying the number of members who pay dues and the number of members who do not pay dues.

If a registered employee organization does not submit this information for a certified bargaining unit it represents, the organization's certification for that unit is revoked. This provision does not apply to an employee organization that represents, or seeks to represent, employees who are law enforcement officers as defined in s. 943.10(1), F.S.,<sup>19</sup> correctional officers as defined in s. 943.10(2), F.S.,<sup>20</sup> or firefighters as defined in s. 633.102, F.S.<sup>21</sup>

The bill also requires an employee organization that has been certified as the bargaining agent for a unit whose dues-paying membership is less than 50 percent of the employees eligible for representation in that unit to petition the commission for recertification as the exclusive representative of all employees in the unit within one month after the date on which the organization applies for registration renewal. The certification of an employee organization that does not comply with this requirement is revoked. This requirement does not apply to an employee organization that represents, or seeks to represent, employees who are law enforcement officers, correctional officers, or firefighters.

### B. SECTION DIRECTORY:

Section 1. amends s. 447.305, F.S., relating to registration of employee organizations.

Section 2. amends s. 447.307, F.S., relating to certification of employee organizations.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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

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<sup>19</sup> Section 943.10(1), F.S., defines the term "law enforcement officer" to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; 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. The term 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 support personnel employed by the employing agency.

<sup>20</sup> Section 943.10(2), F.S., defines the term "correctional officer" to mean any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity that has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution. The term does not include any secretarial, clerical, or professionally trained personnel.

<sup>21</sup> Section 633.102, F.S., defines the term "firefighter" to mean an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services under s. 633.408, F.S.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on the commission if there is an increase in the number of certification petitions filed by employee organizations or if more elections must be held during the recertification process.

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:

The bill may have an indeterminate negative fiscal impact on employee organizations if more elections must be held during the recertification process.<sup>22</sup>

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:

Constitutional Right to Collective Bargaining

Article I, s. 6 of the Florida Constitution provides that "[t]he right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged." Chapter 447, F.S., provides the process by which employee organizations may register and become certified to represent a unit of employees in collective bargaining. The bill amends such registration and certification processes.

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.

<sup>22</sup> The costs of an election held during the certification process are borne equally by the parties, except as the commission may provide by rule. Section 447.307(3)(a)3., F.S.



1                   A bill to be entitled  
 2           An act relating to labor organizations; amending s.  
 3           447.305, F.S.; revising the information required to be  
 4           included in an application for renewal of registration  
 5           of an employee organization; amending s. 447.307,  
 6           F.S.; providing for the revocation of certification  
 7           under certain conditions; requiring certain employee  
 8           organizations to recertify as bargaining agents;  
 9           providing nonapplicability with respect to employee  
 10          organizations that represent or seek to represent  
 11          certain employees; providing an effective date.

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

14  
 15           Section 1. Subsection (2) of section 447.305, Florida  
 16   Statutes, is amended to read:

17           447.305   Registration of employee organization.—

18           (2)   A registration granted to an employee organization  
 19   pursuant to the provisions of this section shall run for 1 year  
 20   from the date of issuance. A registration shall be renewed  
 21   annually by filing application for renewal under oath with the  
 22   commission, which application shall reflect any changes in the  
 23   information provided to the commission in conjunction with the  
 24   employee organization's preceding application for registration  
 25   or previous renewal, whichever is applicable. Each application

26 | for renewal of registration shall include a current annual  
 27 | financial report, signed by its president and treasurer or  
 28 | corresponding principal officers, containing the following  
 29 | information in such detail as may be necessary accurately to  
 30 | disclose its financial condition and operations for its  
 31 | preceding fiscal year and in such categories as the commission  
 32 | may prescribe:

33 |       (a) Assets and liabilities at the beginning and end of the  
 34 | fiscal year.†

35 |       (b) Receipts of any kind and the sources thereof.†

36 |       (c) Salary, allowances, and other direct or indirect  
 37 | disbursements, including reimbursed expenses, to each officer  
 38 | and also to each employee who, during such fiscal year, received  
 39 | more than \$10,000 in the aggregate from such employee  
 40 | organization and any other employee organization affiliated with  
 41 | it or with which it is affiliated or which is affiliated with  
 42 | the same national or international employee organization.†

43 |       (d) Direct and indirect loans made to any officer,  
 44 | employee, or member which aggregated more than \$250 during the  
 45 | fiscal year, together with a statement of the purpose, security,  
 46 | if any, and arrangements for repayment.† ~~and~~

47 |       (e) Direct and indirect loans to any business enterprise,  
 48 | together with a statement of the purpose, security, if any, and  
 49 | arrangements for repayment.

50 |       (f) For each certified bargaining unit that the registered

51 employee organization represents, the number of employees:

52 1. In the bargaining unit who are eligible for  
 53 representation by the employee organization.

54 2. Who are represented by the employee organization,  
 55 specifying the number of members who pay dues and the number of  
 56 members who do not pay dues.

57 Section 2. Subsection (5) is added to section 447.307,  
 58 Florida Statutes, to read:

59 447.307 Certification of employee organization.—

60 (5)(a) If a registered employee organization does not  
 61 submit the information required in s. 447.305(2)(f) for a  
 62 certified bargaining unit it represents, the employee  
 63 organization's certification for that unit is revoked.

64 (b) An employee organization that has been certified as  
 65 the bargaining agent for a unit whose dues-paying membership is  
 66 less than 50 percent of the employees eligible for  
 67 representation in that unit must petition the commission  
 68 pursuant to subsections (2) and (3) for recertification as the  
 69 exclusive representative of all employees in the unit within 1  
 70 month after the date on which the organization applies for  
 71 renewal of registration pursuant to s. 447.305(2). The  
 72 certification of an employee organization that does not comply  
 73 with this paragraph is revoked.

74 (c) This subsection does not apply to an employee  
 75 organization, however organized or constituted, which

HB 11

2017



76 | represents, or seeks to represent, employees who are law  
77 | enforcement officers as defined in s. 943.10(1), correctional  
78 | officers as defined in s. 943.10(2), or firefighters as defined  
79 | in s. 633.102.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 111 Public Records/Identity of Witness to a Murder  
**SPONSOR(S):** Criminal Justice Subcommittee, Stafford and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 550

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

### SUMMARY ANALYSIS

Current law provides public record exemptions for information identifying certain parties involved in the investigation of a crime. Such parties include confidential informants or confidential sources, a victim of a child abuse offense, a victim of a human trafficking offense who is less than 18 years of age, and a victim of a sexual offense.

The bill creates a public record exemption for criminal intelligence or criminal investigative information that reveals the personal identifying information of a witness to a murder. The information is confidential and exempt for two years after the date on which the murder is observed by the witness. The bill authorizes a criminal justice agency to disclose the confidential and exempt information:

- In the furtherance of its official duties and responsibilities.
- To assist in locating or identifying the witness if the agency believes the witness to be missing or endangered.
- To another governmental agency for use in the performance of its official duties and responsibilities.

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

The bill also provides that the public record exemption continues to apply to personal identifying information of a witness to a murder when it is disclosed in discovery to a person who is arrested or when it is made part of a court file.

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

The bill takes effect on July 1, 2017.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Public Records**

##### Florida Constitution

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

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

##### Florida Statutes

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

The Open Government Sunset Review Act<sup>2</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>3</sup> In addition, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.<sup>4</sup>

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

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

Currently, s. 119.071(2), F.S., in relevant part, provides public record exemptions for various types of criminal investigative information<sup>6</sup> or criminal intelligence information<sup>7</sup> that reveals the identifying

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

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

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

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

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

<sup>6</sup> Section 119.011(3)(b), F.S., defines the term "criminal investigative information" as "information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance."

<sup>7</sup> Section 119.011(3)(a), F.S., defines the term "criminal intelligence information" as "information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity."

information of specified parties involved in the investigation of a crime. Information revealing the identity of:

- A confidential informant or a confidential source is exempt from disclosure.<sup>8</sup>
- A victim under the age of 18 of a human trafficking or child abuse offense is confidential and exempt from disclosure.<sup>9</sup>
- A victim of a sexual offense is confidential and exempt from disclosure.<sup>10</sup>

It should be noted that 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 by the custodian of the record when determined appropriate by the custodian.<sup>11</sup> If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released by the custodian of the record to anyone other than the persons or entities specifically designated in statute.<sup>12</sup>

The identifying information of the above-described crime victims remains confidential and exempt from public disclosure even when such information is:

- Provided in discovery to a person who has been arrested.<sup>13</sup> An exemption from public record requirements does not render a record privileged for purposes of criminal discovery.<sup>14</sup>
- Made part of a court record.<sup>15</sup>

Such victim information may only be disclosed by a law enforcement agency (LEA):

- In the furtherance of its official duties and responsibilities.
- For print, publication, or broadcast if the LEA determines that such release would assist in locating or identifying a person that the LEA believes to be missing or endangered. The information provided must be limited to that needed to identify or locate the victim and may not include the sexual nature of the offense committed against the person.
- To another governmental agency in the furtherance of its official duties and responsibilities.

### **Witness to a Crime**

News articles during the past two years have reported on several unsolved homicides occurring in the Tampa area.<sup>16</sup> The victim in one of the cases was Edward Harris, a 14-year-old boy who was murdered

<sup>8</sup> s. 119.071(2)(f), F.S.

<sup>9</sup> s. 119.071(2)(h)1.a., F.S.

<sup>10</sup> s. 119.071(2)(h)1.b., F.S.

<sup>11</sup> 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).

<sup>12</sup> See 85-62 Fla. Op. Att'y Gen. (1985).

<sup>13</sup> s. 119.011(3)(c)5., F.S.

<sup>14</sup> See s. 119.07(8), F.S. (providing that the section, which is in part entitled "exemptions" and which requires a records custodian to redact the portion of a record to which an exemption applies, does not "expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution or in collateral postconviction proceedings." (emphasis added)); *Ramses, Inc. v. Demings*, 29 So. 3d 418, 421-423 (Fla. 5th DCA 2010) (recognizing the distinction between public records laws and criminal discovery rights and holding that unredacted videos showing undercover officers' faces were still subject to public record exemptions even though the unredacted videos were released to the defendants in discovery under Fla. R. Crim. P. 3.220); *B.B. v. Dep't. of Children and Family Servs.*, 731 So. 2d 30, 34 (Fla. 4th DCA 1999) (holding that a mother had a right to records "in her capacity as a party to the child dependency proceeding," not as a "citizen" and that the statutory exemption for active criminal investigative information did not "override the discovery authorized by the Rules of Juvenile Procedure."); and *Dep't. of Highway Safety and Motor Vehicles v. Kropff*, 445 So. 2d 1068, 1069 (Fla. 3d DCA 1984) ("Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not coextensive in scope.").

<sup>15</sup> s. 119.0714(1)(h), F.S.

