Oversight, Transparency & Public Management Subcommittee

Tuesday, February 4, 2020
3:30 – 6:30 PM
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:	Tuesday, February 04, 2020 03:30 pm
End Date and Time:	Tuesday, February 04, 2020 06:30 pm
Location:	Morris Hall (17 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

HB 453 Law Enforcement and Correctional Officers by Duggan
HB 705 Emergency Sheltering of Persons with Pets by Killebrew, Toledo
CS/HB 755 Pub. Rec. and Meetings/911 and E911 Communication Systems by Energy & Utilities Subcommittee, DuBose
HB 1035 Pub. Rec./Records and Information Provided to Specified Entities for Disaster Recovery Assistance by Raschein
HB 1171 Division of State Technology by Toledo, Duran
HB 1173 Pub. Rec./Nonjudicial Arrest Record of a Minor by Watson, C.
HB 1251 Preservation of Memorials by Roach
HB 1323 Economic Self-sufficiency by Aloupis
HJR 1325 Repeal of Public Campaign Financing Requirement by Aloupis
HB 1327 Campaign Finance by Aloupis
HB 1331 Fire Control Districts and Firefighter Pensions by Roach
HB 1409 Pub. Rec./Records of Insurers/Department of Financial Services by Grant, M.
HB 1455 Division of Library and Information Services by Rodriguez, A. M.
HB 7043 Contingency Fees by Judiciary Committee, Gregory

Consideration of the following bill(s) with proposed committee substitute(s):

PCS for HB 729 -- Regulatory Reform
PCS for HB 757 -- Cultural Affairs

Consideration of the following proposed committee bill(s):

PCB OTM 20-10 -- OGSR/Animal Medical Records

NOTICE FINALIZED on 01/31/2020 4:11PM by Jones.Brenda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 453 Law Enforcement and Correctional Officers
SPONSOR(S): Duggan
TIED BILLS: **IDEN./SIM. BILLS:** SB 884

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

SUMMARY ANALYSIS

The Law Enforcement Officers' Bill of Rights (LEOBOR) provides certain statutory rights and privileges to law enforcement and correctional officers who are under investigation and subject to interrogation for any reason that could result in disciplinary action. The LEOBOR defines "law enforcement officer" and "correctional officer" to mean officers employed on a full time basis.

Currently, disciplinary action may not be taken against an officer unless the investigation is completed within 180 days after the date the agency receives notice of the allegation of misconduct by a person authorized by the agency to initiate an investigation of the misconduct. Notice of disciplinary action must be provided to the officer within 180 days. Florida courts have interpreted the 180-day provision as applying only to external complaints and not to internal complaints.

Prior to 2009, an officer injured by his or her employing agency's failure to comply with the LEOBOR could petition the circuit court for an injunction to restrain and enjoin such violation and to compel the performance of the duties imposed by the LEOBOR. Effective July 1, 2009, this judicial remedy was replaced with a multi-step process culminating in a compliance review hearing before an administrative panel with the authority to remove the investigator from further involvement in the case and direct the initiation of an investigation against the investigator.

The bill revises the definitions of "law enforcement officer" and "correctional officer" to include officers employed part time. The bill further specifies that the 180-day provision applies regardless of the origin of the allegation or complaint. The 180-days begin once the agency receives notice of the allegation, not only once the agency receives notice of the allegation by a person authorized by the agency to initiate an investigation of the misconduct.

The bill amends the LEOBOR to provide that if a law enforcement or correctional officer fails to comply with the LEOBOR, or if the injury suffered by the officer is not capable of being remedied by a compliance review hearing, the officer may file an action for injunctive relief in the circuit court where the agency is located to enforce the requirements of the LEOBOR. Furthermore, clear and convincing evidence that the agency violated the LEOBOR constitutes irreparable harm for purposes of injunctive relief.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Law Enforcement Officers' Bill of Rights

Chapter 112, Part VI, F.S., commonly known as the Law Enforcement Officers' Bill of Rights (LEOBOR), provides specific rights when a law enforcement officer[1] or correctional officer[2] is under investigation and subject to interrogation by members of his or her agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal. The LEOBOR defines "law enforcement officer" and "correctional officer" to mean officers employed on a full time basis.

The LEOBOR prescribes the conditions under which an interrogation of an officer must be conducted, including limitations on the time, place, manner, and length of the interrogation, as well as restrictions on the interrogation techniques.[3] The LEOBOR further affords officers:

- the right to be informed of the nature of the investigation;
- the right to be provided with all evidence against the officer before any interrogation;
- the right to counsel during any interrogation;
- the right to the interrogation recording;
- the right to a complete copy of the investigative file;
- the right to be notified of the reason for disciplinary action before it is imposed; and
- the right to address the findings in the investigative file with the employing agency before disciplinary action is imposed.[4]

An officer cannot be disciplined or otherwise discriminated against for exercising his or her rights under the LEOBOR.[5]

Limitations Period for Disciplinary Action

The LEOBOR provides that disciplinary action may not be taken against an officer for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within 180 days after the date the agency receives notice of the allegation by a person authorized by the agency to initiate an investigation of the misconduct.[6] No statutory provision identifies who within the agency must receive the complaint. As such, the policy of the law enforcement agency or correctional agency determines the individual or individuals authorized by the agency to receive a complaint and initiate an investigation of officer misconduct.[7]

Florida courts have interpreted the 180-day provision as applying only to external complaints and not to internal complaints. In *Fraternal Order of Police, Gator Lodge 67 v. City of Gainesville*[8] an internal complaint was filed against an officer and the agency's subsequent investigation exceeded 180 days. The court reaffirmed its prior interpretation and held that the 180-day provision does not apply to internal complaints because the 180-day provision is triggered by the agency's *receipt* of a complaint,

---

[1] Section 112.531(1), F.S., defines "law enforcement officer" as "any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07."

[2] Section 112.531(2), F.S., defines "correctional officer" as "any person, other than a warden, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution; and includes correctional probation officers, as defined in s. 943.10(3). However, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

[3] Section 112.532(1), F.S.

[4] Section 112.532(1) & (4), F.S.

[5] Section 112.532(5), F.S.

[6] Section 112.532(6), F.S.

[7] Attorney General Opinion 2006-25 (June 29, 2006).

[8] *Fraternal Order of Police, Gator Lodge 67 v. City of Gainesville,* 148 So. 3d 798 (Fla. 1st DCA 2014).

and therefore, the complaint would need to come from a person outside the agency for the 180-day provision to apply.[9]

If the agency determines that disciplinary action is appropriate, it must complete its investigation and give notice in writing to the law enforcement officer or correctional officer of its intent to proceed with disciplinary action. Notice to the officer must be provided within 180 days after the date the agency received notice of the alleged misconduct. The running of the limitations period may be tolled or extended under certain circumstances.[10]

Compliance Review Procedures

Prior to 2009, a law enforcement or correctional officer injured by his or her agency's failure to comply with the LEOBOR could petition the circuit court for an injunction to restrain and enjoin the violation and compel performance of the duties imposed by the LEOBOR.[11] However, ch. 2009-200, L.O.F., replaced this judicial remedy with the current multi-step process culminating in a compliance review hearing. The purpose of a compliance review hearing is to remedy violations of the LEOBOR by removing the investigator from further involvement in the case.[12]

Currently, if an investigative officer or agency fails to comply with the LEOBOR, the officer under investigation may request a compliance review hearing.[13] The officer is required to advise the investigator of the intentional violation of the LEOBOR alleged.[14] If the investigator fails to cure the violation or continues the violation after being notified by the officer, the officer must request the agency head or his or her designee be informed of the alleged intentional violation.[15] Once this request is made, the interview of the officer must cease.[16] Thereafter, a written notice of violation and request for a compliance review hearing must be filed within three working days with the agency head or designee which must contain sufficient information to identify the alleged intentional violation of the LEOBOR.[17]

Unless otherwise remedied by the agency before a hearing, a compliance review hearing must be conducted within ten working days after the request for a compliance review hearing is filed.[18]

An officer under investigation for a disciplinary matter is entitled a compliance review hearing to review alleged violations of the LEOBOR, regardless of the source of the complaint that led to the investigation.[19] The compliance review panel[20] reviews the circumstances and facts surrounding the

---

[9] *Id. See also McQuade v. Department of Corrections,* 51 So. 3d 489 (Fla. 1st DCA 2010); *Migliore v. City of Lauderhill*, 415 So. 2d 62 (Fla. 4th DCA 1982); *approved,* 431 So. 2d 986 (Fla. 1983).

[10] The running limitations period may be tolled for a period specified in a written waiver of the limitation by the law enforcement officer or correctional officer; must be tolled during the time that any criminal investigation or prosecution is pending in connection with act, omission, or other allegation of misconduct; must be tolled if the investigation involves an officer who is incapacitated or otherwise unavailable; may be extended during a multijurisdictional investigation to facilitate coordination with other agencies involved; may be tolled for certain emergencies or natural disasters; and must be tolled during the time that the officer's compliance hearing proceeding is continuing beginning with the filing of notice of violation and a request for a hearing and ending with the written determination of the compliance review panel or upon the violation being remedied by the agency. Section 112.532(6), F.S.

[11] *Fraternal Order of the Police, Gator Lodge 67*, 148 So. 3d 798, at 802.

[12] *Id.* at 805.

[13] Section 112.534(1), F.S.

[14] Section 112.534(1)(a), F.S.

[15] Section 112.534(1)(b), F.S.

[16] *Id.* Refusal to respond to an investigative question by the officer does not constitute insubordination or any similar type of policy violation.

[17] Section 112.534(1)(c), F.S.

[18] An alternate date may be chosen by mutual agreement of the officer and agency or for extraordinary reasons. Section 112.534(1)(d), F.S.

[19] *Fraternal Order of the Police, Gator Lodge* 67, 148 So. 3d 798, at 805-06.

[20] The compliance review panel is made up of three members: one member selected by the agency head, one member selected by the officer filing the request, and a third member selected by the other two members. These members must be active law enforcement or correctional officers from the same law enforcement discipline as the officer filing the request. The panel may be selected from any state, county, or municipal agency within the county in which the officer works. Section 112.534(1)(d), F.S.

alleged intentional violation and must determine whether or not the investigator or agency intentionally violated the requirements of the LEOBOR.[21]

A compliance review panel only reviews alleged violations of the LEOBOR occurring while the investigation is ongoing. In other words, once the investigation is completed, a compliance review hearing is no longer available.[22] If an alleged violation is sustained by the compliance review panel, the agency head must immediately remove the investigator from any further involvements with the investigation of the office.[23]

Effect of the Bill

The bill revises the definitions of “law enforcement officer” and “correctional officer” to include officers employed on a part time basis for the purposes of misconduct review proceedings.

The bill specifies that the 180-day provision applies regardless of the origin of the allegation or complaint. Therefore, investigations of external and internal complaints must be completed within 180 days, and if the agency determines that disciplinary action is appropriate, the officer must be provided written notice within 180 days. Additionally, the bill provides that the 180-days begins once the agency receives notice of the allegation or complaint, not only once the agency receives notice by a person authorized to initiate an investigation of the misconduct.

Additionally, the bill allows a law enforcement officer or correctional officer to file for injunctive relief in certain situations. Specifically, if a law enforcement agency or correctional agency, including investigators in its internal affairs or professional standards division, or an assigned investigating supervisor, fails to comply with the requirements of the LEOBOR, an officer who is personally injured by such failure to comply may file an action for injunctive relief to enforce the requirements of the LEOBOR.

The bill also provides for injunctive relief if the injury suffered by the officer employed by or appointed to the agency is not capable of being remedied by a compliance review hearing. In that case, the officer who is personally injured by such failure to comply may file an action for injunctive relief to enforce the requirements of the LEOBOR.

The bill requires the action for injunctive relief to be filed in the circuit court where the agency is located. The bill specifies that clear and convincing[24] evidence an agency violated the LEOBOR constitutes irreparable harm for purposes of injunctive relief.

B. SECTION DIRECTORY:

Section 1 amends s. 112.531, F.S., relating to definitions.

Section 2 amends s. 112.532(6), F.S., relating to law enforcement officers’ and correctional officers’ rights.

Section 3 amends s. 112.534, F.S., relating to the failure to comply with the LEOBOR.

Section 4 provides an effective date of July 1, 2020.

---

[21] Section 112.534(1)(e), F.S.

[22] *Fraternal Order of Police, Gator Lodge 67,* 148 So. 2d at 804 & 808.

[23] Additionally, the agency head must direct an investigation to be initiated against the investigator determined to have intentionally violated the agency disciplinary action procedures under this part. If that investigation is sustained, the sustained allegations against the investigator shall be forwarded to the Criminal Justice Standards and Training Commission for review as an act of official misconduct and misuse of position. Section 112.534(1)(g), F.S.

[24] Clear and convincing evidence may be defined as an: “intermediate level of proof [that] entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.” *In re Davey,* 645 So. 2d 398, 404 (Fla. 1994).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires all law enforcement and correctional agencies to comply with the LEOBOR for part time law enforcement and correctional officers. The bill also requires the investigations of allegations raised internally and externally to be completed within 180 days. The bill also provides that the 180-days begin when the agency receives notice of the allegation of misconduct by anyone, not only a person authorized by the agency to initiate an investigation. The bill also provides for a private right of action for violations of the LEOBOR. Therefore, the fiscal impact on these agencies will vary based on part time officers employed and frequency of complaints raised internally.

The Department of Highway Safety and Motor Vehicles reports that the bill does not appear to have any fiscal impact on the department.[25]

The Department of Corrections reports that the bill would significantly impact the resources necessary to conduct investigations. The department estimates a 43% increase in investigative staff and a recurring annual cost of 3.1 million dollars.[26]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

---

[25] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2020 HB 453, p. 3 (December 18, 2019).

[26] Department of Corrections, Agency Analysis of 2020 HB 453, p. 3-4 (January 17, 2020).

B. RULE-MAKING AUTHORITY:

This bill does not confer rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to law enforcement and correctional
3 officers; reordering and amending s. 112.531, F.S.;
4 revising definitions; amending s. 112.532, F.S.;
5 specifying that an allegation of misconduct may
6 originate from any source, not just a person
7 authorized to initiate an investigation; amending s.
8 112.534, F.S.; authorizing an officer to bring an
9 action for injunctive relief if a law enforcement or
10 correctional agency fails to comply with specified
11 provisions; providing a presumption of irreparable
12 harm; providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Section 112.531, Florida Statutes, is reordered
17 and amended to read:
18 112.531 Definitions.—As used in this part:
19 (1) ~~(2)~~ "Correctional officer" means any person, other than
20 a warden, who is appointed or employed full time or part time by
21 the state or any political subdivision thereof whose primary
22 responsibility is the supervision, protection, care, custody, or
23 control of inmates within a correctional institution; and
24 includes correctional probation officers, as defined in s.
25 943.10(3). However, the term "correctional officer" does not

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

26 include any secretarial, clerical, or professionally trained
27 personnel.
28 (2) ~~(1)~~ "Law enforcement officer" means any person, other
29 than a chief of police, who is employed full time or part time
30 by any municipality or the state or any political subdivision
31 thereof and whose primary responsibility is the prevention and
32 detection of crime or the enforcement of the penal, traffic, or
33 highway laws of this state; and includes any person who is
34 appointed by the sheriff as a deputy sheriff pursuant to s.
35 30.07.
36 Section 2. Paragraph (a) of subsection (6) of section
37 112.532, Florida Statutes, is amended to read:
38 112.532 Law enforcement officers' and correctional
39 officers' rights.—All law enforcement officers and correctional
40 officers employed by or appointed to a law enforcement agency or
41 a correctional agency shall have the following rights and
42 privileges:
43 (6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.—
44 (a) Except as provided in this subsection, disciplinary
45 action, suspension, demotion, or dismissal may not be undertaken
46 by an agency against a law enforcement officer or correctional
47 officer for any act, omission, or other allegation or complaint
48 of misconduct, regardless of the origin of the allegation or
49 complaint, if the investigation of the allegation or complaint
50 is not completed within 180 days after the date the agency

51 receives notice of the allegation or complaint ~~by a person~~
52 ~~authorized by the agency to initiate an investigation of the~~
53 ~~misconduct~~. If the agency determines that disciplinary action is
54 appropriate, it shall complete its investigation and give notice
55 in writing to the law enforcement officer or correctional
56 officer of its intent to proceed with disciplinary action, along
57 with a proposal of the specific action sought, including length
58 of suspension, if applicable. Notice to the officer must be
59 provided within 180 days after the date the agency received
60 notice of the alleged misconduct, regardless of the origin of
61 the allegation or complaint, except as follows:
62 1. The running of the limitations period may be tolled for
63 a period specified in a written waiver of the limitation by the
64 law enforcement officer or correctional officer.
65 2. The running of the limitations period is tolled during
66 the time that any criminal investigation or prosecution is
67 pending in connection with the act, omission, or other
68 allegation of misconduct.
69 3. If the investigation involves an officer who is
70 incapacitated or otherwise unavailable, the running of the
71 limitations period is tolled during the period of incapacitation
72 or unavailability.
73 4. In a multijurisdictional investigation, the limitations
74 period may be extended for a period of time reasonably necessary
75 to facilitate the coordination of the agencies involved.

76 5. The running of the limitations period may be tolled for
77 emergencies or natural disasters during the time period wherein
78 the Governor has declared a state of emergency within the
79 jurisdictional boundaries of the concerned agency.
80 6. The running of the limitations period is tolled during
81 the time that the officer's compliance hearing proceeding is
82 continuing beginning with the filing of the notice of violation
83 and a request for a hearing and ending with the written
84 determination of the compliance review panel or upon the
85 violation being remedied by the agency.
86 Section 3. Subsection (2) of section 112.534, Florida
87 Statutes, is renumbered as subsection (3), and a new subsection
88 (2) is added to that section, to read:
89 112.534 Failure to comply; official misconduct.—
90 (2) If any law enforcement agency or correctional agency,
91 including investigators in its internal affairs or professional
92 standards division, or an assigned investigating supervisor,
93 fails to comply with the requirements of this part, or if the
94 injury suffered by the law enforcement officer or correctional
95 officer employed by or appointed to such agency is not capable
96 of being remedied by a compliance review hearing, the officer
97 who is personally injured by such failure to comply may file an
98 action for injunctive relief in the circuit court where the
99 agency is located to enforce the requirements of this part.
100 Clear and convincing evidence that an agency violated this part

101 constitutes irreparable harm for purposes of injunctive relief.

102 Section 4. This act shall take effect July 1, 2020.

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Oversight, Transparency &
2 Public Management Subcommittee
3 Representative Duggan offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Section 112.531, Florida Statutes, is reordered
8 and amended to read:
9 112.531 Definitions.—As used in this part:
10 (1) ~~(2)~~ "Correctional officer" means any person, other than
11 a warden, who is appointed or employed full time or part time by
12 the state or any political subdivision thereof whose primary
13 responsibility is the supervision, protection, care, custody, or
14 control of inmates within a correctional institution; and
15 includes correctional probation officers, as defined in s.
16 943.10(3). However, the term "correctional officer" does not

17 include any secretarial, clerical, or professionally trained
18 personnel.
19 (2)~~(1)~~ "Law enforcement officer" means any person, other
20 than a chief of police, who is employed full time or part time
21 by any municipality or the state or any political subdivision
22 thereof and whose primary responsibility is the prevention and
23 detection of crime or the enforcement of the penal, traffic, or
24 highway laws of this state; and includes any person who is
25 appointed by the sheriff as a deputy sheriff pursuant to s.
26 30.07.
27 Section 2. Paragraph (a) of subsection (6) of section
28 112.532, Florida Statutes, is amended to read:
29 112.532 Law enforcement officers' and correctional
30 officers' rights.—All law enforcement officers and correctional
31 officers employed by or appointed to a law enforcement agency or
32 a correctional agency shall have the following rights and
33 privileges:
34 (6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.—
35 (a) Except as provided in this subsection, disciplinary
36 action, suspension, demotion, or dismissal may not be undertaken
37 by an agency against a law enforcement officer or correctional
38 officer for any act, omission, or other allegation or complaint
39 of misconduct, regardless of the origin of the allegation or
40 complaint, if the investigation of the allegation or complaint
41 is not completed within 180 days after the date the agency

42 receives notice of the allegation or complaint by a person
43 authorized by the agency to initiate an investigation of the
44 misconduct. If the agency determines that disciplinary action is
45 appropriate, it shall complete its investigation and give notice
46 in writing to the law enforcement officer or correctional
47 officer of its intent to proceed with disciplinary action, along
48 with a proposal of the specific action sought, including length
49 of suspension, if applicable. Notice to the officer must be
50 provided within 180 days after the date the agency received
51 notice of the alleged misconduct, regardless of the origin of
52 the allegation or complaint, except as follows:
53 1. The running of the limitations period may be tolled for
54 a period specified in a written waiver of the limitation by the
55 law enforcement officer or correctional officer.
56 2. The running of the limitations period is tolled during
57 the time that any criminal investigation or prosecution is
58 pending in connection with the act, omission, or other
59 allegation of misconduct.
60 3. If the investigation involves an officer who is
61 incapacitated or otherwise unavailable, the running of the
62 limitations period is tolled during the period of incapacitation
63 or unavailability.
64 4. In a multijurisdictional investigation, the limitations
65 period may be extended for a period of time reasonably necessary
66 to facilitate the coordination of the agencies involved.

67 5. The running of the limitations period may be tolled for
68 emergencies or natural disasters during the time period wherein
69 the Governor has declared a state of emergency within the
70 jurisdictional boundaries of the concerned agency.
71 6. The running of the limitations period is tolled during
72 the time that the officer's compliance hearing proceeding is
73 continuing beginning with the filing of the notice of violation
74 and a request for a hearing and ending with the written
75 determination of the compliance review panel or upon the
76 violation being remedied by the agency.
77 Section 3. This act shall take effect July 1, 2020.
78
79 ---
80 **T I T L E A M E N D M E N T**
81 Remove everything before the enacting clause and insert:
82 An act relating to law enforcement and correctional officers;
83 reordering and amending s. 112.531, F.S.; revising definitions;
84 amending s. 112.532, F.S.; specifying that an allegation of
85 misconduct may originate from any source; providing an effective
86 date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 705 Emergency Sheltering of Persons with Pets
SPONSOR(S): Killebrew and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 752

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

SUMMARY ANALYSIS

The federal Pets Evacuation and Transportation Standards (PETS) Act was signed into law in 2006 and requires state and local emergency preparedness authorities to plan for how they will accommodate the needs of persons with pets and service animals prior to, during, and following a major disaster or emergency. The PETS Act also authorizes FEMA to provide rescue, care, shelter, and essential needs to persons with pets and service animals following a major disaster or emergency. Accordingly, FEMA authorizes state and local governments to seek reimbursement for pet rescue, shelter, and evacuation-support costs.

