Oversight, Transparency & Public Management Subcommittee

Wednesday, January 29, 2020
8:00 AM – 10:30 AM
Morris Hall (17 HOB)

Jose R. Oliva
Speaker

Cyndi Stevenson
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Oversight, Transparency & Public Management Subcommittee

Start Date and Time: Wednesday, January 29, 2020 08:00 am

End Date and Time: Wednesday, January 29, 2020 10:30 am

Location: Morris Hall (17 HOB)

Duration: 2.50 hrs

Consideration of the following bill(s):

HJR 157 Limitation on Terms of Office for Members of a District School Board by Sabatini, Willhite
HB 279 Local Government Public Construction Works by Smith, D.
HB 605 Senior Management Service Class by Pritchett, Plakon
HB 855 Special Districts by Payne
HB 865 Emergency Reporting by Rodriguez, A.
HB 1005 Voting Systems by Byrd
HB 1155 Legislative Review of Proposed Regulation of Unregulated Functions by Hage
HB 1181 Florida Disaster Volunteer Leave Act by Maggard

NOTICE FINALIZED on 01/27/2020 4:05PM by Jones.Brenda

HJR 157

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 157 Limitation on Terms of Office for Members of a District School Board
SPONSOR(S): Sabatini; Willhite and others
TIED BILLS: None **IDEN./SIM. BILLS:** SJR 1216, SJR 1480

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) PreK-12 Innovation Subcommittee	13 Y, 4 N	D'Souza	Brink
2) Oversight, Transparency & Public Management Subcommittee		Toliver	Smith
3) Education Committee			

SUMMARY ANALYSIS

The House joint resolution proposes an amendment to the Florida Constitution that would prohibit a school board member from appearing on a ballot for reelection if, by the end of his or her current term of office, the member will have served, or would have served if not for resignation, in that office for eight consecutive years. This proposal is similar to the term limits placed on elected state officials.

The proposed limitation would apply only to terms of office beginning on or after November 3, 2020, and is prospective, so that school board members reelected to a consecutive term in 2020 could serve another consecutive eight years before reaching the term limit.

Article XI, Section 1 of the Florida Constitution requires a joint resolution proposing a constitutional amendment be passed by three-fifths of the membership of each legislative house to be placed on the ballot.

Article XI, Section 5 of the Florida Constitution requires a proposed constitutional amendment be approved by at least sixty percent of those voting on the measure at a general election to amend the Florida Constitution.

The proposed constitutional amendment will go into effect on November 3, 2020, if approved.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

Present Situation

Florida's Constitution provides that each county school district must be governed by a school board composed of five or more members elected to staggered, four-year terms, as provided by law.[1] Each district school board must operate, control, and supervise all free public schools within the school district and determine the rate of school district taxes within constitutional limits.[2] The law does not limit the number of terms a school board member may serve.[3]

Florida's Constitution establishes term limits for the following elected officials:[4]

- Florida Governor;
- Florida representatives;
- Florida senators;
- Florida Lieutenant Governor;
- Florida Cabinet members;
- U.S. representatives from Florida; and
- U.S. senators from Florida.

Term limits imposed by states for federal elected officials were held to be unconstitutional, and thus unenforceable, by the U.S. Supreme Court in 1995.

The Florida Constitution states that none of these officials, except for the office of Governor which is governed by a slightly different provision, may appear on a ballot for reelection if, by the end of the current term of office, the person will have served or, but for resignation, would have served in that office for eight consecutive years.[5] These term limits became effective in 1992 and were prospective, so that officials reelected to a consecutive term in 1992 could serve another consecutive eight years before reaching the term limit.[6]

The Florida Constitution prohibits a person from being elected to the office of Governor if the person served, or but for resignation would have served, as Governor or acting Governor for more than six years in two consecutive terms.[7] The term limit provision for the office of Governor has been in the Florida Constitution since the 1968 revision.[8] Prior to the 1968 revision, the Florida Constitution of 1885 restricted the Governor to a single four-year term.[9]

Effect of Proposed Changes

[1] Art. IX, s. 4(a), Fla. Const.
[2] Art. IX, s. 4(b), Fla. Const.
[3] Art. IX, s. 4(a), Fla. Const.
[4] Art. VI, s. 4(c), Fla. Const.; *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995). *See also Ray v. Mortham*, 742 So. 2d 1276 (Fla. 1999) (holding that term limits imposed on elected state officials were severable from provisions imposing term limits on elected federal officials).
[5] Art. VI, s. 4(c), Fla. Const.
[6] *See* Art. VI, s. 4, Fla. Const. (1992); Billy Buzzett and Steven J. Uhlfelder, *Constitution Revision Commission: A Retrospective and Prospective Sketch*, The Florida Bar Journal (April 1997), https://www.floridabar.org/the-florida-bar-journal/constitution-revision-commission-a-retrospective-and-prospective-sketch/ (last visited January 23, 2020).
[7] Art. IV, s. 5(b), Fla. Const.
[8] *See* Art. VI, s. 5(b), Fla. Const. (1968).
[9] *See* Art. IV, s. 2, Fla. Const. (1885).

The House joint resolution proposes amending the Florida Constitution to prohibit a school board member from appearing on a ballot for reelection if, by the end of his or her current term of office, the member will have served, or would have served if not for resignation, in that office for eight consecutive years. The proposed constitutional amendment, if passed, will go into effect on November 3, 2020.[10]

The resolution also provides that school board members' current terms will not count toward the proposed limitation. Only terms that begin on or after November 3, 2020, will count toward the proposed limitation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Article XI, Section 5(d) of the Florida Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections (division) within the Department of State is also required to provide each supervisor of elections with either booklets or posters displaying the full text of each proposed amendment.[11]

   The division, using 2018 election cycle rates, has estimated the cost to advertise the amendment and produce booklets to be $74,251.07, at a minimum.[12] Accurate costs based on the current election cycle cannot be determined until the total number of amendments to be advertised is known.[13] The cost to advertise the amendment and produce booklets would be paid from non-recurring General Revenue funds.

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

[10] Art. XI, s. 5(e), Fla. Const.
[11] S. 101.171, F.S.
[12] Agency Bill Analysis for HJR 157, Department of State, on file with the Oversight, Transparency & Public Management Subcommittee.
[13] *Id.*

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

House Joint Resolution

A joint resolution proposing an amendment to Section 4 of Article IX and the creation of a new section in Article XII of the State Constitution to limit the terms of office for a member of a district school board.

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

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

ARTICLE IX

EDUCATION

SECTION 4. School districts; school boards.—

(a) Each county shall constitute a school district; provided, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district. In each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.

(b) The school board shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

(c) A person may not appear on the ballot for reelection to the office of school board member if, by the end of his or her current term of office, the person will have served, or but for resignation would have served, in that office for eight consecutive years.

ARTICLE XII

SCHEDULE

Limitation on terms of office for members of a district school board.—This section and the amendment to Section 4 of Article IX imposing limits on the terms of office for members of a district school board shall take effect on the date they are approved by the electorate, but no service in a term of office which commenced before November 3, 2020, will be counted toward the limitation imposed by this amendment.

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

CONSTITUTIONAL AMENDMENT

ARTICLE IX, SECTION 4

ARTICLE XII

LIMITATION ON TERMS OF OFFICE FOR MEMBERS OF A DISTRICT SCHOOL BOARD.—Proposing an amendment to the State Constitution to limit terms for school board members by prohibiting incumbent members who have held the office for the preceding eight years from appearing on a ballot for reelection to that office and to specify that the amendment only applies to terms of office beginning on or after November 3, 2020.

HB 279

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 279 Local Government Public Construction Works
SPONSOR(S): Smith, D. and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 504

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee		Toliver	Smith
2) Business & Professions Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Counties, municipalities, special districts, and other political subdivisions seeking to construct or improve a public building or structure must competitively bid the project if the projected cost is in excess of $300,000. For electrical work, local governments must competitively bid projects estimated to cost more than $75,000. An exemption from the requirement to award competitively these projects exists when the governing board of a local government determines that it is in the public's best interest to use the local government's own services, employees, and equipment.

Current law also requires counties to competitively bid and award to the lowest bidder all projects for construction and reconstruction of roads and bridges that utilize the proceeds of the 80-percent portion of the surplus of the constitutional gas tax. An exception to this requirement allows a county to use its own forces for these construction and reconstruction projects if the estimated cost of a project is less than specified thresholds depending upon the type of project.

The bill specifies the manner in which the estimated cost of a public building construction project must be determined when a local government governing board is deciding whether it is in the local government's best interest to perform the project using its own services, employees, and equipment. Specifically, the bill requires the estimated cost of the project to be determined using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials.

The bill also applies this requirement to the estimated cost of construction and reconstruction projects of roads and bridges performed utilizing proceeds from the constitutional gas tax.

The bill does not appear to have a fiscal impact on state government, but it may have an indeterminate positive fiscal impact on local governments. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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 the following by rule:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of 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.[1]

Counties, municipalities, special districts, and other political subdivisions seeking to construct or improve a public building, structure, or other public construction works must competitively award the project if the projected cost is in excess of $300,000.[2] For electrical work, local governments must competitively award[3] projects estimated to cost more than $75,000.[4]

Exemption from Competitive Solicitation for Local Governments Performing Work

If the governing board of a local government seeking to construct or improve a public building or structure conducts a public meeting and finds by majority vote that it is in the public's best interest to perform the project using its own services, employees, and equipment, then the local government is exempt from the requirement to competitively award the contract for the project.[5] The meeting of the governing board must have been publicly noticed at least 21 days before the date of the public meeting at which the governing board takes final action.[6] The notice must identify the project, the components and scope of the project, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the project, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials.[7] The notice must state that the purpose of the meeting is to consider whether it is in the best interest of the public to perform the project using the local government's own services, employees, and equipment.[8]

At the public meeting, the governing board must allow any qualified contractor or vendor who could have been awarded the project had the project been competitively bid to present evidence regarding the project and the accuracy of the local government's estimated cost of the project.[9] In making a determination, the governing board must consider the estimated cost of the project and the accuracy of the estimated cost in light of any other information that may be presented at the public meeting. In addition, the board must consider whether the project requires an increase in the number of government employees or an increase in capital expenditures for public facilities, equipment, or other

[1] Section 255.29, F.S.
[2] Section 255.20(1), F.S.
[3] The term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. *Id.*
[4] *Id.*
[5] Section 255.20(1)(c)9., F.S.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*

capital assets.[10] The governing body may further consider the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest.[11]

Construction and Maintenance of Roads and Bridges

Current law authorizes counties to employ labor and provide road equipment to construct and open new roads or bridges and to repair and maintain any existing roads and bridges under certain circumstances.[12] However, counties must competitively bid and award to the lowest bidder all projects for construction and reconstruction of roads and bridges, including resurfacing, that utilize the proceeds of the 80-percent portion of the surplus of the constitutional gas tax.[13] An exception to this requirement allows a county to use its own forces for these construction and reconstruction projects under the following circumstances:

- In emergencies;
- When a construction or reconstruction project has a total cumulative annual value not to exceed five percent of its 80-percent portion of the constitutional gas tax or $400,000, whichever is greater; or
- When constructing sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of less than $400,000.[14]

In addition, if, after proper advertising, the county receives no bids for a specific project, the county may use its own forces to construct the project.[15] A county is not prohibited from performing routine maintenance as authorized by law.[16]

Effect of the Bill

The bill specifies the manner in which the estimated cost of a public building construction project must be determined when a local government governing board is deciding whether it is in the local government's best interest to perform the project using its own services, employees, and equipment. Specifically, the bill requires the estimated cost of the project to be determined using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials.

The bill also applies this requirement to the estimated cost of construction and reconstruction projects performed utilizing proceeds from the constitutional gas tax, for which a county may use its own forces if the estimated cost is less than the thresholds described above for different types of projects.

The bill requires a local government that performs a public building construction project using its own services, employees, and equipment to disclose the actual costs of the project after completion to the Auditor General, who must review such disclosures as part of his or her routine audits of local governments.

B. SECTION DIRECTORY:

Section 1 amends s. 255.20, F.S., relating to local bids and contracts for public construction works.

[10] *Id.*
[11] *Id.*
[12] Section 336.41, F.S.
[13] Section 336.41(4), F.S.; *see also* Art. XII, s. 9(c)(4), FLA. CONST.
[14] *Id.*
[15] *Id.*
[16] *Id.*

Section 2 amends s. 336.41, F.S., relating to counties; employing labor and providing road equipment; accounting; when competitive bidding required.

Section 3 provides an effective date of July 1, 2020.

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:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill may have an indeterminate positive fiscal impact on local governments if the estimated cost for a local government to complete a construction project causes governing boards to select private contractors that can perform the projects at a lower cost. Any increase in projects awarded to private contractors would result in a positive fiscal impact on the private sector.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to local government public construction works; amending s. 255.20, F.S.; requiring the governing board of a local government to consider estimated costs of certain projects using generally accepted cost-accounting principles that account for specified costs when making a specified determination; requiring a local government that performs a project using its own services, employees, and equipment to disclose the actual costs of the project after completion to the Auditor General; requiring the Auditor General to review such disclosures as part of his or her routine audits of local governments; amending s. 336.41, F.S.; requiring estimated total construction project costs for certain projects to include specified costs; providing an effective date.

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

Section 1. Paragraph (c) of subsection (1) of section 255.20, Florida Statutes, is amended to read:

255.20 Local bids and contracts for public construction works; specification of state-produced lumber.—

(1) A county, municipality, special district as defined in

chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than $300,000. For electrical work, the local government must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than $75,000. As used in this section, the term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. This subsection expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law. For purposes of this section, cost includes the cost of all labor, except inmate labor, and the cost of equipment and materials to be used in the construction of the project. Subject to the provisions of subsection (3), the county, municipality, special district, or other political subdivision may establish, by municipal or county ordinance or

special district resolution, procedures for conducting the bidding process.

(c) ~~The provisions of~~ This subsection does ~~do~~ not apply:

1. If the project is undertaken to replace, reconstruct, or repair an existing public building, structure, or other public construction works damaged or destroyed by a sudden unexpected turn of events such as an act of God, riot, fire, flood, accident, or other urgent circumstances, and such damage or destruction creates:

a. An immediate danger to the public health or safety;

b. Other loss to public or private property which requires emergency government action; or

c. An interruption of an essential governmental service.

2. If, after notice by publication in accordance with the applicable ordinance or resolution, the governmental entity does not receive any responsive bids or proposals.

3. To construction, remodeling, repair, or improvement to a public electric or gas utility system if such work on the public utility system is performed by personnel of the system.

4. To construction, remodeling, repair, or improvement by a utility commission whose major contracts are to construct and operate a public electric utility system.