<sup>16</sup> Dan Sullivan, *Federal officials increase rewards, offer protection, to solve four unsolved Tampa murders*, TAMPA BAY TIMES, (Oct. 29, 2015), <http://www.tampabay.com/news/publicsafety/crime/federal-officials-increase-rewards-offer-protection-to-solve-four-unsolved/2251784> (last visited Jan. 16, 2017); Sue Carlton, *Solutions to street violence elusive amid anti-snitching culture*, TAMPA BAY TIMES, (June 2, 2015), <http://www.tampabay.com/news/publicsafety/crime/carlton-no-snitching-no-answers/2232047> (last visited Jan. 16, 2017); Dan Sullivan, *In Tampa, a father and a city still seek answers a year after boy's slaying*, TAMPA BAY TIMES, (May



in a park during a drive-by-shooting.<sup>17</sup> A spokeswoman for the Tampa Police Department stated that between October 2014 and April 2015, Mr. Harris was the witness to multiple crimes that resulted in arrests. Mr. Harris's family has made statements indicating they believe he was murdered as a result of talking to police.<sup>18</sup>

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

### **Effect of the Bill**

The bill creates s. 119.071(2)(m), F.S., to provide that criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder, as described in s. 782.04, F.S.,<sup>19</sup> is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for two years after the date on which the murder is observed by the witness.

The bill authorizes a criminal justice agency<sup>20</sup> to disclose such information:

- In the furtherance of its official duties and responsibilities.
- To assist in locating or identifying the witness if the agency believes the witness to be missing or endangered.
- To another governmental agency for use in the performance of its official duties and responsibilities.

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

The bill also adds a cross-reference to the exemption for the personal identifying information of a witness to a murder in:

- Section 119.011(3)(c)5., F.S., to specify that such information remains confidential and exempt from public disclosure when the information is provided in discovery to a person who is arrested.
- Section 119.0714(1)(h), F.S., to specify that such information remains confidential and exempt from public disclosure when made part of the court record.<sup>21</sup>

The bill provides a statement of public necessity as required by the Florida Constitution.<sup>22</sup> It specifies that the Legislature finds that personal identifying information of a witness to a murder should be made confidential and exempt to encourage "[c]omplete cooperation and truthful testimony of witnesses" because "[t]he judicial system cannot function without the participation of witnesses."

The bill takes effect on July 1, 2017.

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31, 2016), <http://www.tampabay.com/news/publicsafety/tampa-father-still-seeking-answers-a-year-after-boys-slaying/2279651> (last visited Jan. 16, 2017).

<sup>17</sup> Stephanie Slifer, *Dad believes son was killed in Tampa drive-by shooting for talking to cops*, CBS NEWS, (June 2, 2015), <http://www.cbsnews.com/news/dad-believes-son-was-killed-in-tampa-drive-by-shooting-for-talking-to-cops/> (last visited Jan. 16, 2017).

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

<sup>19</sup> Section 782.04, F.S., relating to murder, makes the unlawful killing of a human being punishable as a capital felony or second or first degree felony, depending on the circumstances of the crime.

<sup>20</sup> Section 119.011(4), F.S., defines the term "criminal justice agency" as: "(a) Any law enforcement agency, court, or prosecutor; (b) Any other agency charged by law with criminal law enforcement duties; (c) Any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or (d) The Department of Corrections."

<sup>21</sup> This exemption is not made subject to the Open Government Sunset Review Act, because the Act provides that it does not apply to an exemption that applies solely to the State Court System, s. 119.15(2)(b), F.S.

<sup>22</sup> FLA. CONST. art. I, s. 24(c).

**B. SECTION DIRECTORY:**

Section 1. Amends s. 119.011, F.S., relating to definitions.

Section 2. Amend s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 3. Amends s. 119.0714, F.S., relating to court files, court records, and official records.

Section 4. Provides a public necessity statement.

Section 5. Provides an effective date of July 1, 2017.

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

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

1. Revenues:

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

2. Expenditures:

See Fiscal Comments.

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

1. Revenues:

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

2. Expenditures:

See Fiscal Comments.

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

None.

**D. FISCAL COMMENTS:**

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

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a limited public record exemption for the personal identifying information of a witness to a murder, which does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

#### B. RULE-MAKING AUTHORITY:

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

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 8, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS:

- Adds authority for a criminal justice agency to disclose the personal identifying information of a witness to a murder in order to assist in locating or identifying the witness if the agency believes the witness to be missing or endangered.
- Adds a cross-reference in s. 119.011(3)(c)5., F.S., to the public record exemption created by the bill to specify that the personal identifying information of the witness remains confidential and exempt from public disclosure when the information is provided in discovery to a person who is arrested.

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

1                   A bill to be entitled  
 2           An act relating to public records; amending s.  
 3           119.011, F.S.; providing that the personal identifying  
 4           information of a witness to a murder remains  
 5           confidential and exempt for a specified period;  
 6           amending s. 119.071, F.S.; providing an exemption from  
 7           public records requirements for criminal intelligence  
 8           or criminal investigative information that reveals the  
 9           personal identifying information of a witness to a  
 10          murder for a specified period; authorizing specified  
 11          entities to receive the information; providing for  
 12          future legislative review and repeal of the exemption;  
 13          amending s. 119.0714, F.S.; providing that the public  
 14          records exemption applies to personal identifying  
 15          information of a witness to a murder that is made part  
 16          of a court file; providing a statement of public  
 17          necessity; providing an effective date.

18  
 19   Be It Enacted by the Legislature of the State of Florida:

20  
 21           Section 1. Paragraph (c) of subsection (3) of section  
 22   119.011, Florida Statutes, is amended to read:  
 23           119.011 Definitions.—As used in this chapter, the term:  
 24           (3)  
 25           (c) "Criminal intelligence information" and "criminal

26 | investigative information" shall not include:

27 |       1. The time, date, location, and nature of a reported  
28 | crime.

29 |       2. The name, sex, age, and address of a person arrested or  
30 | of the victim of a crime except as provided in s. 119.071(2)(h).

31 |       3. The time, date, and location of the incident and of the  
32 | arrest.

33 |       4. The crime charged.

34 |       5. Documents given or required by law or agency rule to be  
35 | given to the person arrested, except as provided in s.

36 | 119.071(2)(h) or (2)(m), and, except that the court in a  
37 | criminal case may order that certain information required by law  
38 | or agency rule to be given to the person arrested be maintained  
39 | in a confidential manner and exempt from the provisions of s.  
40 | 119.07(1) until released at trial if it is found that the  
41 | release of such information would:

42 |       a. Be defamatory to the good name of a victim or witness  
43 | or would jeopardize the safety of such victim or witness; and

44 |       b. Impair the ability of a state attorney to locate or  
45 | prosecute a codefendant.

46 |       6. Informations and indictments except as provided in s.  
47 | 905.26.

48 |       Section 2. Paragraph (m) is added to subsection (2) of  
49 | section 119.071, Florida Statutes, to read:

50 |       119.071 General exemptions from inspection or copying of

51 public records.-  
 52       (2) AGENCY INVESTIGATIONS.-  
 53       (m)1. Criminal intelligence information or criminal  
 54 investigative information that reveals the personal identifying  
 55 information of a witness to a murder, as described in s. 782.04,  
 56 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
 57 I of the State Constitution for 2 years after the date on which  
 58 the murder is observed by the witness. A criminal justice agency  
 59 may disclose such information:  
 60       a. In the furtherance of its official duties and  
 61 responsibilities.  
 62       b. To assist in locating or identifying the witness if the  
 63 agency believes the witness to be missing or endangered.  
 64       c. To another governmental agency for use in the  
 65 performance of its official duties and responsibilities.  
 66       2. This paragraph is subject to the Open Government Sunset  
 67 Review Act in accordance with s. 119.15 and shall stand repealed  
 68 on October 2, 2022, unless reviewed and saved from repeal  
 69 through reenactment by the Legislature.  
 70       Section 3. Paragraph (h) of subsection (1) of section  
 71 119.0714, Florida Statutes, is amended to read:  
 72       119.0714 Court files; court records; official records.-  
 73       (1) COURT FILES.-Nothing in this chapter shall be  
 74 construed to exempt from s. 119.07(1) a public record that was  
 75 made a part of a court file and that is not specifically closed

76 | by order of court, except:

77 |       (h) Criminal intelligence information or criminal  
78 | investigative information that is confidential and exempt as  
79 | provided in s. 119.071(2)(h) or (2)(m).

80 |       Section 4. The Legislature finds that it is a public  
81 | necessity that personal identifying information of a witness to  
82 | a murder, as described in s. 782.04, Florida Statutes, be made  
83 | confidential and exempt from s. 119.07(1), Florida Statutes, and  
84 | s. 24(a), Article I of the State Constitution for 2 years after  
85 | the date on which the murder is observed by the witness. The  
86 | judicial system cannot function without the participation of  
87 | witnesses. Complete cooperation and truthful testimony of  
88 | witnesses is essential to the determination of the facts of a  
89 | case. The public disclosure of personal identifying information  
90 | of a witness to a murder could have an undesirable chilling  
91 | effect on witnesses stepping forward and providing their  
92 | eyewitness accounts of murders. A witness to a murder may be  
93 | unwilling to cooperate fully with law enforcement officers if  
94 | the witness knows his or her personal identifying information  
95 | can be made publicly available. A witness may be less likely to  
96 | call a law enforcement officer and report a murder if his or her  
97 | personal identifying information is made available in connection  
98 | with the murder that is being reported or under investigation.  
99 | The Legislature further finds that a witness could become the  
100 | subject of intimidation tactics or threats by the perpetrator of

CS/HB 111

2017

101 the murder if the witness's personal identifying information is  
102 publicly available. For these reasons, the Legislature finds  
103 that it is a public necessity that the personal identifying  
104 information of a witness to a murder, as described in s. 782.04,  
105 Florida Statutes, be made confidential and exempt from public  
106 records requirements.

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





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 163 Public Records  
**SPONSOR(S):** Burgess, Jr.  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 246

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Moore <i>AM</i>	Harrington <i>JA</i>
2) Civil Justice & Claims 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.

If an agency unlawfully fails to provide a public record, the person making the public records request may sue to have the request enforced. Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of attorney fees. The assessment of attorney fees is considered a legal consequence that is independent of the public records request.

Once an enforcement action has been filed, an agency, or a contractor acting on behalf of an agency, can be held liable for attorney fees even after the agency has produced the requested records. The public policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial. Granting attorney fees also makes it more likely that public agencies will comply with public records laws and deter improper denials of requests. If a court finds that an agency unlawfully refused access to a public record, the court must order the agency to pay for the requestor's reasonable costs of enforcement, including reasonable attorney fees.

The bill provides that a court must assess and award the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency if it determines that:

- The agency unlawfully refused to permit the public record to be inspected or copied; and
- The complainant provided written notice identifying the public record request to the agency's custodian of public records at least 5 days before filing the civil action, except as provided below.

The complainant is not required to provide written notice of the public record request, as required above, if the agency does not prominently post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested and on the agency's website, if the agency has a website.

A court may not assess and award any reasonable costs of enforcement, including reasonable attorney fees, against the agency if the court determines that the request to inspect or copy the public record was made primarily to harass the agency or cause a violation of ch. 119, F.S.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### Public Records Law

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency<sup>1</sup> to provide access to public records.<sup>2</sup> Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records.