The Division of Emergency Management (DEM) addresses the sheltering of service animals and persons with pets in the State Comprehensive Emergency Management Basic Plan and the Statewide Emergency Shelter Plan (Plans). Specifically, the Plans include information on the availability of shelters that accept pets, and states that a person who uses a service animal must be allowed to bring the service animal into a shelter and be accompanied by the service animal in all areas of public accommodation. Additionally, the Plans provide that the following be taken into consideration when developing strategies for the sheltering of persons with pets:

- Locating pet-friendly shelters within buildings with restrooms, running water, and proper lighting;
- Allowing pet owners to interact with their animals and care for them; and
- Ensuring animals are properly cared for during the emergency.

The bill requires each county to designate at least one shelter that can accommodate persons with pets. The pets must be contained in secure enclosures in an area of the facility separate from the sheltering public. The designated shelter must be in compliance with safety procedures regarding the sheltering of pets established in the shelter component of the state comprehensive emergency management plan.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Pets Evacuation and Transportation Standards Act

On October 6, 2006, the federal Pets Evacuation and Transportation Standards (PETS) Act was signed into law amending the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).[1] The PETS Act requires state and local emergency preparedness authorities to plan for how they will accommodate the needs of individuals with household pets and service animals prior to, during, and following a major disaster or emergency when presenting their plans to the Federal Emergency Management Agency (FEMA). The PETS Act also authorizes FEMA to provide rescue, care, shelter, and essential needs for individuals with household pets and service animals, and to the household pets and animals themselves, following a major disaster or emergency.

FEMA's Disaster Assistance Policy

FEMA's Disaster Assistance Policy (DAP) authorizes state and local governments that receive evacuees from areas declared a major disaster or emergency to seek reimbursement for pet rescue, sheltering, and evacuation-support costs. Contractors and nonprofit organizations may be indirectly reimbursed through a state or local government provided their operations and expenses are verified.[2]

FEMA's DAP identifies reimbursable expenses related to state and local governments' emergency pet evacuation and sheltering activities. For household pet rescue, reimbursable expenses include overtime for regular full-time employees, regular and overtime for contract labor, and the use of owned or leased equipment. For congregated household pet sheltering, reimbursable expenses include facilities, supplies and commodities, labor, equipment, emergency veterinary services, shelter safety and security, and cleaning and restoration services.[3]

Additionally, FEMA's DAP provides the following definitions:

> **Household pet** means a domesticated animal, such as a dog, cat, bird, rabbit, rodent, or turtle that is traditionally kept in the home for pleasure rather than for commercial purposes, can travel in commercial carriers, and be housed in temporary facilities. Household pets do not include reptiles (except turtles), amphibians, fish, insects and arachnids, farm animals (including horses), and animals kept for racing purposes.
>
> **Service animal** means any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.[4]

Division of Emergency Management

The Division of Emergency Management (division) is responsible for all professional, technical, and

---

[1] 42 U.S.C. 170b, 42 U.S.C. 5192; the Pets Evacuation and Transportation Standards Act (PETS Act) of 2006, P.L. No. 109-308, § 4, 120 Stat. 1725 (2006); and 44 CFR §§ 206.223(a), 206.225(a).

[2] Federal Emergency Management Agency, *FEMA Disaster Assistance Policy 9523.19*
, https://www.fema.gov/pdf/government/grant/pa/policy.pdf (last visited January 28, 2020).

[3] *Id.*

[4] *Id.*

administrative support functions necessary to carry out the State's Emergency Management Act.[5,6] The division, with the assistance of the Department of Agriculture and Consumer Services, is required to address strategies for the evacuation of persons with pets and must include similar strategies in its standards and requirements for local comprehensive emergency management plans.[7]

The State Comprehensive Emergency Management Basic Plan and the Statewide Emergency Shelter Plan (the Plans) address the sheltering of service animals and persons with pets.[8] Specifically, the Plans include information on the availability of shelters that accept pets, and states that a person who uses a service animal must be allowed to bring the service animal into a shelter and be accompanied by the service animal in all areas of public accommodation. Additionally, the Plans provide that the following be taken into consideration when developing strategies for the sheltering of persons with pets:

- Locating pet-friendly shelters within buildings with restrooms, running water, and proper lighting;
- Allowing pet owners to interact with their animals and care for them; and
- Ensuring animals are properly cared for during the emergency.

Emergency Sheltering Facilities

Counties may initiate their own protective measures, such as ordering evacuations and activating public shelters, including pet-friendly shelters.[9] Public facilities, including schools, postsecondary education facilities, and other facilities owned or leased by the state or local governments, which are suitable for use as public evacuation centers must be made available at the request of the local emergency management agencies.[10] Agencies must coordinate with these entities to ensure that designated facilities are ready to activate prior to an emergency or disaster.[11] Hospitals, hospice care facilities, assisted living facilities, and nursing homes may not be designated as emergency sheltering facilities.[12]

Effect of the Bill

The bill provides that each county must designate at least one shelter that can accommodate persons with pets. The pets must be contained in secure enclosures in an area of the facility separate from the sheltering public. The shelter must be in compliance with safety procedures regarding the sheltering of pets established in the shelter component of the state comprehensive emergency management plan.

B. SECTION DIRECTORY:

Section 1 amends s. 252.3568, F.S., relating to emergency sheltering of persons with pets.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

---

[5] Section 14.2016(1), F.S.
[6] Sections 252.31 – 252.63, F.S., are cited as the State Emergency Management Act. Section 252.31, F.S.
[7] Section 252.3568, F.S.
[8] Division of Emergency Management, *2018 Statewide Emergency Shelter Plan*, https://www.floridadisaster.org/globalassets/dem/response/sesp/2018/2018-sesp-a1-main-plan-text_final_1-30-18.pdf (last visited January 28, 2020); Division of Emergency Management, *2014 State of Florida Comprehensive Emergency Management Basic Plan*, https://www.floridadisaster.org/globalassets/importedpdfs/2014-state-cemp-basic-plan.pdf (last visited January 29, 2020).
[9] Division of Emergency Management, *2014 State of Florida Comprehensive Emergency Management Basic Plan*, *supra* note 8.
[10] Section 252.385(4)(a), F.S.
[11] *Id.*
[12] *Id.*

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:

The bill may have an indeterminate negative fiscal impact on counties to designate at least one shelter that can accommodate persons with pets. The bill provides that pets must be contained in secure enclosures in an area of the facility separate from the sheltering public, and the shelter must be in compliance with safety procedures regarding the sheltering of pets established in the shelter component of the state comprehensive emergency management plan. The costs associated with designating appropriate facilities and containing pets is indeterminate as each county would be responsible for determining their own standards.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may require counties to expend funds in order to designate shelters that can accommodate persons with pets and ensure the pets are contained in secure enclosures separate from the sheltering public. However, an exemption may apply due to an insignificant fiscal cost.

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.

1 A bill to be entitled
2 An act relating to emergency sheltering of persons
3 with pets; requiring counties to designate at least
4 one shelter that can accommodate persons with pets;
5 specifying requirements for such shelters; providing
6 an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 252.3568, Florida Statutes, is amended
11 to read:
12 252.3568 Emergency sheltering of persons with pets.—
13 (1) In accordance with s. 252.35, the division shall
14 address strategies for the evacuation of persons with pets in
15 the shelter component of the state comprehensive emergency
16 management plan and shall include the requirement for similar
17 strategies in its standards and requirements for local
18 comprehensive emergency management plans. The Department of
19 Agriculture and Consumer Services shall assist the division in
20 determining strategies regarding this activity.
21 (2) Each county must designate at least one shelter that
22 can accommodate persons with pets. The pets must be contained in
23 secure enclosures in an area of the facility separate from the
24 sheltering public. The shelter must be in compliance with safety
25 procedures regarding the sheltering of pets established in the

26 shelter component of the state comprehensive emergency
27 management plan.
28 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

---

1 Committee/Subcommittee hearing bill: Oversight, Transparency &
2 Public Management Subcommittee
3 Representative Killebrew offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Section 252.3568, Florida Statutes, is amended
8 to read:
9 252.3568 Emergency sheltering of persons with pets.—
10 (1) In accordance with s. 252.35, the division shall
11 address strategies for the evacuation of persons with pets in
12 the shelter component of the state comprehensive emergency
13 management plan and shall include the requirement for similar
14 strategies in its standards and requirements for local
15 comprehensive emergency management plans. The Department of
16 Agriculture and Consumer Services and the Department of

17 Education shall assist the division in determining strategies
18 regarding this activity.
19 (2) If a county maintains designated shelters it must also
20 designate a shelter that can accommodate persons with pets. The
21 shelter must be in compliance with applicable FEMA Disaster
22 Assistance Policies and Procedures and with safety procedures
23 regarding the sheltering of pets established in the shelter
24 component of both local and state comprehensive emergency
25 management plans.
26 Section 2. This act shall take effect July 1, 2020.
27
28 ---
29 **T I T L E A M E N D M E N T**
30 Remove everything before the enacting clause and insert:
31 An act relating to emergency sheltering of persons with pets;
32 requiring counties that maintain designated shelters to
33 designate a shelter that can accommodate persons with pets;
34 specifying requirements for such shelters; providing an
35 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 755 Pub. Rec. and Meetings/911 and E911 Communication Systems
SPONSOR(S): Energy & Utilities Subcommittee; DuBose
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1060

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	14 Y, 0 N, As CS	Keating	Keating
2) Oversight, Transparency & Public Management Subcommittee		Villa	Smith
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government. However, the Legislature may provide by general law for the exemption of records from the constitutional requirements.

Current law provides public record exemptions for various records related to the physical security of certain structures and for certain information related to the Nationwide Public Safety Broadband Network. There is not a specific public record exemption for records related to infrastructure used to provide 911 or E911 communication service.

The bill creates a public record exemption for specific records that identify the design, scope, and location of 911 or E911 communication system infrastructure owned and operated by an agency before, on, or after the effective date of the bill. The bill also creates a public meeting exemption for any portion of a meeting that would reveal these records. Specifically, the bill creates a public record exemption for:

- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency; and
- Geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 services, or other 911 or E911 communication structures or facilities owned and operated by an agency.

The bill identifies specific circumstances in which these records may be disclosed. Further, the bill requires that all portions of a public meeting exempted by the bill be recorded and transcribed. The bill provides that such recordings and transcripts are confidential and exempt from disclosure as public records except to the extent that any portion of the recording or transcript is determined by a court of competent jurisdiction, after an in camera review, to reveal nonexempt data.

The bill provides for repeal of the exemptions on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

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

The bill provides that it will take effect upon becoming law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a).[1] The general law must state with specificity the public necessity justifying the exemption[2] and must be no more broad than necessary to accomplish its purpose.[3]

Public Meetings

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

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.[4] The board or commission must provide reasonable notice of all public meetings.[5] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or that operates in a manner that unreasonably restricts the public's access to the facility.[6] Minutes of a public meeting must be promptly recorded and open to public inspection.[7]

The Legislature may provide by general law for the exemption of meetings from the requirements of article I, section 24(b) of the Florida Constitution.[8] The general law must state with specificity the public necessity justifying the exemption[9] and must be no more broad than necessary to accomplish its purpose.[10]

Open Government Sunset Review

[1] FLA. CONST. art. I, s. 24(c).
[2] This portion of a public record exemption is commonly referred to as a "public necessity statement."
[3] FLA. CONST. art. I, s. 24(c).
[4] S. 286.011(1), F.S.
[5] *Id.*
[6] S. 286.011(6), F.S.
[7] S. 286.011(2), F.S.
[8] FLA. CONST. art. I, s. 24(c).
[9] This portion of a public meeting exemption is commonly referred to as a "public necessity statement."
[10] FLA. CONST. art. I, s. 24(c).

The Open Government Sunset Review Act[11] provides that a public meeting and public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[12]

The Act requires the automatic repeal of a public meeting or public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.[13]

Public Record and Public Meeting Exemptions for Building Security and Public Safety Communications System Information

Current law provides a public record exemption for various records related to the physical security of certain structures. For example, building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency[14] are exempt from disclosure as a public record.[15] This information may be disclosed to another governmental entity if necessary in the performance of its duties and responsibilities or to a licensed architect, contractor, or engineer who is performing work on or related to the structure at issue. If disclosed, the entity that receives the information must maintain its exempt status.

In addition, current law provides a public record exemption for certain information related to the Nationwide Public Safety Broadband Network[16] that is held by an agency. This information, which includes geographical maps indicating actual or proposed locations of network infrastructure or facilities, among other things, is confidential and exempt from disclosure as a public record.[17]

Effect of Proposed Changes

The bill creates a public record exemption for specific records that identify the design, scope, and location of 911 or E911 communication system infrastructure owned and operated by an agency before, on, or after the effective date of the bill. The bill also creates a public meeting exemption for any portion of a meeting that would reveal these records.

Specifically, the bill provides the following records are exempt[18] from public record requirements:

---

[11] S. 119.15, F.S.
[12] S. 119.15(6)(b), F.S.
[13] S. 119.15(3), F.S.
[14] For purposes of the public record law, an "agency" means "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." S. 119.011(2), F.S.
[15] S. 119.071(3)(b), F.S.
[16] In 2012, Federal law mandated the development of a nationwide, interoperable public safety broadband network. The network is based on a single, national network architecture that evolves with technological advances and that initially consists of a core network of national and regional data center that provides connectivity between the radio access network and the public Internet or public switched network, or both. 47 U.S.C. s. 1422. The network was created "to give public safety 21st century communication tools to help save lives, solve crimes and keep our communities and emergency responders safe." FirstNet, *The Network*, https://firstnet.gov/network (last visited Jan. 17, 2020).
[17] S. 119.071(3)(d), F.S.
[18] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review*

- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency; and
- Geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 services, or other 911 or E911 communication structures or facilities owned and operated by an agency.

The bill provides that this information may be disclosed in three circumstances, provided that any entity who receives the information must maintain its exempt status. First, it may be disclosed to another governmental entity if necessary for the receiving entity to perform its duties and responsibilities. Second, it may be disclosed to a licensed architect, contractor, or engineer who is performing work on or related to the 911 or E911 communication system infrastructure. Third, it may be disclosed upon a showing of good cause before a court of competent jurisdiction.

The bill requires that all portions of a public meeting exempted by the bill must be recorded and transcribed. The bill provides that such recordings and transcripts are confidential and exempt from disclosure as public records except to the extent that any portion of the recording or transcript is determined by a court of competent jurisdiction, after an in camera review, to reveal nonexempt data.

The bill provides a statement of public necessity as required by the Florida Constitution. It includes the following legislative findings:

- The records for which the bill creates a public record exemption and public meeting exemption identify information concerning the design, scope, and location of 911 and E911 communication system infrastructure, both within and external to buildings and other structures.
- These records could be used by criminals or terrorists to examine 911 and E911 communication system infrastructure for vulnerabilities and to plan and execute criminal actions including cyber-crime, arson, and terrorism.
- This infrastructure must be protected to avoid disruption during an active shooter or other terror event, as disruption could result in greater loss of life and property damage.
- It is a public necessity to exempt these records from disclosure to reduce exposure to these security threats and to protect the public.

The public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

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

Section 2. Amends s. 286.0113, F.S., relating to general exemptions from public meetings.

Section 3. Provides a public necessity statement as required by the Florida Constitution.

Section 4. Provides for the bill to take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

---

denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

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, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on government entities that handle records that qualify for the exemptions created by the bill. Staff responsible for complying with public meeting and public record requirements may require training related to implementation of the exemptions. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of these entities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

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

   Public Necessity Statement
   Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public meeting or public record exemption. The bill creates a new public meeting and public record exemption and includes a statement supporting the public necessity for these exemptions.

   Breadth of Exemption
   Article I, section 24(c) of the Florida Constitution requires a newly created public meeting or public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for specified documents that depict structural elements of 911

or E911 communication system infrastructure and the locations of such infrastructure used to provide 911 or E911 services. The bill creates a public meeting exemption for only the portion of a public meeting that would reveal such documents. The bill identifies specific entities to whom the exempt information may be disclosed as necessary. The exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 21, 2020, the Energy & Utilities Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Requires recording and transcription of the portions of a public meeting exempted by the bill, and provides that these recordings and transcripts are confidential and exempt from the public records law except to the extent that any portion of the recording or transcript is determined by a court of competent jurisdiction to reveal nonexempt data.
- Corrects the date upon which the exemptions created by the bill will stand repealed unless reviewed and saved from repeal through reenactment by the Legislature.

This analysis addresses the committee substitute as approved by the Energy & Utilities Subcommittee.

1 A bill to be entitled
2 An act relating to public records and meetings;
3 amending s. 119.071, F.S.; providing an exemption from
4 public records requirements for certain documents
5 which depict the structural elements of certain 911 or
6 E911 communication system infrastructure, structures,
7 or facilities; providing an exemption from public
8 records requirements for geographical maps indicating
9 the actual or proposed locations of certain 911 or
10 E911 communication system infrastructure, structures,
11 or facilities; providing for retroactive application;
12 authorizing disclosure under certain circumstances;
13 providing for future legislative review and repeal of
14 the exemptions; amending s. 286.0113, F.S.; providing
15 an exemption from public meetings requirements for
16 portions of meetings that would reveal certain
17 documents depicting the structural elements of 911 or
18 E911 communication system infrastructure, structures,
19 or facilities, or geographic maps indicating the
20 locations or proposed locations of 911 or E911
21 communication system infrastructure, structures, or
22 facilities; requiring the recording and transcription
23 of exempt portions of such meetings; providing an
24 exemption from public records requirements for such
25 recordings and transcripts; providing an exception;

26 providing for future legislative review and repeal of
27 the exemption; providing a statement of public
28 necessity; providing an effective date.
29
30 Be It Enacted by the Legislature of the State of Florida:
31
32 Section 1. Paragraph (e) is added to subsection (3) of
33 section 119.071, Florida Statutes, to read:
34 119.071 General exemptions from inspection or copying of
35 public records.—
36 (3) SECURITY AND FIRESAFETY.—
37 (e)1.a. Building plans, blueprints, schematic drawings,
38 and diagrams, including draft, preliminary, and final formats,
39 which depict the structural elements of 911 or E911
40 communication system infrastructure, including towers, antennae,
41 equipment or facilities used to provide 911 or E911
42 communication services, or other 911 or E911 communication
43 structures or facilities owned and operated by an agency are
44 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
45 Constitution.
46 b. Geographical maps indicating the actual or proposed
47 locations of 911 or E911 communication system infrastructure,
48 including towers, antennae, equipment or facilities used to
49 provide 911 or E911 services, or other 911 or E911 communication
50 structures or facilities owned and operated by an agency are

51 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
52 Constitution.
53 2. This exemption applies to building plans, blueprints,
54 schematic drawings, and diagrams, including draft, preliminary,
55 and final formats, which depict the structural elements of 911
56 or E911 communication system infrastructure or other 911 and
57 E911 communication structures or facilities owned and operated
58 by an agency, and geographical maps indicating actual or
59 proposed locations of 911 or E911 communication system
60 infrastructure or other 911 or E911 communication structures or
61 facilities owned and operated by an agency, before, on, or after
62 the effective date of this act.
63 3. Information made exempt by this paragraph may be
64 disclosed:
65 a. To another governmental entity if disclosure is
66 necessary for the receiving entity to perform its duties and
67 responsibilities;
68 b. To a licensed architect, engineer, or contractor who is
69 performing work on or related to the 911 or E911 communication
70 system infrastructure, including towers, antennae, equipment or
71 facilities used to provide 911 or E911 communication services,
72 or other 911 or E911 communication structures or facilities
73 owned and operated by an agency; or
74 c. Upon a showing of good cause before a court of
75 competent jurisdiction.

76 4. The entities or persons receiving such information must
77 maintain the exempt status of the information.
78 5. This paragraph is subject to the Open Government Sunset
79 Review Act in accordance with s. 119.15 and shall stand repealed
80 on October 2, 2025, unless reviewed and saved from repeal
81 through reenactment by the Legislature.
82 Section 2. Subsection (4) is added to section 286.0113,
83 Florida Statutes, to read:
84 286.0113 General exemptions from public meetings.—
85 (4)(a) Any portion of a meeting that would reveal building
86 plans, blueprints, schematic drawings, or diagrams, including
87 draft, preliminary, and final formats, which depict the
88 structural elements of 911 or E911 communication system
89 infrastructure, including towers, antennae, equipment or
90 facilities used to provide 911 or E911 communication services,
91 or other 911 and E911 communication structures or facilities
92 made exempt by s. 119.071(3)(e)1.a. is exempt from s. 286.011
93 and s. 24, Art. I of the State Constitution.
94 (b) Any portion of a meeting that would reveal
95 geographical maps indicating the actual or proposed locations of
96 911 or E911 communication system infrastructure, including
97 towers, antennae, equipment or facilities used to provide 911 or
98 E911 communication services, or other 911 or E911 communication
99 structures or facilities made exempt by s. 119.071(3)(e)1.b. is
100 exempt from s. 286.011 and s. 24, Art. I of the State

101 Constitution.
102 (c) No portion of an exempt meeting under paragraphs (a)
103 or (b) may be off the record. All exempt portions of such
104 meeting shall be recorded and transcribed. Such recordings and
105 transcripts are confidential and exempt from disclosure under s.
106 119.07(1) and s. 24(a), Art. I of the State Constitution unless
107 a court of competent jurisdiction, after an in-camera review,
108 determines that the meeting was not restricted to the discussion
109 of the information made exempt by s. 119.071(3)(e)1.a. or b. In
110 the event of such a judicial determination, only that portion of
111 the recording and transcript which reveals nonexempt information
112 may be disclosed to a third party.
113 (d) This subsection is subject to the Open Government
114 Sunset Review Act in accordance with s. 119.15 and shall stand
115 repealed on October 2, 2025, unless reviewed and saved from
116 repeal through reenactment by the Legislature.
117 Section 3. The Legislature finds that it is a public
118 necessity that building plans, blueprints, schematic drawings,
119 and diagrams, including draft, preliminary, and final formats,
120 which depict the structural elements of 911 or E911
121 communication system infrastructure, including towers, antennae,
122 equipment or facilities used to provide 911 or E911
123 communication services, and other 911 or E911 communication
124 structures or facilities owned and operated by an agency, and
125 geographic maps indicating the actual or proposed locations of

126 such communication system infrastructure, structures, or
127 facilities should be made exempt from s. 119.07(1), Florida
128 Statutes, and s. 24(a), Article I of the State Constitution to
129 ensure the security of emergency communication infrastructure,
130 structures, and facilities. In addition, the Legislature finds
131 that it is a public necessity that any portion of a meeting
132 revealing such documents and maps that are held by an agency
133 should be made exempt from s. 286.011, Florida Statutes, and s.
134 24(b), Art. I of the State Constitution. Building plans,
135 blueprints, schematic drawings, and diagrams, including draft,
136 preliminary, and final formats, received and held by counties,
137 municipalities, and other governmental agencies that depict the
138 structural elements of 911 or E911 communication system
139 infrastructure, structures, and facilities are currently subject
140 to release as public records upon request. Similarly,
141 geographical maps showing the present or proposed locations of
142 such 911 or E911 communication system infrastructure,
143 structures, and facilities that are in the possession of
144 counties, municipalities, and other governmental agencies are
145 also subject to release as public records upon request.
146 Counties, municipalities and other governmental agencies may
147 review the building plans or geographical maps to ensure
148 compliance with land development regulations, building codes,
149 agency rules, and standards to protect the public health and
150 safety. These building plans include diagrams and schematic

151 drawings of emergency communication systems, electrical systems,
152 and other physical plant and security details which depict the
153 structural elements of such emergency communications facilities
154 and structures. 911 and E911 communication facilities, including
155 towers and antennae, are a vital link in the chain of survival.
156 Such critical infrastructure must be protected as any disruption
157 during an active shooter or other terror event is very likely to
158 result in greater loss of life and property damage. To function
159 properly, towers and antennae need to be visible, increasing the
160 security risk of such facilities. Because architectural and
161 engineering plans reviewed and held by counties, municipalities
162 and other government agencies include information about tower,
163 equipment, ancillary facilities, critical systems, and
164 restricted areas, these plans could be used by criminals or
165 terrorists to examine the physical plant for vulnerabilities.
166 Information contained in these documents could aid in the
167 planning of, training for, and execution of criminal actions
168 including cyber-crime, arson, and terrorism. Consequently, the
169 Legislature finds that it is a public necessity to exempt such
170 information from public records requirements to reduce exposure
171 to security threats and protect the public.
172 Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1035 Pub. Rec./Records and Information Provided to Specified Entities for Disaster Recovery Assistance
SPONSOR(S): Raschein
TIED BILLS: **IDEN./SIM. BILLS:** SB 966

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

SUMMARY ANALYSIS

The Department of Economic Opportunity (DEO), the Florida Housing Finance Corporation (FHFC), counties, municipalities, and local housing finance agencies provide various housing programs designed to assist those who have been impacted by a disaster. One such program, the Community Development Block Grant - Disaster Recovery (CDBG-DR) program, supports communities following disasters by addressing long-term recovery needs. The U.S. Department of Housing and Urban Development (HUD) administers the CDBG-DR program at the federal level and DEO's Office of Disaster Recovery administers the program at the state level. CDBG-DR is designed to address housing, infrastructure, economic development and mitigation needs that remain after other assistance has been exhausted, including federal assistance as well as private insurance.