5. If the project is undertaken as repair or maintenance of an existing public facility. For the purposes of this paragraph, the term "repair" means a corrective action to

restore an existing public facility to a safe and functional condition and the term "maintenance" means a preventive or corrective action to maintain an existing public facility in an operational state or to preserve the facility from failure or decline. Repair or maintenance includes activities that are necessarily incidental to repairing or maintaining the facility. Repair or maintenance does not include the construction of any new building, structure, or other public construction works or any substantial addition, extension, or upgrade to an existing public facility. Such additions, extensions, or upgrades shall be considered substantial if the estimated cost of the additions, extensions, or upgrades included as part of the repair or maintenance project exceeds the threshold amount in subsection (1) and exceeds 20 percent of the estimated total cost of the repair or maintenance project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. An addition, extension, or upgrade shall not be considered substantial if it is undertaken pursuant to the conditions specified in subparagraph 1. Repair and maintenance projects and any related additions, extensions, or upgrades may not be divided into multiple projects for the purpose of evading the requirements of this subparagraph.

6. If the project is undertaken exclusively as part of a public educational program.

7. If the funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent.

8. If the local government competitively awarded a project to a private sector contractor and the contractor abandoned the project before completion or the local government terminated the contract.

9. If the governing board of the local government complies with all of the requirements of this subparagraph, conducts a public meeting under s. 286.011 after public notice, and finds by majority vote of the governing board that it is in the public's best interest to perform the project using its own services, employees, and equipment. The public notice must be published at least 21 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the components and scope of the work, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. The notice must specify that the purpose for the public meeting is to consider

whether it is in the public's best interest to perform the project using the local government's own services, employees, and equipment. Upon publication of the public notice and for 21 days thereafter, the local government shall make available for public inspection, during normal business hours and at a location specified in the public notice, a detailed itemization of each component of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimated cost. At the public meeting, any qualified contractor or vendor who could have been awarded the project had the project been competitively bid shall be provided with a reasonable opportunity to present evidence to the governing board regarding the project and the accuracy of the local government's estimated cost of the project. In deciding whether it is in the public's best interest for the local government to perform a project using its own services, employees, and equipment, the governing board must consider the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials, and the accuracy of the estimated cost in light of any other information that may be presented at the public meeting and whether the project requires an increase in the number of government employees or an increase

in capital expenditures for public facilities, equipment, or other capital assets. The local government may further consider the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest. A local government that performs a project using its own services, employees, and equipment must disclose the actual costs of the project after completion to the Auditor General. The Auditor General shall review such disclosures as part of his or her routine audits of local governments.

10. If the governing board of the local government determines upon consideration of specific substantive criteria that it is in the best interest of the local government to award the project to an appropriately licensed private sector contractor pursuant to administrative procedures established by and expressly set forth in a charter, ordinance, or resolution of the local government adopted before July 1, 1994. The criteria and procedures must be set out in the charter, ordinance, or resolution and must be applied uniformly by the local government to avoid awarding a project in an arbitrary or capricious manner. This exception applies only if all of the following occur:

a. The governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a two-thirds vote of the governing board that it is in the public's best interest to award the project according to the criteria and procedures established by charter, ordinance, or resolution. The public notice must be published at least 14 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to award the project using the criteria and procedures permitted by the preexisting charter, ordinance, or resolution.

b. The project is to be awarded by any method other than a competitive selection process, and the governing board finds evidence that:

(I) There is one appropriately licensed contractor who is uniquely qualified to undertake the project because that contractor is currently under contract to perform work that is affiliated with the project; or

(II) The time to competitively award the project will jeopardize the funding for the project, materially increase the cost of the project, or create an undue hardship on the public health, safety, or welfare.

c. The project is to be awarded by any method other than a

competitive selection process, and the published notice clearly specifies the ordinance or resolution by which the private sector contractor will be selected and the criteria to be considered.

d. The project is to be awarded by a method other than a competitive selection process, and the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without competitive selection, and the consideration by, and the justification of, the government body are documented, in writing, in the project file and are presented to the governing board prior to the approval required in this paragraph.

11. To projects subject to chapter 336.

Section 2. Subsection (4) of section 336.41, Florida Statutes, is amended to read:

336.41 Counties; employing labor and providing road equipment; accounting; when competitive bidding required.—

(4) All construction and reconstruction of roads and bridges, including resurfacing, full scale mineral seal coating, and major bridge and bridge system repairs, to be performed utilizing the proceeds of the 80-percent portion of the surplus of the constitutional gas tax shall be let to contract to the lowest responsible bidder by competitive bid, except for:

(a) Construction and maintenance in emergency situations; ~~, and~~

(b) In addition to emergency work, construction and reconstruction, including resurfacing, mineral seal coating, and bridge repairs, having a total cumulative annual value not to exceed 5 percent of its 80-percent portion of the constitutional gas tax or $400,000, whichever is greater;~~,~~ and

(c) Construction of sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of less than $400,000 or as adjusted by the percentage change in the Construction Cost Index from January 1, 2008,

for which the county may utilize its own forces. Estimated total construction project costs shall include all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials. However, if, after proper advertising, no bids are received by a county for a specific project, the county may use its own forces to construct the project, notwithstanding the limitation of this subsection. Nothing in this section shall prevent the county from performing routine maintenance as authorized by law.

Section 3. This act shall take effect July 1, 2020.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Oversight, Transparency & Public Management Subcommittee
Representative Smith, D. offered the following:

Amendment (with directory and title amendments)

Remove lines 31-52 and insert:

to cost more than $400,000 ~~$300,000~~. For electrical work, the local government must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than $100,000 ~~$75,000~~. As used in this section, the term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. This subsection expressly allows

contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law. For purposes of this section, cost includes the cost of all labor, except inmate labor, and the cost of equipment and materials to be used in the construction of the project. Subject to the provisions of subsection (3), the county, municipality, special district, or other political subdivision may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.

(a) Notwithstanding any other law, a governmental entity seeking to construct or improve bridges, roads, streets, highways, or railroads, and services incidental thereto, at a cost in excess of $250,000 may require that persons interested in performing work under contract first be certified or qualified to perform such work. A contractor may be considered ineligible to bid if the contractor is behind by 10 percent or more on completing an approved progress schedule for the governmental entity at the time of advertising the work. A prequalified contractor considered eligible by the Department of Transportation to bid to perform the type of work described under the contract is presumed to be qualified to perform the work described. The governmental entity may provide an appeal

process to overcome that presumption with de novo review based on the record below to the circuit court.

(b) For contractors who are not prequalified by the Department of Transportation, the governmental entity shall publish prequalification criteria and procedures prior to advertisement or notice of solicitation. Such publications must include notice of a public hearing for comment on such criteria and procedures prior to adoption. The procedures must provide for an appeal process within the authority for making objections to the prequalification process with de novo review based on the record below to the circuit court within 30 days.

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

Remove line 21 and insert:

Section 1. Subsection (1) of section

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

Between lines 3 and 4, insert:

revising the amount at which specified entities must competitively award certain projects;

HB 605

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 605 Senior Management Service Class
SPONSOR(S): Pritchett; Plakon; and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 952

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee		Toliver	Smith
2) Appropriations Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

In 2007, the Legislature established five Offices of Criminal Conflict and Civil Regional Counsel. When an Office of the Public Defender determines it has a conflict in representing an indigent defendant, the Office of Criminal Conflict and Civil Regional Counsel will be appointed to represent the defendant. The Office of Criminal Conflict and Civil Regional Counsel has primary responsibility for representing persons entitled to court-appointed counsel under the Federal or State Constitution or as authorized by law in civil proceedings, such as proceedings to terminate parental rights. The Governor appoints each Regional Counsel for a term of four years, subject to Senate confirmation.

The Florida Retirement System (FRS) is a contributory retirement system, with active members contributing three percent of their salaries. FRS Members have two primary plan options available for participation: the defined benefit plan, also known as the pension plan, and the defined contribution plan, also known as the investment plan. The membership of the FRS is divided into five membership classes:

- The Regular Class;
- The Special Risk Class;
- The Special Risk Administrative Support Class;
- The Elected Officers' Class; and
- The Senior Management Service Class (SMSC).

Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation. The Regular Class service credit provides a 1.6 percent accrual value for each year of creditable service while the SMSC earns a 2.0 percent accrual value each year.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and investment earnings. Benefits are provided through employee-directed investments offered by approved investment providers. The amount of money contributed to each member's account varies by class with the Regular Class receiving 6.3 percent and SMSC receiving 7.67 percent.

The bill makes certain managerial employees of the Criminal Conflict and Civil Regional Counsel offices members of the SMSC (rather than the Regular Class) of the FRS. The bill also grants discretion to each of the offices to designate up to an additional 5 percent of its employees to the SMSC. For each employee participating in the pension plan, this shift means the employee earns 2.0 percent service credit for each year of service rather than 1.6 percent. For an employee participating in the investment plan, the employee will receive contributions into the investment account equal to 7.67 percent of salary rather than 6.3 percent. Any employee shifted from the Regular Class to the SMSC is permitted to upgrade retirement credit for service in the same position.

The bill would have a significant fiscal impact on state government expenditures. *See Fiscal Comments.*

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Criminal Conflict and Civil Regional Counsel

In 2007, the Legislature established five offices of Criminal Conflict and Civil Regional Counsel.[1] When an Office of the Public Defender determines it has a conflict in representing an indigent defendant, the Office of Criminal Conflict and Civil Regional Counsel will be appointed to represent the defendant. The Office of Criminal Conflict and Civil Regional Counsel has primary responsibility for representing persons entitled to court-appointed counsel under the Federal or State Constitution or as authorized by law in civil proceedings, such as proceedings to terminate parental rights.[2] Each regional counsel is recommended as part of list of qualified candidates by the Supreme Court Judicial Nominating Commission.[3] Thereafter, the Governor appoints the regional counsel from amongst those listed for a term of four years.[4] The appointment is subject to Senate confirmation.[5] Each office of criminal conflict and civil regional counsel is housed, for administrative purposes, in the Justice Administrative Commission.[6] Regional counsels serve on a full-time basis and may not engage in the private practice of law while holding office.[7]

The table below shows the number of full-time equivalent positions and the amount of salary rate authorized for each of the five regional offices.

Regional Office	FTE Positions	Salary Rate
First	122.00	6,822,226
Second	107.00	6,310,604
Third	66.75	4,314,054
Fourth	114.00	6,257,822
Fifth	92.00	4,621,667
Total	501.75	28,326,373

The Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.[8] The FRS is a contributory system, with active members contributing three percent of their salaries. It is the primary retirement plan for employees of state and county government agencies, district school boards, state colleges, and universities.

The membership of the FRS is divided into five membership classes:

- The Regular Class[9] consists of 554,631 active members and 7,629 in renewed membership;
- The Special Risk Class[10] includes 74,274 active members and 1,112 in renewed membership;

[1] Section 27.511(1), F.S.
[2] Section 27.511(5) and (6), F.S.
[3] Section 27.511(3)(a), F.S.
[4] *Id.*
[5] *Id.*
[6] Section 27.511(2), F.S.
[7] Section 27.511(4), F.S.
[8] Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2019, at p. 35, available at https://www.rol.frs.state.fl.us/forms/2018-19_CAFR.pdf (last visited January 24, 2020).
[9] The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

- The Special Risk Administrative Support Class[11] has 100 active members and 1 in renewed membership;
- The Elected Officers' Class[12] has 2,088 active members and 112 in renewed membership; and
- The Senior Management Service Class[13] has 7,767 active members and 214 in renewed membership.[14]

Members of the FRS have two primary plan options available for participation:
- The defined benefit plan, also known as the pension plan; and
- The defined contribution plan, also known as the investment plan.

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.[15] Investment management is handled by the State Board of Administration.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.[16] For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.[17] Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.[18] For most current members of the pension plan (including members in the Regular Class and the Senior Management Service Class), normal retirement (when first eligible for unreduced benefits) occurs at the earliest attainment of 30 years of service or age 62.[19] Members initially enrolled in the pension plan on or after July 1, 2011, have longer service requirements. For members initially enrolled after that date, a member in the Regular Class or the Senior Management Service Class (SMSC) must complete 33 years of service or attain age 65.[20]

The Regular Class and the SMSC share the same normal retirement dates, average final compensation calculation, and disability/survivor benefits. However, the Regular Class service credit provides a 1.6 percent accrual value for each year of creditable service while the SMSC earns a 2.0 percent accrual value each year.[21]

A member of the SMSC may upgrade service credit in the same position from Regular Class accrual value to the SMSC accrual value.[22] Generally, the service credit may be purchased by the employer on behalf of the member.[23]

Investment Plan

In 2000, the Public Employee Optional Retirement Program (investment plan) was created as a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.[24] The State

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[10] The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.
[11] The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.
[12] The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.
[13] The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.
[14] *Supra* note 8 at pg. 161.
[15] Section 121.025, F.S.
[16] Section 121.021(45)(a), F.S.
[17] Section 121.021(45)(b), F.S.
[18] Section 121.091, F.S.
[19] Section 121.021(29)(a)1., F.S.
[20] Sections 121.021(29)(a)2. and (b)2., F.S.
[21] Section 121.091(1)(a), F.S.
[22] Section 121.055(1)(j), F.S.
[23] *Id.*
[24] Section 121.4501(1), F.S.

Board of Administration (SBA) is primarily responsible for administering the investment plan.[25] The Board of Trustees of the SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.[26]

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and earnings.[27] Benefits are provided through employee-directed investments offered by approved investment providers.[28]

A member vests immediately in all employee contributions paid to the investment plan.[29] With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.[30] Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.[31] The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.[32] An FRS member who qualifies for disability while enrolled in the investment plan may apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.[33]

The table below shows the allocation of contributions made into the FRS for members of the investment plan participating in the Regular Class and SMSC. The contributions are based on a percentage of the member's gross compensation for the month.

[25] Section 121.4501(8), F.S.
[26] Article IV, s. 4(e), FLA. CONST.
[27] Section 121.4501(1), F.S.
[28] *Id.*
[29] Section 121.4501(6)(a), F.S.
[30] If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b)-(d), F.S.
[31] Section 121.591, F.S.
[32] *See* s. 121.4501(16), F.S.
[33] Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in-line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.

Allocation of Contributions	Regular Class	SMSC
Investment Account	6.30%	7.67%
Disability	0.25%	0.26%
In line of duty death	0.05%	0.05%
Administrative Assessments	0.06%	0.06%
Total	6.66%	8.04%

Effect of the bill

The bill makes certain managerial employees of the Criminal Conflict and Civil Regional Counsel Offices members of the SMSC, rather than the Regular Class, of the FRS. The bill also grants discretion to each of the offices to designate up to an additional 5 percent of its employees to the SMSC. For each employee participating in the pension plan of the FRS, this shift means the employee earns 2.0 percent service credit for each year of service rather than 1.6 percent. For an employee participating in the investment plan of the FRS, the employee will receive contributions into the investment account equal to 7.67 percent of salary rather than 6.3 percent. Any employee shifted from the Regular Class to the SMSC is permitted to upgrade retirement credit for service in the same position. The upgraded service credit may not be purchased by the member's employer.