###### Inspection and Copying of Public Records

Current law describes the duties and responsibilities of a custodian of public records<sup>3</sup> (records custodian). Section 119.07(1), F.S., requires a records custodian to permit records to be inspected and copied by any person, at any reasonable time,<sup>4</sup> under reasonable conditions, and under supervision by the records custodian. Generally, a records custodian may not require that a request for public records be submitted in a specific fashion.<sup>5</sup>

An agency is permitted to charge fees for inspection or copying of records. Those fees are prescribed by law and are based upon the nature or volume of the public records requested. Section 119.07(4), F.S., provides that if the nature or volume of the request requires extensive use of information technology or extensive clerical or supervisory assistance, the agency may charge, in addition to the actual cost of duplication, a reasonable service charge based on the cost incurred for the use of information technology and the labor cost that is actually incurred by the agency in responding to the request. The term "labor cost" includes the entire labor cost, including benefits in addition to wages or salary.<sup>6</sup> Such service charge may be assessed, and payment may be required, by an agency prior to providing a response to the request.<sup>7</sup>

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<sup>1</sup> Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any agency.

<sup>2</sup> Section 119.011(12), F.S., defines the term "public records" to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

<sup>3</sup> Section 119.011(5), F.S., defines the term "custodian of public records" to mean the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

<sup>4</sup> There is no specific time limit established for compliance with public records requests. A response must be prepared within a reasonable time of the request. *Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984). What constitutes a reasonable time for a response will depend on such factors as the volume of records that are responsive to a request, as well as the amount of confidential or exempt information contained within the request.

<sup>5</sup> See *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302 (Fla. 3d DCA 2001) (holding that public records requests need not be made in writing).

<sup>6</sup> *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008).

<sup>7</sup> Section 119.07(4), F.S.; see also *Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991) (stating if a requestor identifies a record with sufficient specificity to permit an agency to identify it and forwards the appropriate fee, the agency must furnish by mail a copy of the record).

### Enforcing Public Records Laws and Attorney Fees

If an agency unlawfully fails to provide a public record, the person making the public records request may sue to have the request enforced.<sup>8</sup> Whenever such an action is filed, the court must give the case priority over other pending cases and must set an immediate hearing date.<sup>9</sup>

Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of fees. The assessment of attorney fees is considered a legal consequence that is independent of the public records request.<sup>10</sup> Once an enforcement action has been filed, an agency can be held liable for attorney fees even after the agency has produced the requested records.<sup>11</sup> The public policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial.<sup>12</sup> Granting attorney fees also makes it more likely that agencies will comply with public records laws and deter improper denials of requests.<sup>13</sup>

If the court finds that the agency unlawfully refused access to a public record, the court must order the agency to pay for the requestor's reasonable costs of enforcement, including reasonable attorney fees.<sup>14</sup> If a contractor acting on behalf of the agency fails to comply with a public records request, the requestor may sue the contractor to enforce his or her rights to have access to records.<sup>15</sup> If a court determines that the contractor unlawfully withheld public records, the court must order the contractor to pay for the cost of the enforcement lawsuit and the requestor's attorney fees in the same manner that an agency would be liable if:

- The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and
- At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.<sup>16</sup>

A contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.<sup>17</sup> Attorney fees for efforts expended to obtain attorney fees are not currently permitted.<sup>18</sup>

A court will not take into consideration whether a records custodian intended to violate public records laws or was simply inept,<sup>19</sup> and it is immaterial if a records custodian did not willfully refuse to provide a public record.<sup>20</sup> In addition, to be entitled to attorney fees against the state or any of its agencies, the plaintiff must serve a copy of the pleading claiming the fees on the Department of Financial Services (DFS). DFS is then entitled to participate with the agency in the defense of the suit and any appeal thereof with respect to such fees.<sup>21</sup>

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<sup>8</sup> Section 119.11, F.S.

<sup>9</sup> Section 119.11(1), F.S.

<sup>10</sup> Section 119.12, F.S.

<sup>11</sup> *Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002); *Barfield v. Town of Eatonville*, 675 So. 2d 223 (Fla. 5th DCA 1996); *Althouse v. Palm Beach County Sheriff's Office*, 92 So. 3d 899, 902 (Fla. 4th DCA 2012).

<sup>12</sup> *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993).

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

<sup>14</sup> Section 119.12, F.S.

<sup>15</sup> *See New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27 (Fla. 1993).

<sup>16</sup> Section 119.0701(4), F.S.

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

<sup>18</sup> *Downs v. Austin*, 559 So. 2d 246, 248 (Fla. 1st DCA 1990).

<sup>19</sup> *Barfield v. Town of Eatonville*, 675 So. 2d 223, 225 (Fla. 5th DCA 1996).

<sup>20</sup> *Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654 (Fla. 1st DCA 2014).

<sup>21</sup> Section 284.30, F.S.

## Recent Litigation

In recent years, allegations have arisen that some individuals and entities have used public records enforcement lawsuits as a way to generate fees rather than to make lawful public records requests.<sup>22</sup> Governmental entities often settle these lawsuits because settlements are less costly than litigation.<sup>23</sup>

In 2015, the Town of Gulf Stream filed a federal class action lawsuit on behalf of state and local governmental entities against multiple individuals and entities based on their use of public records laws.<sup>24</sup> The Town of Gulf Stream alleged that the defendants violated the federal Racketeer Influenced Corrupt Organizations Act by filing frivolous public records requests that were intended to be overlooked, then bringing lawsuits when the requests were not addressed and attempting to obtain settlements.<sup>25</sup> The case was dismissed by a federal judge, who stated:

To the extent Defendants are abusing the rights afforded them by the Florida public records laws, those abuses must be addressed in the individual lawsuits filed, or through a change in the laws by the Florida Legislature.<sup>26</sup>

Counties and state agencies have also been sued as a result of their failure to provide public records after a public records request has been made. In another case, an entity called Consumer Rights, LLC, filed a public records lawsuit against Union County, which was ultimately appealed after the trial court ruled in favor of the county and did not award attorney fees to Consumer Rights, LLC.<sup>27</sup> On appeal, the First District Court of Appeal found that:

The plaintiff made the request in a suspicious email that could not be easily verified, directed it to a general email account that might not be checked by the person having anything to do with the records at issue, waited four months without saying anything and then sued the county, claiming a right to attorney fees.<sup>28</sup>

The court affirmed the lower court's decision to deny attorney fees to the plaintiff, holding that the manner in which the public records request was made, as well as the fact that the county ultimately provided the requested record when it became apparent that the email was not spam, indicated that there was no unlawful refusal to provide the requested records.<sup>29</sup> Since there was no refusal, there was no basis for awarding attorney fees.<sup>30</sup>

Consumer Rights, LLC, also filed a public records enforcement lawsuit against the Department of Economic Opportunity (DEO), but was not awarded attorney fees due to procedural issues.<sup>31</sup> The First District Court of Appeal noted that there was some evidence to support DEO's allegations that Consumer Rights, LLC, was engaged in a "scheme [that] was designed to generate fees," but the court declined to rule on the allegation.<sup>32</sup>

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<sup>22</sup> See Tristram Korten and Trevor Aaronson, *Florida nonprofit's ties to law firm questioned after dozens of lawsuits filed*, NAPLES DAILY NEWS, Dec. 6, 2014; Jan Pudlow, *A new scam: Public records shakedown*, THE FLORIDA BAR NEWS, Feb. 1, 2015, at 1.

<sup>23</sup> For example, the City of Dunedin settled a public records enforcement lawsuit for \$2,500 rather than spending as much as \$10,000 to fight the suit. Mike Brassfield, *Lawsuits from Public Records Group are a Nuisance, Florida Cities Say*, TAMPA BAY TIMES, July 6, 2015, available at <http://www.tampabay.com/news/humaninterest/lawsuits-from-public-records-group-are-a-nuisance-florida-cities-say/2236362>.

<sup>24</sup> *Town of Gulf Stream v. O'Boyle*, No. 15-80182-CIV-MARRA, U.S. Dist. LEXIS 84778 (S.D. Fla. June 30, 2015).

<sup>25</sup> *Id.* at \*4.

<sup>26</sup> *Id.* at \*11.

<sup>27</sup> *Consumer Rights, LLC v. Union County, Fla.*, 159 So. 3d 882 (Fla. 1st DCA 2015).

<sup>28</sup> *Id.* at 885.

<sup>29</sup> *Id.* at 886-87.

<sup>30</sup> *Id.*

<sup>31</sup> *State v. Consumer Rights, LLC*, 181 So. 3d 1239, 1241 (Fla. 1st DCA 2015).

<sup>32</sup> *Id.*

## Effect of Proposed Changes

The bill provides that a court must assess and award the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency if it determines that:

- The agency unlawfully refused to permit the public record to be inspected or copied; and
- The complainant provided written notice identifying the public record request to the agency's custodian of public records at least five days before filing the civil action, except as provided below.

The complainant is not required to provide written notice of the public record request, as required above, if the agency does not prominently post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested and on the agency's website, if the agency has a website.

A court may not assess and award any reasonable costs of enforcement, including reasonable attorney fees, against the agency if the court determines that the request to inspect or copy the public record was made primarily to harass the agency or cause a violation of ch. 119, F.S.

### B. SECTION DIRECTORY:

Section 1. amends s. 119.12, F.S., relating to attorney fees.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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

#### 2. Expenditures:

The bill may have a positive fiscal impact on the state if there are fewer instances when a court assesses against an agency the reasonable costs of enforcement in a public records lawsuit.

### 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 a positive fiscal impact on local governments if there are fewer instances when a court assesses against a local government the reasonable costs of enforcement in a public records lawsuit.

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

The bill may have a negative fiscal impact on individuals and entities who file public records lawsuits if there are fewer instances when a court awards to a prevailing complainant in a public records lawsuit the reasonable costs of enforcement.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

1                                   A bill to be entitled  
 2           An act relating to public records; amending s. 119.12,  
 3           F.S.; revising the circumstances under which a court  
 4           must assess and award the reasonable costs of  
 5           enforcement against an agency in a civil action to  
 6           enforce ch. 119, F.S.; prohibiting a court from  
 7           assessing and awarding the reasonable costs of  
 8           enforcement against an agency if certain conditions  
 9           exist; specifying circumstances under which a  
 10          complainant is not required to provide certain written  
 11          notice of a public record request; providing an  
 12          effective date.

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

15  
 16          Section 1. Section 119.12, Florida Statutes, is amended to  
 17          read:

18          119.12 Attorney ~~Attorney's~~ fees.-

19          (1) If a civil action is filed against an agency to  
 20          enforce the provisions of this chapter ~~and if the court~~  
 21          ~~determines that such agency unlawfully refused to permit a~~  
 22          ~~public record to be inspected or copied,~~ the court shall assess  
 23          and award, ~~against the agency responsible,~~ the reasonable costs  
 24          of enforcement, including reasonable attorney ~~attorneys'~~ fees,  
 25          against the responsible agency if the court determines that:





26        (a) The agency unlawfully refused to permit a public  
 27 record to be inspected or copied; and  
 28        (b) The complainant provided written notice identifying  
 29 the public record request to the agency's custodian of public  
 30 records at least 5 business days before filing the civil action,  
 31 except as provided under subsection (3).  
 32        (2) The court may not assess and award any reasonable  
 33 costs of enforcement, including reasonable attorney fees,  
 34 against the responsible agency if the court determines that the  
 35 request to inspect or copy the public record was made primarily  
 36 to harass the agency or cause a violation of this chapter.  
 37        (3) The complainant is not required to provide written  
 38 notice of the public record request to the agency's custodian of  
 39 public records as provided in paragraph (1)(b) if the agency  
 40 does not prominently post the contact information for the  
 41 agency's custodian of public records in the agency's primary  
 42 administrative building in which public records are routinely  
 43 created, sent, received, maintained, and requested and on the  
 44 agency's website, if the agency has a website.  
 45        Section 2. This act shall take effect upon becoming a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 383 Pub. Rec./Former Firefighters Personal Identifying Information  
**SPONSOR(S):** Willhite  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1108

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

### SUMMARY ANALYSIS

Current law provides that the home addresses, telephone numbers, dates of birth, and photographs of certified firefighters are exempt from public record requirements. In addition, the home addresses, telephone numbers, photographs, dates of birth, places of employment of the spouses and children of those firefighters, and the names and locations of schools and day care facilities attended by their children are exempt from public record requirements. While the public record exemption protects specified personal identification and location information for firefighters, it does not appear to protect such information for former firefighters.