Persons or families that have had their homes damaged or destroyed following a disaster may apply to DEO to receive money to repair, reconstruct, or possibly replace their housing units. To receive funding from the CDBG-DR program, an applicant must submit the following types of information:

- Photo I.D.;
- Proof of ownership;
- Homeowner's insurance information;
- Tax returns;
- Salary or wage statements;
- Social security, disability, or retirement benefits; and
- Unemployment income information.

The bill creates a public record exemption for records or information related to property photographs, financial documents, or financial information provided to DEO, FHFC, a county or municipality, or a local housing finance agency by, or on behalf of an applicant for, or participant in a federal, state, or local housing program for the purpose of disaster recovery assistance. The information is confidential and exempt from public record requirements. The bill provides that the information may be released to a governmental entity for the purpose of auditing a housing program.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act and will repeal October 2, 2025, unless the Legislature reviews and reenacts the exemptions by that date.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a).[1] The general law must state with specificity the public necessity justifying the exemption and must be no more broad than necessary to accomplish its purpose.[2]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[3] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[5]

Department of Economic Opportunity

The Department of Economic Opportunity (DEO) was created to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians.[6] The head of the DEO is the executive director, who is appointed by the Governor, subject to confirmation by the Senate. The executive director serves at the pleasure of and reports to the Governor.[7] The executive director manages all activities and responsibilities of the DEO, and serves as the manager for the state with respect to contracts with Enterprise Florida Inc., and all applicable direct-support organizations.[8] Within the DEO, the Office of Disaster Recovery "supports communities following disasters by addressing long-term recovery needs for housing, infrastructure and economic development."[9]

[1] Art. I, s. 24(c), FLA. CONST.
[2] Art. I, s. 24(c), FLA. CONST.
[3] Section 119.15, F.S.
[4] Section 119.15(6)(b), F.S.
[5] Section 119.15(3), F.S.
[6] Section 20.60(4), F.S.
[7] Section 20.60(2), F.S.
[8] Section 20.60(9), F.S.
[9] Department of Economic Opportunity, *Office of Disaster Recovery*, http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/disaster-recovery-initiative (last visited Feb. 1, 2020).

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC), a public corporation administratively housed within the Department of Economic Opportunity (DEO),[10] is the state's affordable housing finance agency. As such, the FHFC is responsible for increasing the amount of affordable housing available to individuals and families by stimulating investment of private capital and encouraging public and private sector housing partnerships. To accomplish this, the FHFC uses federal and state resources to finance the development of safe, affordable homes and rental housing and to assist first-time homebuyers.[11]

Disaster Recovery Housing Assistance Programs

The DEO, FHFC, counties, municipalities, and local housing finance agencies have various housing programs designed to assist those who have been impacted by a disaster. One such program, the Community Development Block Grant - Disaster Recovery (CDBG-DR) program, supports communities following disasters by addressing long-term recovery needs. The U.S. Department of Housing and Urban Development (HUD) administers the CDBG-DR program at the federal level[12] and DEO's Office of Disaster Recovery administers the program at the state level.[13] In response to a presidentially declared disaster, Congress may appropriate additional funding for the CDBG-DR Program as "grants to rebuild the affected areas and provide crucial seed money to start the recovery process."[14] CDBG-DR is designed to address housing, infrastructure, economic development and mitigation needs that remain after other assistance has been exhausted, including federal assistance as well as private insurance.[15]

In September 2018, Florida launched Rebuild Florida, a program administered by DEO in partnership with the HUD and funded through the CDBG-DR program.[16] Rebuild Florida was "created to help Florida recover from the devastating impacts of Hurricane Irma" by repairing and rebuilding "damaged homes across the hardest-hit communities of our state, with priority funding for those low-income residents who are most vulnerable, including the elderly, those with disabilities and families with children under the age of 18."[17] The state of Florida has "received $616 million through [HUD's]" CDBG-DR program.[18]

Persons or families that have had their homes damaged or destroyed following a disaster may apply to DEO to receive money to repair, reconstruct, or possibly replace their housing units.[19] To receive funding from the CDBG-DR program, an applicant must submit the following types of information:

- Photo I.D.;
- Proof of ownership;
- Homeowner's insurance information;
- Tax returns;
- Salary or wage statements;
- Social security, disability, or retirement benefits; and
- Unemployment income information.

---

[10] Section 420.504(1), F.S.

[11] *See* ss. 420.502 and 420.507, F.S.

[12] U.S. Department of Housing and Urban Development, *CDBG-DR Fact Sheet*, available at https://files.hudexchange.info/resources/documents/CDBG-DR-Fact-Sheet.pdf (last visited Feb. 1, 2020).

[13] Department of Economic Opportunity, *Office of Disaster Recovery*, http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/disaster-recovery-initiative (last visited Feb. 1, 2020).

[14] U.S. Department of Housing and Urban Development, *Community Development Block Grant Disaster Recovery Program*, https://www.hudexchange.info/programs/cdbg-dr/ (last visited Feb. 1, 2020).

[15] *Supra* note 12.

[16] Rebuild Florida, *Frequently Asked Questions*, http://floridajobs.org/rebuildflorida/faqs (last visited Feb. 1, 2020).

[17] *Id.*

[18] *Id.; see also* Governor DeSantis, *Governor Ron DeSantis Announces Completion of Rebuild Florida's First Home Repair*, https://www.flgov.com/2019/05/21/governor-ron-desantis-announces-completion-of-rebuild-floridas-first-home-repair/ (last visited Feb. 1, 2020).

[19] *Supra* note 12.

Presidential Disaster Declaration

Congress, in order "to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from … disasters,"[20] passed the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).[21] The Stafford Act allows a state to collect monetary assistance from the federal government in the event that an emergency "situation is of such severity and magnitude that [an] effective response is beyond the capabilities of the State and the affected local governments."[22]

To receive funding, the Governor, on behalf of the state or on behalf of certain localities, must request from the President of the United States a declaration that an emergency exists (Stafford declaration).[23] If the Governor decides to request a Stafford declaration from the President, he or she must submit the request through the Federal Emergency Management Agency[24] Regional Administrator.[25] Based upon the Governor's request, the President may declare that an emergency exists in a state or a region of a state.[26] Once a Stafford declaration is signed by the President, Congress may allocate funds for the CDBG-DR program.[27]

Effect of the Bill

The bill creates a public record exemption for records or information related to property photographs, financial documents, or financial information provided to DEO, FHFC, a county or municipality, or a local housing finance agency by, or on behalf of an applicant for, or participant in a federal, state, or local housing program for the purpose of disaster recovery assistance. The information is confidential and exempt[28] from public record requirements. The bill provides that the information may be released to a governmental entity for the purpose of auditing a housing program. Further, the bill specifies that the information may used in any administrative or judicial proceeding.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act and will repeal October 2, 2025, unless the Legislature reviews and reenacts the exemptions by that date.

B. SECTION DIRECTORY:

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

Section 2 provides a statement of public necessity.

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

---

[20] 42 U.S.C. s. 5121(b).
[21] P.L. 100-707 (1988).
[22] 42 U.S.C. s. 5191(a).
[23] *Id.*
[24] The Stafford Act empowers the Federal Emergency Management Agency (FEMA) to promulgate rules and regulations to carry out its provisions. 42 U.S.C. s. 5164.
[25] 44 C.F.R. ss. 206.35(a) and 206.36(a).
[26] 42 U.S.C. s. 5191(a).
[27] *Supra* note 12.
[28] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. (1985).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

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

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

   Breadth of Exemption
   Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public record exemption for certain information submitted by persons applying to receive housing aid in the wake of a disaster. The purpose of the exemption is to protect persons

made vulnerable due to a disaster from actors who might use the information maliciously. As such, the bill appears to be no broader than necessary to accomplish its purpose.

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.

1 A bill to be entitled
2 An act relating to public records; providing an
3 exemption from public records requirements for certain
4 records and information provided to the Department of
5 Economic Opportunity, the Florida Housing Finance
6 Corporation, a county, a municipality, or a local
7 housing finance agency by or on behalf of an applicant
8 for or a participant in a federal, state, or local
9 housing assistance program for the purpose of disaster
10 recovery assistance; authorizing access to such
11 records and information for certain purposes;
12 providing for future legislative review and repeal of
13 the exemption; providing a statement of public
14 necessity; providing an effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Paragraph (l) is added to subsection (5) of
19 section 119.071, Florida Statutes, to read:
20 119.071 General exemptions from inspection or copying of
21 public records.—
22 (5) OTHER PERSONAL INFORMATION.—
23 (l)1. Records and information related to property
24 photographs, financial documents, or financial information
25 provided to the Department of Economic Opportunity, the Florida

26 Housing Finance Corporation, a county, a municipality, or a
27 local housing finance agency by or on behalf of an applicant for
28 or a participant in a federal, state, or local housing
29 assistance program for the purpose of disaster recovery
30 assistance are confidential and exempt from s. 119.07(1) and s.
31 24(a), Art. I of the State Constitution.
32 2. A governmental entity and its agents shall have access
33 to such confidential and exempt records and information for the
34 purpose of auditing federal, state, or local housing programs or
35 housing assistance programs. Such confidential and exempt
36 records and information may be used in any administrative or
37 judicial proceeding, provided such records are kept confidential
38 and exempt unless otherwise ordered by a court.
39 3. This paragraph is subject to the Open Government Sunset
40 Review Act in accordance with s. 119.15 and shall stand repealed
41 on October 2, 2025, unless reviewed and saved from repeal
42 through reenactment by the Legislature.
43 Section 2. The Legislature finds that it is a public
44 necessity that records and information related to property
45 photographs, financial documents, or financial information of an
46 applicant for or a participant in a federal, state, or local
47 housing assistance program provided to the Department of
48 Economic Opportunity, the Florida Housing Finance Corporation, a
49 county, a municipality, or a local housing finance agency for
50 the purpose of disaster recovery assistance should be made

51 confidential and exempt from s. 119.07(1), Florida Statutes, and
52 s. 24 (a), Article I of the State Constitution. In response to a
53 disaster an agency, in an effort to determine storm damage and
54 ascertain the estimated cost of rehabilitation, may conduct a
55 property inspection to observe and record the presence of
56 damage. The damage assessment data collected may include
57 interior and exterior photographs of such individual's
58 residence. This information may be used to locate the damaged
59 property and identify and contact the property owner or tenant.
60 If released, this information may be used by fraudulent
61 contractors, predatory lenders, thieves, or individuals seeking
62 to impose on the vulnerability of a distressed property owner or
63 tenant following a disaster. Therefore, it is necessary that
64 this information be protected to ensure that people impacted by
65 a disaster do not have sensitive information released.
66 Section 3. This act shall take effect July 1, 2020.

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Oversight, Transparency &
2 Public Management Subcommittee
3 Representative Raschein offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Paragraph (l) is added to subsection (5) of
8 section 119.071, Florida Statutes, to read:
9 119.071 General exemptions from inspection or copying of
10 public records.—
11 (5) OTHER PERSONAL INFORMATION.—
12 (l)1. For purposes of this paragraph, the term "financial
13 documentation" means income statements, paystubs, bank
14 statements, tax returns, public assistance information, disaster
15 recovery benefits, social security disability benefits, and
16 insurance information.

17 2. Property photographs and applicant financial
18 documentation provided to the Department of Economic
19 Opportunity, the Florida Housing Finance Corporation, a county,
20 a municipality, or a local housing finance agency by or on
21 behalf of an applicant for or a participant in a federal, state,
22 or local housing assistance program for the purpose of disaster
23 recovery assistance for presidentially declared disasters are
24 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
25 of the State Constitution.
26 3. A governmental entity and its agents shall have access
27 to such confidential and exempt records and information for the
28 purpose of auditing federal, state, or local housing programs or
29 housing assistance programs. Such confidential and exempt
30 records and information may be used in any administrative or
31 judicial proceeding, provided such records are kept confidential
32 and exempt unless otherwise ordered by a court.
33 4. This paragraph is subject to the Open Government Sunset
34 Review Act in accordance with s. 119.15 and shall stand repealed
35 on October 2, 2025, unless reviewed and saved from repeal
36 through reenactment by the Legislature.
37 Section 2. The Legislature finds that it is a public
38 necessity that property photographs and applicant financial
39 documentation provided to the Department of Economic
40 Opportunity, the Florida Housing Finance Corporation, a county,
41 a municipality, or a local housing finance agency by or on

42 behalf of an applicant for or a participant in a federal, state,
43 or local housing assistance program for the purpose of disaster
44 recovery assistance for presidentially declared disasters be
45 made confidential and exempt from s. 119.07(1), Florida
46 Statutes, and s. 24 (a), Article I of the State Constitution. In
47 response to a disaster an agency, in an effort to determine
48 storm damage and ascertain the estimated cost of rehabilitation,
49 may conduct a property inspection to observe and record the
50 presence of damage. The damage assessment data collected may
51 include interior and exterior photographs of such individual's
52 residence. This information may be used to locate the damaged
53 property and identify and contact the property owner or tenant.
54 If released, this information may be used by fraudulent
55 contractors, predatory lenders, thieves, or individuals seeking
56 to impose on the vulnerability of a distressed property owner or
57 tenant following a disaster. Therefore, it is necessary that
58 this information be protected to ensure that people impacted by
59 a disaster do not have sensitive information released.
60 Section 3. This act shall take effect July 1, 2020.
61
62 ---
63 **T I T L E A M E N D M E N T**
64 Remove everything before the enacting clause and insert:
65 An act relating to public records; amending s. 119.071, F.S.;
66 providing a definition for financial documentation; providing an

67 exemption from public records requirements for property
68 photographs and financial documentation provided to the
69 Department of Economic Opportunity, the Florida Housing Finance
70 Corporation, a county, a municipality, or a local housing
71 finance agency by or on behalf of an applicant for or a
72 participant in a federal, state, or local housing assistance
73 program for the purpose of disaster recovery assistance;
74 authorizing access to such records and information for certain
75 purposes; providing for future legislative review and repeal of
76 the exemption; providing a statement of public necessity;
77 providing an effective date.
78

HB 1171

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1171 Division of State Technology
SPONSOR(S): Toledo and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 800

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

The Department of Management Services (DMS) oversees IT governance and security for the executive branch of state government. The Division of State Technology (DST), a subdivision of DMS subject to its control and supervision, implements DMS's duties and policies in this area. The head of DST is appointed by the Secretary of Management Services and serves as the state chief information officer. The duties and responsibilities of DMS and DST relating to IT management include:

- Developing IT policy for the management of the state's IT resources;
- Establishing IT architecture standards;
- Establishing project management and oversight standards;
- Performing project oversight of all state agency IT projects that have a total cost of $10 million or more, as well as cabinet agency IT projects that have a total cost of $25 million or more;
- Recommending potential methods for standardizing data across state agencies which will promote interoperability and reduce the collection of duplicative data;
- Recommending open data technical standards and terminologies for use by state agencies;
- Establishing best practices for the procurement of IT products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services;
- Establishing a policy for all IT-related state contracts.

The bill creates the Data Innovation Program (DIP) within DST. The bill provides that the Legislature recognizes that DMS is responsible for ensuring that the state's data is interoperable. The bill requires DST to:

- Identify all data elements within state agencies and publish a data catalog;
- Develop common data definitions across state agencies and publish a data dictionary;
- Inform state agencies of the data types they collect and report publicly or to the Federal government to identify where interagency data-sharing can create staff and technology efficiencies;
- Inventory, by June 30, 2020, all existing interagency data-sharing agreements, identify areas of data-sharing needs, and, thereafter, execute a new interagency agreement.

To promote data interoperability across government agencies, the bill directs DST to develop three pilot programs in conjunction with the Agency for Health Care Administration, the Department of Health, and the Department of Children and Families. The pilot programs must be conducted by December 31, 2020. The programs must demonstrate interoperability across diverse data types, enable information generation across state agencies with different missions, and be able to scale to provide at volumes to support all types of initiatives. The pilot programs must use solutions that preserve existing investments in technology among agencies while achieving interoperability on a broader scale and enabling future technical paradigms.

The bill may have a negative fiscal impact on state government expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of Management Services

IT Management

The Department of Management Services (DMS)[1] oversees information technology (IT)[2] governance and security for the executive branch of state government. The Division of State Technology (DST), a subdivision of DMS subject to its control and supervision, implements DMS's duties and policies in this area.[3] The head of DST is appointed by the Secretary of Management Services[4] and serves as the state chief information officer (CIO).[5] The CIO must be a proven effective administrator with at least 10 years of executive level experience in the public or private sector.[6] DST "provides the State with guidance and strategic direction on a variety of transformational technologies, such as cybersecurity and data analytics, while also providing the following critical services: voice, data, software, and much more."[7] The duties and responsibilities of DMS and DST include:

- Developing IT policy for the management of the state's IT resources;
- Establishing IT architecture standards and assisting state agencies[8] in complying with those standards;
- Establishing project management and oversight standards with which state agencies must comply when implementing IT projects. The standards must include:
  - Performance measurements and metrics that reflect the status of an IT project based on a defined and documented project scope, cost, and schedule;
  - Methodologies for calculating acceptable variances in the projected versus actual scope, schedule, or cost of an IT project; and
  - Reporting requirements
- Performing project oversight of all state agency IT projects that have a total cost of $10 million or more, as well as cabinet agency IT projects that have a total cost of $25 million or more, and are funded in the General Appropriations Act or any other law;
- Recommending potential methods for standardizing data across state agencies which will promote interoperability and reduce the collection of duplicative data;
- Recommending open data[9] technical standards and terminologies for use by state agencies;
- Establishing best practices for the procurement of IT products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services; and
- Establishing a policy for all IT-related state contracts, including state term contracts for IT commodities, consultant services, and staff augmentation services.[10]

---

[1] *See* s. 20.22, F.S.

[2] The term "information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form. S. 282.0041(14), F.S.

[3] Section 20.22(2)(a), F.S.

[4] The Secretary of Management Services serves as the head of DMS and is appointed by the Governor, subject to confirmation by the Senate. S. 20.22(1), F.S.

[5] Section 20.22(2)(b), F.S.

[6] *Id.*

[7] *State Technology*, FLORIDA DEPARTMENT OF MANAGEMENT SERVICES , https://www.dms.myflorida.com/business_operations/state_technology (last visited January 27, 2020).

[8] *See* s. 282.0041(27), F.S.

[9] The term "open data" means data collected or created by a state agency and structured in a way that enables the data to be fully discoverable and usable by the public. The term does not include data that are restricted from public distribution based on federal or state privacy, confidentiality, and security laws and regulations or data for which a state agency is statutorily authorized to assess a fee for its distribution. S. 282.0041(18), F.S.

State Data Center and the Cloud-First Policy

In 2008, the Legislature created the State Data Center (SDC) system, established two primary data centers,[11] and required that agency data centers be consolidated into the primary data centers by 2019.[12] Data center consolidation was completed in FY 2013-14. In 2014, the two primary data centers were merged in law to create the SDC within then-existing AST.[13] The SDC is established within DMS and DMS is required to provide operational management and oversight of the SDC.[14]

The SDC relies heavily on the use of state-owned equipment installed at the SDC facility located in the state's Capital Circle Office Center in Tallahassee for the provision of data center services. The SDC is led by the director of the SDC.[15] The SDC is required to do the following:

- Offer, develop, and support the services and applications defined in service-level agreements executed with its customer entities;[16]
- Maintain performance of the state data center by ensuring proper data backup, data backup recovery, disaster recovery, and appropriate security, power, cooling, fire suppression, and capacity;
- Develop and implement business continuity and disaster recovery plans, and annually conduct a live exercise of each plan;
- Enter into a service-level agreement with each customer entity to provide the required type and level of service or services;
- Assume administrative access rights to resources and equipment, including servers, network components, and other devices, consolidated into the SDC;
- Show preference, in its procurement process, for cloud-computing solutions that minimize or do not require the purchasing, financing, or leasing of SDC infrastructure, and that meet the needs of customer agencies, reduce costs, and that meet or exceed the applicable state and federal laws, regulations, and standards for IT security; and
- Assist customer entities in transitioning from state data center services to third-party cloud-computing services procured by a customer entity.