B. SECTION DIRECTORY:

Section 1 amends s. 121.055, F.S., relating to the Senior Management Service Class.

Section 2 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The additional employer contributions to be paid annually beginning in the 2020-2021 fiscal year are estimated to be $338,685.[34] These funds will be deposited into the FRS Trust Fund to be used to pay benefits upon each member's retirement.

[34] Legislative Budget Request, Justice Administration Commission, on file with the Oversight, Transparency & Public Management Subcommittee.

The Regional Offices are granted discretion to designate an additional 5 percent of its employees to SMSC. The additional employer contributions to be paid for the 2020-2021 fiscal year for the discretionary positions are indeterminate but will be based on the salaries of each member designated.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor does it require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to the Senior Management Service Class; amending s. 121.055, F.S.; providing that participation in the Senior Management Service Class of the Florida Retirement System is compulsory for certain persons on a specified date; authorizing certain additional positions to be included in such class; authorizing members of such class to purchase and upgrade certain retirement credit; providing an effective date.

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

Section 1. Paragraph (m) is added to subsection (1) of section 121.055, Florida Statutes, to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1)

(m)1. Effective July 1, 2020, participation in the Senior Management Service Class is compulsory for each appointed criminal conflict and civil regional counsel and each district's assistant regional counsel chiefs, administrative directors, and chief investigators. Additional full-time positions may be

designated by the criminal conflict and civil regional counsel for inclusion in the Senior Management Service Class, not to exceed 5 percent of the regularly established positions within the office of criminal conflict and civil regional counsel.

2. A member under this paragraph of the Senior Management Service Class may purchase additional retirement credit in such class for creditable service within the purview of the Senior Management Service Class retroactive to February 1, 1987, and may upgrade retirement credit for such service in accordance with paragraph (j). However, this service credit may not be purchased by the employer on behalf of the member.

Section 2. This act shall take effect July 1, 2020.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Oversight, Transparency & Public Management Subcommittee

Representative Plakon offered the following:

Amendment (with title amendment)

Remove lines 25-33 and insert:

chief investigators.

2. A member under this paragraph of the Senior Management Service Class may purchase additional retirement credit in such class for creditable service within the purview of the Senior Management Service Class retroactive to October 1, 2007, and

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

Remove lines 6-8 and insert:

certain persons on a specified date; authorizing members of such class to purchase

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 855 Special Districts
SPONSOR(S): Payne and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1466

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration Subcommittee	11 Y, 0 N	Rivera	Miller
2) Oversight, Transparency & Public Management Subcommittee		Toliver	Smith
3) State Affairs Committee			

SUMMARY ANALYSIS

Special districts are units of local government used to provide a variety of local services. Independent districts typically are created by special act and operationally are independent of any local general-purpose government. Dependent districts generally are created by local ordinance and are subject to the control of a local general-purpose government. Special districts are required to maintain an official website and post certain information including an annual budget and any recent audit reports.

State and local government websites are subject to Title II of the Americans with Disabilities Act (ADA), which prohibits state and local governments from discriminating against a qualified disabled person because of a disability unless a modification is unreasonable, alters the nature of the service, or causes the government an undue financial or administrative burden. The U.S. Department of Justice (DOJ) administers Title II. While the DOJ has not provided any regulations on how state and local government websites can comply with the ADA, it has issued an ADA Best Practices Tool Kit for State and Local Governments which provides suggestions and checklists. Under Title II of the ADA, state and local governments may be sued and many have recently faced increased litigation outlining the boundaries of ADA compliance for state and local government website access.

The bill will allow special districts to satisfy the statutory requirement to post the most recent financial audit by providing a link to the report maintained on the state's Auditor General's website. The bill also removes the requirement for districts to post facility reports and meeting materials online, only requiring the district to post a meeting or event agenda. The facility reports and meeting materials will continue to be available for inspection and copying.

The bill may have a limited positive fiscal impact on local governments to the extent special districts would no longer be required to place specific public documents on their websites while remaining responsible to provide access to the documents.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Special Districts

A "special district" is "a unit of local government created for a special purpose… operat[ing] within a limited geographic boundary and is created by general law, special act, local ordinance, or rule of the Governor and Cabinet."[1] Special districts provide a wide variety of services, such as mosquito control,[2] children's services,[3] fire control and rescue,[4] or drainage control.[5]

Special districts are classified as "dependent special districts"[6] or "independent special districts."[7] A dependent special district must meet at least one of the following criteria:

- Membership of its governing body is identical to that of the governing body of a single county or a single municipality;[8]
- All members of its governing body are appointed by the governing body of a single county or a single municipality;[9]
- The members of its governing body are subject to removal at will by the governing body of a single county or single municipality, during their unexpired terms;[10] or
- The district's budget requires approval or can be vetoed by the governing body of a single county or a single municipality.[11]

An "independent special district" is any special district that does not meet the definition of "dependent special district."[12] Furthermore, any special district that includes territory in more than one county is an independent special district, unless the district lies entirely with the borders of a single municipality.[13]

According to the Department of Economic Opportunity's (DEO) Special District Accountability Program Official List of Special Districts list, the state currently has 1,757 special districts. There are 1,124 independent districts and 633 dependent districts.[14]

Special districts are governed generally by the Uniform Special District Accountability Act (Act).[15] The Act, initially passed in 1989,[16] created ch. 189, F.S., to centralize provisions governing special districts. The Act applies to the formation,[17] governance,[18] administration,[19] supervision,[20] merger,[21] and

[1] S. 189.012(6), F.S.
[2] S. 388.021(1), F.S. (however, new independent mosquito control districts are prohibited, *see* s. 388.021(2)).
[3] S. 125.901(1), F.S.
[4] S. 191.002, F.S.
[5] S. 298.01, F.S.
[6] S. 189.012(2), F.S.
[7] S. 189.012(3), F.S.
[8] S. 189.012(2)(a), F.S.
[9] S. 189.012(2)(b), F.S.
[10] S. 189.012(2)(c), F.S.
[11] S. 189.012(2)(d), F.S.
[12] S. 189.012(3), F.S.
[13] *Id*.
[14] *See* Department of Economic Opportunity, *Official List of Special Districts Online, Special District Statewide Totals as of December 12, 2019*, available at http://specialdistrictreports.floridajobs.org/webreports/StateTotals.aspx (last visited January23, 2020).
[15] S. 189.01, F.S., *but see* ch. 190, F.S. (community development districts), ch. 191, F.S. (independent special fire control districts).
[16] Ch. 89-169, Laws of Fla.
[17] *See* s. 189.02, F.S. (creation of dependent special districts), s. 189.031, F.S. (creation of independent special districts).
[18] *See* s. 189.0311, F.S. (charter requirements for independent special districts).
[19] *See* s. 189.019, F.S. (requiring codification of charters incorporating all special acts for the district).
[20] *See* s. 189.0651, F.S. (oversight for special districts created by special act of the Legislature).
[21] Ss. 189.071, 189.074, F.S.

dissolution[22] of special districts, unless otherwise expressly provided in law.[23] The Act also provides a statement of legislative intent providing that the legislature sought to improve the accountability of special districts to state and local governments as well as promote more effective communication and coordination in the monitoring of required reporting.[24]

Reporting Requirements

Special districts are subject to oversight and review by state and local governments to better determine the need for the continued existence of a district, the appropriate future role and focus of a district, improvements to the function or service by a district, and the need for any transition, adjustment, or special implementation periods or provisions.[25]

Special districts created by special act are subject to review by the Legislative Auditing Committee at a public meeting for not complying with reporting requirements under the Act, as well as oversight matters in general.[26] Special districts created by local ordinance or resolution are subject to review by the chair, or the equivalent, of the local governing body.[27] Special districts created or established by rule of the Governor and Cabinet may be reviewed as directed by the Governor and Cabinet.[28] Special districts not subject to other oversight may be reviewed as directed by the President of the Senate and the Speaker of the House of Representatives.[29]

State agencies administering funding programs to eligible special districts are responsible to oversee the use of such funds by the special district, including reporting the existence of the program to the Special District Accountability Program of DEO and annually submitting a list of special districts participating in a state funding program to the Special District Accountability Program.[30]

Maintaining Official Websites

Special districts are required to maintain an official website and list certain information on the website.[31] An independent special district is required to maintain a website separate from the local governing body's official website.[32] A dependent special may maintain a separate website but is only required to be prominently displayed on the homepage of the local general purpose government's website with a hyperlink to the pages that provide the information required by statute.[33]

Every special district is required to post, at a minimum, the following information on its official website:

1. The full legal name, mailing address, e-mail address, telephone number, and website uniform resource locator of the special district.
2. The public purpose of the special district.
3. The primary contact information for the special district for purposes of communication from DEO.
4. The name, official address, official e-mail address, and, if applicable, term and appointing authority for each member of the governing body of the special district.
5. The fiscal year of the special district.

[22] Ss. 189.071, 189.072, F.S.
[23] *See, e.g.*, s. 190.004 (Ch. 190, F.S. as "sole authorization" for creation of community development districts).
[24] S. 189.06, F.S.
[25] S. 189.068(1), F.S. Any final recommendations from the oversight review process which are adopted and implemented by the appropriate level of government may not be implemented in a manner that would impair the obligation of contracts.
[26] S. 189.0651(2), F.S.
[27] S. 189.0652(2), F.S. Dependent special districts, not created by special act, may be reviewed by the local general-purpose government upon which it is dependent. See s. 189.068(2)(c), F.S.
[28] S. 189.068(2)(d), F.S.
[29] S. 189.068(2)(e), F.S.
[30] Ss. 189.065(1) & (2), F.S. The list of participating special districts must indicate if a district is not in compliance with state funding program requirements.
[31] S. 189.069(1), F.S.
[32] S. 189.069(1)(a), F.S.
[33] S. 189.069(1)(b), F.S.

6. The full text of the special district's charter, the date of establishment, the establishing entity, and the statute or statutes under which the special district operates, if different from the statute or statutes under which the special district was established..
7. A description of the boundaries or service area of, and the services provided by, the special district.
8. A listing of all taxes, fees, assessments, or charges imposed and collected by the special district, including the rates or amounts for the fiscal year and the statutory authority for the levy of the tax, fee, assessment, or charge .
9. A code of ethics adopted by the special district, if applicable, and a hyperlink to generally applicable ethics provisions.
10. The budget of the special district and any amendments thereto.
11. The final, complete audit report for the most recently completed fiscal year and audit reports required by law or authorized by the governing body of the special district.
12. A listing of its regularly scheduled public meetings .
13. The public facilities report, if applicable.
14. The link to the Department of Financial Services' website.
15. At least seven days before each meeting or workshop, the agenda of the event, along with any meeting materials available in an electronic format, excluding confidential and exempt information. The information must remain on the website for at least one year after the event.[34]

Noncomplying Special Districts

If an independent special district fails to file required reports or information regarding registered agents[35], public meetings[36], public facilities[37], or its budget[38] with the local general-purpose government or governments in which it is located, the local government is only permitted to notify the district's registered agent, grant a 30-day extension upon request, or notify DEO.[39]

If a dependent special district fails to file such reports with the local governing authority to which it is dependent, the local governing authority is obligated to take the necessary steps to enforce the special district's accountability, including, as authorized, withholding funds, removing the governing body members at will, vetoing the special district's budget, conducting the oversight review process,[40] or amending, merging, or dissolving the special district in accordance with the provisions contained in the ordinance that created the dependent special district.[41]

If a special district fails to file the reports or information relating to notice of bond issues[42] with the appropriate state agency, the agency must notify DEO, and DEO will send a certified technical assistance letter to the special district summarizing the requirements and compelling the district to take steps to prevent future noncompliance.[43] If a special district fails to file the reports or information required relating to actuarial reports with the appropriate state agency, the agency must notify DEO.[44] If a special district fails to file the reports or information required under s. 218.32 or s. 218.39 with the appropriate state agency or office, the state agency or office must, and the Legislative Auditing Committee may, notify DEO. If DEO receives notification of a special district failing to file these reports, it must send a certified letter to the special district, and, if the special district is dependent, send a copy

[34] S. 189.069(2)(a), F.S.
[35] S. 189.014, F.S.
[36] S. 189.015, F.S.
[37] S. 189.08, F.S.
[38] S. 189.016(9), F.S.
[39] S. 189.066(1), F.S.
[40] As set out in s. 189.068, F.S.
[41] S. 189.066(2), F.S.
[42] S. 218.38, F.S.
[43] S. 189.066(3), F.S.
[44] S. 189.066(4), F.S.

of that letter to the chair of the local governing authority.[45] The letter must include a description of the required report, including statutory submission deadlines, a contact telephone number for technical assistance to help the special district comply, a 60-day deadline for filing the required report with the appropriate entity, the address where the report must be filed, and an explanation of the penalties for noncompliance.[46]

If a special district fails to comply after DEO has exhausted its attempt to assist, the failure is deemed final action by the district[47] and the district is then subject to the oversight process headed by either the Legislative Auditing Committee (LAC)[48] or the local governing body,[49] as appropriate.

If the noncompliance involves actuarial reports[50] or LAC requests,[51] DEO will attempt to assist if the district is not already receiving assistance, or initiate legal proceedings in circuit court requesting declaratory, injunctive, other equitable relief, or any remedy provided by law.[52] In such proceedings, the court must award the prevailing party reasonable attorney's fees and costs unless affirmatively waived by all parties.[53]

Federal and State Laws Regulating Access to Records by Disabled Individuals

The Americans with Disabilities Act of 1990

The Americans with Disabilities Act of 1990 (ADA) was enacted to place persons with disabilities on an equal, not advantageous, footing to those without disabilities.[54] The ADA has three parts: Title I applies to employers, Title II applies to public entities, and Title III applies to private entities.

The ADA does not restrict the imposition of greater protection for individuals by other federal, state, or local laws,[55] and does not require covered entities to accommodate or modify their processes for individuals who are not actually disabled.[56]

Public Entities

Title II of the ADA prohibits public entities from excluding the participation in or denying the benefits of their services, programs, or activities to qualified individuals with a disability,[57] or otherwise discriminating against such individuals, because of the disability.[58] "Public entities" includes state and local governments, state and local agencies, and special districts.[59] To meet the definition of a qualified individual with a disability, the person must be eligible for receipt of the public benefit with or without a reasonable modification.[60]

If the need is obvious or upon request,[61] a public entity must:

1) Make reasonable modifications to its rules, policies, or practices;
2) Remove architectural, communication, or transportation barriers; or

[45] S. 189.067(1)(a), F.S.
[46] *Id.*
[47] S. 189.067(2), F.S.
[48] Ss. 189.067(2) and 189.0651, F.S.
[49] Ss. 189.067(2) and 189.0652, F.S.
[50] S. 112.63, F.S.
[51] S. 11.40(2)(b), F.S.
[52] S. 189.067(3), F.S.
[53] S. 189.067(4), F.S.
[54] *Kornblau v. Dade Cnty.*, 86 F.3d 193 (11th Cir. 1996) (holding disabled individual was not entitled to parking space in private employee parking lot closest to county government services building).
[55] 42 U.S.C. s. 12201(b).
[56] 42 U.S.C. s. 12201(h).
[57] A person is a 'qualified' individual with a disability with respect to licensing if he or she, with or without reasonable modifications, 'meets the essential requirements' for the receipt of services or the participation in programs or activities provided by a public entity. 42 U.S.C. s. 12131(2). *See also Fla. Bar v. Clement*, 662 So. 2d 690, 700 (Fla. 1995), as amended (November 28, 1995).
[58] 42 U.S.C. s. 12132.
[59] 42 U.S.C. s. 12131(1)
[60] 42 U.S.C. s. 12131(2)
[61] *See McCullum v. Orlando Reg'l Healthcare*, No. 6:11–cv–1387–Orl–31GJK, 2013 WL 1212860, at *4 (M.D.Fla.2013); see also *Smith v. Rainey*, 747 F. Supp. 2d 1327, 1338 (M.D.Fla.2010).