The bill expands the public record exemption to include the personal identification and location information of former firefighters and their spouses and children.

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

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

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>5</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

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

##### Firefighters

Chapter 633, F.S., governs state law on fire prevention and control. The Chief Financial Officer is designated as the State Fire Marshal,<sup>8</sup> operating through the Division of State Fire Marshal (division) within the Department of Financial Services (DFS),<sup>9</sup> and tasked with regulating "fire service providers." The division is responsible for establishing, by rule, a Minimum Standards Course as the training and educational curriculum of firefighters and volunteers firefighters.<sup>10</sup> In order to serve as a firefighter, the individual must have a current and valid Firefighter Certificate of Compliance (FCOC) or Special Certificate of Compliance issued by the division.<sup>11</sup> A FCOC is issued by the division to an individual who:

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

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

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

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

<sup>5</sup> Section 119.15, F.S.

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

<sup>7</sup> Section 119.15(3), F.S.

<sup>8</sup> Section 633.104(1), F.S.

<sup>9</sup> Section 633.104, F.S.

<sup>10</sup> Section 633.408(1), F.S.

<sup>11</sup> Section 633.102(9), F.S.

- Satisfactorily completes the Minimum Standards Course or equivalent training;
- Passes the Minimum Standards Course examination; and
- Meets certain character and fitness requirements.<sup>12</sup>

#### Public Record Exemption for Firefighters

Current law provides that the home addresses, telephone numbers,<sup>13</sup> dates of birth, and photographs of certified firefighters are exempt<sup>14</sup> from public record requirements.<sup>15</sup> In addition, the home addresses, telephone numbers, photographs, dates of birth, places of employment of the spouses and children of those firefighters, and the names and locations of schools and day care facilities attended by their children are exempt from public record requirements.<sup>16</sup> While the public record exemption protects specified personal identification and location information for firefighters, it does not appear to protect such information for *former* firefighters.

#### **Effect of the Bill**

The bill expands the public record exemption for firefighters to protect the home addresses, telephone numbers, dates of birth, and photographs of *former* firefighters. Additionally, the bill expands the public record exemption to protect the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of former firefighters as well as the names and locations of schools and day care facilities attended by their children.

The bill provides a public necessity statement as required by the State Constitution, specifying that it is a public necessity to expand the public record exemption to include former firefighters and their spouses and children because the release of such identifying and location information may place former firefighters and their family members in danger as former firefighters have often responded to serious emergency situations ranging from domestic violence to homicide.

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

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

Section 1 amends s. 119.071, F.S., relating to public record exemptions for agency personnel.

Section 2 provides a public necessity statement.

Section 3 provides that the bill will take effect upon becoming law.

<sup>12</sup> Section 633.408(4), F.S.

<sup>13</sup> The term “telephone numbers” includes home, personal cellular, and personal pager telephone numbers, and telephone numbers associated with personal communications devices. *See* s. 119.071(4)(d)1., F.S.

<sup>14</sup> 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).

<sup>15</sup> Section 119.071(4)(d)2.b., F.S.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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

#### 2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

See Fiscal Comments.

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

None.

### D. FISCAL COMMENTS:

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

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

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

#### 2. Other:

##### Vote Requirement

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

##### Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands an existing public record exemption for the identification and location information of firefighters and their spouses and children. The expansion of the public record exemption seeks to prevent former firefighters and their families from being the victims of physical or emotional harm. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

1                   A bill to be entitled  
 2           An act relating to public records; amending s.  
 3           119.071, F.S.; expanding an exemption from public  
 4           records requirements for the personal identifying and  
 5           location information of certain firefighters and their  
 6           spouses and children to include the personal  
 7           identifying and location information of former  
 8           firefighters and their spouses and children; providing  
 9           for future legislative review and repeal of the  
 10          exemption; providing a statement of public necessity;  
 11          providing an effective date.

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

14  
 15           Section 1. Paragraph (d) of subsection (4) of section  
 16   119.071, Florida Statutes, is amended to read:

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

19           (4) AGENCY PERSONNEL INFORMATION.—

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

25           2.a.(I) The home addresses, telephone numbers, social



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

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

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

50 (IV) The home addresses, telephone numbers, dates of

51 | birth, and photographs of current or former nonsworn  
52 | investigative personnel of the Department of Financial Services  
53 | whose duties include the investigation of fraud, theft, workers'  
54 | compensation coverage requirements and compliance, other related  
55 | criminal activities, or state regulatory requirement violations;  
56 | the names, home addresses, telephone numbers, dates of birth,  
57 | and places of employment of the spouses and children of such  
58 | personnel; and the names and locations of schools and day care  
59 | facilities attended by the children of such personnel are exempt  
60 | from s. 119.07(1) and s. 24(a), Art. I of the State  
61 | Constitution. This sub-sub-subparagraph is subject to the Open  
62 | Government Sunset Review Act in accordance with s. 119.15 and  
63 | shall stand repealed on October 2, 2021, unless reviewed and  
64 | saved from repeal through reenactment by the Legislature.

65 |       b. The home addresses, telephone numbers, dates of birth,  
66 | and photographs of current or former firefighters certified in  
67 | compliance with s. 633.408; the home addresses, telephone  
68 | numbers, photographs, dates of birth, and places of employment  
69 | of the spouses and children of such firefighters; and the names  
70 | and locations of schools and day care facilities attended by the  
71 | children of such firefighters are exempt from s. 119.07(1). This  
72 | sub-subparagraph is subject to the Open Government Sunset Review  
73 | Act in accordance with s. 119.15, and shall stand repealed on  
74 | October 2, 2022, unless reviewed and saved from repeal through  
75 | reenactment by the Legislature.

76 c. The home addresses, dates of birth, and telephone  
77 numbers of current or former justices of the Supreme Court,  
78 district court of appeal judges, circuit court judges, and  
79 county court judges; the home addresses, telephone numbers,  
80 dates of birth, and places of employment of the spouses and  
81 children of current or former justices and judges; and the names  
82 and locations of schools and day care facilities attended by the  
83 children of current or former justices and judges are exempt  
84 from s. 119.07(1).

85 d.(I) The home addresses, telephone numbers, social  
86 security numbers, dates of birth, and photographs of current or  
87 former state attorneys, assistant state attorneys, statewide  
88 prosecutors, or assistant statewide prosecutors; the home  
89 addresses, telephone numbers, social security numbers,  
90 photographs, dates of birth, and places of employment of the  
91 spouses and children of current or former state attorneys,  
92 assistant state attorneys, statewide prosecutors, or assistant  
93 statewide prosecutors; and the names and locations of schools  
94 and day care facilities attended by the children of current or  
95 former state attorneys, assistant state attorneys, statewide  
96 prosecutors, or assistant statewide prosecutors are exempt from  
97 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

98 (II) The names of the spouses and children of current or  
99 former state attorneys, assistant state attorneys, statewide  
100 prosecutors, or assistant statewide prosecutors are exempt from

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

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

106 e. The home addresses, dates of birth, and telephone  
 107 numbers of general magistrates, special magistrates, judges of  
 108 compensation claims, administrative law judges of the Division  
 109 of Administrative Hearings, and child support enforcement  
 110 hearing officers; the home addresses, telephone numbers, dates  
 111 of birth, and places of employment of the spouses and children  
 112 of general magistrates, special magistrates, judges of  
 113 compensation claims, administrative law judges of the Division  
 114 of Administrative Hearings, and child support enforcement  
 115 hearing officers; and the names and locations of schools and day  
 116 care facilities attended by the children of general magistrates,  
 117 special magistrates, judges of compensation claims,  
 118 administrative law judges of the Division of Administrative  
 119 Hearings, and child support enforcement hearing officers are  
 120 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 121 Constitution if the general magistrate, special magistrate,  
 122 judge of compensation claims, administrative law judge of the  
 123 Division of Administrative Hearings, or child support hearing  
 124 officer provides a written statement that the general  
 125 magistrate, special magistrate, judge of compensation claims,

126 administrative law judge of the Division of Administrative  
 127 Hearings, or child support hearing officer has made reasonable  
 128 efforts to protect such information from being accessible  
 129 through other means available to the public.

130 f. The home addresses, telephone numbers, dates of birth,  
 131 and photographs of current or former human resource, labor  
 132 relations, or employee relations directors, assistant directors,  
 133 managers, or assistant managers of any local government agency  
 134 or water management district whose duties include hiring and  
 135 firing employees, labor contract negotiation, administration, or  
 136 other personnel-related duties; the names, home addresses,  
 137 telephone numbers, dates of birth, and places of employment of  
 138 the spouses and children of such personnel; and the names and  
 139 locations of schools and day care facilities attended by the  
 140 children of such personnel are exempt from s. 119.07(1) and s.  
 141 24(a), Art. I of the State Constitution.

142 g. The home addresses, telephone numbers, dates of birth,  
 143 and photographs of current or former code enforcement officers;  
 144 the names, home addresses, telephone numbers, dates of birth,  
 145 and places of employment of the spouses and children of such  
 146 personnel; and the names and locations of schools and day care  
 147 facilities attended by the children of such personnel are exempt  
 148 from s. 119.07(1) and s. 24(a), Art. I of the State  
 149 Constitution.

150 h. The home addresses, telephone numbers, places of

151 employment, dates of birth, and photographs of current or former  
 152 guardians ad litem, as defined in s. 39.820; the names, home  
 153 addresses, telephone numbers, dates of birth, and places of  
 154 employment of the spouses and children of such persons; and the  
 155 names and locations of schools and day care facilities attended  
 156 by the children of such persons are exempt from s. 119.07(1) and  
 157 s. 24(a), Art. I of the State Constitution, if the guardian ad  
 158 litem provides a written statement that the guardian ad litem  
 159 has made reasonable efforts to protect such information from  
 160 being accessible through other means available to the public.