A state agency is prohibited, unless exempted[17] elsewhere in law, from:

- Creating a new agency computing facility or data center;
- Expanding the capability to support additional computer equipment in an existing agency computing facility or data center; or
- Terminating services with the SDC without giving written notice of intent to terminate 180 days before termination.[18]

Cloud computing is "a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g. networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction."[19] In 2019, the Legislature mandated that each agency adopt a cloud-first policy that first considers cloud computing solutions in its technology sourcing strategy for technology

---

[10] Section 282.0051, F.S.

[11] The Northwood Shared Resource Center and the Southwood Shared Resource Center. Ss. 282.204-282.205, F.S. (2008).

[12] Chapter 2008-116, L.O.F.

[13] Chapter 2014-221, L.O.F.

[14] *See* s. 282.201, F.S.

[15] Section 282.201, F.S.

[16] A "customer entity" means an entity that obtains services from DMS. Section 282.0041(7), F.S.

[17] The following entities are exempt from the use of the SDC: the Department of Law Enforcement, the Department of the Lottery's Gaming Systems Design and Development in the Office of Policy and Budget, regional traffic management centers, the Office of Toll Operations of the Department of Transportation, the State Board of Administration, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, and the Florida Housing Finance Corporation. Section 282.201(2), F.S.

[18] Section 282.201(3), F.S.

[19] *Special Publication 800-145*, National Institute of Standards and Technology, https://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf (last visited January 27, 2020). The term "cloud computing" has the same meaning as provided in Special Publication 800-145 issued by the National Institute of Standards and Technology (NIST). Section 282.0041(5), F.S.

initiatives or upgrades whenever possible or feasible.[20] Each agency must, just like the SDC, show a preference for cloud-computing solutions in its procurement process and adopt formal procedures for the evaluation of cloud-computing options for existing applications, technology initiatives, or upgrades.[21]

IT Security

The IT Security Act[22] establishes requirements for the security of state data and IT resources.[23] DMS must designate a state chief information security officer (CISO) to oversee state IT security.[24] The CISO must have expertise in security and risk management for communications and IT resources.[25] DMS is tasked with the following duties regarding IT security:

- Establishing standards and processes consistent with generally accepted best practices for IT security, including cybersecurity.
- Adopting rules that safeguard an agency's data, information, and IT resources to ensure availability, confidentiality, and integrity and to mitigate risks.
- Developing, and annually updating, a statewide IT security strategic plan that includes security goals and objectives for the strategic issues of IT security policy, risk management, training, incident management, and disaster recovery planning including:
  - Identifying protection procedures to manage the protection of an agency's information, data, and IT resources;
  - Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes; and
  - Recovering information and data in response to an IT security incident.
- Developing and publishing for use by state agencies an IT security framework.
- Reviewing the strategic and operational IT security plans of executive branch agencies annually.[26]

The IT Security Act requires the heads of state agencies to designate an information security manager to administer the IT security program of the state agency.[27] In part, the heads of state agencies are also required to annually submit to DMS the state agency's strategic and operational IT security plans; conduct, and update every three years, a comprehensive risk assessment to determine the security threats to the data, information, and IT resources of the state agency; develop, and periodically update, written internal policies and procedures; and ensure that periodic internal audits and evaluations of the agency's IT security program for the data, information, and IT resources of the state agency are conducted.[28]

Effect of the Bill

The bill creates the Data Innovation Program (DIP) within DST. The bill provides that the Legislature recognizes that DMS is responsible for ensuring that the state's data is interoperable. The bill provides that the Legislature, by establishing DIP, intends to:

- Ensure that all state agencies collaborate and synthesize data securely through interoperability.
- Create software and IT portfolio rationalization[29] and procurement to achieve interoperability and reduce the number of standalone applications that do not communicate with one another.
- Minimize costs associated with data management areas.

---

[20] Section 282.206(1), F.S.
[21] Section 282.206(2)-(3), F.S.
[22] Section 282.318, F.S., is cited as the "Information Technology Security Act."
[23] Section 282.318, F.S.
[24] Section 282.318(3), F.S.
[25] *Id.*
[26] Section 282.318(3), F.S.
[27] Section 282.318(4)(a), F.S.
[28] Section 282.318(4), F.S.
[29] The bill defines "IT portfolio rationalization" to mean the streamlining of existing application portfolio to improve efficiency, reduce complexity, and lower the total cost of ownership through processes including software license optimization, application retirement, server optimization, project rationalization, data storage optimization, retirement of aged and low-value applications, elimination of redundancies, standardization of common technology platforms.

- Ensure accurate procedures for regulation and compliance activities.
- Increase transparency within data-related activities,
- Institute better training and educational practices for the management of data assets.
- Increase the value of this state's data while providing standardized data systems, data policies, and data procedures.
- Aid in the resolution of past and current data issues.
- Facilitate improved monitoring and tracking mechanisms for data quality and other data-related activities.
- Increase overall state data standards, thereby translating data into actionable information and workable knowledge of this state's information technology system.
- Enable state agencies to transform their use of technology to offer services in an effective, efficient, and secure manner.
- Improve the health of all persons in this state.

The bill requires DST to identify all data elements within state agencies and develop common data definitions across state agencies; inform state agencies of the data types they collect and report publicly or to the Federal government, to identify where interagency data-sharing can create staff and technology efficiencies. DST must also publish a comprehensive data catalog and a data dictionary. DST must inventory, by June 30, 2020, all existing interagency data-sharing agreements, identify areas of data-sharing needs, and, thereafter, execute a new interagency agreement.

To promote data interoperability across government agencies, the bill directs DST to develop three pilot programs in conjunction with the Agency for Health Care Administration, the Department of Health, and the Department of Children and Families. The pilot programs must be conducted by December 31, 2020. The programs must demonstrate interoperability across diverse data types, enable information generation across state agencies with different missions, and be able to scale to provide at volumes to support all types of initiatives. However, the programs must respect policy differences in data use among the agencies and require robust consent and security functionality, especially related to personal information. To conserve current resources, the bill requires the programs use solutions that preserve existing IT investments while achieving interoperability on a broader scale and enabling future technical paradigms. Lastly, the pilot programs must:

- Enable the use of information in elemental data form, rather than through document-based methods;
- Use technology with the latest standards and standards deployment to facilitate vendor-agnostic interoperability;
- Select solutions with integrated database technology which natively enable analytics at the interagency and intraagency level; and
- Use technology that supports the spectrum of modern software development technologies including application programming interfaces, web services, and representational state transfer.

B. SECTION DIRECTORY:

Section 1 amends s. 282.0041, F.S., relating to definitions applicable to the IT management act.

Section 2 amends s. 282.0051, F.S., relating to the powers, duties, and functions of DMS under the IT management act.

Section 3 creates s. 282.319, F.S., relating to the Data Innovation Program.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill might have a negative fiscal impact on state government expenditures as it requires the establishment of a new program within DST and the creation and management of three pilot programs. It is unclear whether these functions can be absorbed within DMS's current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill gives DMS the power the administer DIP in s. 282.0051, F.S., and DMS has rulemaking authority to adopt rules to administer that section in s. 282.0051(19), F.S. The bills gives DMS sufficient guidance and parameters to allow the department to develop and promulgate rules, if necessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to the Division of State Technology;
3 amending s. 282.0041, F.S.; defining the term
4 "information technology portfolio rationalization";
5 amending s. 282.0051, F.S.; requiring the Department
6 of Management Services to administer the Data
7 Innovation Program through the division; creating s.
8 282.319, F.S.; establishing the Data Innovation
9 Program within the division; providing legislative
10 intent; specifying requirements for the division for
11 data governance across state agencies; requiring the
12 division to develop and conduct data interoperability
13 pilot programs with the Agency for Health Care
14 Administration, the Department of Health, and the
15 Department of Children and Families by a specified
16 date; specifying requirements for the pilot programs;
17 providing an effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Present subsections (16) through (31) of
22 section 282.0041, Florida Statutes, are redesignated as
23 subsections (17) through (32), respectively, and a new
24 subsection (16) is added to that section, to read:
25 282.0041 Definitions.—As used in this chapter, the term:

26 (16) "Information technology portfolio rationalization"
27 means the streamlining of an existing application portfolio to
28 improve efficiency, reduce complexity, and lower the total cost
29 of ownership through processes including, but not limited to:
30 (a) Software license optimization;
31 (b) Application retirement;
32 (c) Server optimization;
33 (d) Project rationalization;
34 (e) Data storage optimization;
35 (f) Retirement of aged and low-value applications;
36 (g) Elimination of redundancies; and
37 (h) Standardization of common technology platforms.
38 Section 2. Present subsections (17), (18), and (19) of
39 section 282.0051, Florida Statutes, are redesignated as
40 subsections (18), (19), and (20), respectively, and a new
41 subsection (17) is added to that section, to read:
42 282.0051 Department of Management Services; powers,
43 duties, and functions.—The department shall have the following
44 powers, duties, and functions:
45 (17) Administer the Data Innovation Program established
46 under s. 282.319 through the Division of State Technology.
47 Section 3. Section 282.319, Florida Statutes, is created
48 to read:
49 282.319 Data Innovation Program.—
50 (1) PROGRAM ESTABLISHMENT AND INTENT.—The Data Innovation

51 Program is established within the Division of State Technology
52 of the department. The Legislature recognizes that the
53 department is responsible for ensuring that this state's data is
54 interoperable. By establishing the program, the Legislature
55 intends to:
56 (a) Ensure that all state agencies collaborate and
57 synthesize data securely through interoperability.
58 (b) Create software and information technology portfolio
59 rationalization and procurement to achieve interoperability and
60 reduce the number of standalone applications that do not
61 communicate with each other.
62 (c) Minimize costs associated with data management areas.
63 (d) Ensure accurate procedures for regulation and
64 compliance activities.
65 (e) Increase transparency within data-related activities.
66 (f) Institute better training and educational practices
67 for the management of data assets.
68 (g) Increase the value of this state's data while
69 providing standardized data systems, data policies, and data
70 procedures.
71 (h) Aid in the resolution of past and current data issues.
72 (i) Facilitate improved monitoring and tracking mechanisms
73 for data quality and other data-related activities.
74 (j) Increase overall state data standards, thereby
75 translating data into actionable information and workable

76 knowledge of this state's information technology system.
77 (k) Enable state agencies to transform their use of
78 technology to offer services in an effective, efficient, and
79 secure manner.
80 (l) Improve the health of all persons in this state.
81 (2) DATA GOVERNANCE.—The Division of State Technology
82 shall:
83 (a) Identify all data elements within state agencies and
84 publish a comprehensive data catalog.
85 (b) Develop common data definitions across state agencies
86 and publish a data dictionary. Where data definitions are
87 limited to agency functionality, the data dictionary must define
88 each data element, depending on each state agency's need.
89 (c) By June 30, 2020, inventory all existing interagency
90 data-sharing agreements, identify areas of data-sharing needs
91 which are not currently addressed, and execute a new interagency
92 agreement.
93 (d) Inform state agencies of the data types they collect
94 and report publicly or to the Federal Government, to identify
95 where interagency data-sharing can create staff and technology
96 efficiencies.
97 (3) DATA INTEROPERABILITY.—The Division of State
98 Technology shall develop three proof-of-concept pilot programs
99 in conjunction with the Agency for Health Care Administration,
100 the Department of Health, and the Department of Children and

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

101 Families. The pilot programs must be conducted by December 31,
102 2020, and:
103 (a) Respect policy differences in data use among the state
104 agencies and require robust consent and security functionality,
105 especially related to personal information.
106 (b) Enable the use of information in elemental data form
107 rather than through document-based methods.
108 (c) Select solutions with integrated database technology
109 which natively enable analytics at the interagency and
110 intraagency level.
111 (d) Use technology that supports the spectrum of modern
112 software development technologies, including, but not limited
113 to, application programming interfaces, web services, and
114 representational state transfer.
115 (e) Demonstrate interoperability across diverse data types
116 and enable information generation across state agencies with
117 different missions.
118 (f) Be able to scale to perform at volumes to support all
119 types of state initiatives.
120 (g) Use technology with the latest standards and standards
121 development to facilitate vendor-agnostic interoperability.
122 (h) Use solutions that preserve the existing investments
123 in technology among state agencies while achieving
124 interoperability on a broader scale and enabling future
125 technical paradigms.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1173 Pub. Rec./Nonjudicial Arrest Record of a Minor
SPONSOR(S): Watson, C.
TIED BILLS: HB 615 **IDEN./SIM. BILLS:** SB 1292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 0 N	Rochester	Hall
2) Oversight, Transparency & Public Management Subcommittee		Toliver	Smith
3) Judiciary Committee			

SUMMARY ANALYSIS

The Department of Law Enforcement (FDLE) must expunge a nonjudicial arrest record of a juvenile who has successfully completed a diversion program for a misdemeanor offense. Moreover, a juvenile who successfully completes a diversion program for a first-time misdemeanor offense may lawfully deny or fail to acknowledge his or her participation in a diversion program and the expunction of a nonjudicial arrest record, unless the inquiry is made by a criminal justice agency for specified purposes.

HB 615 (2020), to which this bill is linked, authorizes FDLE to expunge a juvenile's nonjudicial arrest record following the successful completion of a diversion program for any offense, including a felony. A juvenile who successfully completes a diversion program for any offense, including a felony or subsequent misdemeanor, may lawfully deny or fail to acknowledge his or her participation in a diversion program and the expunction of a nonjudicial arrest record, except when the inquiry is made by a criminal justice agency for specified purposes.

HB 1173, which is linked to the passage of HB 615, creates a public records exemption for the nonjudicial arrest records of a minor who has successfully completed a diversion program for a felony or subsequent misdemeanor. Under the bill, such records are confidential and exempt from public disclosure, except that the record must be made available to criminal justice agencies only for the purpose of:

- Determining eligibility for diversion programs;
- A criminal investigation; or
- Making a prosecutorial decision.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill may have a fiscal impact on agencies responsible for complying with public records requests and redacting confidential and exempt information prior to releasing a record.

The bill will become effective on the same date that HB 615 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the Florida Constitution.[1] The general law must state with specificity the public necessity justifying the exemption and must be no more broad than necessary to accomplish its purpose.[2]

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act[3] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

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

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.

Juvenile Diversion Expunction

Diversion Programs

Diversion is a program designed to divert a juvenile from entering the juvenile justice system by placing him or her on a less restrictive track that affords more opportunities for rehabilitation and restoration.[5] The goal of diversion is to maximize the opportunity for success and minimize the likelihood of recidivism.[6] The decision to refer a juvenile to a diversion program is at the discretion of either the law enforcement officer who interacts with the juvenile at the time of the offense or the state attorney who is referred the case. Examples of such programs are Community Arbitration, Juvenile Alternative Services Program, Teen Court, Intensive Delinquency Diversion Services, Civil Citation, Boy and Girl Scouts, Boys and Girls Clubs, mentoring programs, and alternative schools.[7]

---

[1] Art. I, s. 24(c), Fla. Const.
[2] *Id.*
[3] S. 119.15, F.S.
[4] S. 119.15(6)(b), F.S.
[5] Florida Department of Juvenile Justice, *Glossary*, http://www.djj.state.fl.us/youth-families/glossary (last visited Jan. 30, 2020).
[6] Center for Health & Justice at TASC, *A National Survey of Criminal Justice Diversion Programs and Initiatives*, pg. 6, (December 2013), http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf (last visited Jan. 30, 2020).
[7] Florida Department of Juvenile Justice, *Probation & Community Intervention*, http://www.djj.state.fl.us/services/probation (last visited Jan. 30, 2020).

A juvenile may have the opportunity to participate in either a prearrest or postarrest diversion program. A prearrest diversion program is an intervention program that holds a juvenile accountable for their behavior, while diverting them from any court proceeding or formal arrest record.[8] A postarrest diversion program is a similar intervention program, but diverts the juvenile from further court proceedings after an arrest.[9] While prearrest diversion diverts a juvenile before an arrest record is ever created, in postarrest diversion an arrest record is created and maintained pending the juvenile's participation and completion of the diversion program. Upon successful completion of a postarrest diversion program, the juvenile's charges are dismissed.

Expunction

Generally, expunction is the court-ordered physical destruction or obliteration of a criminal history record or portion of a record by any criminal justice agency having custody of the record.[10] A juvenile who completes one of the following diversion programs may petition for juvenile diversion expunction:[11]

- Civil citation or a similar prearrest diversion program;[12]
- Prearrest or postarrest diversion program;[13]
- Neighborhood restorative justice;[14]
- Community arbitration;[15] or
- A program to which a state attorney refers the juvenile.[16]

FDLE is required to expunge a juvenile's misdemeanor nonjudicial arrest record after successfully completing a diversion program, if the juvenile:

- Submits an application for prearrest or postarrest diversion expunction;
- Participated in a diversion program based on the commission of a misdemeanor;
- Has not committed any other criminal offense or comparable ordinance violation;
- Participated in a diversion program that expressly allows for such expunction; and
- Submits certification from the state attorney that the juvenile meets the expunction qualifications.[17]

Juvenile diversion expunction has the same effect as court-ordered expunction of criminal history records[18] except that:

- FDLE may make an expunged juvenile diversion criminal record available to:
  - Criminal justice agencies for the purpose of determining eligibility for diversion programs;
  - When the record is sought as part of a criminal investigation; or
  - When making a prosecutorial decision;[19] and

---

[8] Mark A. Greenwald, Overview of Florida's Pre-Arrest and Post-Arrest Juvenile Diversion Programs and Applicable Laws, Florida Department of Juvenile Justice (June 7, 2018), http://www.fdle.state.fl.us/MSDHS/Meetings/June-Meeting-Documents/Presentations/June-7-930AM-DJJ-Greenwald-Diversion-Programs.aspx (last visited Jan. 30, 2020).
[9] *Id.*
[10] S. 943.045(16), F.S. Criminal history records in the custody of FDLE must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction. *Id.*
[11] S. 943.0582, F.S.
[12] S. 985.12, F.S. The civil citation program offers early intervention, community counseling referrals, and other appropriate community resources to divert juvenile misdemeanor offenders from the Juvenile Justice System. The program works with other community partners in an effort to reduce juvenile crime and to provide services for at-risk youth. Nineteenth Judicial Circuit, *Civil Citation* (2019), http://www.circuit19.org/programs-services/court-programs/juvenile/civil-citation (last visited Jan. 30, 2020).
[13] S. 985.125, F.S.
[14] S. 985.155, F.S. In neighborhood restorative justice programs, victims, the offender, and all others impacted by the crime discuss the impact, obligations, and actions needed to repair harm. Florida Restorative Justice Association, *Retributive Justice vs. Restorative Justice* (2014), https://www.floridarestorativejustice.com/about-rj.html (last visited Jan. 30, 2020).
[15] S. 985.16, F.S. Community arbitration is a program where a juvenile who has committed a relatively minor offense can have his or her case resolved in an informal manner, and appear before a community arbitrator instead of a judge in juvenile court. Twentieth Judicial Circuit, *Juvenile Arbitration Program* (2014), https://www.ca.cjis20.org/home/main/juvarb.asp (last visited Jan. 30, 2020).
[16] S. 985.15, F.S.; *see* s. 943.0582(2)(a), F.S.
[17] S. 943.0582(3), F.S.
[18] *See* s. 943.0585, F.S.
[19] S. 943.0582(2)(b)1., F.S.

- Local criminal justice agencies in the county in which an arrest occurred must seal instead of destroy any relevant records.[20]

A juvenile who successfully completes a diversion program for a first-time misdemeanor offense may lawfully deny or fail to acknowledge his or her participation in a program and the expunction of a nonjudicial arrest record, unless the inquiry is made by a criminal justice agency[21] for the purpose of:

- Determining eligibility for diversion programs;
- A criminal investigation; or
- Making a prosecutorial decision.[22]

<u>HB 615 (2020)</u>

HB 615 (2020), to which this bill is linked, requires FDLE to expunge a juvenile's nonjudicial arrest record following the successful completion of a diversion program for any offense, including a felony. The bill permits a juvenile who has successfully completed a diversion program for any offense, including a felony or subsequent misdemeanor, to lawfully deny or fail to acknowledge his or her participation in a program and the expunction of a nonjudicial arrest record, except when the inquiry is made by a criminal justice agency for specified purposes.[23]

Effect of Proposed Changes

HB 1173, which is linked to the passage of HB 615, creates a public records exemption for certain juvenile offender records. Specifically, the bill provides that the nonjudicial arrest records of a minor who has successfully completed a diversion program are confidential and exempt from public disclosure, except that the record must be made available to criminal justice agencies for specified purposes.

This bill provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that the purpose of diversion programs is to redirect youth from the justice system and this purpose will be undermined if the nonjudicial arrest record is not confidential and exempt.

This bill provides for repeal of the exemption on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill will become effective on the same date that HB 615 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 943.0582, F.S., relating to diversion program expunction.
Section 2: Provides a public necessity statement as required by the Florida Constitution.
Section 3: Provides an effective date of the same date that HB 615 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

---

[20] S. 943.0582(2)(b)2., F.S.
[21] "Criminal justice agency" means a court; FDLE; DJJ; the protective investigations component of the Department of Children and Families, investigating abuse or neglect; and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice. S. 942.045(11), F.S.
[22] Ss. 985.126(5) and 943.0582(2)(b)1.a.-c., F.S.
[23] *Supra*, n 18.

1. Revenues:

   None.