3) Provide auxiliary aids and services when necessary to accommodate an individual with a disability.[62]

A public entity must provide auxiliary aids and services in a timely manner and in an accessible format, and must protect the privacy and independence of the individual.[63] An accommodation or modification that fundamentally alters the nature of the activity, service, or program, or that causes the public entity an undue financial or administrative burden is not reasonable or necessary.[64]

Private Entities

Title III prohibits certain private entities[65] from discriminating against an individual on the basis of a disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. A private entity may provide a different or separate benefit if necessary to effectively provide benefits.[66]

A private entity must make reasonable modifications to its policies, practices, or procedures, or take any steps necessary to ensure individuals are not denied services, segregated or otherwise treated differently due to the absence of an aid or service. A modification or step that will fundamentally alter the nature of the product or service, or pose a direct danger to others is not required. When readily achievable,[67] a private entity must

1) Remove any existing architectural, structural communication, or transportation barrier; or
2) Offer access to its product or service through alternative methods.[68]

Federal Regulations

The Department of Justice (DOJ) is responsible for administering Title II and Title III.[69] In 2010, DOJ took the position that internet website access fell within the scope of the ADA, even in the absence of explicit language. Therefore, public entities communicating through web-based applications or otherwise providing internet services must ensure that individuals with disabilities have equal access to such services or information unless it would alter the nature of the product or cause the entity an undue burden. To date, DOJ has promulgated no regulations on this issue.[70]

From December 2006 to June 2007, the Civil Rights Division of DOJ released a Best Practices Tool Kit for State and Local Governments.[71] Chapter 5 addresses web accessibility under Title II. DOJ provides suggestions for how governments may design their websites and recommends referencing the Worldwide Web Consortium's (W3C) Web Content Accessibility Guidelines 2.0 (WCAG 2.0), an internationally accepted resource, for conformance standards. State and local governments are not required to use the Tool Kit. However, DOJ intends to provide a reasonable approach to achieve compliance through the Tool Kit. For documents posted online, DOJ suggests governments posting documents online in Portable Document Format (PDF), or other image-based format, also post a version in Rich Text Format (RTF), or other text-based format, to allow compatibility with assistive technologies. The Tool Kit includes a checklist to help local governments assess the accessibility of their websites.

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[62] *See* 42 U.S.C. s. 12131(2).
[63] 28 C.F.R. s. 35.160(b).
[64] *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 603 (1999).
[65] A private entity is defined as any entity other than a public entity. 42 U.S.C. s. 12181 (6). Private entities that own, lease, or operate places of public accommodation fall under Title III.
[66] *See* 42 U.S.C. s. 12182.
[67] Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. 42 U.S.C. s. 12181(9).
[68] 42 U.S.C. s. 12182. *See also A.L. by & through D.L. v. Walt Disney Parks & Resorts US, Inc.*, 900 F.3d 1270 (11th Cir. 2018)(holding that the Defendant's blanket accommodation for all cognitively disabled theme park guests was not per se ADA violation).
[69] *See* 28 CFR parts 35 (Title II) and 36 (Title III).
[70] DOJ stated in its 2010 comments, "The Department expects to engage in rulemaking relating to website accessibility under the ADA in the near future." Department of Justice, *2010 Guidance and Section-by-Section Analysis (Attorney General's Comments)*, available at https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm#a35102 (last visited December 17, 2019).
[71] DOJ, ADA Best Practices Tool Kit for State and Local Governments, Chapter 5, available at https://www.ada.gov/pcatoolkit/chap5toolkit.htm (last visited December 17, 2019). The Tool Kit contains a notice that some chapters may not fully reflect the current ADA

Section 508 of the Rehabilitation Act of 1973

Federal agency website accessibility is not regulated under the ADA but primarily under section 508 of the Rehabilitation Act of 1973 (Section 508).[72] Public entities are not required to follow these guidelines. However, Florida requires its state agencies, which includes the executive, legislative, and judicial branches, to follow Section 508 when providing public and employee access to electronic information and data.[73]

Under Section 508, when federal agencies develop, procure, maintain, or use electronic and information technology, they must give employees and members of the public with disabilities access to that information that is comparable to the access available to those without disabilities. The U.S. Access Board (Access Board) is responsible for developing federal accessibility standards.[74] The Access Board updated its rules in 2018 and currently incorporates the WCAG 2.0 into its regulation.[75]

W3C released a newer version in the WCAG 2.1 just after the Access Board updated its rules. Compliance with the newer standards will satisfy the WCAG 2.0.[76] The WCAG guidelines are primarily intended for Web content developers (page authors, site designers, etc.), Web authoring tool developers, Web accessibility evaluation tool developers, and others who want or need a standard for web accessibility, including for mobile accessibility.

State Law

Chapter 282, F.S., regulates the accessibility of electronic information among state agencies.[77] Executive, legislative, and judicial branches of state government must ensure that state employees with disabilities have access to and are provided with electronic information and data comparable to the access and use by state employees who do not have disabilities unless an undue burden would be imposed on the agency.[78] Similarly, individuals with disabilities who are members of the public must be provided with access to and use of electronic information and data comparable to that provided to nondisabled members of the public, unless an undue burden would be imposed on the agency.[79]

Each state agency must develop, procure, maintain, and use accessible electronic information and information technology in conformance with federal law,[80] absent an undue burden. If an agency claims compliance will impose an undue burden, it must provide proof an alternative method allows the individual to use the information and data.[81] The statute does not extend its requirements to local governments.[82]

Case Law Involving Access to Electronic Information

Section 508 does not authorize a private, non-administrative right of action.[83] Individuals seeking to enforce Section 508 must file an administrative complaint with the offending federal agency.[84] However, Title II of the ADA validly abrogates state sovereign immunity under the Eleventh and Fourteenth Amendments to the U.S. Constitution, insofar as it creates a private cause of action for damages against a state for conduct that actually violates the Fourteenth Amendment.[85] The Eleventh

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[72] *See* 29 U.S.C. s. 794d, s. 508 of the Rehabilitation Act; 47 U.S.C. s. 255, and s. 255 of the Telecommunications Act. There is proposed legislation currently in the U.S. Congress that would research the best guidance for state and local governments providing website access. *See* H.R. 4099 (2019).
[73] *See* ss. 282.601-606, F.S.
[74] *See* 29 U.S.C. s. 794d; 36 CFR s. 1194. See also U.S. General Services Administration, *IT Accessibility Laws and Policies*, https://www.section508.gov/manage/laws-and-policies (last visited December 17, 2019).
[75] *See* 36 CFR Parts 1193 and 1194, Appendix C to Part 1194. See also U.S. General Services Administration, *IT Accessibility Laws and Policies*, https://www.section508.gov/manage/laws-and-policies (last visited December 17, 2019).
[76] Worldwide Web Consortium (W3C), *Abstract*, http://www.w3.org/TR/2018/REC-WCAG21-20180605/ (last visited December 17, 2019).
[77] Ss. 282.601-606, F.S.
[78] S. 282.601(1), F.S.
[79] S. 282.601(2), F.S.
[80] Including Section 508 and 36 C.F.R. part 1194.
[81] S. 282, 603, F.S.
[82] *See* ch. 282, F.S.
[83] *See* 29 U.S.C. s. 794(d) and *Latham v. Brownlee*, 2005 WL 578149, at *9 (W.D. Tex.2005).
[84] 29 U.S.C. s. 794(d).
[85] *U.S. v. Ga.*, 546 U.S. 151 (2006).

Amendment to the U.S. Constitution does not extend its immunity to units of local government that are subject to private claims for damages under the ADA without limitation to Fourteenth Amendment claims.[86]

To establish a claim under Title II, a plaintiff must establish he or she had a disability, was denied a public benefit or other discrimination, and the denial of benefits or discrimination was by reason of the plaintiff's disability.[87] A plaintiff has standing where there is an injury-in-fact, a causal connection between the asserted injury-in-fact and challenged action of the defendant, and the injury will be redressed by a favorable decision. Standing to seek injunctive relief also requires an allegation of facts giving rise to an inference that the plaintiff will suffer future discrimination by the defendant.[88]

The scope of public entities subject to Title II of the ADA includes state prisons,[89] universities,[90] courts,[91] and legislative chambers.[92] Additionally, states may be held accountable for discrimination by private entities that lease government-owned property.[93]

While currently there appears to be no Florida appellate court decision resolving a challenge to state agency website accessibility, there have been a number of federal cases in recent years. In *Nat'l Assn. of Deaf v. State*, hearing impaired individuals sued the Florida Senate and House of Representatives claiming the failure to put closed captions on live and archived videos of Florida legislative sessions violated the ADA.[94] The case survived a motion dismiss because the Court found the right to participate in the democratic process is a fundamental right that properly abrogates the state's Eleventh Amendment immunity.[95]

Local governments are facing continued federal litigation in the absence of official rules on ADA compliance for government website and electronic document access. The case law is new and unsettled, but there are two emerging legal theories currently being used to determine if a case is viable. Some courts have relied on the standing analysis in Title III website access cases to resolve Title II cases.[96] Other courts have adopted a new Title II rubric based, in part, on the connection the plaintiff has with the defendant-government.[97]

The Title III standing analysis requires impeded access to a physical public accommodation in order to find a plaintiff has standing to bring suit.[98] The new three-factor standing analysis for Title II website access cases considers, in addition to totality of the relevant facts:

(1) The plaintiff's connection with the defendant governmental entity;

(2) The type of information that is inaccessible; and

(3) The relation between the inaccessibility and the plaintiff's alleged future harm.[99]

Some governments argued that these cases are not ripe for adjudication because DOJ has not yet promulgated regulations. Courts have generally dismissed this argument, with one court emphasizing that DOJ has had eight years to comment further or promulgate rules on website accessibility compliance but failed to do so.[100]

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[86] *Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001).
[87] *Kornblau v. Dade Cnty.*, 86 F.3d 193 (11th Cir. 1996).
[88] *Shotz v. Cates*, 256 F.3d 1077 (11th Cir. 2001).
[89] *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206 (1998); *Edison v. Douberly*, 604 F.3d 1307 (11th Cir. 2010).
[90] *Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001).
[91] *Tenn. v. Lane*, 541 U.S. 509 (2004).
[92] *Nat'l Ass'n of Deaf v. State*, 318 F. Supp. 3d 1338, Case no. 18-cv-21232-UU (S.D. Fla. 2018).
[93] *See Haas v. Quest Recovery Servs., Inc.*, 549 U.S. 1163 (2007).
[94] *Nat'l Ass'n of Deaf v. State*, 318 F. Supp. 3d 1338, Case no. 18-cv-21232-UU (S.D. Fla. 2018)(case is pending).
[95] "Order of Motion to Dismiss Based on Sovereign Immunity," *Id.* (June 18, 2018).
[96] *See Gil v. Broward Cnty.*, No. 18-60282-CIV, 2018 WL 4941108 (S.D. Fla. 2018)
[97] *See Price v. City of Ocala*, 375 F. Supp. 3d 1264 (M.D. Fla. 2019)(reasoning Title III analysis is the wrong standard to apply to Title II website access cases because Title III requires a nexus between a physical place and the alleged violation), and *Gil v. City of Pensacola, Fla.*, 392 F. Supp. 3d 1493 (N.D. Fla. 2019).
[98] *See Gil v. Broward Cnty., Fla.*, 2018 WL 4941108 (S.D. Fla. 2018).
[99] *See Price v. City of Ocala, Fla.*, 375 F. Supp. 3d 1264 (M.D. Fla. 2019).
[100] *See Open Access for All, Inc. v. Town of Juno Beach, Fla.*, "Order Denying Defendant's Motion to Dismiss," Case no. 9:19-CV-80518-ROSENBERG/REINHART, 2019 WL 3425090 (S.D. Fla. July 29, 2019)(case dismissed on other grounds August 15, 2019).

Effect of Proposed Bill

The bill will allow special districts to post the most recent financial audit by providing a link to the report maintained on the Auditor General's website. The bill also removes the requirement for districts to post facility reports and meeting materials online, only requiring the district to post a meeting or event agenda.

B. SECTION DIRECTORY:

Section 1. Amending s. 189.069, F.S., revising certain website reporting requirements for special districts.

Section 2. Providing an effective date of July 1, 2020.

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:

There may be a negative impact on private companies maintaining special district websites due to local governments no longer needing companies to ensure ADA compliance status of the specific online documents.

D. FISCAL COMMENTS:

There may be a positive financial impact on special districts that are no longer required to post and maintain certain meeting materials and documents online.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides rulemaking authority nor requires rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to special districts; amending s. 189.069, F.S.; revising the method by which a special district may post its final audit report on its website; deleting a requirement that each special district's public facilities report be posted on the special district's website; deleting a requirement that certain meeting materials be posted on website; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 189.069, Florida Statutes, is amended to read:

189.069 Special districts; required reporting of information; web-based public access.—

(2)(a) A special district shall post the following information, at a minimum, on the district's official website:

1. The full legal name of the special district.

2. The public purpose of the special district.

3. The name, official address, official e-mail address, and, if applicable, term and appointing authority for each member of the governing body of the special district.

4. The fiscal year of the special district.

5. The full text of the special district's charter, the

date of establishment, the establishing entity, and the statute or statutes under which the special district operates, if different from the statute or statutes under which the special district was established. Community development districts may reference chapter 190 as the uniform charter but must include information relating to any grant of special powers.

6. The mailing address, e-mail address, telephone number, and website uniform resource locator of the special district.

7. A description of the boundaries or service area of, and the services provided by, the special district.

8. A listing of all taxes, fees, assessments, or charges imposed and collected by the special district, including the rates or amounts for the fiscal year and the statutory authority for the levy of the tax, fee, assessment, or charge. For purposes of this subparagraph, charges do not include patient charges by a hospital or other health care provider.

9. The primary contact information for the special district for purposes of communication from the department.

10. A code of ethics adopted by the special district, if applicable, and a hyperlink to generally applicable ethics provisions.