161 i. The home addresses, telephone numbers, dates of birth,  
 162 and photographs of current or former juvenile probation  
 163 officers, juvenile probation supervisors, detention  
 164 superintendents, assistant detention superintendents, juvenile  
 165 justice detention officers I and II, juvenile justice detention  
 166 officer supervisors, juvenile justice residential officers,  
 167 juvenile justice residential officer supervisors I and II,  
 168 juvenile justice counselors, juvenile justice counselor  
 169 supervisors, human services counselor administrators, senior  
 170 human services counselor administrators, rehabilitation  
 171 therapists, and social services counselors of the Department of  
 172 Juvenile Justice; the names, home addresses, telephone numbers,  
 173 dates of birth, and places of employment of spouses and children  
 174 of such personnel; and the names and locations of schools and  
 175 day care facilities attended by the children of such personnel

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

178 j.(I) The home addresses, telephone numbers, dates of  
179 birth, and photographs of current or former public defenders,  
180 assistant public defenders, criminal conflict and civil regional  
181 counsel, and assistant criminal conflict and civil regional  
182 counsel; the home addresses, telephone numbers, dates of birth,  
183 and places of employment of the spouses and children of such  
184 defenders or counsel; and the names and locations of schools and  
185 day care facilities attended by the children of such defenders  
186 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
187 the State Constitution.

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

195 k. The home addresses, telephone numbers, and photographs  
196 of current or former investigators or inspectors of the  
197 Department of Business and Professional Regulation; the names,  
198 home addresses, telephone numbers, and places of employment of  
199 the spouses and children of such current or former investigators  
200 and inspectors; and the names and locations of schools and day

201 care facilities attended by the children of such current or  
202 former investigators and inspectors are exempt from s. 119.07(1)  
203 and s. 24(a), Art. I of the State Constitution if the  
204 investigator or inspector has made reasonable efforts to protect  
205 such information from being accessible through other means  
206 available to the public. This sub-subparagraph is subject to the  
207 Open Government Sunset Review Act in accordance with s. 119.15  
208 and shall stand repealed on October 2, 2017, unless reviewed and  
209 saved from repeal through reenactment by the Legislature.

210 1. The home addresses and telephone numbers of county tax  
211 collectors; the names, home addresses, telephone numbers, and  
212 places of employment of the spouses and children of such tax  
213 collectors; and the names and locations of schools and day care  
214 facilities attended by the children of such tax collectors are  
215 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
216 Constitution if the county tax collector has made reasonable  
217 efforts to protect such information from being accessible  
218 through other means available to the public. This sub-  
219 subparagraph is subject to the Open Government Sunset Review Act  
220 in accordance with s. 119.15 and shall stand repealed on October  
221 2, 2017, unless reviewed and saved from repeal through  
222 reenactment by the Legislature.

223 m. The home addresses, telephone numbers, dates of birth,  
224 and photographs of current or former personnel of the Department  
225 of Health whose duties include, or result in, the determination



226 or adjudication of eligibility for social security disability  
227 benefits, the investigation or prosecution of complaints filed  
228 against health care practitioners, or the inspection of health  
229 care practitioners or health care facilities licensed by the  
230 Department of Health; the names, home addresses, telephone  
231 numbers, dates of birth, and places of employment of the spouses  
232 and children of such personnel; and the names and locations of  
233 schools and day care facilities attended by the children of such  
234 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
235 the State Constitution if the personnel have made reasonable  
236 efforts to protect such information from being accessible  
237 through other means available to the public. This sub-  
238 subparagraph is subject to the Open Government Sunset Review Act  
239 in accordance with s. 119.15 and shall stand repealed on October  
240 2, 2019, unless reviewed and saved from repeal through  
241 reenactment by the Legislature.

242 n. The home addresses, telephone numbers, dates of birth,  
243 and photographs of current or former impaired practitioner  
244 consultants who are retained by an agency or current or former  
245 employees of an impaired practitioner consultant whose duties  
246 result in a determination of a person's skill and safety to  
247 practice a licensed profession; the names, home addresses,  
248 telephone numbers, dates of birth, and places of employment of  
249 the spouses and children of such consultants or their employees;  
250 and the names and locations of schools and day care facilities

251 attended by the children of such consultants or employees are  
 252 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 253 Constitution if a consultant or employee has made reasonable  
 254 efforts to protect such information from being accessible  
 255 through other means available to the public. This sub-  
 256 subparagraph is subject to the Open Government Sunset Review Act  
 257 in accordance with s. 119.15 and shall stand repealed on October  
 258 2, 2020, unless reviewed and saved from repeal through  
 259 reenactment by the Legislature.

260       o. The home addresses, telephone numbers, dates of birth,  
 261 and photographs of current or former emergency medical  
 262 technicians or paramedics certified under chapter 401; the  
 263 names, home addresses, telephone numbers, dates of birth, and  
 264 places of employment of the spouses and children of such  
 265 emergency medical technicians or paramedics; and the names and  
 266 locations of schools and day care facilities attended by the  
 267 children of such emergency medical technicians or paramedics are  
 268 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 269 Constitution if the emergency medical technicians or paramedics  
 270 have made reasonable efforts to protect such information from  
 271 being accessible through other means available to the public.  
 272 This sub-subparagraph is subject to the Open Government Sunset  
 273 Review Act in accordance with s. 119.15 and shall stand repealed  
 274 on October 2, 2021, unless reviewed and saved from repeal  
 275 through reenactment by the Legislature.

276 p. The home addresses, telephone numbers, dates of birth,  
 277 and photographs of current or former personnel employed in an  
 278 agency's office of inspector general or internal audit  
 279 department whose duties include auditing or investigating waste,  
 280 fraud, abuse, theft, exploitation, or other activities that  
 281 could lead to criminal prosecution or administrative discipline;  
 282 the names, home addresses, telephone numbers, dates of birth,  
 283 and places of employment of spouses and children of such  
 284 personnel; and the names and locations of schools and day care  
 285 facilities attended by the children of such personnel are exempt  
 286 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
 287 if the personnel have made reasonable efforts to protect such  
 288 information from being accessible through other means available  
 289 to the public. This sub-subparagraph is subject to the Open  
 290 Government Sunset Review Act in accordance with s. 119.15 and  
 291 shall stand repealed on October 2, 2021, unless reviewed and  
 292 saved from repeal through reenactment by the Legislature.

293 3. An agency that is the custodian of the information  
 294 specified in subparagraph 2. and that is not the employer of the  
 295 officer, employee, justice, judge, or other person specified in  
 296 subparagraph 2. shall maintain the exempt status of that  
 297 information only if the officer, employee, justice, judge, other  
 298 person, or employing agency of the designated employee submits a  
 299 written request for maintenance of the exemption to the  
 300 custodial agency.

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

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

309 Section 2. The Legislature finds that it is a public  
 310 necessity to expand the exemption from public records  
 311 requirements that applies to the home addresses, telephone  
 312 numbers, dates of birth, and photographs of firefighters  
 313 certified under s. 633.408; the home addresses, telephone  
 314 numbers, photographs, dates of birth, and places of employment  
 315 of the spouses and children of such firefighters; and the names  
 316 and locations of schools and day care facilities attended by the  
 317 children of such firefighters to include former firefighters and  
 318 their spouses and children. The personal identifying and  
 319 location information of other former first responders, such as  
 320 former law enforcement officers, and their family members is  
 321 currently exempt from public records requirements. Firefighters  
 322 often respond to serious emergency situations ranging from  
 323 domestic violence to homicide, and the release of personal  
 324 identifying and location information may place former  
 325 firefighters and their family members in danger of serious

326 physical or emotional harm by hostile individuals. The  
327 Legislature further finds that the harm that may result from the  
328 release of such identifying and location information outweighs  
329 any public benefit that may be derived from the disclosure of  
330 such information.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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



**Amendment**

4  
 5  
 6 Remove line 71 and insert:  
 7 children of such firefighters are exempt from s. 119.071(1) and  
 8 s. 24(a), Art. I of the State Constitution. This



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 599 Public Works Projects  
**SPONSOR(S):** Williamson and others  
**TIED BILLS:** IDEN./SIM. BILLS: SB 534

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

Contracts for construction services that are projected to cost more than a specified threshold must be competitively awarded. Specifically, state contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid. Counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the estimated cost is in excess of \$300,000. The solicitation of competitive bids or proposals must be publicly advertised in the Florida Administrative Register.

The bill creates s. 255.0992, F.S., relating to public works projects. The bill defines the terms "political subdivision" and "public works project." It prohibits the state or a political subdivision, except when required by state or federal law, from requiring a contractor, subcontractor, or material supplier or carrier engaged in a public works project to:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.

In addition, the bill provides that the state or a political subdivision that contracts for a public works project may not prohibit a contractor, subcontractor, or material supplier or carrier from submitting a bid on the project or being awarded the relevant contract if such individual is otherwise qualified to do the work described.

The bill does not apply to contracts executed by the Department of Transportation under ch. 337, F.S.

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

##### Federal Labor and Wage Laws

The National Labor Relations Act of 1935<sup>1</sup> and the Labor Management Relations Act of 1947<sup>2</sup> constitute a comprehensive scheme of regulations guaranteeing employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce.

The Fair Labor Standards Act (FLSA or act) establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States.<sup>3</sup> A state may set the rate higher than the federal minimum, but not lower.<sup>4</sup> The act also requires employers to pay time and a half to their employees for overtime hours worked,<sup>5</sup> and establishes standards for recordkeeping<sup>6</sup> and child labor.<sup>7</sup> Over 135 million workers are covered under the act;<sup>8</sup> most, but not all, jobs are covered by the FLSA. In addition, some jobs covered by the act are considered "exempt" from the FLSA overtime requirements.<sup>9</sup>

On February 12, 2014, President Obama signed Executive Order 13658, which establishes a minimum wage for certain federal contractors.<sup>10</sup> The Executive Order requires parties who contract with the federal government to pay workers performing work on or in connection with covered federal contracts at least \$10.10 per hour beginning January 1, 2015. Beginning January 1, 2016, and annually thereafter, such workers must be paid an amount determined by the Secretary of Labor in accordance with the Executive Order. The order stated that "[r]aising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs."<sup>11</sup> The Executive Order hourly minimum wage in effect from January 1, 2017, through December 31, 2017, is \$10.20.<sup>12</sup>

The Davis-Bacon Act<sup>13</sup> applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and

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<sup>1</sup> 29 U.S.C. ss. 151-169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

<sup>2</sup> 29 U.S.C. ss. 141-197 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

<sup>3</sup> 29 U.S.C. s. 206.

<sup>4</sup> 29 U.S.C. s. 218(a).

<sup>5</sup> 29 U.S.C. s. 207(a)(1).

<sup>6</sup> 29 U.S.C. s. 211.

<sup>7</sup> 29 U.S.C. s. 212.

<sup>8</sup> United States Department of Labor, *Wage and Hour Division: Resources for Workers*, <http://www.dol.gov/whd/workers.htm> (last visited Feb. 24, 2017).

<sup>9</sup> 29 U.S.C. s. 213; United States Department of Labor, *Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)*, [www.dol.gov/whd/regs/compliance/whdfs14.pdf](http://www.dol.gov/whd/regs/compliance/whdfs14.pdf) (last visited Feb. 24, 2017).

<sup>10</sup> Exec. Order 13658, 79 Fed. Reg. 9851 (Feb. 12, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/02/12/executive-order-minimum-wage-contractors>.

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

<sup>12</sup> 81 Fed. Reg. 64513 (Sept. 20, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-09-20/pdf/2016-22515.pdf>.