2. Expenditures:

   The bill may have a fiscal impact on agencies responsible for complying with public records requests and redacting confidential and exempt information prior to releasing a record.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may have a fiscal impact on agencies responsible for complying with public records requests and redacting confidential and exempt information prior to releasing a record.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to take 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:

   <u>Vote Requirement</u>

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

   <u>Public Necessity Statement</u>

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

   <u>Breadth of Exemption</u>

   Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for the nonjudicial arrest records of a minor who has successfully completed a diversion program for a felony or subsequent misdemeanor, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to public records; amending s.
3 943.0582, F.S.; providing an exemption from public
4 records requirements for a nonjudicial record of the
5 arrest of a minor who has successfully completed a
6 diversion program; providing for retroactive
7 application; providing for future legislative review
8 and repeal of the exemption under the Open Government
9 Sunset Review Act; providing a statement of public
10 necessity; providing a contingent effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Subsection (5) is added to section 943.0582,
15 Florida Statutes, to read:
16 943.0582 Diversion program expunction.—
17 (5) A nonjudicial record of the arrest of a minor who has
18 successfully completed a diversion program which is sealed or
19 expunged under this section and which is retained by the
20 department is confidential and exempt from s. 119.07(1) and s.
21 24(a), Art. I of the State Constitution, except that the record
22 may be made available to criminal justice agencies only for the
23 purposes specified in subparagraph (2)(b)1. The exemption under
24 this subsection applies to records held by the department
25 before, on, or after July 1, 2020. This subsection is subject to

26 the Open Government Sunset Review Act in accordance with s.
27 119.15 and shall stand repealed on October 2, 2025, unless
28 reviewed and saved from repeal through reenactment by the
29 Legislature.
30 Section 2. The Legislature finds that it is a public
31 necessity that the nonjudicial record of the arrest of a minor
32 who successfully completed a diversion program for minors, which
33 is sealed or expunged pursuant to s. 943.0582, Florida Statutes,
34 be made confidential and exempt from s. 119.07(1), Florida
35 Statutes, and s. 24(a), Article I of the State Constitution. The
36 purpose of diversion programs is to redirect youth from the
37 justice system with opportunities for programming,
38 rehabilitation, and restoration. This purpose will be undermined
39 if the nonjudicial record of arrest is not confidential and
40 exempt. The presence of a nonjudicial record of arrest of a
41 minor who completed a diversion program can jeopardize his or
42 her ability to obtain education, employment, and other
43 opportunities necessary to become a productive, contributing,
44 self-sustaining member of society. Such negative consequences
45 are unwarranted in cases in which the minor was successfully
46 diverted from further delinquency proceedings through the
47 completion of a diversion program. For these reasons, the
48 Legislature finds that it is a public necessity that the
49 criminal history records of minors which have received an
50 expunction due to the successful completion of a diversion

51 program be confidential and exempt from public records
52 requirements.
53 Section 3. This act shall take effect on the same date
54 that HB 615 or similar legislation takes effect, if such
55 legislation is adopted in the same legislative session or an
56 extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1251 Preservation of Memorials
SPONSOR(S): Roach
TIED BILLS: **IDEN./SIM. BILLS:** SB 1690

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

SUMMARY ANALYSIS

Various memorials, monuments, and places of recognition have been created throughout the state recognizing historical events or significant accomplishments of the residents of this state.

A person who willfully places graffiti or otherwise vandalizes and damages the real or personal property of another is guilty of criminal mischief, punishable as follows:

- If the damage to property is $200 or less, it is a second degree misdemeanor punishable by 60 days imprisonment and a $500 fine.
- If the damage to property is between $200 and $1,000, it is a first degree misdemeanor punishable by one year imprisonment and a $1,000 fine.
- If the damage to property is greater than $1,000, it is a third degree felony punishable by five years imprisonment and a $5,000 fine.

A minor found guilty of criminal mischief for placing graffiti on any public or private property may have his or her driving privilege revoked, suspended, or withheld for up to one year. To reduce the sentence of revocation, suspension, or withholding he or she may elect to perform community service in the form of cleaning graffiti from public property.

The bill creates the Historical Memorials Preservation Act, defining memorial and providing that any person or entity that damages, destroys, takes, or removes a memorial without proper authorization is civilly liable for the full cost of repair or replacement of the memorial. Such person or entity will also be liable for treble damages, attorney fees, and court costs associated with an action brought to recover damages. The bill provides that anyone who willfully damages, defaces, or removes a memorial commits a felony of the third degree, punishable by up to five years imprisonment and a $5,000 fine.

The bill further provides that a minor choosing to reduce his or her driver's license suspension, revocation, or withholding via community service may apply the cleaning of graffiti on memorials or the general cleanup of parks dedicated to veterans or historic sites towards the community service requirement.

Additionally, the bill prohibits a plaque, sign, or any other object that would obstruct the view of a memorial on public property, or that would convey information about the memorial, from being placed on or next to a memorial in existence on or before January 1, 2019, without the express written approval of the Secretary of State.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Memorials

Various memorials, monuments, and places of recognition have been created throughout the state recognizing historical events or significant accomplishments of the residents of this state. Included in these memorials are ones located on the grounds of the Capitol Complex[1], such as the:

- Florida Women's Hall of Fame
- Florida Medal of Honor Wall
- Florida Veterans' Hall of Fame
- POW-MIA Chair of Honor Memorial
- Florida Veterans' Walk of Honor
- Florida Veterans' Memorial Garden
- Florida Law Enforcement Officers' Hall of Fame
- Florida Holocaust Memorial
- Florida Slavery Memorial

Civil Liability and Treble Damages

A statute may subject a person to civil liability for damages caused by the person's criminal behavior. "Civil liability" is the quality, state, or condition of being legally obligated or accountable for civil damages.[2] "Treble damages" are damages that, by statute, are three times the amount of actual damages that the fact-finder determines is owed.[3]

Criminal Mischief

A person commits the offense of criminal mischief if he or she (1) willfully and maliciously (2) injures or damages (3) real or personal property belonging to another, including the placement of graffiti or other acts of vandalism.[4] Criminal mischief is punishable as follows:

- If the damage to property is $200 or less, it is a second degree misdemeanor punishable by 60 days imprisonment and a $500 fine.[5]
- If the damage to property is between $200 and $1,000, it is a first degree misdemeanor punishable by one year imprisonment and a $1,000 fine.[6]
- If the damage to property is greater than $1,000, it is a third degree felony punishable by five years imprisonment and a $5,000 fine.[7]

If the offense is related to the placement of graffiti, the offender is required to perform 100 hours of community service that, if possible, involves the removal of graffiti. If not possible, the offender is

---

[1] Section 281.01, F.S., defines capitol complex to mean portions of Tallahassee, Leon County, Florida, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the Pepper Building, the Holland Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street. The term also includes the State Capital Circle Office Complex located in Leon County, Florida.

[2] *Civil Liability*, Black's Law Dictionary (11th ed. 2019).

[3] *Treble Damages*, Blacks' Law Dictionary (11th ed. 2019).

[4] Section 806.13(1)(a), F.S.

[5] Section 806.13(1)(b)1., F.S. If the offender has one or more criminal mischief violations, then the charge must be reclassified as a third degree felony. Section 806.13(1)(a)4.

[6] Section 806.13(1)(b)2., F.S. If the offender has one or more criminal mischief violations, then the charge must be reclassified as a third degree felony. Section 806.13(1)(a)4.

[7] Section 806.13(1)(b)3., F.S. This punishment may be aggravated if the court finds the defendant to be a habitual felony offender. *See* section 775.084, F.S.

required to perform at least 40 hours of community service.[8] Furthermore, in addition to any other criminal penalty imposed, the offender must pay a fine of:

- At least $250 for the first offense;
- At least $500 for the second offense; and
- At least $1,000 for the third offense.[9,10]

Special Penalties for Minors

In addition to other penalties, a minor who is found guilty of criminal mischief for placing graffiti on any public or private property may have his or her driving privilege revoked, suspended, or withheld for up to one year.[11] To reduce the sentence of revocation, suspension, or withholding he or she may elect to perform community service in the form of cleaning graffiti from public property, at a rate of one day's suspension per hour community service worked.[12]

Effect of the Bill

The bill creates the "Historical Memorials Protection Act" (the Act).

The bill defines the term "memorial" to mean a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising this state or the Unites States. The term includes, but is not limited to, the following memorials established by law:

- Florida Women's Hall of Fame;
- Florida Medal of Honor Wall;
- Florida Veterans' Hall of Fame;
- POW-MIA Chair of Honor Memorial;
- Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden;
- Florida Law Enforcement Officers' Hall of Fame;
- Florida Holocaust Memorial;
- Florida Slavery Memorial; and
- Any other memorial located within the Capitol Complex, including, but not limited to, Waller Park.

The bill provides that any person or entity that damages, destroys, takes, or removes a memorial without authorization is civilly liable for the full cost of repair or replacement of the memorial. In addition, such person or entity is liable for treble damages, attorney fees, and court costs associated with any action brought to recover the damages for the cost of repair or replacement. The bill provides that a resident of this state, a historical preservation organization, a military veteran, a veterans' organization, or a law enforcement or benevolent organization has standing to seek enforcement of the Act through civil action in the circuit court in the county in which the memorial that has been damaged or destroyed is located.

The bill provides that a person who willfully damages, defaces, or removes a memorial that is owned or erected by a governmental entity, museum, historical society, or a similar public or private organization, or a memorial located in a cemetery or on a grave or tombstone, commits a felony of the third degree, punishable by up to five years imprisonment and a $5,000 fine.

---

[8] Section 806.13(6)(b), F.S.

[9] Section 806.13(6)(a), F.S.

[10] If the offender is a minor, the parent or legal guardian of the minor is liable along with the minor for payment of the fine. However, the court may decline to order a person to pay the fine if the court finds the person indigent or otherwise unable to pay the fine. Section 806.13(6)(c), F.S.

[11] Section 806.13(7), F.S.

[12] Section 806.13(8), F.S.

The bill further provides that a minor choosing to reduce his or her driver's license suspension, revocation, or withholding via community service may apply the cleaning of graffiti on memorials or the general cleanup of parks dedicated to veterans or historic sites towards such community service requirement.

Additionally, the bill prohibits any plaque, sign, picture, marker, exhibit, notice, or other object that would obstruct the view of a memorial on public property, or that would convey information about the memorial, from being placed on or adjacent to any memorial in existence on or before January 1, 2019, without the express written approval of the Secretary of State.

B. SECTION DIRECTORY:

Section 1 provides that this act may be cited as the "Historical Memorials Protection Act."

Section 2 creates s. 265.710, F.S., relating to civil liability for damaging, destroying, or removing memorials.

Section 3 amends s. 806.13, F.S., relating to criminal mischief.

Section 4 provides an effective date of October 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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not confer rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.

1 A bill to be entitled
2 An act relating to preservation of memorials;
3 providing a short title; creating s. 265.710, F.S.;
4 defining the term "memorial"; prohibiting specified
5 activities concerning memorials by a person or an
6 entity; providing for liability and the award of
7 certain costs and damages for violations of the act;
8 requiring the Secretary of State to provide written
9 approval before the placement of certain materials on
10 or adjacent to certain memorials on public property;
11 granting certain persons standing for enforcement of
12 the act; amending s. 806.13, F.S.; providing criminal
13 penalties for damage to or removal of certain
14 memorials; redefining the term "community service" for
15 purposes of minors found to have committed certain
16 delinquent acts of criminal mischief; providing an
17 effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. This act may be cited as the "Historical
22 Memorials Protection Act."
23 Section 2. Section 265.710, Florida Statutes, is created
24 to read:
25 265.710 Civil liability for damaging, destroying, or

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

26 removing memorials; enforcement.—
27 (1) As used in this section, the term "memorial" means a
28 plaque, statue, marker, flag, banner, cenotaph, religious
29 symbol, painting, seal, tombstone, structure name, or display
30 that is constructed and located with the intent of being
31 permanently displayed or perpetually maintained; is dedicated to
32 a historical person, an entity, an event, or a series of events;
33 and honors or recounts the military service of any past or
34 present United States Armed Forces military personnel, or the
35 past or present public service of a resident of the geographical
36 area comprising this state or the United States. The term
37 includes, but is not limited to, the following memorials
38 established under this chapter:
39 (a) Florida Women's Hall of Fame;
40 (b) Florida Medal of Honor Wall;
41 (c) Florida Veterans' Hall of Fame;
42 (d) POW-MIA Chair of Honor Memorial;
43 (e) Florida Veterans' Walk of Honor and Florida Veterans'
44 Memorial Garden;
45 (f) Florida Law Enforcement Officers' Hall of Fame;
46 (g) Florida Holocaust Memorial;
47 (h) Florida Slavery Memorial; and
48 (i) Any other memorial located within the Capitol Complex,
49 including, but not limited to, Waller Park.
50 (2) Any person or entity that damages or destroys any

51 memorial, or that takes or removes a memorial without returning
52 the memorial to its original position and condition, is liable
53 for the full cost of repair or replacement of such memorial
54 unless such person or entity was authorized to take or remove
55 the memorial by the person or entity owning such memorial for
56 the purpose of restoring or repairing the memorial.
57 (3) In addition to the cost of repair or replacement, any
58 person or entity that intentionally damages, destroys, takes, or
59 removes a memorial without authorization is liable for treble
60 damages, attorney fees, and court costs to the owner of the
61 memorial in any action or proceeding brought to recover damages
62 for the cost of repair or replacement of a memorial.
63 (4) No plaque, sign, picture, marker, exhibit, notice, or
64 other object that would obstruct the view of a memorial that is
65 located on public property or that would convey information
66 about such a memorial may be placed on or immediately adjacent
67 to any such memorial in existence on or before January 1, 2019,
68 without the express written approval of the Secretary of State.
69 (5) A resident of this state, a historical preservation
70 organization, a military veteran, a veterans' organization, or a
71 law enforcement or firefighter benevolent organization has
72 standing to seek enforcement of this section through civil
73 action in the circuit court in the county in which a memorial
74 that has been damaged or destroyed is located.
75 Section 3. Present subsections (5) through (9) of section

76 806.13, Florida Statutes, are renumbered as subsections (6)
77 through (10), respectively, a new subsection (5) is added to
78 that section, and present subsection (8) of that section is
79 amended, to read:
80 806.13 Criminal mischief; penalties; penalty for minor.—
81 (5) A person may not willfully damage or deface, or remove
82 by any means, a memorial that is owned or erected by a
83 governmental entity, a museum, a historical society, or a
84 similar public or private organization, or a memorial that is
85 located in a cemetery or on a grave or tombstone. A person who
86 violates this subsection commits a felony of the third degree,
87 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
88 For purposes of this subsection, the term "memorial" has the
89 same meaning as in s. 265.710.
90 (9) ~~(8)~~ A minor whose driver license or driving privilege
91 is revoked, suspended, or withheld under subsection (8) ~~(7)~~ may
92 elect to reduce the period of revocation, suspension, or
93 withholding by performing community service at the rate of 1 day
94 for each hour of community service performed. In addition, if
95 the court determines that due to a family hardship, the minor's
96 driver license or driving privilege is necessary for employment
97 or medical purposes of the minor or a member of the minor's
98 family, the court shall order the minor to perform community
99 service and reduce the period of revocation, suspension, or
100 withholding at the rate of 1 day for each hour of community

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

101 service performed. As used in this subsection, the term
102 "community service" means cleaning graffiti from public
103 property, including graffiti on memorials, or the general
104 cleanup of parks dedicated to veterans or historic sites.
105 Section 4. This act shall take effect October 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1323 Economic Self-sufficiency
SPONSOR(S): Aloupis
TIED BILLS: **IDEN./SIM. BILLS:** SB 1624

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

SUMMARY ANALYSIS

The Auditor General, established by Art. III, s. 2 of the State Constitution, is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Legislative Auditing Committee, subject to confirmation by both houses of the Legislature. The Auditor General must conduct audits, examinations, or reviews of government programs as well as audit the accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Legislative Auditing Committee. The Auditor General conducts operational and performance audits on public records and information technology systems and also reviews all audit reports of local governmental entities, charter schools, and charter technical career centers.

The bill requires the Auditor General to conduct, at least every three years, performance audits of the following programs:

- Medicaid;
- Temporary cash assistance program;
- School Readiness program;
- Supplemental Nutrition Assistance Program; and
- Housing Choice Voucher Program

The audits must include a review of the following aspects of those programs:

- Eligibility, including:
  - Criteria for eligibility;
  - Frequency of eligibility determinations;
  - Clarity in both written and verbal communication in which eligibility requirements are conveyed to current and potential program subscribers; and
  - The manner that each program establishes and documents eligibility and disbursement policies;
- The number of families receiving multiple program services out of the total eligible families;
- The number of families receiving services and those utilizing the earned income tax credit, if possible; and
- Opportunities for improving service efficiency and efficacy made possible by improved integration of state data system platforms, processes, and procedures related to data collection, analysis, documentation, and inter-agency sharing.

The Auditor General must provide the results of the audits in a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Legislative Auditing Committee. The report must be provided within 30 days after its completion but no later than December 31, 2020. Thereafter, the report must be provided every three years.

The bill requires that parents who have an intensive services account or an individual training account be given priority for participation in the School Readiness program equal to parents receiving temporary cash assistance benefits. The bill also eliminates certain definitions applicable to the School Readiness program.

The bill might have an indeterminate negative fiscal impact on state government expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Medicaid
Medicaid is the health care safety net for low-income Floridians. Medicaid is a partnership of the federal and state governments established to provide coverage for health services for eligible persons. The program is administered by the Agency for Health Care Administration (AHCA) and financed by federal and state funds. AHCA delegates certain functions to other state agencies, including the Department of Children and Families (DCF), which makes eligibility determinations.

The structure of each state's Medicaid program varies, but what states must pay for is largely determined by the federal government, as a condition of receiving federal funds.[1] Federal law sets the amount, scope, and duration of services offered in the program, among other requirements. These federal requirements create an entitlement that comes with constitutional due process protections. The entitlement means that two parts of the Medicaid cost equation – people and utilization – are largely predetermined for the states. The federal government sets the minimum mandatory populations to be included in every state Medicaid program. The federal government also sets the minimum mandatory benefits to be covered in every state Medicaid program. These benefits include physician services, hospital services, home health services, and family planning.[2] States can add benefits, with federal approval. Florida has added many optional benefits, including prescription drugs, ambulatory surgical center services, and dialysis.[3]

The Florida Medicaid program covers approximately 3.8 million low-income individuals.[4]
Medicaid is the second largest single program in the state, behind public education, representing approximately one-third of the total FY 2019-2020 state budget.[5]

Temporary Aid for Needy Families
Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,[6] the Temporary Aid for Needy Families (TANF) program replaced the welfare programs known as Aid to Families with Dependent Children, the Job Opportunities and Basic Skills Training program, and the Emergency Assistance program. The law ended federal entitlement to assistance and instead created TANF as a block grant that provides federal funds to states, territories, and tribes each year. These funds cover benefits, administrative expenses, and services targeted to needy families. TANF became effective July 1, 1997, and was reauthorized by the Deficit Reduction Act of 2005. States receive block grants to operate their individual programs and to accomplish the goals of the TANF program.

Florida's Temporary Cash Assistance Program
Florida's temporary cash assistance (TCA) program is one of several programs funded with TANF block grant funds. The purpose of the TCA program is to help families with children become self-supporting while allowing children to remain in their own homes. It provides cash assistance to families that meet the technical, income, and asset requirements.[7]

---

[1] 42 U.S.C. §§ 1396-1396w-5; 42 C.F.R. Part 430-456 (§§ 430.0-456.725) (2016).
[2] Section 409.905, F.S.
[3] Section 409.906, F.S.
[4] Agency for Health Care Administration, *Florida Statewide Medicaid Monthly Enrollment Report*, September 2019, https://ahca.myflorida.com/medicaid/Finance/data_analytics/enrollment_report/index.shtml (last visited Jan. 31, 2020).
[5] Chapter 2019-115, L.O.F.; *see also Fiscal Analysis in Brief: 2019 Legislative Session*, http://flsenate.gov/UserContent/Committees/Publications/FiscalAnalysisInBrief/2019_Fiscal_Analysis_In_Brief.pdf (last visited Jan. 31, 2020).
[6] P.L. 104-193.
[7] Children must be under the age of 18, or under age 19 if they are full time secondary school students. Parents, children and minor siblings who live together must apply together. Additionally, pregnant women may also receive TCA, either in the third trimester of pregnancy if unable to work, or in the 9th month of pregnancy.

Various state agencies and entities work together through a series of contracts or memoranda of understanding to administer the TCA program. DCF receives the federal TANF block grant and administers the TCA program, monitoring eligibility and dispersing benefits. The Department of Economic Opportunity (DEO) is responsible for financial and performance reporting to ensure compliance with federal and state measures, and for providing training and technical assistance to Local Workforce Development Boards (LWDBs). LWDBs provide information about available jobs, on-the-job training, and education and training services within their respective areas and contract with one-stop career centers.[8] CareerSource Florida has planning and oversight responsibilities for all workforce-related programs.

School Readiness Program

Established in 1999,[9] the School Readiness Program provides subsidies for child care services and early childhood education for children of low-income families; children in protective services who are at risk of abuse, neglect, abandonment, or homelessness; foster children; and children with disabilities.[10] The School Readiness Program offers financial assistance for child care to these families while supporting children in the development of skills for success in school. Additionally, the program provides developmental screening and referrals to health and education specialists where needed. These services are provided in conjunction with other programs for young children such as Head Start, Early Head Start, Migrant Head Start, Child Care Resource and Referral and the Voluntary Prekindergarten Education Program.[11]

The School Readiness Program is a state-federal partnership between Florida's Office of Early Learning (OEL)[12] and the Office of Child Care of the United States Department of Health and Human Services.[13] It is administered by early learning coalitions (ELC) at the county or regional level.[14] Florida's OEL administers the program at the state level, including statewide coordination of ELCs.[15]

The Florida DCF's Office of Child Care Regulation, as the agency responsible for the state's child care provider licensing program, inspects all child care providers that provide the School Readiness Program for specified health and safety standards.[16] The law authorizes a county to designate a local licensing agency to license providers if its licensing standards meet or exceed DCF's standards. Five counties have done this – Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota. Thus, in these five counties the local licensing agency, not DCF, inspects child care providers that provide the School Readiness Program[17] for health and safety standards.

Supplemental Nutrition Assistance Program (SNAP)

The Food and Nutrition Service (FNS), under the U.S. Department of Agriculture (USDA), administers the Supplemental Nutrition Assistance Program (SNAP).[18] SNAP offers nutrition assistance to millions

---

[8] CareerSource Florida, Inc., *Workforce Investment Act – Workforce Innovation and Opportunity Act Annual Report for 2015-2016 Program Year*, https://careersourceflorida.com/wp-content/uploads/2016/10/161003_AnnualReport.pdf (last visited Jan. 31, 2020).

[9] Section 1, ch. 99-357, L.O.F.

[10] Sections 1002.81 and 1002.87, F.S.

[11] Florida Office of Early Learning, *School Readiness Program,* http://www.floridaearlylearning.com/family-resources/financial-assistance (last visited Feb. 2, 2020).

[12] In 2013, the Legislature established the Office of Early Learning in the Office of Independent Education and Parental Choice within the Department of Education. The office is administered by an executive director and is fully accountable to the Commissioner of Education but shall independently exercise all powers, duties, and functions prescribed by law, as well as adopt rules for the establishment and operation of the School Readiness Program and the VPK Program. Section 1, ch. 2013-252, L.O.F., *codified at* s. 1001.213, F.S.

[13] *See* U.S. Department of Health and Human Services, *Office of Child Care Fact Sheet*, http://www.acf.hhs.gov/programs/occ/fact-sheet-occ(last visited Feb. 2, 2020).