11. The budget of the special district and any amendments thereto in accordance with s. 189.016.

12. The final, complete audit report for the most recent completed fiscal year and audit reports required by law or

authorized by the governing body of the special district. If the special district has submitted its most recent final, complete audit report to the Auditor General, the governing body may satisfy this requirement by providing a link to the audit report on the Auditor General's website.

13. A listing of its regularly scheduled public meetings as required by s. 189.015(1).

~~14. The public facilities report, if applicable.~~

14.~~15.~~ The link to the Department of Financial Services' website as set forth in s. 218.32(1)(g).

15.~~16.~~ At least 7 days before each meeting or workshop, the agenda of the event~~, along with any meeting materials available in an electronic format, excluding confidential and exempt information~~. The information must remain on the website for at least 1 year after the event.

Section 2. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 865 Emergency Reporting
SPONSOR(S): Rodriguez, A.
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 538

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee		Villa	Smith
2) Appropriations Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Division of Emergency Management (Division) is responsible for all professional, technical, and administrative support functions necessary to carry out the State's Emergency Management Act. Within the division, is the State Watch Office (SWO) whose primary purpose is to record, analyze, and share information with federal, state, and county entities for appropriate response to emergencies.

The SWO is a watch center, manned 24 hours a day, seven days a week monitoring an array of incidents across the state and serving as a clearinghouse of information for emergency response.

Currently, the SWO maintains and provides to counties and municipalities a list of reportable incidents divided into the following categories:

- Fire or search and rescue;
- Law enforcement incidents and suspicious activity;
- Natural hazards;
- Population protective actions;
- Technical hazards or environmental concerns;
- Transportation incidents;
- Utilities or infrastructure; and
- Military events.

Counties and municipalities are asked to notify the SWO of an incident after the initial response is handled at the local level by first responders.

The bill requires counties and municipalities to notify the SWO of certain incidents occurring within their jurisdiction, as soon as practicable following its initial response. The bill authorizes the Division to establish guidelines specifying additional information that a county or municipality must provide to the SWO when reporting an incident.

The bill may have an insignificant fiscal impact on local governments. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The State Watch Office within the Division of Emergency Management

The Division of Emergency Management (Division) is responsible for all professional, technical, and administrative support functions necessary to carry out the State's Emergency Management Act.[1,2] Within the division, is the State Watch Office (SWO) whose primary purpose is to record, analyze, and share information with federal, state, and county entities for appropriate response to emergencies.[3]

The SWO is not a dispatch center, but a clearinghouse of information to be shared with other governmental entities that can independently act within their own authority and protocols.[4] The SWO is a watch center manned by division personnel 24 hours a day, seven days a week monitoring an array of incidents including fuel spills, damages from severe weather, and rocket launches from Cape Canaveral.

Reportable Incidents

For National Emergency Accreditation purposes, the SWO maintains and disseminates a list of "Reportable Incidents" to counties and municipalities.[5] The document also contains information on statewide communication systems, important contact information, the SWO Incident Tracker, and emergency resources. The "Reportable Incidents" list is divided into the following categories:

- Fire or search and rescue;
- Law enforcement incidents and suspicious activity;
- Natural hazards;
- Population protective actions;
- Technical hazards or environmental concerns;
- Transportation incidents;
- Utilities or infrastructure; and
- Military events.

Counties and municipalities are asked to notify the SWO of an incident after the initial response is handled at the local level by first responders. Initial response action takes precedence. The information for these incidents is generally given to the SWO from a county Public Safety Answering Point. Guidelines of what information is to be conveyed to the SWO when reporting an incident is provided as part of the "Reportable Incidents" list. The collected information is logged into an incident tracking system and then disseminated to local, state, tribal, federal, and private partners to aid in response actions.[6]

Although wastewater and chemical spills are the only incidents required by law to be reported to the SWO,[7] counties and municipalities regularly share information concerning reportable incidents with the SWO.

Effect of the Bill

[1] Section 14.2016(1), F.S.
[2] Sections 252.31 – 252.63, F.S., are cited as the State Emergency Management Act. Section 252.31, F.S.
[3] Section 14.2016(2), F.S.
[4] *Id.*
[5] Florida Division of Emergency Management, *State Watch Office Guide for Florida County Warning Points and* PSAPs, https://www.floridadisaster.org/globalassets/dem/response/operations/state-watch-office-reportable-incidents-list.pdf (last visited January 21, 2020).
[6] *Id.*
[7] Section 403.077(2), F.S.; *see also* Rules 62-762.411, 62-761.405, 62-780.210, 62S-6.022, and 62S-6.033, F.A.C.

The bill requires counties and municipalities to notify the SWO of certain incidents occurring within their jurisdiction, as soon as practicable following its initial response. Specifically, a county or municipality must provide notification to the SWO of any of the following incidents that occur within their boundaries:

- Major fire incidents and search and rescue operations, including wildfires, multiunit commercial or residential fires, industrial accidents, structure collapses, urban search and rescue responses, and transportation incidents requiring a search and rescue response.
- Law enforcement incidents and other suspicious activity, including bomb threats, the report of a threat to inflict harm on large numbers of people or significant damage to critical infrastructure, a device detonation, the discovery of any suspicious device, civil events or disturbances, rioting, any law enforcement search or manhunt for a violent felony suspect, active shooter or active shooting situations, looting, poisoning, any incidents involving a suspicious powder, correctional facility incidents, a cyber-related infrastructure breach, a lockdown, and a security breach.
- Natural hazards, including earthquakes, ground subsidence or sinkholes, severe weather reports, and severe weather damage.
- Population protective actions, including any public health hazards, the establishment of shelter-in-place orders or evacuation orders, emergency shelter openings, hazards involving animals or agriculture, and food supply contaminations or recalls.
- Technical hazards or environmental concerns, including petroleum spills; wastewater releases; hazardous material spills and releases; chemical, biological, radiological, and nuclear incidents; nuclear power plant events; and environmental crimes.
- Transportation incidents, including incidents involving aircraft or airports, railroad accidents or derailments, major road or bridge closings, and incidents involving marine vessels that block a navigable channel of a major waterway.
- Incidents involving utilities or infrastructure, including dam failure or overtopping, a drinking water facility breach, a water quality issue or boil water advisory, and utility disruptions or major outages involving transmission lines or substations.
- Military events, when information regarding such activity is provided to local officials.

The bill authorizes the Division to establish guidelines specifying additional information that a county or municipality must provide to the SWO when reporting an incident outlined above.

B. SECTION DIRECTORY:

Section 1 creates s. 252.351, F.S., relating to mandatory reporting of certain incidents by counties and municipalities.

Section 2 provides an effective date of July 1, 2020.

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:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There may be an insignificant fiscal impact to local governments for the mandatory reporting requirements of the bill. Currently, only wastewater and chemical spills are required in statute to be reported to the SWO. However, counties and municipalities provide the information required by the bill regularly as part of the list of "Reportable Incidents" that is provided to them by the division.[8]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The municipality/county mandates provision of Art. VII, section 18, of the Florida Constitution may apply because of the mandatory reporting requirements of the bill; however, an exemption may apply due to an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.

[8] Florida Division of Emergency Management, *FDEM Legislative Priorities 2019-2020 (Fla. Stat. § 252)*, on file with the Florida House of Representatives Oversight, Transparency & Public Management Subcommittee.

A bill to be entitled

An act relating to emergency reporting; creating s. 252.351, F.S.; requiring a county or municipality to report certain incidents to the State Watch Office within the Division of Emergency Management; authorizing the division to establish guidelines to specify additional information that must be provided by a reporting county or municipality; providing an effective date.

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

Section 1. Section 252.351, Florida Statutes, is created to read:

252.351 Mandatory reporting of certain incidents by counties and municipalities.—

(1) As soon as practicable following its initial response to an incident, a county or a municipality shall provide notification to the State Watch Office within the division of any of the following incidents that occur within the geographic boundaries of the county or municipality:

(a) Major fire incidents and search and rescue operations, including wildfires, multiunit commercial or residential fires, industrial accidents, structure collapses, urban search and rescue responses, and transportation incidents requiring a

search and rescue response.

(b) Law enforcement incidents and other suspicious activity, including bomb threats, the report of a threat to inflict harm on large numbers of people or significant damage to critical infrastructure, a device detonation, the discovery of any suspicious device, civil events or disturbances, rioting, any law enforcement search or manhunt for a violent felony suspect, active shooter or active shooting situations, looting, poisoning, any incidents involving a suspicious powder, correctional facility incidents, a cyber-related infrastructure breach, a lockdown, and a security breach.

(c) Natural hazards, including earthquakes, ground subsidence or sinkholes, severe weather reports, and severe weather damage.

(d) Population protective actions, including any public health hazards, the establishment of shelter-in-place orders or evacuation orders, emergency shelter openings, hazards involving animals or agriculture, and food supply contamination or recalls.

(e) Technical hazards or environmental concerns, including petroleum spills; wastewater releases; hazardous material spills and releases; chemical, biological, radiological, and nuclear incidents; nuclear power plant events; and environmental crimes.

(f) Transportation incidents, including incidents involving aircraft or airports, railroad accidents or

derailments, major road or bridge closings, and incidents involving marine vessels that block a navigable channel of a major waterway.

(g) Incidents involving utilities or infrastructure, including dam failure or overtopping, a drinking water facility breach, a water quality issue or boil water advisory, and utility disruptions or major outages involving transmission lines or substations.

(h) Military events, when information regarding such activity is provided to local officials.

(2) The division may establish guidelines specifying additional information that a county or municipality must provide to the State Watch Office when reporting an incident pursuant to subsection (1).

Section 2. This act shall take effect July 1, 2020.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Oversight, Transparency & Public Management Subcommittee

Representative Rodriguez, A. offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 252.351, Florida Statutes, is created to read:

252.351 Mandatory reporting of certain incidents by political subdivisions.-

(1) For purposes of this section, the term "office" refers to the State Watch Office established within the division pursuant to s. 14.2016.

(2) The office, to aid in its mission of serving as a clearinghouse for emergency-related information across all levels of government, shall create and maintain a list of

reportable incidents. The list shall include, but is not limited to, the following events:

(a) Major fires, including wildfires, commercial or multi-unit residential fires, and industrial fires.

(b) Search and rescue operations, including structure collapse or urban search and rescue response.

(c) Bomb threat or threat to inflict harm on a large number of people or significant infrastructure, a suspicious device or device detonation.

(d) Natural hazards and severe weather, including earthquake, landslide, or ground subsidence or sinkholes.

(e) Public health and population protective actions, including public health hazards, evacuation orders, or emergency shelter openings.

(f) Animal or agricultural events, including suspected or confirmed animal disease, suspected or confirmed agricultural disease, crop failure, or food supply contamination.

(g) Environmental concerns, including an incident of reportable pollution release as required in s. 403.077(2).

(h) Nuclear power plant events, including events in process or that have occurred that indicate a potential degradation of the level of safety of the plant or that indicate a security threat to facility protection.

(i) Major transportation events, including aircraft or airport incidents, passenger or commercial railroad incidents,

major road or bridge closures, or marine incident involving a blocked navigable channel of a major waterway.

(j) Major utility or infrastructure events, including dam failure or overtopping, drinking water facility breach, or major utility outages or disruptions involving transmission lines or substations.

(k) Military events, when information regarding such activity is provided to a political subdivision.

(2) As soon as practicable following its initial response to an incident, a political subdivision shall provide notification to the office that an incident specified on the list of reportable incidents has occurred within its geographical boundaries. The office may establish guidelines specifying the method and format a political subdivision must utilize when reporting an incident.

(3) Beginning December 1, 2020, and by December 1 of each year, the office must provide the list of reportable incidents to each political subdivision.

Section 2. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert: An act relating to emergency reporting; creating s. 252.351, F.S.; requiring the State Watch Office within the Division of

Emergency Management to create a list of reportable incidents; requiring a political subdivision to report incidents contained on the list to the State Watch Office; authorizing the State Watch Office to establish guidelines a political subdivision must follow to report an incident; requiring the State Watch Office to annually provide the list of reportable incidents to each political subdivision; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1005 Voting Systems
SPONSOR(S): Byrd
TIED BILLS: **IDEN./SIM. BILLS:** SB 1312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee		Toliver	Smith
2) Public Integrity & Ethics Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

A “voting system” is a method of casting and processing votes that consists of electromechanical components and, in most instances, utilizes marksense ballots. The Division of Elections (division) must approve all voting systems used in Florida elections. The Florida Election Code prescribes the general standards for the approval of voting systems; division rule further details the complex, technical certification requirements.

The preliminary results of a close election may warrant a machine recount and, depending on the margin of victory following the machine recount, may also warrant a manual recount. The recount occurs before the election results are certified. The purpose of the recount is to determine who won an election. If the first set of unofficial results indicate that the margin of victory in any race is one-half of one percent or less, each canvassing board must run the marksense ballots through the voting system’s automatic tabulating equipment to determine whether the returns correctly reflect the votes cast. If the machine recount results indicate a margin of victory of one-quarter of one percent or less, the county canvassing board generally must conduct a manual recount of the overvotes and undervotes.

Voting system audits must be conducted after the final canvassing board certifies the election results. The purpose of the audit is to confirm the accuracy of the voting system tabulation and to identify problems and recommend adjustments for future elections. The county canvassing board has the option to conduct either a manual audit or an automated, independent audit of the voting systems used in randomly selected precincts.

The bill allows county canvassing boards and supervisors of elections to use digital imaging, automated tabulating equipment that is not part of the voting system, equipment currently used for conducting independent audits, to conduct both machine and manual recounts. During the machine recount process, the ballots may be run through the automated tabulating equipment instead of the voting system’s tabulators that performed the original tally. While the machine recount is underway, overvotes and undervotes may be identified and sorted physically or digitally in preparation of a manual recount should one be warranted. To facilitate faster manual recounts of overvotes and undervotes, the bill specifically allows for the counting of the actual paper ballots or the digital image of the ballots. Lastly, the bill directs the Department of State to develop procedures relating to the certification and the use of automatic tabulating equipment that is not part of a voting system.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Voting Systems

A "voting system" is a method of casting and processing votes that consists of electromechanical components and, in most instances, utilizes marksense ballots.[1] The voting system may also include things like procedures, operating manuals, supplies, printouts, and other software necessary for the system's operation.[2]

The Division of Elections (division) must approve all voting systems used in Florida elections.[3] The Electronic Voting Systems Act[4] in the Florida Election Code prescribes the general standards for the approval of voting systems; division rule further details the complex, technical certification requirements.[5] The certification process tests the reliability of both the hardware and software components of the voting system to make sure that they meet rigorous standards.