<sup>13</sup> Davis-Bacon Act, 40 U.S.C. s. 3141-3148.

decorating) of public buildings or public works.<sup>14</sup> Contractors and subcontractors subject to the Davis-Bacon Act are required to pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area, as determined by the Department of Labor.<sup>15</sup> The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts.<sup>16</sup> Many federal laws that authorize federal assistance for construction through grants, loans, loan guarantees, and insurance are referred to as Davis-Bacon “related Acts.”<sup>17</sup> The “related Acts” include provisions that require the prevailing wage provisions of the Davis-Bacon Act to apply to most federally assisted construction.<sup>18</sup>

### State Labor and Wage Regulations

The State Constitution protects the right for workers to collectively bargain, including public sector employees.<sup>19</sup> It provides, in pertinent part, that “[t]he right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” The Florida Supreme Court has held that public employees maintain the same rights to collectively bargain as do private employees.<sup>20</sup>

In addition, the State Constitution provides that “[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.”<sup>21</sup> Employers must pay employees no less than the minimum wage for all hours worked in Florida.<sup>22</sup> The current state minimum wage is \$8.10 per hour,<sup>23</sup> which is higher than the federal rate.<sup>24</sup>

### Procurement of Construction Services

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. The Department of Management Services is responsible for establishing by rule the following:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertising for and receiving bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.<sup>25</sup>

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<sup>14</sup> United States Department of Labor, *Wage and Hour Division: Davis-Bacon and Related Acts*, <http://www.dol.gov/whd/govcontracts/dbra.htm> (last visited Feb. 24, 2017).

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

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

<sup>17</sup> United States Department of Labor, *Fact Sheet #66: The Davis-Bacon and Related Acts (DBRA)*, <http://www.dol.gov/whd/regs/compliance/whdfs66.pdf> (last visited Feb. 24, 2017). Examples of “related Acts” are the Federal Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.

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

<sup>19</sup> Art. I, s. 6, FLA. CONST.

<sup>20</sup> See *Hillsborough Cnty. Gov’tl Emps. Ass’n, Inc. v. Hillsborough Cnty. Aviation Auth.*, 522 So. 2d 358 (Fla. 1988); *City of Tallahassee v. Public Employees Relations Comm’n*, 410 So. 2d 487 (Fla. 1981); *Dade Cnty. Classroom Teachers Ass’n v. Legislature of Fla.*, 269 So. 2d 684 (Fla. 1972).

<sup>21</sup> Art. X, s. 24(a), FLA. CONST.

<sup>22</sup> Art. X, s. 24(c), FLA. CONST.

<sup>23</sup> Department of Economic Opportunity, *Display Posters and Required Notices*, <http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notices> (last visited Feb. 24, 2017).

<sup>24</sup> The federal minimum wage is \$7.25 per hour. For more information about federal minimum wage provisions, see <http://www.dol.gov/whd/minimumwage.htm> (last visited Feb. 24, 2017).

<sup>25</sup> Section 255.29, F.S.

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.<sup>26</sup> A county, municipality, special district, or other political subdivision seeking to construct or improve a public building must competitively bid the project if the estimated cost is in excess of \$300,000.<sup>27</sup>

Section 255.0525, F.S., requires the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 to be publicly advertised in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening. If the cost of the construction project is projected to exceed \$500,000, the advertisement must be published in the FAR at least 30 days prior to the bid opening, and at least once in a newspaper of general circulation in the county where the project is located at least 30 days prior to the bid opening.<sup>28</sup>

Florida law provides a preference for the employment of state residents in construction contracts funded with state funds. Such contracts must contain a provision requiring the contractor to give preference to employing state residents to perform the work if such residents have substantially equal qualifications<sup>29</sup> to those of non-residents.<sup>30</sup> If a construction contract is funded by local funds, the contract may, but is not required to, contain such a provision.<sup>31</sup> In addition, a contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.<sup>32</sup>

For a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon:

- The contractor's maintaining an office or place of business within a particular local jurisdiction;
- The contractor's hiring employees or subcontractors from within a particular local jurisdiction; or
- The contractor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.<sup>33</sup>

Several counties and municipalities have adopted ordinances requiring companies bidding on contracts to pay their employees a "living wage,"<sup>34</sup> while others have adopted ordinances requiring apprenticeship programs.<sup>35</sup>

#### Department of Transportation Construction Projects

Chapter 337, F.S., governs contracting by the Department of Transportation (DOT). Any person who wants to bid for a construction contract in excess of \$250,000 must be certified by DOT as qualified.<sup>36</sup> Certification is also required to bid on road, bridge, or public transportation construction projects of more than \$250,000.<sup>37</sup> The purpose of certification is to ensure professional and financial competence

<sup>26</sup> See s. 255.0525, F.S.; see also chapters 60D-5.002 and 60D-5.0073, F.A.C.

<sup>27</sup> Section 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

<sup>28</sup> For counties, municipalities, and political subdivisions, similar publishing provisions apply. See Section 255.0525(2), F.S.

<sup>29</sup> Section 255.099(1)(a), F.S., defines substantially equal qualifications as the "qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons."

<sup>30</sup> Section 255.099(1), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> Section 255.099(1)(b), F.S.

<sup>33</sup> Section 255.0991(2), F.S.

<sup>34</sup> See, e.g., Broward County Code of Ordinances s. 26-102, Palm Beach County Code of Ordinances s. 2-147 to 2-250.1, Miami-Dade County Code of Ordinances s. 2-8.9.

<sup>35</sup> See Charlie Frago, *St. Pete council approves mandatory apprentice program for city projects*, Tampa Bay Times (May 7, 2015), available at <http://www.tampabay.com/news/localgovernment/st-pete-council-approves-mandatory-apprentice-program-for-city-projects/2228783>.

<sup>36</sup> Section 337.14(1), F.S. and ch. 14-22, F.A.C.

<sup>37</sup> Section 337.14(2), F.S.

relating to the performance of construction contracts by evaluating bidders "with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification."<sup>38</sup>

### **Effect of Proposed Changes**

The bill creates s. 255.0992, F.S., relating to public works projects. It defines the following terms:

- "Political subdivision" means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair, or improvement of public works.
- "Public works project" means an activity that is paid for in whole or in part with state funds and that consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.

The bill provides that except as required by federal or state law, the state or any political subdivision that contracts for a public works project may not require a contractor, subcontractor, or material supplier or carrier engaged in the project to:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.

In addition, the bill provides that the state or any political subdivision that contracts for a public works project may not prohibit any contractor, subcontractor, or material supplier or carrier from submitting a bid on the project or being awarded the relevant contract if such individual is able to perform the work described and is qualified, licensed, or certified as required by state law.

The bill does not apply to contracts executed by DOT under ch. 337, F.S.

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

Section 1. creates s. 255.0992, F.S., relating to public works projects.

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 revenues.

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

The bill does not appear to impact state expenditures.

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

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

The bill does not appear to impact 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 neither provides rulemaking authority nor requires implementation by executive branch rulemaking.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

1                   A bill to be entitled  
 2           An act relating to public works projects; creating s.  
 3           255.0992, F.S.; providing definitions; prohibiting the  
 4           state and political subdivisions that contract for  
 5           public works projects from imposing restrictive  
 6           conditions on certain contractors, subcontractors, or  
 7           material suppliers or carriers; prohibiting the state  
 8           and political subdivisions from restricting qualified  
 9           bidders from submitting bids or being awarded  
 10          contracts; providing applicability; providing an  
 11          effective date.

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

14  
 15           Section 1. Section 255.0992, Florida Statutes, is created  
 16 to read:

17           255.0992 Public works projects; prohibited governmental  
 18 actions.-

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

20           (a) "Political subdivision" means a separate agency or  
 21 unit of local government created or established by law or  
 22 ordinance and the officers thereof. The term includes, but is  
 23 not limited to, a county; a city, town, or other municipality;  
 24 or a department, commission, authority, school district, taxing  
 25 district, water management district, board, public corporation,

26 institution of higher education, or other public agency or body  
 27 thereof authorized to expend public funds for construction,  
 28 maintenance, repair, or improvement of public works.

29 (b) "Public works project" means an activity that is paid  
 30 for in whole or in part with state funds and that consists of  
 31 the construction, maintenance, repair, renovation, remodeling,  
 32 or improvement of a building, road, street, sewer, storm drain,  
 33 water system, site development, irrigation system, reclamation  
 34 project, gas or electrical distribution system, gas or  
 35 electrical substation, or other facility, project, or portion  
 36 thereof that is owned in whole or in part by any political  
 37 subdivision.

38 (2) (a) Except as required by federal or state law, the  
 39 state or any political subdivision that contracts for a public  
 40 works project may not require that a contractor, subcontractor,  
 41 or material supplier or carrier engaged in such project:

42 1. Pay employees a predetermined amount of wages or  
 43 prescribe any wage rate;

44 2. Provide employees a specified type, amount, or rate of  
 45 employee benefits;

46 3. Control, limit, or expand staffing; or

47 4. Recruit, train, or hire employees from a designated,  
 48 restricted, or single source.

49 (b) The state or any political subdivision that contracts  
 50 for a public works project may not prohibit any contractor,

51 subcontractor, or material supplier or carrier able to perform  
52 such work who is qualified, licensed, or certified as required  
53 by state law to perform such work from submitting a bid on the  
54 public works project or being awarded any contract, subcontract,  
55 material order, or carrying order.

56 (3) This section does not apply to contracts executed  
57 under chapter 337.

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





Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

**Amendment**

Remove lines 29-30 and insert:

7 (b) "Public works project" means an activity of which 50  
8 percent or more of the cost will be paid from state-appropriated  
9 funds that were appropriated at the time of the competitive  
10 solicitation and which consists of



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

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

**Amendment**

4  
 5  
 6 Remove line 55 and insert:  
 7 material order, or carrying order. This paragraph does not apply  
 8 to vendors listed in ss. 287.133 and 287.134.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB OTA 17-04 OGSR/Office of Insurance Regulation  
**SPONSOR(S):** Oversight, Transparency & Administration Subcommittee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee		Toliver LT	Harrington JAH

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Title insurers and title insurance agencies are required to submit to the Office of Insurance Regulation (OIR), by May 31 of each year, data that have been identified as necessary to assist in the analysis of premium rates, title search costs, and the condition of Florida's title insurance industry. Current law provides that proprietary business information provided to OIR by a title insurance agency or insurer is confidential and exempt from public record requirements until such information is otherwise publicly available or is no longer treated by the title insurance agency or insurer as proprietary business information. However, information provided by multiple title insurance agencies and insurers may be aggregated on an industry-wide basis and disclosed to the public as long as the specific identities of the agencies or insurers are not revealed.

The bill reenacts the public record exemption, which will repeal on October 2, 2017, if this bill does not become law. The bill also narrows the definition of proprietary business information to limit the types of financial information that may be protected.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>2</sup>

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

- 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.<sup>3</sup>

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>4</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>5</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Title Insurance

Title insurance insures owners of real property or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.<sup>6</sup> Title insurance is a policy issued by a title insurer that, after performing a search of title, represents the state of that title and insures the accuracy of its search against claims of title defects. It is usually secured by the purchaser of property or an entity that is loaning money on a mortgage. Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property.