[14] Section 1002.83, F.S.

[15] Section 1001.213(3), F.S.

[16] *See* ss. 402.301-402.319 and 1002.88, F.S.

[17] Section 402.306(1), F.S.

[18] U.S. Department of Agriculture, Food and Nutrition, *A Short History of SNAP*, https://www.fns.usda.gov/snap/short-history-snap (last visited December 7, 2017).

of eligible, low-income individuals and families, in the form of funds to purchase "eligible food,"[19] and provides economic benefits to communities by reducing poverty and food insecurity.[20]

The federal government funds 100% of the benefit amount. However, FNS and states share the administrative costs of the program. Federal laws, regulations, and waivers provide states with various policy options to better target benefits to those most in need, streamline program administration and field operations, and coordinate SNAP activities with those of other programs.[21]

The amount of benefits, or allotment, for which a households qualifies depends on the number of individuals in the household and the household's net income. To calculate a household's allotment, 30% of its net income is subtracted from the maximum allotment for that household size.[22] This is because SNAP households are expected to spend about 30% of their own resources on food.[23]

Housing Choice Voucher Program

The Housing Choice Voucher Program (HCVP) "is the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market."[24] There are two different types of assistance under the HCVP: tenant-based and project-based.[25] Tenant-based assistance is an arrangement where the unit is selected by the family, wherever they wish to live, and the PHA pays the landlord a subsidy and the family pays the difference between the rent price and subsidy. In project-based assistance, "rental assistance is paid for families living in specific housing developments or units."[26]

The U.S. Department of Housing and Urban Development (HUD) oversees the HCVP,[27] but the program "is generally administered by State or local governmental entities called public housing agencies (PHAs)."[28] HUD provides funding to the PHAs, who then contract with a landlord to subsidized rent on behalf of the program participant.[29] Housing units receiving HCVP funding must meet and maintain certain housing quality standards.[30] To be eligible for HCVP the applicant must be a low income family[31] with "the family's income not exceeding 50% of the median income for the county or metropolitan area."[32]

Auditor General

Present Situation

The position of Auditor General is established by Art. III, s. 2 of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Legislative Auditing Committee, subject to confirmation by both houses of the

---

[19] The Food and Nutrition Act of 2008 defines eligible food as any food or food product intended for human consumption except alcoholic beverages, tobacco, hot foods and hot food products prepared for immediate consumption, with some exceptions. 7 USC § 2012(k).

[20] For a detailed overview of SNAP, *see* Randy Alison Aussenberg, *Supplemental Nutrition Assistance Program (SNAP): A Primer on Eligibility and Benefits*, CONGRESSIONAL RESEARCH SERVICE, Dec. 29, 2014, *available at* https://www.fas.org/sgp/crs/misc/R42505.pdf (last visited Feb. 2, 2020).

[21] U.S. Department of Agriculture, Food and Nutrition, *State Options Report: Supplemental Nutrition Assistance Program* , (11th ed.), Sept. 2013, *available at* http://www.fns.usda.gov/sites/default/files/snap/11-State_Options.pdf (last visited Feb. 2, 2020).

[22] U.S. Department of Agriculture Food and Nutrition Service, *SNAP Eligibility*, https://www.fns.usda.gov/snap/recipient/eligibility (last visited Feb. 2, 2020).

[23] *Id.*

[24] *Housing Choice Vouchers Fact Sheet*, U.S. Department of Housing and Urban Development, https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/about/fact_sheet (last visited Jan. 31, 2020).

[25] 24 C.F.R. § 982.201.

[26] *Id.*

[27] *See* 42 U.S.C. s. 1437.

[28] 24 C.F.R. § 982.1.

[29] *Id.*

[30] *See* 24 C.F.R. § 982.401.

[31] 24 C.F.R. § 982.201.

[32] U.S. Department of Housing and Urban Development, *Housing Choice Vouchers Fact Sheet,* https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/about/fact_sheet (last visited Jan. 31, 2020).

Legislature.[33] The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.[34] At the time of appointment, the Auditor General must have been certified under the Public Accountancy Law in Florida for a period of at least 10 years and may not have less than 10 years' experience in an accounting or auditing related field.[35]

The Auditor General must conduct audits, examinations, or reviews of government programs[36] as well as audit the accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Legislative Auditing Committee.[37] The Auditor General conducts operational and performance audits on public records and information technology systems and also reviews all audit reports of local governmental entities, charter schools, and charter technical career centers.[38]

Various provisions require the Auditor General to compile and submit reports. For example, the Auditor General must annually compile and transmit to the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee a summary of significant findings and financial trends identified in audit reports.[39] The Auditor General also must compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Legislative Auditing Committee an annual report by December 1. The report must include a two-year work plan identifying the audit and other accountability activities to be undertaken and a list of statutory and fiscal changes recommended by the Auditor General.[40] In addition, the Auditor General must transmit recommendations at other times during the year when the information would be timely and useful to the Legislature.[41]

Effect of the Bill

The bill requires the Auditor General to conduct, at least every three years, performance audits of the following programs:

- Medicaid;
- TCA;
- School Readiness;
- SNAP; and
- HCVP.

The audits must include a review of the following aspects of those programs:

- Eligibility, including:
  - Criteria for eligibility;
  - Frequency of eligibility determinations;
  - Clarity in both written and verbal communication in which eligibility requirements are conveyed to current and potential program subscribers; and
  - The manner that each program establishes and documents eligibility and disbursement policies;
- The number of families receiving multiple program services out of the total eligible families;
- The number of families receiving services and those utilizing the earned income tax credit, if possible; and
- Opportunities for improving service efficiency and efficacy made possible by improved integration of state data system platforms, processes, and procedures related to data collection, analysis, documentation, and inter-agency sharing.

---

[33] Section 11.42(2), F.S.
[34] Section 11.42(5), F.S.
[35] Section 11.42(2), F.S.
[36] Section 11.45(7), F.S.
[37] Section 11.45(2)(d)-(f), F.S.
[38] Section 11.45(7)(b), F.S.
[39] Section 11.45(7)(f), F.S.
[40] Section 11.45(7)(h), F.S.
[41] *Id.*

The Auditor General must provide the results of the audits in a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Legislative Auditing Committee. The report must be provided within 30 days after its completion but no later than December 31, 2020. Thereafter, the report must be provided every three years.

The bill requires that parents who have an intensive services account or an individual training account be given priority for participation in the School Readiness program equal to parents receiving TCA benefits. The bill also eliminates certain definitions applicable to the School Readiness program.

B. SECTION DIRECTORY:

Section 1 amends s. 11.45, F.S., related to the duties of the Auditor General.

Section 2 amends s. 1002.81, F.S., related to definitions applicable to the School Readiness Program.

Section 3 amends s. 1002.87, F.S., related to eligibility for, and enrollment in the School Readiness Program.

Section 4 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:

   The bill may have an indeterminate negative fiscal impact on state government expenditures as it requires the Auditor General to conduct performances audits of five government programs. It is unclear whether the additional workload the bill places on the Auditor General could be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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.

1 A bill to be entitled
2 An act relating to economic self-sufficiency; amending
3 s. 11.45, F.S.; requiring the Auditor General to
4 perform certain audits within a specified time frame;
5 providing requirements for such audits; providing
6 reporting requirements for the results of such audits;
7 amending s. 1002.81, F.S.; repealing certain
8 definitions; amending s. 1002.87, F.S.; revising the
9 criteria for a child to be given priority enrollment
10 in the school readiness program; providing an
11 effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Paragraph (m) is added to subsection (2) of
16 section 11.45, Florida Statutes, to read:
17 11.45 Definitions; duties; authorities; reports; rules.—
18 (2) DUTIES.—The Auditor General shall:
19 (m) At least every 3 years, conduct performance audits of
20 the Supplemental Nutrition Assistance Program established under
21 7 U.S.C. ss. 2011 et seq., the temporary cash assistance program
22 under s. 414.095, the Medicaid program under s. 409.963, the
23 School Readiness program under Part VI of chapter 1002, and the
24 housing choice voucher program established under 42 U.S.C. s.
25 1437. Such audits shall include a review of eligibility

26 criteria; the manner that each program establishes and documents
27 eligibility and disbursement policies; the frequency of
28 eligibility determinations; the clarity in both written and
29 verbal communication in which eligibility requirements are
30 conveyed to current and potential program subscribers;
31 opportunities for improving service efficiency and efficacy made
32 possible by improved integration of state data system platforms,
33 processes, and procedures related to data collection, analysis,
34 documentation, and inter-agency sharing; and the number of
35 families receiving multiple program services out of the total
36 eligible families. If possible, the Auditor General shall also
37 determine the number of families receiving services and those
38 utilizing the Earned Income Tax Credit. The Auditor General
39 shall provide the results of the audits in a report to the
40 Governor, the President of the Senate, the Speaker of the House
41 of Representatives, the Chief Financial Officer, and the
42 Legislative Auditing Committee within 30 days after completion
43 of the audit but no later than December 31, 2020, and every 3
44 years thereafter.
45
46 The Auditor General shall perform his or her duties
47 independently but under the general policies established by the
48 Legislative Auditing Committee. This subsection does not limit
49 the Auditor General's discretionary authority to conduct other
50 audits or engagements of governmental entities as authorized in

51 subsection (3).
52 Section 2. Subsections (6) and (15) of section 1002.81,
53 Florida Statutes, are amended to read:
54 1002.81 Definitions.—Consistent with the requirements of
55 45 C.F.R. parts 98 and 99 and as used in this part, the term:
56 ~~(6) "Earned income" means gross remuneration derived from~~
57 ~~work, professional service, or self-employment. The term~~
58 ~~includes commissions, bonuses, back pay awards, and the cash~~
59 ~~value of all remuneration paid in a medium other than cash.~~
60 ~~(15) "Unearned income" means income other than earned~~
61 ~~income. The term includes, but is not limited to:~~
62 ~~(a) Documented alimony and child support received.~~
63 ~~(b) Social security benefits.~~
64 ~~(c) Supplemental security income benefits.~~
65 ~~(d) Workers' compensation benefits.~~
66 ~~(e) Reemployment assistance or unemployment compensation~~
67 ~~benefits.~~
68 ~~(f) Veterans' benefits.~~
69 ~~(g) Retirement benefits.~~
70 ~~(h) Temporary cash assistance under chapter 414.~~
71 Section 3. Paragraph (a) of subsection (1) of section
72 1002.87, Florida Statutes, is amended to read:
73 1002.87 School readiness program; eligibility and
74 enrollment.—
75 (1) Each early learning coalition shall give priority for

76 participation in the school readiness program as follows:
77 (a) Priority shall be given first to a child younger than
78 13 years of age from a family that includes a parent who is
79 receiving temporary cash assistance under chapter 414 and
80 subject to the federal work requirements or a parent who has an
81 Intensive Services Account or an Individual Training Account
82 under s. 445.009.
83 Section 4. This act shall take effect July 1, 2020.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ____ (Y/N)

ADOPTED AS AMENDED ____ (Y/N)

ADOPTED W/O OBJECTION ____ (Y/N)

FAILED TO ADOPT ____ (Y/N)

WITHDRAWN ____ (Y/N)

OTHER

---

1 Committee/Subcommittee hearing bill: Oversight, Transparency &
2 Public Management Subcommittee
3 Representative Aloupis offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. (1) The Department of Children and Families
8 shall contract for an evaluation of and a report on the
9 effectiveness of the following programs in this state:
10 (a) Supplemental Nutrition Assistance Program established
11 under 7 U.S.C. ss. 2011 et seq.
12 (b) Temporary cash assistance program under s. 414.095,
13 Florida Statutes.
14 (c) Medicaid program under s. 409.963, Florida Statutes.
15 (d) School Readiness program under Part VI of chapter
16 1002, Florida Statutes.

17 (e) Housing choice voucher program established under 42
18 U.S.C. s. 1437.
19 (2) The Department of Children and Families, in
20 coordination with the Agency for Health Care Administration, the
21 Department of Economic Opportunity, the Department of Education,
22 and the Florida Housing Finance Corporation, shall establish a
23 working group comprised of two representatives from each agency
24 with a representative from the Department of Children and
25 Families serving as chair. The working group shall:
26 (a) Develop criteria for selecting an entity to conduct an
27 evaluation of the effectiveness of the programs described in
28 subsection (1). The criteria must, at a minimum, identify
29 datasets necessary to evaluate the effectiveness of the programs
30 and determine the qualifications necessary in order to bid on
31 the contract.
32 (b) Evaluate the bid responses and select an entity to
33 conduct the program evaluations.
34 (3) The program evaluations must include a history of the
35 program; a description of the program, including its objectives,
36 methods of assistance, and ongoing accountability activities; an
37 analysis of the impacts and effectiveness of the program; a
38 review of the eligibility criteria for the program; the process
39 used to establish and document eligibility; the frequency of
40 eligibility determinations; the clarity in written, verbal, and
41 electronic communication in which eligibility requirements are

42 conveyed to current and potential program subscribers; and the
43 opportunities for improving service efficiency and efficacy. In
44 addition, to the degree possible for each program, the program
45 evaluation must quantify the changes in levels of economic self-
46 sufficiency among Floridians over the life of the program;
47 assess the degree to which the program is responsible for any
48 positive changes in economic self-sufficiency and identify any
49 contributing factors; identify the strengths and weaknesses in
50 the methods of assistance used by the program; and identify
51 potential innovations in, alternatives to, or improvements in
52 the program that may increase achievement of economic self-
53 sufficiency.
54 (4) Program evaluations must be compiled into a final
55 report. The Department of Children and Families must submit the
56 final report by February 1, 2021, to the Governor, the President
57 of the Senate, and the Speaker of the House of Representatives.
58 In addition, the department must provide copies of the report to
59 the Secretary of the Agency for Health Care Administration, the
60 Director of the Department of Economic Opportunity, the
61 Commissioner of Education, and the Board of Directors of the
62 Florida Housing Finance Corporation.
63 (5) This section expires July 1, 2021.
64 Section 2. This act shall take effect upon becoming a law.
65
66 ---

67 **T I T L E A M E N D M E N T**
68 Remove everything before the enacting clause and insert:
69 An act relating to economic self-sufficiency; requiring the
70 Department of Children and Families to contract for an
71 evaluation of the effectiveness of certain programs; creating an
72 interagency workgroup to aid in the procurement process;
73 providing requirements for the evaluations; requiring the
74 evaluations be compiled into a report by a certain date and
75 submitted to specified entities; providing for the expiration of
76 the act; providing an effective date.

HJR 1325

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1325 Repeal of Public Campaign Financing Requirement
SPONSOR(S): Aloupis
TIED BILLS: HB 1327 **IDEN./SIM. BILLS:** SJR 1110

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

In 1998, the Florida electorate approved an amendment to the Florida Constitution requiring the establishment of a method of public financing for campaigns for statewide office. The amendment was incorporated into the Florida Constitution as Article VI, s. 7, the public campaign financing amendment. The amendment requires the Legislature to establish in law a method of public financing for campaigns for statewide office. The amendment further requires spending limits be created for any candidate who chooses to use the public financing option.

The joint resolution proposes an amendment to the Florida Constitution that repeals the public campaign financing amendment. If passed, the joint resolution will be considered by the electorate at the next general election on November 3, 2020.

The joint resolution, if passed in conjunction with HB 1327 (2020), will likely have a positive fiscal impact on the state. HB 1327 (2020), which is linked to the passage of the joint resolution, repeals the Florida Election Campaign Public Financing Act that contains the statutory framework for the public financing of statewide campaigns. *See* Fiscal Comments.

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

Article XI, s. 5 of the Florida Constitution requires 60 percent voter approval for adoption of a proposed constitutional amendment.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Campaign Financing Amendment

In 1998, the Constitution Revision Commission,[1] a body which meets every 20 years to consider amendments to the Florida Constitution, placed an amendment on the general election ballot requiring the establishment of a method of public financing for candidates for state-wide office. The proposed amendment was approved by the electorate, garnering 64.1 percent of the vote.[2] The constitutional provision is presently found in Article VI, s. 7 and provides that "[i]t is the policy of this state to provide for state-wide elections in which all qualified candidates may compete effectively."[3] The provision requires the Legislature to establish in law a method of public financing for campaigns for statewide office.[4] The provision further requires spending limits be created for any candidate who chooses to use the public financing option.[5]

In 2009, the Legislature passed HJR 81 (2009), which proposed a constitutional amendment to repeal the public campaign financing amendment. The proposed amendment was placed on the ballot at the 2010 general election. The amendment failed to pass the required 60 percent threshold, garnering 52.5 percent of the vote, and therefore was not incorporated into the Florida Constitution.[6]

The Florida Election Campaign Financing Act

In 1986,[7] the Legislature, concerned that the costs of running a campaign for statewide office limited the persons who would run to only those who were independently wealthy or those supported by special interests,[8] created the Florida Election Campaign Financing Act (the Act).[9] The Act created a framework for the public financing of statewide campaigns, setting eligibility requirements, expenditure limitations for participating candidates, and establishing a supporting trust fund.[10]

Only candidates for the offices of Governor (Governor and Lieutenant Governor candidates are considered a 'single' candidate for public financing purposes) or Cabinet offices are eligible for funding.[11] A candidate for one of those offices seeking to receive public funding under the Act must:

- File a request with the Division of Elections (division) within the Department of State upon qualifying for office;[12]
- Agree to abide by the Act's expenditure limits;[13]
- Raise a certain amount of contributions;[14]

---

[1] Article XI, s. 2, FLA. CONST.

[2] Department of State, *1998 Election Results*, https://results.elections.myflorida.com/?ElectionDate=11/3/1998&DATAMODE= (last visited Jan. 29, 2020).

[3] Article VI, s. 7, FLA. CONST.

[4] *Id.*

[5] *Id.*

[6] Department of State, *2010 Election Results*, https://results.elections.myflorida.com/Index.asp?ElectionDate=11/2/2010&DATAMODE= (last visited Jan. 29, 2020).

[7] Chapter 86-276, L.O.F.

[8] Section 106.31, F.S.

[9] Section 106.30, F.S., states that ss. 106.30-106.36, F.S., may be cited as the "Florida Election Campaign Financing Act."

[10] On November 4, 1996, the trust fund expired by operation of Art. III, s. 19(f)(2), Fla. Const. *See note* in s. 106.32, F.S. All balances and income from the defunct fund were deposited into the state General Revenue Fund. Art. III, s. 19(f)(4), FLA. CONST.

[11] Section 106.33, F.S.

[12] *Id.; see also* Fla. Admin. R. 1S-2.047.

[13] Section 106.33(1), F.S.; *see also* s. 106.34, F.S.

[14] Section 106.33(2), F.S. A candidate for Governor must raise at least $150,000 and a candidate for a cabinet office must raise at least $100,000.

- Limit loans or contributions from the candidate's personal funds to $25,000 and contributions from national, state, and county executive committees of a political party to $250,000 in the aggregate;[15] and
- Submit to a postelection audit of the campaign account by the division.[16]

Gubernatorial candidates and candidates for cabinet member must limit their expenditures[17] according to the following schedule: $2.00 for each Florida-registered voter[18] for Governor and Lieutenant Governor or $1.00 for each Florida-registered voter for Cabinet Officer. The expenditure limits for the 2018 election cycle were as follows:
- Governor and Lieutenant Governor: $27,091,462.00 ($2.00 for each Florida-registered voter); and
- Cabinet Officer: $13,545,731.00 ($1.00 for each Florida-registered voter).[19]

If a candidate who is not receiving public campaign funds exceeds the expenditure limitations set forth in the Act, then a participating candidate is released from abiding by the expenditure limits.[20] The division reviews each request for public contributions and certifies whether the candidate is eligible before distribution.[21] If certified, the candidate receives qualifying matching contributions on a two-to-one basis for contributions making up the amount of funds needed to initially become eligible for public financing and on a one-to-one basis thereafter.[22] The one-to-one match only applies to contributions of $250 or less per individual; any amount contributed by an individual in excess of $250 will only be matched up to $250.[23] Additionally, for the match to occur, the individual from whom the contributions are received must be a resident of the state.[24] The funds are distributed from the general revenue fund.[25] Total distributions for the 2010, 2014, and 2018 election cycles were as follows:

2010 Election Cycle – Total Distributions[26]	
Office	**Distribution**
Governor (Lt. Gov.)	$1,816,014.47
Attorney General	$2,176,956.17
Chief Financial Officer	$1,204,321.09
Commissioner of Agriculture	$868,264.38
TOTAL	**$6,065,556.11**

[15] Section 106.33(3), F.S.
[16] Section 106.33(4), F.S.
[17] *See* s. 106.011(10)(a), F.S.
[18] The Florida Election Campaign Financing Act defines the term "Florida-registered voter" to mean a voter who is registered to vote in Florida as of June 30 of each odd-numbered year. The Division of Elections is required to certify the total number of Florida-registered voters no later than July 31 of each odd-numbered year. Section 106.34(3), F.S.
[19] Department of State, *2018 Public Campaign Financing Handbook*, https://dos.myflorida.com/media/698987/public-campaign-financing-2018.pdf (last visited Jan. 29, 2020).
[20] Section 106.355, F.S.
[21] Section 106.35(1), F.S.
[22] Section 106.35(2)(a), F.S.
[23] Section 106.35(2)(b), F.S.
[24] *Id.*
[25] On November 4, 1996, the trust fund expired by operation of Art. III, s. 19(f)(2), FLA. CONST. *See* note in s. 106.32, F.S. All balances and income from the defunct fund were deposited into the state General Revenue Fund. Art. III, s. 19(f)(4), FLA. CONST.
[26] Department of State, *Public Campaign Finance 2010*, http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2010/ (last visited Jan. 29, 2020).

2014 Election Cycle – Total Distributions[27]	
Office	**Distribution**
Governor (Lt. Gov.)	$2,830,194.03
Attorney General	$628,440.64
Chief Financial Officer	$418,396.06
Commissioner of Agriculture	$459,009.31
TOTAL	**$4,336,040.04**

2018 Election Cycle – Total Distribution[28]	
Office	**Distribution**
Governor (Lt. Gov.)	$8,151,124.58
Attorney General	$933,187.02
Chief Financial Officer	$334,604.00
Commissioner of Agriculture	$433,690.16
TOTAL	**$9,852,605.76**

The purpose of the constitutional provision is that all qualified candidates "may compete effectively."[29] This purpose has been questioned by at least one court.[30]

A participating candidate who exceeds the expenditure limit or falsely reports qualifying matching contributions and thereby receives contributions to which the candidate was not entitled is fined an amount equal to three times the amount at issue.[31]

Effect of the Joint Resolution

The joint resolution repeals Article VI, s. 7 of the Florida Constitution, the public campaign financing amendment.