Recounts

The preliminary results of a close election may warrant a machine recount and, depending on the margin of victory following the machine recount, may also warrant a manual recount. The recount occurs before the election results are certified.[6] The purpose of the recount is to determine who won an election. The State Elections Canvassing Commission, in the case of federal, state, and multicounty races, and the local county canvassing board in most other elections, must certify the results by the 9th day after a primary election and the 14th day after a general election.[7] All recounts are governed by complex procedures and requirements designed to protect the integrity of the process, involving:

- Duplication of ballots;
- Security of ballots during the recount;
- Time and location of the recount;
- Opportunity for public observance;
- Objections to ballot determinations;
- Recordation of recount proceedings; and,
- Processes relating to affected candidates.[8]

Machine Recounts

If the first set of unofficial results[9] indicate that the margin of victory in any race is one-half of one percent or less, each canvassing board must run the marksense ballots through the voting system's automatic tabulating equipment to determine whether the returns correctly reflect the votes cast.[10]

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[1] Section 97.021(46), F.S.
[2] *Id.*
[3] Sections 101.5605 and 101.5606, F.S.
[4] Sections 101.5601 – 101.5614, F.S., are cited as the Electronic Voting Systems Act. Section 101.5601, F.S.
[5] *Id.*; *see* Florida Division of Elections, Bureau of Voting Systems Certification, Form DS-DE 101 (eff. Jan. 12, 2005) (incorporated by reference, Rule 1S-5.001, F.A.C.) (66-page *Florida Voting System Standards* document containing technical requirements for certification), available at http://dos.myflorida.com/media/693718/dsde101.pdf, (last visited Jan. 23, 2020).
[6] Section 102.141(7), F.S.
[7] Section 102.111(2), F.S. County canvassing boards must submit final returns to the Department of State for races certified by the Elections Canvassing Commission no later than 5:00 p.m. on the 7th day after a primary election and by noon on the 12th day after a general election. Section 102.112(1)-(2), F.S.
[8] Section 102.166(5)(b),(d), F.S.; Rule 1S-2.031 (Recount Procedures).
[9] County canvassing boards must report the first set of unofficial results in federal, statewide, state, or multicounty office or ballot measure to the Department of State by noon of the third day after a primary election and noon of the 4th day after a general election. Section 102.141(5), F.S.
[10] Section 102.141(7), F.S. A losing candidate within one-half of one percent or less can waive the automatic recount in writing. *Id.*

During this machine recount process, the tabulators sort out the overvotes[11] and undervotes,[12] in case the results are close enough to warrant a manual recount of overvotes and undervotes. There are also requirements for canvassing boards to perform logic and accuracy tests on the tabulation equipment prior to re-tabulation.[13]

Manual Recounts

If the machine recount results comprising the second set of unofficial results[14] indicate a margin of victory of one-quarter of one percent or less, the county canvassing board generally must conduct a manual recount of the overvotes and undervotes.[15]

The majority of the manual recount process involves teams of two electors reviewing marksense paper ballots to determine whether there is a "clear indication on the ballot that the voter has made a definite choice."[16] If a team cannot agree, the ballot is sent to the county canvassing board for a final determination.[17]

Voting System Audits

Voting system audits must be conducted after the final canvassing board certifies the election results for the purposes of confirming the accuracy of the voting system tabulation and identifying problems and recommending adjustments for future elections.[18] The county canvassing board may conduct a manual audit or an automated, independent audit of the voting systems used in randomly selected precincts.[19]

Manual random audits consist of a public, hand tally of at least one percent of precincts but not more than two percent of precincts in a single race on the ballot.[20] The audit includes a tally of Election Day, vote-by-mail, early voting, provisional, and overseas ballots.[21] Automated, independent audits are much more extensive, tallying votes cast across every race that appears on the ballot.[22] The tally includes all

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[11] The term "overvote" means that the elector marks or designates more names than there are person to be elected to an office or designates more than one answer to a ballot question, and the tabulator records no vote for the office or question. Section 97.021(25), F.S.

[12] The term "undervote" means that the elector does not properly designate any choice for an office or ballot question, and the tabulator records no vote for the office or question. Section 97.021(40), F.S.

[13] Section 102.141(7)(a), F.S.

[14] County canvassing boards must report the second set of unofficial results in federal, statewide, state or multicounty office or ballot measure to the Department of State by 3:00 p.m. of the 5th day after a primary election and 3:00 p.m. of the 9th day after a general election. Section 102.141(7)(c), F.S.

[15] Section 102.166(1), F.S. A manual recount is not required if the losing candidate waives the recount or if the number of overvotes and undervotes to be recounted is fewer than the number of votes needed to change the election outcome. *Id.*

[16] Section 102.166(4)(b), F.S. The division has a 14-page rule detailing which ballot markings constitute a valid vote in the context of how a voter filled out a particular ballot. Rule 1S-2.027, F.A.C.

[17] Section 102.166(5)(c), F.S.

[18] Section 101.591, F.S.

[19] *Id.*

[20] Section 101.591(2)(a), F.S.

[21] Section 101.591(2)(b), F.S.

[22] Section 101.591(2)(b), F.S. Division of Elections indicates that the *ClearAudit* digital imaging system from Clear Ballot Group of Boston, MA, was the only system approved to conduct automated audits for the 2016 and 2018 general election cycles. *See*, Florida Division of Elections, Approvals and Technical Advisories (identifying Democracy Live, Inc.'s, *LiveBallot* electronic ballot delivery/duplication [non-audit] system as the only other system that the division "approved"), available at http://dos.myflorida.com/elections/voting-systems/approvals-and-technical-advisories/ (last visited Jan. 24, 2020); Maria Matthews, Director, Florida Division of Elections, *ClearAudit* 1.4.4. Approval Letter (July 27, 2018, available at https://dos.myflorida.com/media/699784/clearaudit-144-approval-7272018.pdf (approving *ClearAudit* as alternative to manual audit process provided in s. 101.591, F.S. for 2018 election cycle) (last accessed Jan. 24, 2020); Maria Matthews, Director, Florida Division of Elections, *ClearAudit* Interim Approval Extension Letter (Jan. 25, 2016) (approving *ClearAudit* as alternative to manual audit process provided in s. 101.591, F.S. for 2016 election cycle), available at http://dos.myflorida.com/media/695954/clearaudit-106-interim-approval-extension-1252016.pdf (last visited Jan. 24, 2020). Seven of Florida's 67 counties — *Bay, Broward, Columbia,, Leon, Nassau, Putnam, and St. Lucie* — use the Clear Ballot product to audit nearly 14% of the ballots cast in the Florida 2016 general election. Hillary Lincoln, Marketing and Communications Manager, Clear Ballot, Clear Ballot's Audit of Florida's Presidential Election Results a Success (Dec. 14, 2016) (press release), available at https://www.prnewswire.com/news-releases/clear-ballots-

election day, vote-by-mail, early voting, provisional, and overseas ballot in at least of 20% of the precincts chosen at random by the canvassing board.[23]

The division approves the independent audit equipment pursuant to both statutory and rule standards.[24] The automated audit equipment must be:

- Completely independent of the voting system;
- Fast enough to produce audit results no later than midnight of the seventh day following election certification; and
- Capable of demonstrating that the audit system has accurately tallied the ballots.[25]

Division Rule 1S-5.026, F.A.C., contains additional approval requirements and procedures, which are not as comprehensive as the requirements for certifying full voting systems.[26] The canvassing board must complete the audit no later than midnight of the seventh day after it certifies the election results.[27] The canvassing board must provide a report to the Department of State by the 15th day after completing the audit that addresses:

- The overall accuracy of the audit;
- A description of any problems or discrepancies encountered;
- The likely cause of such problems or discrepancies; and
- Recommended corrective action with respect to avoiding or mitigating such circumstances in future elections.[28]

If a manual recount takes place, the affected canvassing board is not required to conduct an audit.[29]

Effect of the Bill

The bill allows county canvassing boards and supervisors of elections to use digital imaging, automated tabulating equipment that is not part of the voting system, equipment currently used for conducting independent audits, to conduct both machine and manual recounts. During the machine recount process, the ballots may be run through the automatic tabulating equipment instead of the voting system's tabulators that performed the original tally. While the machine recount is underway, overvotes and undervotes may be identified and sorted physically or digitally, in preparation of a manual recount should one be warranted. To facilitate faster manual recounts of overvotes and undervotes, the bill specifically allows for the counting of the actual paper ballots or the digital image of the ballots. Further, the bill directs the Department of State to adopt by rule "procedures relating to the certification and the use of automatic tabulating equipment that is not part of a voting system."

B. SECTION DIRECTORY:

Section 1 amends s. 97.3021, F.S., relating to definitions applicable to the Florida Election Code.

Section 2 amends s. 101.5614, F.S., relating to the canvass of election returns.

Section 3 amends s. 102.141, F.S., relating the county canvassing boards.

Section 4 amends s. 102.166, F.S., relating to manual recounts.

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audit-of-floridas-presidential-election-results-a-success-300378422.html (last visited Jan. 24, 2020); Since the 2018 election cycle, Hillsborough and Indian River Counties have joined the list of counties using the Clear Ballot product, bringing the total to nine counties. Mitch Perry, Hillsborough County Adds Accountability Measure for Elections, available at https://www.baynews9.com/fl/tampa/news/2019/11/25/hillsborough-county-adds-accountability-measures-for-elections (last visited Jan. 24, 2019).

[23] Section 101.591(2)(b), F.S.

[24] Section 101.591(2)(c), F.S.

[25] *Id.*

[26] Rule 1S-5.026, F.A.C. (Post-Election Certification Voting System Audit).

[27] Section 101.591(4), F.S.

[28] Section 101.591(5), F.S.

[29] Section 101.591(6), F.S.

Section 5 provides an effective date of July 1, 2020.

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:

The bill may result in a positive fiscal impact to private sector companies that manufacture or sell automatic tabulating machines. As these machines become available for use as recount machines, counties would likely be incentivized to procure the machines to expedite the recount process. Currently, only one machine has been authorized to conduct independent automated audits in the state.[30]

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:

[30] Division of Elections indicates that the *ClearAudit* digital imaging system from Clear Ballot Group of Boston, MA, was the only system approved to conduct automated audits for the 2016 and 2018 general election cycles. *See,* Florida Division of Elections, Approvals and Technical Advisories (identifying Democracy Live, Inc.'s, *LiveBallot* electronic ballot delivery/duplication [non-audit] system as the only other system that the division "approved"), available at http://dos.myflorida.com/elections/voting-systems/approvals-and-technical-advisories/ (last visited Jan. 24, 2020).

The bill does not confer rulemaking authority but does require the Department of State to adopt detailed rules prescribing additional procedures relating to the certification and the use of automatic tabulating equipment that is not part of a voting system for recounts. The Department of State has sufficient rulemaking authority in s. 97.012(1), F.S., to adopt the rules required by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to voting systems; amending s. 97.021, F.S.; defining the term "automatic tabulating equipment" for purposes of the Florida Election Code; amending s. 101.5614, F.S.; revising procedures governing the canvassing of returns to specify usage of a voting system's automatic tabulating equipment; amending s. 102.141, F.S.; specifying the circumstances under which ballots must be processed through automatic tabulating equipment in a recount; amending s. 102.166, F.S.; specifying the manner by which a manual recount may be conducted; revising requirements for hardware or software used in a manual recount; authorizing overvotes and undervotes to be identified and sorted physically or digitally in a manual recount; revising minimum requirements for Department of State rules to require procedures regarding the certification and use of automatic tabulating equipment for manual recounts; providing an effective date.

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

Section 1. Present subsections (5) through (46) of section 97.021, Florida Statutes, are renumbered as subsections (6)

through (47), respectively, and a new subsection (5) is added to that section, to read:

97.021 Definitions.—For the purposes of this code, except where the context clearly indicates otherwise, the term:

(5) "Automatic tabulating equipment" means an apparatus that automatically examines, counts, and records votes.

Section 2. Paragraph (a) of subsection (4) and subsections (6) and (7) of section 101.5614, Florida Statutes, are amended to read:

101.5614 Canvass of returns.—

(4)(a) If any vote-by-mail ballot is physically damaged so that it cannot properly be counted by the voting system's automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of a vote-by-mail ballot containing an overvoted race or a marked vote-by-mail ballot in which every race is undervoted which shall include all valid votes as determined by the canvassing board based on rules adopted by the division pursuant to s. 102.166(4). Upon request, a physically present candidate, a political party official, a political committee official, or an authorized designee thereof, must be allowed to observe the duplication of ballots. All duplicate ballots shall be clearly labeled "duplicate," bear a serial number which shall be recorded on the defective ballot, and be counted in lieu of

the defective ballot. After a ballot has been duplicated, the defective ballot shall be placed in an envelope provided for that purpose, and the duplicate ballot shall be tallied with the other ballots for that precinct.

(6) Vote-by-mail ballots may be counted by the voting system's automatic tabulating equipment if they have been marked in a manner which will enable them to be properly counted by such equipment.

(7) The return printed by the voting system's automatic tabulating equipment, to which has been added the return of write-in, vote-by-mail, and manually counted votes and votes from provisional ballots, shall constitute the official return of the election upon certification by the canvassing board. Upon completion of the count, the returns shall be open to the public. A copy of the returns may be posted at the central counting place or at the office of the supervisor of elections in lieu of the posting of returns at individual precincts.

Section 3. Paragraph (a) of subsection (7) of section 102.141, Florida Statutes, is amended to read:

102.141 County canvassing board; duties.—

(7) If the unofficial returns reflect that a candidate for any office was defeated or eliminated by one-half of a percent or less of the votes cast for such office, that a candidate for retention to a judicial office was retained or not retained by one-half of a percent or less of the votes cast on the question

of retention, or that a measure appearing on the ballot was approved or rejected by one-half of a percent or less of the votes cast on such measure, a recount shall be ordered of the votes cast with respect to such office or measure. The Secretary of State is responsible for ordering recounts in federal, state, and multicounty races. The county canvassing board or the local board responsible for certifying the election is responsible for ordering recounts in all other races. A recount need not be ordered with respect to the returns for any office, however, if the candidate or candidates defeated or eliminated from contention for such office by one-half of a percent or less of the votes cast for such office request in writing that a recount not be made.

(a) Each canvassing board responsible for conducting a recount shall put each marksense ballot through automatic tabulating equipment and determine whether the returns correctly reflect the votes cast. If any marksense ballot is physically damaged so that it cannot be properly counted by the automatic tabulating equipment during the recount, a true duplicate shall be made of the damaged ballot pursuant to the procedures in s. 101.5614(4). Immediately before the start of the recount, a test of the tabulating equipment shall be conducted as provided in s. 101.5612. If the test indicates no error, the recount tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly. If an error is detected, the

cause therefor shall be ascertained and corrected and the recount repeated, as necessary. The canvassing board shall immediately report the error, along with the cause of the error and the corrective measures being taken, to the Department of State. No later than 11 days after the election, the canvassing board shall file a separate incident report with the Department of State, detailing the resolution of the matter and identifying any measures that will avoid a future recurrence of the error. If the automatic tabulating equipment used in a recount is not part of the voting system and the ballots have already been processed through such equipment, the canvassing board is not required to put each ballot through any automatic tabulating equipment again.