##### Title Insurance Regulation

Under current law, two entities provide regulatory oversight of the title insurance industry: the Department of Financial Services (DFS),<sup>7</sup> which regulates title agents, and the Office of Insurance Regulation (OIR),<sup>8</sup> which regulates title insurers, including licensing and promulgation of rates. Rates and premiums charged by title insurers are specified by rule by the Financial Services Commission

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

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

<sup>4</sup> Section 24(c), Art. I, FLA. CONST.

<sup>5</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

<sup>6</sup> Section 624.608, F.S. Title insurance is also insurance of owners and secured parties as to the existence, attachment, perfection and priority of a security interest in personal property under the Uniform Commercial Code.

<sup>7</sup> Section 20.121, F.S.

<sup>8</sup> Section 20.121(3)(a)1., F.S.

(FSC).<sup>9</sup> Title insurers may deviate from the proscribed rates by petitioning OIR for an order authorizing a specific deviation from the adopted premium.<sup>10</sup>

#### Title Insurers and Title Agencies Data Submission

Title insurers, their direct or retail businesses in the state, and title agencies are required to submit to OIR, on or before May 31 of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry.<sup>11</sup> The FSC has adopted rules<sup>12</sup> regarding the collection and analysis of the data.<sup>13</sup> Failure to submit the required data timely to OIR will constitute grounds for DFS to take disciplinary action against the license or appointment of the title insurance agent or agency.<sup>14</sup> Possible sanctions include suspension or revocation of a license or appointment.<sup>15</sup>

#### Public Record Exemption under Review

In 2012, the Legislature created a public record exemption for proprietary business information provided to OIR by a title insurance agency or insurer.<sup>16</sup> The information is confidential and exempt<sup>17</sup> from public record requirements until such information is otherwise publicly available or is no longer treated by the title insurance agency or insurer as proprietary business information.<sup>18</sup> However, information provided by multiple title insurance agencies and insurers may be aggregated on an industry-wide basis and disclosed to the public as long as the specific identities of the agencies or insurers are not revealed.<sup>19</sup>

The exemption defines "proprietary business information" as information that:

- Is owned or controlled by a title insurance agency or insurer requesting confidentiality under this section;
- Is intended to be and is treated by the title insurance agency or insurer as private in that the disclosure of the information would cause harm to the business operations of the title insurance agency or insurer;
- Has not been publicly disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement, providing that the information may be released to the public; and
- Concerns business plans, internal auditing controls and reports of internal auditors, reports of external auditors for privately held companies, trade secrets as defined in s. 688.002, F.S., or financial information, including, but not limited to, revenue data, loss expense data, gross receipts, taxes paid, capital investment, customer identification, and employee wages.

The 2012 public necessity statement for the exemption provides that:<sup>20</sup>

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<sup>9</sup> Section 627.782, F.S.

<sup>10</sup> Section 627.783, F.S.

<sup>11</sup> Section 627.782(8), F.S.

<sup>12</sup> Section 627.782(8), F.S.

<sup>13</sup> See Fla. Admin. Rule 69O-186.013; see also 2017 Title Agencies Data Call, available at <http://www.flair.com/siteDocuments/FloridaTitleAgencyTemplate.pdf> (last visited 3/3/17).

<sup>14</sup> Section 626.8437(11), F.S.

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

<sup>16</sup> Chapter 2012-207, L.O.F.; codified as s. 626.84195, F.S.

<sup>17</sup> There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

<sup>18</sup> Section 626.84195(2), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Chapter 2012-207, L.O.F.

Without this exemption, title insurance agencies and title insurers, whose records are generally not required to be open to the public, might refrain from providing accurate and unbiased data, thus impairing [OIRs] ability to set fair and adequate title insurance rates. Proprietary business information derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use. [OIR], in performing its lawful duties and responsibilities, may need to obtain information from the proprietary business information. Without an exemption from public records requirements for proprietary business information provided to [OIR], such information becomes a public record when received and must be divulged upon request. Divulgence of any proprietary business information under the public records law would destroy the value of that property to the proprietor, causing a financial loss not only to the proprietor but also to the residents of this state due to the loss of reliable financial data necessary for fair and adequate rate regulation. Release of proprietary business information would give business competitors an unfair advantage and weaken the position in the marketplace of the proprietor that owns or controls the proprietary business information.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2017, unless reviewed and saved from repeal by the Legislature.<sup>21</sup>

During the 2016 interim, subcommittee staff consulted with OIR staff as part of the Open Government Sunset Review process. OIR staff indicated that the exemption was necessary to encourage candid participation in OIR data collection efforts and recommended reenactment of the exemption. If the exemption were to lapse, OIR staff believes that title insurers and title agencies would be hesitant to submit information to OIR for fear that their competitors would gain access to sensitive business information. OIR staff indicated that it does not collect "customer identification" and therefore would not object to that term being removed as an example of "financial information" within the exemption.

### **Effect of the Bill**

The bill removes the repeal date thereby reenacting the public record exemption for proprietary business information provided to OIR by a title insurance agency or insurer in response OIR's data collection efforts. The bill narrows the definition of proprietary business information to limit the types of financial information that may be protected. The bill removes the reference to "customer identification" as such information does not appear to be "financial information" and to better mirror information OIR collects.

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

Section 1 amends s. 626.84195, F.S., relating to the confidentiality of information supplied by title insurance agencies and insurers to OIR.

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

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<sup>21</sup> Section 626.84195(3), F.S.  
STORAGE NAME: pcb04.OTA.DOCX  
DATE: 3/6/2017

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

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.



1                                   A bill to be entitled  
 2           An act relating to a review under the Open Government  
 3           Sunset Review Act; amending s. 626.84195, F.S., which  
 4           provides an exemption from public record requirements  
 5           for proprietary business information provided by title  
 6           insurance agencies and insurers to the Office of  
 7           Insurance Regulation; revising the definition of  
 8           "proprietary business information"; removing the  
 9           scheduled repeal of the exemption; providing an  
 10          effective date.

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

13  
 14           Section 1. Section 626.84195, Florida Statutes, is amended  
 15 to read:

16           626.84195 Confidentiality of information supplied by title  
 17 insurance agencies and insurers.—

18           (1) As used in this section, the term "proprietary  
 19 business information" means information that:

20           (a) Is owned or controlled by a title insurance agency or  
 21 insurer requesting confidentiality under this section;

22           (b) Is intended to be and is treated by the title  
 23 insurance agency or insurer as private in that the disclosure of  
 24 the information would cause harm to the business operations of  
 25 the title insurance agency or insurer;

26 (c) Has not been publicly disclosed ~~unless disclosed~~  
 27 ~~pursuant to a statutory provision, an order of a court or~~  
 28 ~~administrative body, or a private agreement, providing that the~~  
 29 ~~information may be released to the public; and~~

30 (d) Concerns:

- 31 1. Business plans;
- 32 2. Internal auditing controls and reports of internal
- 33 auditors;
- 34 3. Reports of external auditors for privately held
- 35 companies;
- 36 4. Trade secrets, as defined in s. 688.002; or
- 37 5. Financial information, including, ~~but not limited to,~~
- 38 revenue data, loss expense data, gross receipts, taxes paid,
- 39 capital investment, ~~customer identification,~~ and employee wages.

40 (2) Proprietary business information provided to the  
 41 office by a title insurance agency or insurer is confidential  
 42 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 43 Constitution until such information is otherwise publicly  
 44 available or is no longer treated by the title insurance agency  
 45 or insurer as proprietary business information. However,  
 46 information provided by multiple title insurance agencies and  
 47 insurers may be aggregated on an industrywide basis and  
 48 disclosed to the public as long as the specific identities of  
 49 the agencies or insurers are not revealed.

50 ~~(3) This section is subject to the Open Government Sunset~~

PCB OTA 17-04

ORIGINAL

2017

51 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~  
52 ~~on October 2, 2017, unless reviewed and saved from repeal~~  
53 ~~through reenactment by the Legislature.~~

54 Section 2. This act shall take effect October 1, 2017.



# STATE OF FLORIDA AUDITOR GENERAL

## Auditor General's Office Overview

House Oversight, Transparency &  
Administration Subcommittee  
March 8, 2017



Sherrill F. Norman, CPA  
Auditor General

# Constitutional and Statutory Audit Authority

## Article III, Section 2 of the State Constitution

- Audit public records and perform related duties as prescribed by law or concurrent resolution.

## Florida Statutes

- Section 11.45(2) - Conduct audits of records and perform related duties as prescribed by law, concurrent resolution of the Legislature, or as directed by the Legislative Auditing Committee.
- Section 11.45(3) - Pursuant to his or her own authority, conduct audits or other engagements as determined appropriate by the Auditor General.

# Auditor General's Vision and Core Values

## Our Vision

*Excellence in auditing for the benefit of Floridians*

## Our Core Values

*Integrity  
Independence and Objectivity  
Accountability*



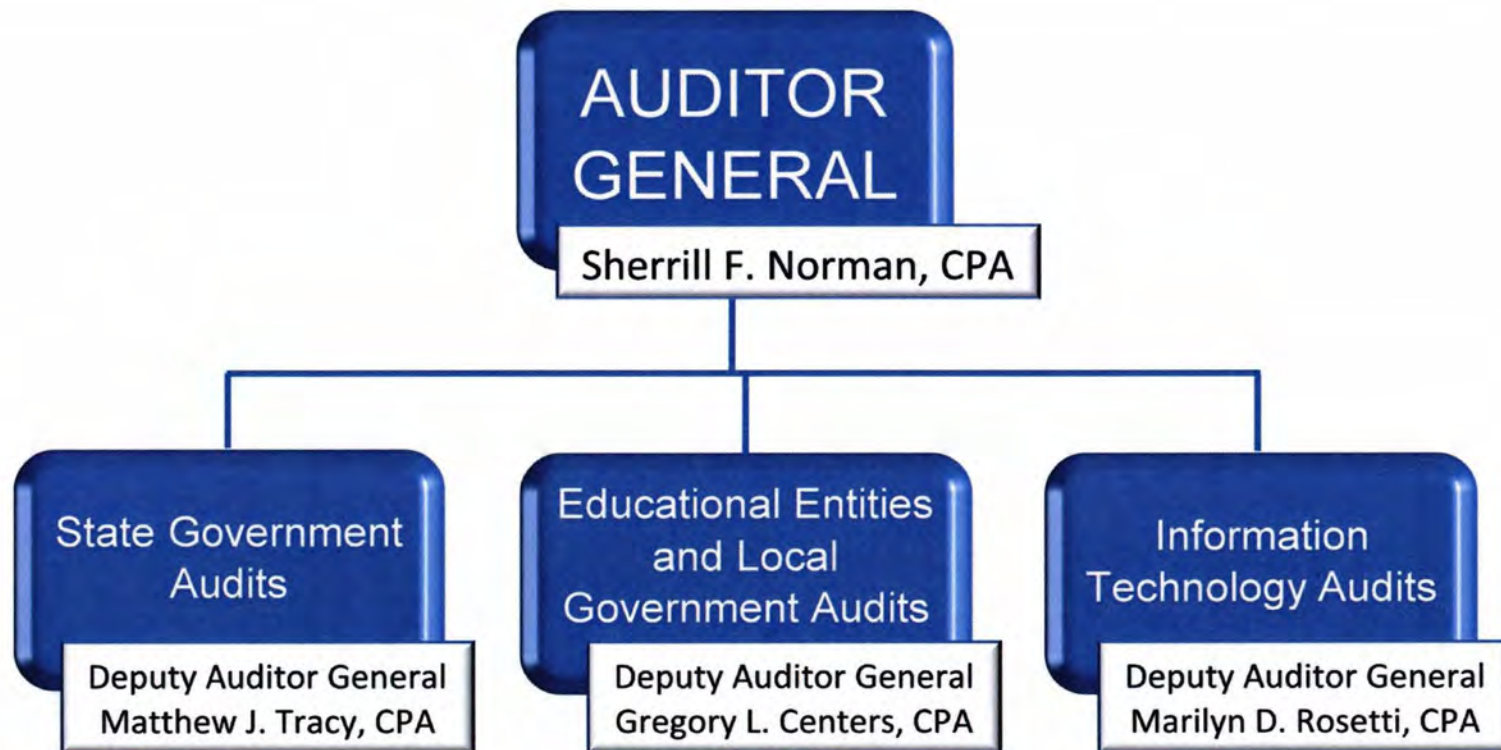
# Auditor General's Recent Peer Review Results

In October 2016, our Office received the highest rating an audit organization can receive from a National State Auditors Association peer review team.