The joint resolution must pass each chamber with a three-fifths vote before it may be placed on the ballot. Thereafter, it must be approved by 60 percent of the electors voting. If approved, the amendment will take effect January 5, 2021.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

---

[27] Department of State, *Public Campaign Finance 2014*, http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2014/ (last visited Jan. 29, 2020).
[28] Department of State, *Public Campaign Finance 2018*, https://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2018/ (last visited Jan. 29, 2020).
[29] Article VI, s. 7, FLA. CONST.
[30] *Scott v. Roberts*, 612 F.3d 1279, 1293 (11th Cir. 2010) ("the system levels the electoral playing filed, and that purpose is constitutionally problematic").
[31] Section 106.36, F.S.

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   None.

D. FISCAL COMMENTS:

   Article XI, s. 5(d) of the Florida Constitution requires publication of a proposed amendment in a newspaper of general circulation in each county. The division is required to advertise the full text of a proposed constitutional amendment twice in a newspaper of general circulation in each county before the election. The division is also required to provide each supervisor of elections with either booklets or posters displaying the full text of a proposed amendment. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was $92.93 per English word of the originating document.

   If passed in conjunction with HB 1327 (2020), the resolution will likely have a positive fiscal impact on the state. HB 1327 (2020), which is linked to the passage of the joint resolution, repeals the Act that contains the statutory framework for the public financing of statewide campaigns. Elimination of the public campaign financing amendment and the Act in chapter 106, F.S., would allow the funds currently expended for those purposes to be diverted elsewhere. The Department of State asserts that $9,852,605.76 was spent on the public financing of campaigns in 2018,[32] $4,336,040.04 in 2014,[33] and $6,065,556.11 in 2010.[34] As the original trust fund for the public campaign financing program expired in 1996, these funds are currently distributed from general revenue.[35]

III. COMMENTS

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.

---

[32] Department of State, *Public Campaign Finance 2018*, https://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2018/ (last visited Jan. 29, 2020).
[33] Department of State, *Public Campaign Finance 2014*, http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2014/ (last visited Jan. 29, 2020).
[34] Department of State, *Public Campaign Finance 2010*, http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2010/ (last visited Jan. 29, 2020).
[35] On November 4, 1996, the trust fund expired by operation of Art. III, s. 19(f)(2), FLA. CONST. *See* note in s. 106.32, F.S. All balances and income from the defunct fund were deposited into the state General Revenue Fund. Art. III, s. 19(f)(4), FLA. CONST.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 House Joint Resolution
2 A joint resolution proposing the repeal of Section 7
3 of Article VI of the State Constitution, relating to
4 public financing of campaigns of candidates for
5 elective statewide office who agree to campaign
6 spending limits.
7
8 Be It Resolved by the Legislature of the State of Florida:
9
10 That the repeal of Section 7 of Article VI of the State
11 Constitution is agreed to and shall be submitted to the electors
12 of this state for approval or rejection at the next general
13 election or at an earlier special election specifically
14 authorized by law for that purpose:
15 BE IT FURTHER RESOLVED that the following statement be
16 placed on the ballot:
17 CONSTITUTIONAL AMENDMENT
18 ARTICLE VI, SECTION 7
19 REPEAL OF PUBLIC CAMPAIGN FINANCING REQUIREMENT.—Proposing
20 the repeal of the provision in the State Constitution which
21 requires public financing of campaigns of candidates for
22 elective statewide office who agree to campaign spending limits.

HB 1327

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1327 Campaign Finance
SPONSOR(S): Aloupis
TIED BILLS: HJR 1325 **IDEN./SIM. BILLS:** SB 1108

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

In 1986, the Legislature created the Florida Election Campaign Financing Act (Act) for the public financing of statewide candidates. The Act created a framework for the public financing of statewide campaigns, set eligibility requirements and expenditure limitations for participating candidates, established a supporting trust fund, and created a distribution formula for public contributions to candidates. Only candidates for the offices of Governor (Governor and Lieutenant Governor candidates are considered a single candidate for public financing purposes) or the Cabinet are eligible for funding under the Act.

In 1998, the Florida electorate approved amendment 10 to the Florida Constitution that required the establishment of a method of public financing for campaigns for statewide office. The amendment was incorporated in the Florida Constitution as art. VI, s. 7.

The bill repeals the Act in its entirety along with any references thereto. The bill is linked to HJR 1325 (2020) and will only become law if that resolution passes the Legislature, is approved by the electorate, and becomes an amendment to the Florida Constitution.

The bill, if passed in conjunction with HJR 1325, will likely have a positive fiscal impact on the state. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Florida Election Campaign Financing Act

In 1986,[1] the Legislature, concerned that the costs of running a campaign for statewide office limited the persons who would run to only those who were independently wealthy or those supported by special interests,[2] created the Florida Election Campaign Financing Act (the Act).[3] The Act created a framework for the public financing of statewide campaigns, setting eligibility requirements, expenditure limitations for participating candidates, and establishing a supporting trust fund.[4]

Only candidates for the offices of Governor (Governor and Lieutenant Governor candidates are considered a 'single' candidate for public financing purposes) or Cabinet offices are eligible for funding.[5] A candidate for one of those offices seeking to receive public funding under the Act must:

- File a request with the Division of Elections (division) within the Department of State upon qualifying for office;[6]
- Agree to abide by the Act's expenditure limits;[7]
- Raise a certain amount of contributions;[8]
- Limit loans or contributions from the candidate's personal funds to $25,000 and contributions from national, state, and county executive committees of a political party to $250,000 in the aggregate;[9] and
- Submit to a postelection audit of the campaign account by the division.[10]

Gubernatorial candidates and candidates for cabinet member must limit their expenditures[11] according to the following schedule: $2.00 for each Florida-registered voter[12] for Governor and Lieutenant Governor or $1.00 for each Florida-registered voter for Cabinet Officer. The expenditure limits for the 2018 election cycle were as follows:

- Governor and Lieutenant Governor: $27,091,462.00 ($2.00 for each Florida-registered voter); and
- Cabinet Officer: $13,545,731.00 ($1.00 for each Florida-registered voter).[13]

If a candidate who is not receiving public campaign funds exceeds the expenditure limitations set forth in the Act, then a participating candidate is released from abiding by the expenditure limits.[14] The division reviews each request for public contributions and certifies whether the candidate is eligible before distribution.[15] If certified, the candidate receives qualifying matching contributions on a two-to-one basis for contributions making up the amount of funds needed to initially become eligible for public

---

[1] Chapter 86-276, L.O.F.
[2] Section 106.31, F.S.
[3] Section 106.30, F.S., states that ss. 106.30-106.36, F.S., may be cited as the "Florida Election Campaign Financing Act."
[4] On November 4, 1996, the trust fund expired by operation of Art. III, s. 19(f)(2), FLA. CONST. *See* note in s. 106.32, F.S. All balances and income from the defunct fund were deposited into the state General Revenue Fund. Art. III, s. 19(f)(4), FLA. CONST.
[5] Section 106.33, F.S.
[6] *Id.; see also* Fla. Admin. R. 1S-2.047.
[7] Section 106.33(1), F.S.; *see also* s. 106.34, F.S.
[8] Section 106.33(2), F.S. A candidate for Governor must raise at least $150,000 and a candidate for a cabinet office must raise at least $100,000.
[9] Section 106.33(3), F.S.
[10] Section 106.33(4), F.S.
[11] *See* s. 106.011(10)(a), F.S.
[12] The Florida Election Campaign Financing Act defines the term "Florida-registered voter" to mean a voter who is registered to vote in Florida as of June 30 of each odd-numbered year. The Division of Elections is required to certify the total number of Florida-registered voters no later than July 31 of each odd-numbered year. Section 106.34(3), F.S.
[13] Department of State, *2018 Public Campaign Financing Handbook*, https://dos.myflorida.com/media/698987/public-campaign-financing-2018.pdf (last visited Jan. 29, 2020).
[14] Section 106.355, F.S.
[15] Section 106.35(1), F.S.

financing and on a one-to-one basis thereafter.[16] The one-to-one match only applies to contributions of $250 or less per individual; any amount contributed by an individual in excess of $250 will only be matched up to $250.[17] Additionally, for the match to occur, the individual from whom the contributions are received must be a resident of the state.[18] The funds are distributed from the general revenue fund.[19] Total distributions for the 2010, 2014, and 2018 election cycles were as follows:

2010 Election Cycle – Total Distributions[20]	
Office	**Distribution**
Governor (Lt. Gov.)	$1,816,014.47
Attorney General	$2,176,956.17
Chief Financial Officer	$1,204,321.09
Commissioner of Agriculture	$868,264.38
TOTAL	**$6,065,556.11**

2014 Election Cycle – Total Distributions[21]	
Office	**Distribution**
Governor (Lt. Gov.)	$2,830,194.03
Attorney General	$628,440.64
Chief Financial Officer	$418,396.06
Commissioner of Agriculture	$459,009.31
TOTAL	**$4,336,040.04**

2018 Election Cycle – Total Distribution[22]	
Office	**Distribution**
Governor (Lt. Gov.)	$8,151,124.58
Attorney General	$933,187.02
Chief Financial Officer	$334,604.00
Commissioner of Agriculture	$433,690.16
TOTAL	**$9,852,605.76**

The purpose of the constitutional provision is that all qualified candidates "may compete effectively."[23] This purpose has been questioned by at least one court.[24]

A participating candidate who exceeds the expenditure limit or falsely reports qualifying matching contributions and thereby receives contributions to which the candidate was not entitled is fined an amount equal to three times the amount at issue.[25]

Public Campaign Financing Amendment

In 1998, the Constitution Revision Commission,[26] a body which meets every 20 years to consider amendments to the Florida Constitution, placed an amendment on the general election ballot requiring the establishment of a method of public financing for candidates for state-wide office. The proposed

[16] Section 106.35(2)(a), F.S.
[17] Section 106.35(2)(b), F.S.
[18] *Id.*
[19] On November 4, 1996, the trust fund expired by operation of Art. III, s. 19(f)(2), FLA. CONST. *See* note in s. 106.32, F.S. All balances and income from the defunct fund were deposited into the state General Revenue Fund. Art. III, s. 19(f)(4), FLA. CONST.
[20] Department of State, *Public Campaign Finance 2010*, http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2010/ (last visited Jan. 29, 2020).
[21] Department of State, *Public Campaign Finance 2014*, http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2014/ (last visited Jan. 29, 2020).
[22] Department of State, *Public Campaign Finance 2018*, https://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2018/ (last visited Jan. 29, 2020).
[23] Article VI, s. 7, FLA. CONST.
[24] *Scott v. Roberts*, 612 F.3d 1279, 1293 (11th Cir. 2010) ("the system levels the electoral playing filed, and that purpose is constitutionally problematic").
[25] Section 106.36, F.S.
[26] Article XI, s. 2, FLA. CONST.

amendment was approved by the electorate, garnering 64.1 percent of the vote.[27] The constitutional provision is presently found in Article VI, s. 7 and provides that "[i]t is the policy of this state to provide for state-wide elections in which all qualified candidates may compete effectively."[28] The provision requires the Legislature to establish in law a method of public financing for campaigns for statewide office.[29] The provision further requires spending limits be created for any candidate who chooses to use the public financing option.[30]

In 2009, the Legislature passed HJR 81 (2009), which proposed a constitutional amendment to repeal the public campaign financing amendment. The proposed amendment was placed on the ballot at the 2010 general election. The amendment failed to pass the required 60 percent threshold, garnering 52.5 percent of the vote, and therefore was not incorporated into the Florida Constitution.[31]

<u>HJR 1325 (2020)</u>
HJR 1325 repeals art. VI, s. 7. of the Florida Constitution, the public campaign financing amendment. If the joint resolution passes each chamber with a three-fifths vote it will be placed on the general election ballot in 2020. If the electorate approves the amendment with at least 60 percent of electors voting in favor of its passage,[32] it will repeal the public financing amendment.

B. SECTION DIRECTORY:

Section 1 repeals ss. 106.30, 106.31, 106.32, 106.33, 106.34, 106.35, 106.353, 106.355, and 106.36, F.S., relating to the Florida Election Campaign Financing Act.

Section 2 amends s. 106.021, F.S., relating to campaign treasurers and depositories.

Section 3 amends s. 106.141, F.S., relating to the disposition of surplus funds by candidates.

Section 4 amends s. 106.22, F.S., relating to duties of the division.

Section 5 amends s. 328.72, F.S., relating to vessel classification and registration.

Section 6 provides an effective date that is contingent upon the passage of HJR 1325 and its approval by the voters.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

---

[27] Department of State, *1998 Election Results*, https://results.elections.myflorida.com/?ElectionDate=11/3/1998&DATAMODE= (last visited Jan. 29, 2020).
[28] Article VI, s. 7, FLA. CONST.
[29] *Id*.
[30] *Id*.
[31] Department of State, *2010 Election Results*, https://results.elections.myflorida.com/Index.asp?ElectionDate=11/2/2010&DATAMODE= (last visited Jan. 29, 2020).
[32] Article XI, s. 5, FLA. CONST.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

If passed in conjunction with HB 1325 (2020), the resolution will likely have a positive fiscal impact on the state. HB 1325 (2020), which is linked to the passage of the joint resolution, repeals the Act that contains the statutory framework for the public financing of statewide campaigns. Elimination of the public campaign financing amendment and the Act in chapter 106, F.S., would allow the funds currently expended for those purposes to be diverted elsewhere. The Department of State asserts that $9,852,605.76 was spent on the public financing of campaigns in 2018,[33] $4,336,040.04 in 2014,[34] and $6,065,556.11 in 2010.[35] As the original trust fund for the public campaign financing program expired in 1996, these funds are currently distributed from general revenue.[36]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of art. VII, s. 18 of the Florida Constitution as it is a bill concerning elections.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules. However, its passage will result in the repeal of the rule implementing the Florida Election Campaign Financing Act.[37]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

---

[33] Department of State, *Public Campaign Finance 2018*, https://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2018/ (last visited Jan. 29, 2020).
[34] Department of State, *Public Campaign Finance 2014*, http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2014/ (last visited Jan. 29, 2020).
[35] Department of State, *Public Campaign Finance 2010*, http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2010/ (last visited Jan. 29, 2020).
[36] On November 4, 1996, the trust fund expired by operation of Art. III, s. 19(f)(2), FLA. CONST. *See* note in s. 106.32, F.S. All balances and income from the defunct fund were deposited into the state General Revenue Fund. Art. III, s. 19(f)(4), FLA. CONST.
[37] *See* Fla. Admin. R. 1S-2.047.

1 A bill to be entitled
2 An act relating to campaign finance; repealing ss.
3 106.30, 106.31, 106.32, 106.33, 106.34, 106.35,
4 106.353, 106.355, and 106.36, F.S., relating to the
5 Florida Election Campaign Financing Act; deleting
6 provisions governing the public funding of campaigns
7 for candidates for statewide office who agree to
8 certain expenditure limits; amending ss. 106.021,
9 106.141, 106.22, and 328.72, F.S.; conforming cross-
10 references and provisions to changes made by the act;
11 providing a contingent effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Sections 106.30, 106.31, 106.32, 106.33,
16 106.34, 106.35, 106.353, 106.355, and 106.36, Florida Statutes,
17 are repealed.
18 Section 2. Paragraph (a) of subsection (1) of section
19 106.021, Florida Statutes, is amended to read:
20 106.021 Campaign treasurers; deputies; primary and
21 secondary depositories.—
22 (1)(a) Each candidate for nomination or election to office
23 and each political committee shall appoint a campaign treasurer.
24 Each person who seeks to qualify for nomination or election to,
25 or retention in, office shall appoint a campaign treasurer and

26 designate a primary campaign depository before qualifying for
27 office. Any person who seeks to qualify for election or
28 nomination to any office by means of the petitioning process
29 shall appoint a treasurer and designate a primary depository on
30 or before the date he or she obtains the petitions. At the same
31 time a candidate designates a campaign depository and appoints a
32 treasurer, the candidate shall also designate the office for
33 which he or she is a candidate. If the candidate is running for
34 an office that will be grouped on the ballot with two or more
35 similar offices to be filled at the same election, the candidate
36 must indicate for which group or district office he or she is
37 running. This subsection does not prohibit a candidate, at a
38 later date, from changing the designation of the office for
39 which he or she is a candidate. However, if a candidate changes
40 the designated office for which he or she is a candidate, the
41 candidate must notify all contributors in writing of the intent
42 to seek a different office and offer to return pro rata, upon
43 their request, those contributions given in support of the
44 original office sought. This notification shall be given within
45 15 days after the filing of the change of designation and shall
46 include a standard form developed by the Division of Elections
47 for requesting the return of contributions. The notice
48 requirement does not apply to any change in a numerical
49 designation resulting solely from redistricting. If, within 30
50 days after being notified by the candidate of the intent to seek

51 a different office, the contributor notifies the candidate in
52 writing that the contributor wishes his or her contribution to
53 be returned, the candidate shall return the contribution, on a
54 pro rata basis, calculated as of the date the change of
55 designation is filed. Up to a maximum of the contribution limits
56 specified in s. 106.08, a candidate who runs for an office other
57 than the office originally designated may use any contribution
58 that a donor does not request be returned within the 30-day
59 period for the newly designated office, provided the candidate
60 disposes of any amount exceeding the contribution limit pursuant
61 to the options in s. 106.11(5)(b) and (c) or s. 106.141(4)(a),
62 (b), or (d) ~~s. 106.141(4)(a)1., 2., or 4.~~; notwithstanding, the
63 full amount of the contribution for the original office shall
64 count toward the contribution limits specified in s. 106.08 for
65 the newly designated office. A person may not accept any
66 contribution or make any expenditure with a view to bringing
67 about his or her nomination, election, or retention in public
68 office, or authorize another to accept such contributions or
69 make such expenditure on the person's behalf, unless such person
70 has appointed a campaign treasurer and designated a primary
71 campaign depository. A candidate for an office voted upon
72 statewide may appoint not more than 15 deputy campaign
73 treasurers, and any other candidate or political committee may
74 appoint not more than 3 deputy campaign treasurers. The names
75 and addresses of the campaign treasurer and deputy campaign

76 treasurers so appointed shall be filed with the officer before
77 whom such candidate is required to qualify or with whom such
78 political committee is required to register pursuant to s.
79 106.03.
80 Section 3. Subsection (4) of section 106.141, Florida
81 Statutes, is amended to read:
82 106.141 Disposition of surplus funds by candidates.—
83 (4)~~(a) Except as provided in paragraph (b),~~ Any candidate
84 required to dispose of funds pursuant to this section shall, at
85 the option of the candidate, dispose of such funds by any of the
86 following means, or any combination thereof:
87 (a)~~1.~~ Return pro rata to each contributor the funds that
88 have not been spent or obligated.
89 (b)~~2.~~ Donate the funds that have not been spent or
90 obligated to a charitable organization or organizations that
91 meet the qualifications of s. 501(c)(3) of the Internal Revenue
92 Code.
93 (c)~~3.~~ Give not more than $25,000 of the funds that have
94 not been spent or obligated to the affiliated party committee or
95 political party of which such candidate is a member.
96 (d)~~4.~~ Give the funds that have not been spent or
97 obligated:
98 1.~~a.~~ In the case of a candidate for state office, to the
99 state, to be deposited in ~~either the Election Campaign Financing~~
100 ~~Trust Fund or~~ the General Revenue Fund~~, as designated by the~~

101 ~~candidate~~; or

102 2.~~b.~~ In the case of a candidate for an office of a

103 political subdivision, to such political subdivision, to be

104 deposited in the general fund thereof.

105 ~~(b) Any candidate required to dispose of funds pursuant to~~

106 ~~this section who has received contributions pursuant to the~~

107 ~~Florida Election Campaign Financing Act shall, after all~~

108 ~~monetary commitments pursuant to s. 106.11(5)(b) and (c) have~~

109 ~~been met, return all surplus campaign funds to the General~~

110 ~~Revenue Fund.~~

111 Section 4. Subsection (6) of section 106.22, Florida

112 Statutes, is amended to read:

113 106.22 Duties of the Division of Elections.—It is the duty

114 of the Division of Elections to:

115 (6) Make, from time to time, audits and field

116 investigations with respect to reports and statements filed

117 under the provisions of this chapter and with respect to alleged

118 failures to file any report or statement required under the

119 provisions of this chapter. ~~The division shall conduct a~~

120 ~~postelection audit of the campaign accounts of all candidates~~

121 ~~receiving contributions from the Election Campaign Financing~~

122 ~~Trust Fund.~~

123 Section 5. Subsection (11) of section 328.72, Florida

124 Statutes, is amended to read:

125 328.72 Classification; registration; fees and charges;

126 surcharge; disposition of fees; fines; marine turtle stickers.—
127 (11) VOLUNTARY CONTRIBUTIONS.—The application form for
128 boat registration shall include a provision to allow each
129 applicant to indicate a desire to pay an additional voluntary
130 contribution to the Save the Manatee Trust Fund to be used for
131 the purposes specified in s. 379.2431(4). This contribution
132 shall be in addition to all other fees and charges. The amount
133 of the request for a voluntary contribution solicited shall be
134 $2 or $5 per registrant. A registrant who provides a voluntary
135 contribution of $5 or more shall be given a sticker or emblem by
136 the tax collector to display, which signifies support for the
137 Save the Manatee Trust Fund. All voluntary contributions shall
138 be deposited in the Save the Manatee Trust Fund and shall be
139 used for the purposes specified in s. 379.2431(4). ~~The form~~
140 ~~shall also include language permitting a voluntary contribution~~
141 ~~of $5 per applicant, which contribution shall be transferred~~
142 ~~into the Election Campaign Financing Trust Fund. A statement~~
143 ~~providing an explanation of the purpose of the trust fund shall~~
144 ~~also be included.~~
145 Section 6. This act shall take effect on the effective
146 date of HJR 1325, or a similar joint resolution having
147 substantially the same specific intent and purpose, if that
148 joint resolution is approved by the electors at the general
149 election to be held in November 2020, or at an earlier special
150 election specifically authorized by law for that purpose.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1331 Fire Control Districts and Firefighter Pensions
SPONSOR(S): Roach
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The Marvin B. Clayton Firefighters' Pension Trust Fund Act (Act) provides a uniform retirement system for the benefit of municipal firefighters. Participation in the trust fund is limited to incorporated municipalities and to special fire control districts. An incentive for establishing firefighter retirement plans through the Act is access to premium tax revenues imposed on the gross premiums of property insurance covering property within the boundaries of the municipality or special fire control district. Currently, unincorporated areas of a county may not participate in the fund unless a special fire control district includes the unincorporated area.