Section 4. Subsections (1), (2), and (5) of section 102.166, Florida Statutes, are amended to read:

102.166 Manual recounts of overvotes and undervotes.—

(1) If the second set of unofficial returns pursuant to s. 102.141 indicates that a candidate for any office was defeated or eliminated by one-quarter of a percent or less of the votes cast for such office, that a candidate for retention to a judicial office was retained or not retained by one-quarter of a percent or less of the votes cast on the question of retention, or that a measure appearing on the ballot was approved or rejected by one-quarter of a percent or less of the votes cast on such measure, a manual recount of the overvotes and

undervotes cast in the entire geographic jurisdiction of such office or ballot measure shall be ordered unless:

(a) The candidate or candidates defeated or eliminated from contention by one-quarter of 1 percent or fewer of the votes cast for such office request in writing that a recount not be made; or

(b) The number of overvotes and undervotes is fewer than the number of votes needed to change the outcome of the election.

The Secretary of State is responsible for ordering a manual recount for federal, state, and multicounty races. The county canvassing board or local board responsible for certifying the election is responsible for ordering a manual recount for all other races. A manual recount consists of a recount of marksense ballots or of digital images of those ballots by a person.

(2) Any hardware or software used to identify and sort overvotes and undervotes for a given race or ballot measure must be certified by the Department of State ~~as part of the voting system pursuant to s. 101.015~~. Any such hardware or software must be capable of simultaneously identifying and sorting overvotes and undervotes in multiple races while simultaneously counting votes. Overvotes and undervotes must be identified and sorted while recounting ballots pursuant to s. 102.141. Overvotes and undervotes may be identified and sorted physically

or digitally.

(5) Procedures for a manual recount are as follows:

(a) The county canvassing board shall appoint as many counting teams of at least two electors as is necessary to manually recount the ballots. A counting team must have, when possible, members of at least two political parties. A candidate involved in the race shall not be a member of the counting team.

(b) Each duplicate ballot prepared pursuant to s. 101.5614(4) or s. 102.141(7) shall be compared with the original ballot to ensure the correctness of the duplicate.

(c) If a counting team is unable to determine whether the ballot contains a clear indication that the voter has made a definite choice, the ballot shall be presented to the county canvassing board for a determination.

(d) The Department of State shall adopt detailed rules prescribing additional recount procedures for each certified voting system which shall be uniform to the extent practicable. The rules shall address, at a minimum, the following areas:

1. Security of ballots during the recount process;

2. Time and place of recounts;

3. Public observance of recounts;

4. Objections to ballot determinations;

5. Record of recount proceedings; ~~and~~

6. Procedures relating to candidate and petitioner representatives; and

7. Procedures relating to the certification and the use of automatic tabulating equipment that is not part of a voting system.

Section 5. This act shall take effect July 1, 2020.

HB 1155

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1155 Legislative Review of Proposed Regulation of Unregulated Functions
SPONSOR(S): Hage
TIED BILLS: **IDEN./SIM. BILLS:** SB 1614

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N	Brackett	Anstead
2) Oversight, Transparency & Public Management Subcommittee		Villa	Smith
3) Commerce Committee			

SUMMARY ANALYSIS

A sunrise review is a formal process of review requiring a cost-benefit analysis be conducted before legislation proposing to regulate an unregulated profession or occupation is enacted.

Florida's sunrise review, which was enacted in 1991, is called the Sunrise Act. The Sunrise Act requires the Legislature to consider certain factors before determining whether to regulate an unregulated profession or occupation. Those factors include:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare;
- Whether the practice of the profession or occupation requires specialized skill or training;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The bill amends the Sunrise Act to:

- Provide that in addition to applying to legislation that regulates an unregulated profession or occupation, the Sunrise Act also applies to legislation that substantially expands regulation of an already regulated profession or occupation;
- Require proponents of a regulation to provide certain information to the President of the Senate, the Speaker of the House of Representatives, and the state agency that is proposed to have jurisdiction of the regulation, no later than 30 days prior to the session in which the legislation is to be filed; and
- Require the state agency proposed to have jurisdiction to provide certain information to the President of the Senate, the Speaker of the House of Representatives, and the proponents of the regulation within 25 days after receiving the legislation.

The bill may have a fiscal impact on state government. The bill is not expected to have a fiscal impact on local governments.

The bill provides for an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Occupational Licensing

An occupational or professional license is a form of regulation that requires individuals who want to perform certain types of work, such as contractors and cosmetologists, to obtain permission from the government to perform the work.[1] Generally, an individual obtains permission from the government to perform a certain type of work by demonstrating that they have the designated knowledge, skills, and abilities to perform the work by meeting pre-determined criteria established by the government, such as work experience and exams. If the individual successfully completes the pre-determined criteria, the government issues the individual a license, which allows them to perform the work.[2]

In the 1950s, less than five percent of U.S. workers were required to have a license to do their jobs. Since then the number of workers required to have a license has risen five-fold to more than one-quarter of U.S. workers with most of these workers being licensed by the states. Almost two-thirds of this change stems from an increase in the number of professions that require a license. The number of licensed workers is even higher in Florida, with an estimated 28.7 percent of the workforce being licensed by the state.[3]

In 2015, the White House published a report on the current state of occupational licensing in the nation. The report found that when designed and implemented carefully, requiring occupational licenses offers important health and safety protections to consumers as well as benefits to workers. However, the report also found that too often licensing requirements are inconsistent, inefficient, arbitrary, and there is evidence that the current license regime in the U.S. raises the price of goods and services, restricts employment opportunities, and makes it more difficult for workers to take their skills across state lines.[4]

The report stated that because occupations are diverse in their tasks, designing and implementing successful occupational license regulations often requires a tailored approach. However, there are a number of common factors that policymakers should consider when contemplating enacting, revising, or repealing an occupational regulation. Policymakers should:[5]

- Ensure that restrictions are closely targeted to protecting public health and safety, and are not overly burdensome;
- Facilitate a careful consideration of licensure's costs and benefits; and
- Work to reduce licensing's barriers to mobility.

Policymakers can facilitate a careful consideration of licensure costs and benefits through both sunrise and sunset reviews. However, evidence suggests that sunrise reviews are more successful at limiting the growth of licensing since removing a license is much more difficult than enacting one. Additionally, state regulators suggested that sunrise reviews may be more effective than sunset reviews.[6]

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[1] The White House, *Occupational Licensing: A Framework for Policymakers*, 6 (July 2015) https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf (last visited on Jan. 14, 2020).
[2] Bureau of Labor Statistics, *Frequently asked questions about data on certifications and licenses*, https://www.bls.gov/cps/certifications-and-licenses-faqs.htm, (last visited on Jan. 14, 2020).
[3] White House *supra* note 1 at 3 & 24.
[4] *Id.*
[5] *Id.* at 41-43
[6] *Id.* at 42, 48-49.

Sunrise Review

Generally, a sunrise review is a formal process where a legislature scrutinizes legislation proposing to regulate an unregulated profession or occupation by requiring a cost-benefit analysis before the legislation is enacted. Most sunrise reviews require the proponents of the regulation to outline the potential impacts, costs, and benefits of the proposed regulation. Some states require the proponents of the regulation to provide certain information to a legislative committee or a state agency for analysis and evaluation, which is then provided to the legislature. Policymakers can review the information provided before moving forward with the legislation.[7]

Currently 12 states, including Florida, have sunrise reviews.[8] However, states vary widely in how independently and thoroughly they administer sunrise reviews. Colorado requires proponents of regulation to submit the proposed regulation along with the potential impacts, costs, and benefits to the Colorado Department of Regulatory Agencies for analysis and evaluation.[9] Minnesota requires proponents of regulation to file a report outlining the regulation's potential impacts, costs, and benefits with the legislature within 15 days of the bill being introduced.[10] Maine requires sunrise reviews for legislation regulating an unregulated profession or occupation and legislation that substantially expands regulation of an already regulated profession or occupation.[11] Florida currently requires proponents of regulation to file information about the regulation's potential impacts, costs, and benefits upon request.[12]

Florida's Sunrise Act

Florida's sunrise review is called the Sunrise Act.[13] The Sunrise Act states that regulation should not be adopted unless it is:

- Necessary to protect the public health, safety, or welfare from significant and discernible harm or damage;
- Exercised only to the extent necessary to prevent the harm; and
- Limited so as not to unnecessarily restrict entry into the practice of the profession or adversely affect public access to the professional services.

In determining whether to regulate a profession or occupation, the Sunrise Act requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

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[7] *Id.* at 48; Iris Hentze, *Improving Occupational Licensing with Sunrise and Sunset Reviews*, National Conference of State Legislatures, (July 2018), http://www.ncsl.org/research/labor-and-employment/improving-occupational-licensing-with-sunrise-and-sunset-reviews.aspx (last visited Jan. 14, 2020); Council on Licensure & Regulation, *Sunrise, Sunset and State Agency Audits*, https://www.clearhq.org/page-486181 (last visited Jan. 14, 2020).
[8] Council on Licensure & Regulation *supra* note 5.
[9] Colo. Rev. Stat. § 24-34-104.1.
[10] Minn. Stat. § 214.002.
[11] ME. Rev. Stat. Ann. Tit. 32-1A, § 60-J.
[12] S. 11.62(4), F.S.
[13] S. 11.62, F.S.

The Sunrise Act requires proponents of legislation that propose new regulation on professions or occupations to provide the following information, **upon request,** by the agency proposed to have jurisdiction or the legislative committee to which the legislation is referred, to document the need for regulation:

- The number of individuals or businesses that would be subject to the regulation;
- The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct;
- Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding three years;
- A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;
- A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;
- A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts are not adequate to protect the public;
- A copy of any federal legislation mandating regulation;
- An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;
- The cost, availability, and appropriateness of training and examination requirements;
- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation;
- The details of any previous efforts in this state to implement regulation of the profession or occupation; and
- Any other information the agency or the committee considers relevant to the analysis of the proposed legislation.

The Sunrise Act requires the agency proposed to have jurisdiction over the regulation to provide the Legislature with the following information:

- The resources required to implement and enforce the regulation;
- The technical sufficiency of the proposal, including its consistency with the regulation of other professions; and
- Any alternatives that may result in less restrictive or more cost-effective regulation.

In determining whether to recommend regulation, the legislative committee reviewing the proposal must assess whether the proposed regulation is:

- Justified based on the statutory criteria and the information provided by both the proponents of regulation and the agency responsible for its implementation;
- The least restrictive and most cost-effective regulatory scheme necessary to protect the public; and
- Technically sufficient and consistent with the regulation of other professions under existing law.

State Agency Rulemaking and Statements of Estimated Regulatory Costs (SERC)

The Administrative Procedure Act (APA)[14] sets forth a uniform set of procedures that agencies must follow when exercising authority to make rules delegated to the agency by the Legislature. Rulemaking authority is delegated by the Legislature through statute and authorizes agencies to "adopt, develop, establish, or otherwise create" rules.[15]

[14] Ch. 120, F.S.

[15] Ss. 120.52(16)-(17) & 120.54(1)(a), F.S; Ch. 120, F.S.

The APA requires an agency to complete a statement of estimated regulatory costs (SERC) in certain circumstances. A SERC is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the proposed rule, as well as to the agency and other governmental entities to implement the rule. Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule. A SERC is required, however, if the proposed rule will have a negative impact on small businesses or increase regulatory costs by more than $200,000 in the aggregate within one year after implementation of the rule.[16] A SERC must include:[17]

- Good faith estimates of the number of people and entities affected by the proposed rule;
- Good faith estimates of the cost to the agency and other governmental entities to implement the proposed rule;
- Good faith estimates of the transactional costs likely to be incurred by people, entities, and governmental agencies for compliance. Transactional costs is defined to mean direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs;
- An analysis of the proposed rule's impact on small businesses, counties, and cities; and
- Any additional information that the agency determines may be useful.

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of $1 million within the first 5 years of implementation on:[18]

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

Effect of the Bill

The bill expands the Sunrise Act to provides that in addition to applying to legislation that regulates an unregulated profession or occupation, the Sunrise Act also applies to legislation that substantially expands regulation of an already regulated profession or occupation. The bill defines the term "substantial expansion of regulation" to mean to expand the scope of practice for current practitioners of a profession or occupation by regulating an activity that is not regulated by the state.

The bill requires proponents of legislation proposing regulation to provide the Legislature and the state agency proposed to have jurisdiction certain information documenting the need for regulation by a certain time, instead of doing so only upon request. The proponents must also file a draft of the legislation and a summary of any bills on the same subject that have been filed with the Legislature in the preceding five years. The proponents must provide this information to the President of the Senate, the Speaker of the House of Representatives, and the agency proposed to have jurisdiction over the regulation at least 30 days before the session in which the legislation is filed.

In addition to the current information an agency must provide to the Legislature, the bill provides that an agency must also provide the Legislature with the following information:

- Good faith estimates of the number of people and entities affected by the proposed regulation;
- Good faith estimates of transactional costs likely to be incurred by people, entities, and governmental agencies for compliance. Transactional costs are defined to mean direct costs that are ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, regulatory compliance costs, operating costs, the cost of monitoring and reporting, and any other costs necessary to comply with the rule;
- The anticipated costs to implement and enforce the proposed regulation, and any anticipated license fees necessary to cover the anticipated costs;
- Whether additional statutory or rulemaking authority is necessary to implement and enforce the proposed regulation;

[16] Ss. 120.54(3)(b) & 120.541(2), F.S.
[17] S. 120.541(2), F.S.
[18] *Id.*

- A comparison of similarly situated professions and occupations regulated by the agency;
- The anticipated impact of the proposed regulation on small businesses, counties, and cities;
- The anticipated impact of the proposed regulation on economic growth, private-sector job creation or employment, and business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets; and
- Any other information the agency determines relevant to the analysis of the proposed regulation.

The bill provides that the state agency proposed to have jurisdiction must provide the information to the President of the Senate, the Speaker of the House of Representatives, and the proponents of the legislation within 25 days of receiving the draft legislation from the proponents. If a state agency fails to provide the required information, they must notify the proponents of the legislation, the President of the Senate, and the Speaker of the House of Representatives that they could not comply with the Sunrise Act's requirements because the agency was unable to acquire sufficient information.

B. SECTION DIRECTORY:

Section 1. Amends s. 11.62, F.S., revising the requirements of the Sunrise Act.

Section 2. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The bill will require agencies to provide certain information to the Legislature and to the proponents of the proposed legislation within a certain time period. The cost to provide the information is indeterminate but may be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate, positive impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None. The bill does not require agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to legislative review of proposed regulation of unregulated functions; amending s. 11.62, F.S.; defining terms; providing that certain requirements must be met before the adoption of a regulation of an unregulated profession or occupation or the substantial expansion of regulation of a regulated profession or occupation; requiring the proponents of legislation that proposes such regulation to provide certain information to the state agency proposed to have jurisdiction over the regulation and the Legislature by a certain date; requiring such state agency to provide certain information to the Legislature within a certain time period; providing an exception; revising information that a legislative committee must consider when determining whether a regulation is justified; providing an effective date.