# Auditor General's Office Divisions



# Auditor General's Office Locations

Audit positions are located in Tallahassee and in various field offices throughout the State.



March 2017 Auditor General's Office Overview

# Auditor General's Office Audit Professionals

Many of our 360 full-time positions are held by audit professionals with various professional accounting and audit-related certifications.

As of February 28, 2017, our audit professionals included:

- 178 Certified Public Accountants
- 19 Certified Information Systems Auditors
- 12 Certified Fraud Examiners

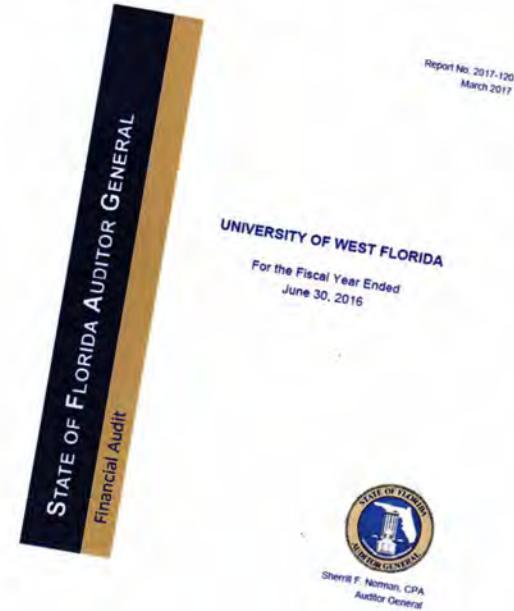
# Auditor General's Office Legislative Appropriations

Fiscal Year	Net Appropriations
2016-17	\$36,017,065
2015-16	\$36,252,952
2014-15	\$35,538,066
2013-14	\$34,143,538
2012-13	\$33,978,484
2011-12	\$34,042,012
2010-11	\$33,467,513
2009-10	\$37,928,053
2008-09	\$41,323,025
2007-08	\$42,524,665

Source: Transparency Florida

# Auditor General's Office Audit Engagements

- **Financial Audits**  
(Including Federal awards)
- **Operational Audits**  
(Including IT systems)
- **Performance Audits**
- **Attestation Engagements**



# Financial Audits

- **Audit Scope and Objectives**
  - Express an opinion on the fairness with which the financial statements are presented in conformity with generally accepted accounting principles.
  - Determine whether operations are properly conducted in accordance with legal and regulatory requirements material to the financial statements.
  - Express an opinion on major Federal program compliance in accordance with the Federal Single Audit Act.

# Financial Audits

- **State of Florida Financial Statement Audit**  
(Conducted Annually)
- **State of Florida Federal Awards Audit**  
(Conducted Annually)
  - Includes State agencies, universities, and colleges
- **Other State Entity Financial Statement Audits**  
(Conducted Annually)
  - Department of the Lottery (as directed by the Legislative Auditing Committee)
  - Florida PRIME – Local Government Surplus Funds Trust Fund (SBA)
  - Florida Retirement System

# Financial Audits

- **Financial Statement Audits**  
(Conducted annually)
  - State Universities
  - State Colleges
- **Financial Statement and Federal Awards Audits**
  - District School Boards (DSBs)
    - Conducted annually for DSBs in counties with populations of less than 150,000
    - Conducted once every 3 years for DSBs in counties with populations of 150,000 or more



# Operational Audits

- **Audit Scope – Variable**
- **Objectives**
  - Evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines.

# Operational Audits

- **Objectives** (continued)
  - Identify and report on weaknesses in internal control
  - Identify and report on legal noncompliance
  - Identify statutory and fiscal changes for recommendation to the Legislature

# Operational Audits

- **State Entities**

(Conducted at least every 3 years)

- State agencies (Executive and Judicial Branches)
- State Universities
- State Colleges
- Florida School for the Deaf and the Blind
- Citizens Property Insurance Corporation
- Florida Clerks of Court Corporation
- Triumph Gulf Coast, Inc.  
(Conducted annually)

# Operational Audits

- **Local Governments and Other Entities**

(Conducted at least once every 3 years)

- District School Boards
- Water Management Districts  
(Conducted at least every 3 years)
- Scholarship Funding Organizations  
(Conducted annually)
- Other local governments  
(Periodically conducted – generally as directed by the Legislative Auditing Committee with an 18-month follow-up)

# Information Technology Operational Audits

- **Audits of major State IT systems, for example:**
  - FLAIR
  - FLORIDA System
  - Reemployment Assistance Claims and Benefits Information System (CONNECT)
  - iBudget
  - Florida Safe Families Network (FSFN)
  - SUNTAX

# Performance Audits

- **Audit Scope – Variable**
- **Objectives – Examine issues related to:**
  1. Economy, efficiency, or effectiveness of the program.
  2. Structure or design of the program to accomplish its goals and objectives.
  3. Adequacy of the program to meet the needs identified by the Legislature or governing body.
  4. Alternative methods of providing program services or products.
  5. Goals, objectives, and performance measures used by the agency to monitor and report program accomplishments.
  6. The accuracy or adequacy of public documents, reports, or requests prepared under the program by State agencies.
  7. Compliance of the program with appropriate policies, rules, or laws.
  8. Any other issues related to governmental entities as directed by the Legislative Auditing Committee.

# Performance Audits

- **Performance Audit of the Department of Revenue's Administration of the Ad Valorem Tax Program**  
(Conducted at least every 3 years)
- **Performance Audit of the Local Government Financial Reporting System**  
(Conducted at least every 3 years)

# Attestation Examinations

- **Educational Entity Audits**

(Conducted periodically on a rotational schedule – generally at least every 3 years)

- Florida Education Finance Program (FEFP) at each School District and other entities, as applicable
  - Full-Time Equivalent (FTE) Student Enrollment
  - Student Transportation
- FRS Schedules of Employer Allocations and Pension Amounts by Employer



# Special Audits

- **Recent Audits Directed by the Legislative Auditing Committee**
  - Health Care District of Palm Beach County (Report No. 2016-189)
  - City of Archer (Report No. 2016-197)
  - City of North Miami
  - Walton County Planning Department
  - Citrus County's Contract with Correctional Corporation of America and Parks and Recreation Department
  - City of Palatka
  - Putnam County
  - City of Opa-Locka

# Special Audits

- **Recent Follow-Up on Audits of Local Governmental Entities**  
(Required by Section 11.45(2)(j), Florida Statutes)
  - City of Starke (Report No. 2016-197)
  - City of Hampton (Report No. 2017-007)
  - Sunshine Water Control District

# Special Audits

- **Other – Required by Law**
  - Pursuant to Chapter 2016-066, Laws of Florida  
Department of Corrections  
Fixed Capital Outlay Expenditures  
(Report No. 2017-037)
  - Pursuant to Chapter 2013-83, Laws of Florida  
Florida Housing Finance Corporation  
(Report No. 2017-047)
  - Pursuant to Chapter 2016-062, Laws of Florida  
Financial Audit of the Florida School for the  
Deaf and the Blind

# Other Accountability Activities

- **Quality Assessment Reviews of State Agency Inspector Generals' Internal Audit Activity**  
(Conducted every 3 years)
  - State agencies (Executive and Judicial Branches)
  - Florida Housing Finance Corporation
- **Per Diem Certifications upon Department of Management Services or Department of Corrections Request**

# Other Accountability Activities

- **Annual Reviews of Audit Reports**
  - Local Governmental Entities
  - School Districts
  - Charter Schools and Charter Technical Career Centers
  - Certain Nonprofit and For-Profit Entities

# Other Accountability Activities

- **Annual Summary of Audit Findings and Financial Trends**
  - Local Governmental Entities
  - School Districts
  - Charter Schools and Charter Technical Career Centers

# Other Accountability Activities

- **Rules and Guidelines**

- **Local Governmental Entities**
  - Chapter 10.550, Rules of the Auditor General
  - Auditor Selection and Audit Report Review Guidelines
- **Certain Nonprofit and For-Profit Entities**
  - Chapters 10.650 and 10.700, Rules of the Auditor General
  - Florida Single Audit Act Guidance
- **School Districts**
  - Chapter 10.800, Rules of the Auditor General
  - Auditor Selection and Audit Report Review Guidelines
- **Charter Schools and Charter Technical Career Centers**
  - Chapter 10.850, Rules of the Auditor General

# Other Accountability Activities

- **Notifications to the Legislative Auditing Committee**
  - Regarding any Local Government, School District, Charter School, Charter Technical Career Center, State University, or State College that:
    - Failed to comply with s. 218.39, FS, audit requirements.
    - Failed to take full corrective action in response to a financial audit report recommendation that was also included in the two preceding reports.
    - Failed to provide significant items omitted from audit reports.
    - Failed to provide evidence of corrective action taken for noncompliance with s. 218.415, FS, as noted by other CPAs.
    - Met one or more of the conditions specified in s. 218.503(1), FS.



## Other Accountability Activities

- **Notifications to the President of the Senate, Speaker of the House of Representatives, and Department of Financial Services**
  - Regarding Charter Schools, Charter Technical Career Centers, School Districts, State Universities, State Colleges, and Water Management Districts that fail to comply with statutory transparency requirements.

# Annual Report of the Auditor General

- Due December 1<sup>st</sup>
- Includes:
  - Statutory Recommendations
  - Overview of Reports Issued
  - Projected 2-Year Work Plan



# Reports Issued November 1, 2015, through October 31, 2016

- **Over 200 reports issued, including:**
  - State of Florida financial statement and Federal awards audits
  - Financial statement audits of all State universities and colleges and 47 district school boards
  - 76 operational audits of State agencies, educational entities, local governments, and information technology systems
  - 19 examinations of student enrollment and transportation reported by school districts
  - Department of Revenue Administration of the Ad Valorem Tax Program

# Projected 2-Year Work Plan

## 2017-18

- 93 Financial Audits
- 74+ Operational Audits
- 27 FEFP Examinations
- 14 Quality Assessment Reviews

## 2018-19

- 92 Financial Audits
- 72+ Operational Audits
- 28 FEFP Examinations
- 13 Quality Assessment Reviews



# Questions?