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

Section 1. Section 11.62, Florida Statutes, is amended to read:

11.62 Legislative review of proposed regulation of unregulated functions.—

(1) This section may be cited as the "Sunrise Act."

(2) It is the intent of the Legislature:

(a) That no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose; and

(b) That no profession or occupation be regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

(3) As used in this section, the term:

(a) "Substantial expansion of regulation" means to expand the scope of practice for current practitioners of a profession or occupation by regulating an activity that is not regulated by the state.

(b) "Transactional costs" means direct costs that are ascertainable based upon standard business practices, including filing fees, license fees, regulatory compliance costs, operating costs, monitoring and reporting costs, and any other costs necessary to comply with the proposed regulation.

(4) In determining whether to regulate a profession or occupation, the Legislature shall consider the following

factors:

(a) Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;

(b) Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;

(c) Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;

(d) Whether the public is or can be effectively protected by other means; and

(e) Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

(5) In order to ensure that the Legislature only adopts those regulations that are necessary to protect the public, and are the least restrictive regulatory alternative consistent with the public interest, the requirements of this section must be met before the adoption of:

(a) Any regulation of a profession or occupation not already expressly subject to state regulation; or

(b) Any regulation that substantially expands the regulation of a regulated profession or occupation.

(6) ~~(4)~~ The proponents of legislation, including any individual, group, or entity, that proposes ~~provides for~~ the regulation of an unregulated profession or occupation or the substantial expansion of regulation of a regulated profession or occupation ~~not already expressly subject to state regulation~~ shall provide~~, upon request,~~ the following information in writing to the state agency that is proposed to have jurisdiction over the regulation, the President of the Senate, and the Speaker of the House of Representatives at least 30 days before the regular session of the Legislature in which the legislation is to be filed ~~and to the legislative committees to which the legislation is referred~~:

(a) A copy of the draft legislation proposing to regulate an unregulated profession or occupation or the substantial expansion of regulation of a regulated profession or occupation;

(b) ~~(a)~~ The number of individuals or businesses that would be subject to the regulation;

(c) ~~(b)~~ The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct;

(d) ~~(c)~~ Documentation of the nature and extent of the harm

to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding 3 years;

(e) ~~(d)~~ A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;

(f) ~~(e)~~ A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;

(g) ~~(f)~~ A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts have not proven ~~are not~~ adequate to protect the public;

(h) ~~(g)~~ A copy of any federal legislation mandating regulation;

(i) ~~(h)~~ An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;

(j) ~~(i)~~ The cost, availability, and appropriateness of training and examination requirements;

(k) ~~(j)~~ The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;

(l) ~~(k)~~ The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation;

(m) ~~(l)~~ The details of any previous efforts in this state to implement regulation of the profession or occupation, including a summary of bills filed in the Legislature on the same subject in the preceding 5 years; and

(n) ~~(m)~~ Any other information the proponents of the legislation consider ~~agency or the committee considers~~ relevant to the analysis of the proposed legislation.

(7) ~~(5)~~ The state agency proposed to have jurisdiction over the regulation shall provide the President of the Senate and the Speaker of the House of Representatives with the following information within 25 days after the proponents of the legislation submit the draft legislation to the state agency in accordance with subsection (6) ~~The agency shall provide the Legislature with information concerning the effect of proposed legislation that provides for new regulation of a profession or occupation regarding~~:

(a) The departmental resources necessary to implement and enforce the proposed regulation, including, but not limited to, the anticipated costs to implement and enforce the proposed regulation and any anticipated license fees necessary to cover the anticipated costs.~~;~~

(b) Whether additional statutory or rulemaking authority

is necessary to implement and enforce the proposed regulation.

(c) A comparison of similarly situated professions and occupations regulated by the state agency.

(d) The anticipated impact on small businesses as defined in s. 288.703 and small counties and small cities as defined in s. 120.52.

(e) The anticipated impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets.

(f) The anticipated impact on economic growth and private sector job creation or employment.

(g) The technical sufficiency of the proposal for regulation, including its consistency with the regulation of other professions and occupations under existing law.~~; and~~

(h)~~(c)~~ If applicable, any alternatives to the proposed regulation which may result in a less restrictive or more cost-effective regulatory scheme.

(i) A good faith estimate of the number of individuals or businesses that would be subject to the proposed regulation.

(j) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, that would be required to comply with the proposed regulation.

(k) Any other information the state agency determines

relevant to the analysis of the proposed regulation.

(8) If the state agency that is proposed to have jurisdiction over the regulation is unable to provide the information required by subsection (7), such state agency shall notify the proponents of the legislation, the President of the Senate, and the Speaker of the House of Representatives that the agency was unable to acquire sufficient information to comply with that subsection.

(9) ~~(6)~~ When making a recommendation concerning proposed legislation providing for new regulation of a profession or occupation, a legislative committee shall determine:

(a) Whether the regulation is justified based on the criteria ~~specified in subsection (3), the information submitted pursuant to request under subsection (4),~~ and ~~the~~ information provided under subsections (4), (6), and (7) ~~subsection (5)~~;

(b) The least restrictive and most cost-effective regulatory scheme that will adequately protect the public; and

(c) The technical sufficiency of the proposed legislation, including its consistency with the regulation of other professions and occupations under existing law.

Section 2. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1181 Florida Disaster Volunteer Leave Act
SPONSOR(S): Maggard
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1050

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee		Villa	Smith
2) Appropriations Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Disaster Volunteer Leave Act (the Act) provides that an employee of a state agency who is a certified disaster service volunteer of the American Red Cross (Red Cross) may be granted a leave of absence with pay for not more than 15 working days in any 12-month period to participate in specialized disaster relief services for the Red Cross. Leave may be granted upon the request of the Red Cross and upon the approval of the employee's employing agency. Such leave may only be granted for services related to a disaster occurring within the state. However, with the approval of the Governor and Cabinet, leave may be granted for services in response to a disaster occurring within the United States.

The bill increases the number of state employees eligible to utilize paid administrative leave for disaster volunteer service, expands the type of organization through which an employee may provide volunteer service, and revises employee and employer requirements for disaster volunteer service. Specifically, the bill includes legislative and judicial employees as eligible to utilize paid administrative leave for disaster volunteer service and broadens volunteer service to include nonpaid services to a nonprofit 501(c)(3) or (4) organization that the employee has entered into an agreement with, not exclusively the Red Cross. A leave of absence with pay may be granted by the employing agency, upon the request of the employee, after the agency verifies the employee's volunteer status. Approval from the head of the employing agency is required for disasters occurring outside the state but within the United States. The bill further requires an employee who was granted leave for disaster volunteer service to provide the head of his or her employing agency, at a minimum, documentation specifying the time period the employee provided volunteer services and a description of the disaster response or recovery services provided.

The bill may have a negative fiscal impact on state government. *See* Fiscal Comments.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Disaster Volunteer Leave Act

The Florida Disaster Volunteer Leave Act[1] (the Act) provides that an employee of a state agency[2] who is a certified disaster service volunteer of the American Red Cross (Red Cross) may be granted a leave of absence with pay for not more than 15 working days in any 12-month period to participate in specialized disaster relief services for the Red Cross.[3] A "disaster" includes disasters designated at level II and above in the American National Red Cross regulations and procedures. Under the Act, a leave of absence may be granted upon the request of the Red Cross and upon the approval of the employee's employing agency. Such leave may only be granted for services related to a disaster occurring within the state. However, with the approval of the Governor and Cabinet, leave may be granted for services in response to a disaster occurring within the United States.

An employee granted leave under the Act is not deemed to be an employee of the state for purposes of workers' compensation during the leave of absence.

Tax-Exempt Nonprofit Organizations and Disaster Relief

Tax-exempt organizations, such as the Red Cross and the Salvation Army, play a critical role in disaster relief and recovery efforts. As recognized by the Internal Revenue Service, "[p]roviding aid to relieve human suffering caused by a natural or civil disaster or an emergency hardship is charity in its most basic form."[4] In the years since the 9/11 terrorist attack, there has been a sharp growth in the creation of tax-exempt nonprofits that receive donations and disburse assistance following a disaster.

To be tax-exempt under s. 501(c)(3) of the Internal Revenue Code, an organization must be operated for an exempt purpose including religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.[5] No part of the net earnings of the organization may inure to the benefit of any private shareholder or individual.[6]

Additionally, certain organizations may be tax-exempt under s. 501(c)(4) of the Internal Revenue Code, if the organization is not organized for profit but operated exclusively for the promotion of social welfare.[7] A local association of employees may also be granted tax-exempt status under s. 501(c)(4) if the membership is limited to the employees of a designated person or persons and the net earnings of the association are devoted exclusively to charitable, educational, or recreational purposes.[8]

State of Emergency Declaration Process

[1] Section 110.120, F.S., is cited as the Florida Disaster Volunteer Leave Act.
[2] The term "state agency" is defined by the Act to mean any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. Section 110.120(2)(a), F.S.
[3] Section 110.120(3), F.S.
[4] Internal Revenue Service, *Publication 3833, Disaster Relief, Providing Assistance Through Charitable Organizations*, https://www.irs.gov/pub/irs-pdf/p3833.pdf (last visited January 23, 2020).
[5] 26 U.S.C. § 501(c)(3).
[6] *Id.*
[7] 26 U.S.C. § 501(c)(4).
[8] *Id.*

In Florida, the Governor is responsible for meeting the dangers presented to this state and its people by emergencies.[9] In the event of an emergency[10] beyond local control, the Governor may assume or delegate direct operational control over all or any part of the emergency management functions within this state.[11] If the Governor finds that an emergency has occurred or that the occurrence or threat thereof is imminent, the Governor must declare a state of emergency through an executive order or proclamation.[12] The state of emergency will continue until the Governor finds that the emergency conditions no longer exist.[13] However, a state of emergency cannot continue for longer than 60 days unless renewed by the Governor.[14] The Legislature may terminate a state of emergency at any time by a concurrent resolution.[15] If a state of emergency is terminated by the Legislature, the Governor must issue an executive order or proclamation ending the state of emergency.[16] All executive orders or proclamations must indicate the nature of the emergency, the area or areas threatened, and the conditions which have brought the emergency about or which make its termination possible.[17]

Effect of the Bill

The bill increases the number of state employees eligible to utilize paid administrative leave for disaster volunteer service, expands the type of organization through which an employee may provide volunteer service, and revises employee and employer requirements for disaster volunteer service. Specifically, the bill includes legislative and judicial employees as eligible to utilize paid administrative leave for disaster volunteer service and broadens volunteer service to include nonpaid services to a nonprofit 501(c)(3) or (4) organization that the employee has entered into an agreement with, not exclusively the Red Cross. A leave of absence with pay may be granted by the employing agency, upon the request of the employee, after the agency verifies the employee's volunteer status. Approval from the head of the employing agency is required for disasters occurring outside the state but within the United States. The bill further requires an employee who was granted leave for disaster volunteer service to provide the head of his or her employing agency, at a minimum, documentation specifying the time period the employee provided volunteer services and a description of the disaster response or recovery services provided.

The bill revises the definition of disaster under the Act to no longer mean a disaster designated at certain levels by the Red Cross but to mean an event that has resulted in a state of emergency as declared by the Governor through an executive order under the State Emergency Management Act.[18]

B. SECTION DIRECTORY:

Section 1 amends s. 110.120, F.S., relating to administrative leave for disaster service volunteers.

Section 2 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[9] Section 252.36(1)(a), F.S.
[10] "Emergency" is defined by the State Emergency Management Act to mean any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property. Section 252.34(4), F.S.
[11] Section 252.36(1)(a), F.S.
[12] Section 252.36(2), F.S.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] Sections 252.31 – 252.60, F.S., are cited as the State Emergency Management Act. Section 252.31, F.S.

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Currently, only executive branch employees are eligible for disaster leave, and all volunteer services must be provided to the American Red Cross. The bill, by including the legislature and judicial branch in the definition of "state agency," makes those agencies' employees eligible to request disaster volunteer leave with any tax-exempt nonprofit under 501(c)(3) or 501(c)(4). Thus the government sector may experience a slight negative impact due to increased number of employees made eligible to request leave, and by expanding eligible volunteer opportunities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to effect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to the Florida Disaster Volunteer Leave Act; amending s. 110.120, F.S.; providing and revising definitions; providing that certain employees may be granted a leave of absence with pay for a specified period of time under certain circumstances; providing requirements for such leave to be granted; providing restrictions on the location an employee may provide disaster-related services; providing an exception; requiring certain documentation from an employee; providing an effective date.

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

Section 1. Section 110.120, Florida Statutes, is amended to read:

110.120 Administrative leave for disaster service volunteers.—

(1) SHORT TITLE.—This section shall be known and may be cited as the "Florida Disaster Volunteer Leave Act."

(2) DEFINITIONS.—As used in this section, the term ~~following terms shall apply~~:

(a) "State agency" means any official, officer, commission, board, authority, council, committee, or department of the executive, legislative, or judicial branch of state

government.

(b) "Disaster" means an event that has resulted in a state of emergency as declared by the Governor through an executive order under chapter 252 ~~includes disasters designated at level II and above in the American National Red Cross regulations and procedures~~.

(c) "Disaster area" means a location under a state of emergency as declared by the Governor through an executive order under chapter 252.

(d) "Volunteer" means a person who has entered into an agreement with a nonprofit organization that is exempt from federal income tax under s. 501(c)(3) or s. 501(c)(4) of the Internal Revenue Code to provide nonpaid services to a disaster area for disaster response or recovery.

(3) LEAVE OF ABSENCE.—An employee of a state agency who is a ~~certified disaster service~~ volunteer ~~of the American Red Cross~~ may be granted a leave of absence with pay for not more than 120 working hours ~~15 working days~~ in any 12-month period to provide ~~participate in specialized~~ disaster relief services ~~for the American Red Cross~~. Such leave of absence may be granted upon the request of the employee ~~American Red Cross~~ and upon the approval of the employee's employing agency after the agency verifies the employee's volunteer status. An employee granted leave under this section is ~~shall~~ not ~~be deemed to be~~ an employee of the state for purposes of workers' compensation.

Leave under this section ~~act~~ may be granted only to provide volunteer ~~for~~ services related to a disaster occurring within the boundaries of the state ~~of Florida~~, except that, with the approval of the head of the employee's employing agency ~~Governor and Cabinet~~, leave may be granted to provide volunteer ~~for~~ services in response to a disaster occurring within the boundaries of the states or territories of the United States. An employee granted leave under this section must provide to the head of his or her employing agency, at a minimum, the following documentation showing he or she completed volunteer services:

(a) Documentation specifying the time period that the employee provided services as a volunteer.

(b) A description of the disaster response or recovery services that the employee provided.

Section 2. This act shall take effect July 1, 2020.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Oversight, Transparency & Public Management Subcommittee

Representative Maggard offered the following:

Amendment

Remove line 25 and insert:

of the executive branch of state