A county has the authority to establish Municipal Services Taxing Units (MSTUs) for any part or all of the unincorporated area of a county. The creation of an MSTU allows the county's governing body to place the burden of ad valorem taxes upon property in a geographic area less than countywide to fund a particular municipal-type service or services.

The bill expands the applicability of the Act to allow a municipality that provides fire protection services to a MSTU through an interlocal agreement to receive insurance premium taxes collected within the MSTU boundary, for the purpose of providing pension benefits to the municipality's firefighters.

The Revenue Estimating Conference, on January 30, 2020, estimated that the bill would have a state General Revenue impact of -$0.5 million annually and a local government revenue impact of $0.5 million annually beginning in fiscal year 2020-2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Municipal Firefighters' Pension Trust Fund

Local firefighter pension plans are governed by Chapter 175, F.S., which is known as the Marvin B. Clayton Firefighters' Pension Trust Fund Act (Act). The Act declares a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters.[1] All municipal and special district firefighter retirement trust fund systems and plans must be managed, administered, operated, and funded to maximize the protection of firefighters' pension trust funds.[2]

Chapter 175, F.S., was originally enacted in 1939 to provide an incentive – access to premium tax revenues - to encourage cities to establish firefighter retirement plans. Special fire control districts became eligible to participate in 1993.

Participation in the trust fund is limited to incorporated municipalities and to special fire control districts. Single consolidated governments of a county and one or more municipalities are also allowed to participate in the trust fund. Currently, unincorporated areas of a county may not participate unless a special fire control district includes the unincorporated areas.

Pension Funding Sources

Four sources provide funding for these pension plans: net proceeds from an excise tax levied by a city upon property and casualty insurances companies (known as the "premium tax"); employee contributions; other revenue sources; and mandatory payments by the city of the normal cost of the plan.[3] To qualify for insurance premium tax dollars, plans must meet requirements found in Chapter 175. F.S.

The premium tax is an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or special fire control district.[4] The insurers pay the tax to the Department of Revenue (DOR), and the net proceeds are transferred to the appropriate fund at the Division of Retirement (division) in the Department of Management Services (DMS). In 2018, premium tax distributions to municipalities and special fire control districts from the Firefighters' Pension Trust Fund amounted to $77.1 million.[5]

A municipality that has entered into a one-year or longer interlocal agreement to provide fire services to another incorporated municipality may receive its premium taxes.[6] The municipality providing fire services must notify the division of the interlocal agreement. The division may then distribute any premium taxes reported for the other incorporated municipality to the municipality providing the fire services.

Counties Furnishing Municipal Services

General law implements the constitutional provision authorizing a county furnishing municipal services to levy additional taxes within the limits fixed for municipal purposes via the establishment of Municipal Services Taxing Units (MSTU).[7] The creation of a MSTU allows the county's governing body to place the burden of ad valorem taxes upon property in a geographic area less than countywide to fund a

---

[1] Section 175.021(1), F.S.
[2] *Id.*
[3] Section 175.091(1), F.S.
[4] Section 175.101(1), F.S.
[5] Department of Management Services, *Municipal Police and Fire Plans*, available at https://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans (last visited 2/2/20).
[6] Although, the criteria in s. 175.041(3)(c), F.S., must be met.
[7] Section 125.01(1)(q), F.S.

particular municipal-type service or services. The MSTU is used in a county budget to separate those ad valorem taxes levied within the taxing unit itself to ensure that the funds derived from the tax levy are used within the boundaries of the taxing unit for the contemplated services. If ad valorem taxes are levied to provide these municipal services, counties are authorized to levy up to ten mills.[8]

The MSTU may encompass the entire unincorporated area, a portion of the unincorporated area, or all or part of the boundaries of a municipality. However, the inclusion of municipal boundaries within the MSTU is subject to the consent by ordinance of the governing body of the affected municipality given either annually or for a term of years.[9]

Effect of Proposed Changes

The bill expands the applicability of the Firefighters' Pension Trust Fund to allow a municipality that provides fire protection services to a MSTU through an interlocal agreement to receive insurance premium taxes collected within the MSTU boundary, for the purpose of providing pension benefits to the municipality's firefighters.

The bill also permits the MSTU to revoke its participation; which would terminate eligibility for premium tax distributions.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 175.032, F.S., conforming provisions to changes made by the act.

Section 2: Amends s. 175.041. F.S., revising applicability of the Firefighters' Pension Trust Fund; authorizing a municipality that provides fire protection services to a MSTU under an interlocal agreement to receive property insurance premium taxes; authorizing a county to enact an ordinance levying a tax on behalf of a MSTU receiving fire protection services.

Section 3: Amends s. 175.071, F.S., conforming to provisions made by the act.

Section 4: Amends s. 175.101, F.S., authorizing a MSTU that enters into an interlocal agreement for fire protection services with a municipality to impose an excise tax on property insurance premiums.

Section 5: Amends s. 175.111, F.S., requiring a MSTU to provide the Division of Retirement of the Department of Management Services with a certified copy of an ordinance assessing and imposing certain taxes.

Sections 6, 7, and 8: Amends ss. 175.121, 175.122, and 175.351, F.S., revising provisions relating to the disbursement of moneys by the division and the Department of Revenue and the limitation of disbursement to conform to changes made by the act.

Section 9: Amends s. 175.381, F.S., conforming provisions to changes made by the act.

Section 10: Amends s. 175.411, F.S., authorizing a MSTU to revoke its participation and cease to receive property insurance premium taxes under certain conditions.

Section 11: Amends s. 191.006, F.S., requiring an independent special fire district to have, and authorizing the board of such district to exercise by majority vote, specified powers.

Section 12: Amends s. 633.422, F.S., conforming provisions to changes made by the act.

Section 13: Provides an effective date of July 1, 2020.

---

[8] Section 200.071(3), F.S.

[9] Office of Economic and Demographic Research, *Local Government Financial Information Handbook* (2019).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference, on January 30, 2020, estimated that the bill would have a state General Revenue impact of -$0.5 million annually beginning in fiscal year 2020-2021.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference, on January 30, 2020, estimated that the bill would have a local government revenue impact of $0.5 million annually beginning in fiscal year 2020-2021.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill specifies that a municipality is entitled to premium tax distributions provided by chapter 175, F.S., for providing fire services to MSTUs. As a result, this bill will have a fiscal impact on state revenues because state premium taxes paid by an insurer to fund a municipal firefighter retirement plan are credited against the premium taxes paid to the state by the insurance company.[10]

The bill will result in a positive fiscal impact on local governments because the bill provides that a municipality may collect premium tax revenues within the MSTU boundary receiving firefighter services if the consolidated government provides a municipal firefighter retirement plan, as provided for in chapter 175, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

[10] Section 624.509(4), F.S.

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to fire control districts and
3 firefighter pensions; amending s. 175.041, F.S.;
4 revising applicability of the Firefighters' Pension
5 Trust Fund; authorizing a municipality that provides
6 fire protection services to a municipal services
7 taxing unit under an interlocal agreement to receive
8 property insurance premium taxes; authorizing a county
9 to enact an ordinance levying a tax on behalf of a
10 municipal services taxing unit receiving fire
11 protection services; amending s. 175.101, F.S.;
12 authorizing a municipal services taxing unit that
13 enters into an interlocal agreement for fire
14 protection services with a municipality to impose an
15 excise tax on property insurance premiums; amending s.
16 175.111, F.S.; requiring a municipal services taxing
17 unit to provide the Division of Retirement of the
18 Department of Management Services with a certified
19 copy of an ordinance assessing and imposing certain
20 taxes; amending ss. 175.121, 175.122, and 175.351,
21 F.S.; revising provisions relating to the disbursement
22 of moneys by the division and the Department of
23 Revenue and the limitation of disbursement to conform
24 to changes made by the act; amending s. 175.411, F.S.;
25 authorizing a municipal services taxing unit to revoke

26 its participation and cease to receive property
27 insurance premium taxes under certain conditions;
28 amending s. 191.006, F.S.; requiring an independent
29 special fire control district to have, and authorizing
30 the board of such district to exercise by majority
31 vote, specified powers; amending ss. 175.032, 175.071,
32 175.381, and 633.422, F.S.; conforming provisions to
33 changes made by the act; providing an effective date.
34
35 Be It Enacted by the Legislature of the State of Florida:
36
37 Section 1. Subsection (14) of section 175.032, Florida
38 Statutes, is amended to read:
39 175.032 Definitions.—For any municipality, special fire
40 control district, chapter plan, local law municipality, local
41 law special fire control district, or local law plan under this
42 chapter, the term:
43 (14) "Local law plan" means a retirement plan that
44 includes both a defined benefit plan component and a defined
45 contribution plan component for firefighters, or for
46 firefighters and police officers if both are included, as
47 described in s. 175.351, established by ~~municipal~~ ordinance,
48 special district resolution, or special act of the Legislature,
49 which enactment sets forth all plan provisions. Local law plan
50 provisions may vary from the provisions of this chapter if

51 minimum benefits and minimum standards are met. However, any
52 such variance must provide a greater benefit for firefighters,
53 or firefighters and police officers if both are included.
54 Actuarial valuations of local law plans shall be conducted by an
55 enrolled actuary as provided in s. 175.261(2).
56 Section 2. Section 175.041, Florida Statutes, is amended
57 to read:
58 175.041 Firefighters' Pension Trust Fund created;
59 applicability of provisions.—For any municipality, municipal
60 services taxing unit, special fire control district, chapter
61 plan, local law municipality, local law special fire control
62 district, or local law plan under this chapter:
63 (1) There shall be established a special fund exclusively
64 for the purpose of this chapter, which in the case of chapter
65 plans shall be known as the "Firefighters' Pension Trust Fund,"
66 in each municipality, municipal services taxing unit, and each
67 special fire control district of this state heretofore or
68 hereafter created which now has or which may hereafter have a
69 constituted fire department or an authorized volunteer fire
70 department, or any combination thereof.
71 (2) To qualify as a fire department or volunteer fire
72 department or combination thereof under the provisions of this
73 chapter, the department shall own and use apparatus for the
74 fighting of fires that was in compliance with National Fire
75 Protection Association Standards for Automotive Fire Apparatus

76 at the time of purchase.
77 (3) ~~The provisions of~~ This chapter applies ~~shall apply~~
78 only to municipalities organized and established under ~~pursuant~~
79 ~~to~~ the laws of the state and to special fire control districts.
80 This chapter does~~, and said provisions shall~~ not apply to the
81 unincorporated areas of any county or counties except with
82 respect to municipal services taxing units established in
83 unincorporated areas for the purpose of receiving fire
84 protection services from a municipality and special fire control
85 districts that include unincorporated areas. This chapter also
86 does not~~, nor shall the provisions hereof~~ apply to any
87 governmental entity whose firefighters are eligible to
88 participate in the Florida Retirement System.
89 (a) Special fire control districts that include, or
90 consist exclusively of, unincorporated areas of one or more
91 counties may levy and impose the tax and participate in the
92 retirement programs created ~~enabled~~ by this chapter.
93 (b) With respect to the distribution of premium taxes, a
94 single consolidated government consisting of a former county and
95 one or more municipalities, consolidated under ~~pursuant to~~ s. 3
96 or s. 6(e), Art. VIII of the State Constitution, is also
97 eligible to participate under this chapter. The consolidated
98 government shall notify the division when it has entered into an
99 interlocal agreement to provide fire services to a municipality
100 within its boundaries. The municipality may enact an ordinance

101 levying the tax as provided in s. 175.101. Upon being provided
102 copies of the interlocal agreement and the municipal ordinance
103 levying the tax, the division may distribute any premium taxes
104 reported for the municipality to the consolidated government as
105 long as the interlocal agreement is in effect.
106 (c) Any municipality that has entered into an interlocal
107 agreement to provide fire protection services to any other
108 incorporated municipality, in its entirety, or a municipal
109 services taxing unit in an unincorporated area, in its entirety,
110 for a period of 12 months or more may be eligible to receive the
111 premium taxes reported for such other municipality or municipal
112 services taxing unit. In order to be eligible for such premium
113 taxes, the municipality providing the fire services must notify
114 the division that it has entered into an interlocal agreement
115 with another municipality or a county on behalf of a municipal
116 services taxing unit. The municipality receiving the fire
117 services, or a county on behalf of the municipal services taxing
118 unit receiving the fire services, may enact an ordinance levying
119 the tax as provided in s. 175.101. Upon being provided copies of
120 the interlocal agreement and the municipal ordinance levying the
121 tax, the division may distribute any premium taxes reported for
122 the municipality or municipal services taxing unit receiving the
123 fire services to the participating municipality providing the
124 fire services as long as the interlocal agreement is in effect.
125 (4) No municipality shall establish more than one

126 retirement plan for public safety officers which is supported in
127 whole or in part by the distribution of premium tax funds as
128 provided by this chapter or chapter 185, nor shall any
129 municipality establish a retirement plan for public safety
130 officers which receives premium tax funds from both this chapter
131 and chapter 185.
132 Section 3. Section 175.071, Florida Statutes, is amended
133 to read:
134 175.071 General powers and duties of board of trustees.—
135 For any municipality, <u>municipal services taxing unit,</u> special
136 fire control district, chapter plan, local law municipality,
137 local law special fire control district, or local law plan under
138 this chapter:
139 (1) The board of trustees, subject to the fiduciary
140 standards in ss. 112.656, 112.661, and 518.11 and the Code of
141 Ethics in ss. 112.311-112.3187, may:
142 (a) Invest and reinvest the assets of the firefighters'
143 pension trust fund in annuity and life insurance contracts of
144 life insurance companies in amounts sufficient to provide, in
145 whole or in part, the benefits to which all of the participants
146 in the firefighters' pension trust fund are entitled under this
147 chapter and pay the initial and subsequent premiums thereon.
148 (b) Invest and reinvest the assets of the firefighters'
149 pension trust fund in:
150 1. Time or savings accounts of a national bank, a state

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

151 bank insured by the Bank Insurance Fund, or a savings, building,
152 and loan association insured by the Savings Association
153 Insurance Fund administered by the Federal Deposit Insurance
154 Corporation or a state or federal chartered credit union whose
155 share accounts are insured by the National Credit Union Share
156 Insurance Fund.
157 2. Obligations of the United States or obligations
158 guaranteed as to principal and interest by the government of the
159 United States.
160 3. Bonds issued by the State of Israel.
161 4. Bonds, stocks, or other evidences of indebtedness
162 issued or guaranteed by a corporation organized under the laws
163 of the United States, any state or organized territory of the
164 United States, or the District of Columbia, if:
165 a. The corporation is listed on any one or more of the
166 recognized national stock exchanges or on the National Market
167 System of the NASDAQ Stock Market and, in the case of bonds
168 only, holds a rating in one of the three highest classifications
169 by a major rating service; and
170 b. The board of trustees may not invest more than 5
171 percent of its assets in the common stock or capital stock of
172 any one issuing company, nor may the aggregate investment in any
173 one issuing company exceed 5 percent of the outstanding capital
174 stock of that company or the aggregate of its investments under
175 this subparagraph at cost exceed 50 percent of the assets of the

176 fund.
177
178 This paragraph applies to all boards of trustees and
179 participants. However, if a municipality, municipal services
180 taxing unit, or special fire control district has a duly enacted
181 pension plan under ~~pursuant to~~, and in compliance with, s.
182 175.351, and the trustees desire to vary the investment
183 procedures, the trustees of such plan must request a variance of
184 the investment procedures as outlined herein only through an ~~a~~
185 ~~municipal~~ ordinance, special act of the Legislature, or
186 resolution by the governing body of the special fire control
187 district; if a special act, or a municipality by ordinance
188 adopted before July 1, 1998, permits a greater than 50-percent
189 equity investment, such municipality is not required to comply
190 with the aggregate equity investment provisions of this
191 paragraph. Notwithstanding any other provision of law, this
192 section may not be construed to take away any preexisting legal
193 authority to make equity investments that exceed the
194 requirements of this paragraph. Notwithstanding any other
195 provision of law, the board of trustees may invest up to 25
196 percent of plan assets in foreign securities on a market-value
197 basis. The investment cap on foreign securities may not be
198 revised, amended, increased, or repealed except as provided by
199 general law.
200 (c) Issue drafts upon the firefighters' pension trust fund

201 pursuant to this act and rules prescribed by the board of
202 trustees. All such drafts must be consecutively numbered, be
203 signed by the chair and secretary, or by two individuals
204 designated by the board who are subject to the same fiduciary
205 standards as the board of trustees under this subsection, and
206 state upon their faces the purpose for which the drafts are
207 drawn. The treasurer or depository of each municipality or
208 special fire control district shall retain such drafts when
209 paid, as permanent vouchers for disbursements made, and no money
210 may be otherwise drawn from the fund.
211 (d) Convert into cash any securities of the fund.
212 (e) Keep a complete record of all receipts and
213 disbursements and the board's acts and proceedings.
214 (2) Any and all acts and decisions shall be effectuated by
215 vote of a majority of the members of the board; however, no
216 trustee shall take part in any action in connection with the
217 trustee's own participation in the fund, and no unfair
218 discrimination shall be shown to any individual firefighter
219 participating in the fund.
220 (3) The board's action on all claims for retirement under
221 this act shall be final, provided, however, that the rules and
222 regulations of the board have been complied with.
223 (4) The secretary of the board of trustees shall keep a
224 record of all persons receiving retirement payments under ~~the~~
225 ~~provisions of~~ this chapter, in which shall be noted the time

226 when the pension is allowed and the time when the pension shall
227 cease to be paid. In this record, the secretary shall keep a
228 list of all firefighters employed by the municipality, municipal
229 services taxing unit, or special fire control district. The
230 record shall show the name, address, and time of employment of
231 such firefighters and when they cease to be employed by the
232 municipality, municipal services taxing unit, or special fire
233 control district.
234 (5) The sole and exclusive administration of, and the
235 responsibilities for, the proper operation of the firefighters'
236 pension trust fund and for making effective ~~the provisions of~~
237 this chapter are vested in the board of trustees; however,
238 nothing herein shall empower a board of trustees to amend ~~the~~
239 ~~provisions of~~ a retirement plan without the approval of the
240 municipality, municipal services taxing unit, or special fire
241 control district. The board of trustees shall keep in convenient
242 form such data as shall be necessary for an actuarial valuation
243 of the firefighters' pension trust fund and for checking the
244 actual experience of the fund.
245 (6)(a) At least once every 3 years, the board of trustees
246 shall retain a professionally qualified independent consultant
247 who shall evaluate the performance of any existing professional
248 money manager and shall make recommendations to the board of
249 trustees regarding the selection of money managers for the next
250 investment term. These recommendations shall be considered by

251 the board of trustees at its next regularly scheduled meeting.
252 The date, time, place, and subject of this meeting shall be
253 advertised in the same manner as for any meeting of the board.
254 (b) For purposes of this subsection, the term
255 "professionally qualified independent consultant" means a
256 consultant who, based on education and experience, is
257 professionally qualified to evaluate the performance of
258 professional money managers, and who, at a minimum:
259 1. Provides his or her services on a flat-fee basis.
260 2. Is not associated in any manner with the money manager
261 for the pension fund.
262 3. Makes calculations according to the American Banking
263 Institute method of calculating time-weighted rates of return.
264 All calculations must be made net of fees.
265 4. Has 3 or more years of experience working in the public
266 sector.
267 (7) To assist the board in meeting its responsibilities
268 under this chapter, the board, if it so elects, may:
269 (a) Employ independent legal counsel at the pension fund's
270 expense.
271 (b) Employ an independent enrolled actuary, as defined in
272 s. 175.032, at the pension fund's expense.
273 (c) Employ such independent professional, technical, or
274 other advisers as it deems necessary at the pension fund's
275 expense.

276

277 If the board chooses to use the municipality's, municipal
278 services taxing unit's, or special district's legal counsel or
279 actuary, or chooses to use any of the municipality's, municipal
280 services taxing unit's, or special district's other
281 professional, technical, or other advisers, it must do so only
282 under terms and conditions acceptable to the board.
283 (8) Notwithstanding paragraph (1)(b) and as provided in s.
284 215.473, the board of trustees must identify and publicly report
285 any direct or indirect holdings it may have in any scrutinized
286 company, as defined in that section, and proceed to sell,
287 redeem, divest, or withdraw all publicly traded securities it
288 may have in that company beginning January 1, 2010. The
289 divestiture of any such security must be completed by September
290 30, 2010. The board and its named officers or investment
291 advisors may not be deemed to have breached their fiduciary duty
292 in any action taken to dispose of any such security, and the
293 board shall have satisfactorily discharged the fiduciary duties
294 of loyalty, prudence, and sole and exclusive benefit to the
295 participants of the pension fund and their beneficiaries if the
296 actions it takes are consistent with the duties imposed by s.
297 215.473, and the manner of the disposition, if any, is
298 reasonable as to the means chosen. For the purposes of effecting
299 compliance with that section, the pension fund shall designate
300 terror-free plans that allocate their funds among securities not

301 subject to divestiture. No person may bring any civil, criminal,
302 or administrative action against the board of trustees or any
303 employee, officer, director, or advisor of such pension fund
304 based upon the divestiture of any security pursuant to this
305 subsection.
306 Section 4. Section 175.101, Florida Statutes, is amended
307 to read:
308 175.101 State excise tax on property insurance premiums
309 authorized; procedure.—For any municipality, municipal services
310 taxing unit, special fire control district, chapter plan, local
311 law municipality, local law special fire control district, or
312 local law plan under this chapter:
313 (1) Each municipality, municipal services taxing unit, or
314 special fire control district in this state described and
315 classified in s. 175.041, having a lawfully established
316 ~~firefighters'~~ pension trust fund, ~~or~~ municipal fund, or special
317 fire control district fund, by whatever name known, providing
318 pension benefits to firefighters, or firefighters and police
319 officers if both are included, as provided under this chapter,
320 or receiving fire protection services from a municipality
321 participating under this chapter, may assess and impose on every
322 insurance company, corporation, or other insurer now engaged in
323 or carrying on, or who shall hereinafter engage in or carry on,
324 the business of property insurance as shown by the records of
325 the Office of Insurance Regulation of the Financial Services

326 Commission, an excise tax in addition to any lawful license or
327 excise tax now levied by each of the municipalities, municipal
328 services taxing units, or special fire control districts,
329 respectively, amounting to 1.85 percent of the gross amount of
330 receipts of premiums from policyholders on all premiums
331 collected on property insurance policies covering property
332 within the corporate limits of such municipalities or within the
333 legally defined boundaries of municipal services taxing units or
334 special fire control districts, respectively. Whenever the
335 boundaries of a special fire control district that has lawfully
336 established a firefighters' pension trust fund encompass a
337 portion of the corporate territory of a municipality that has
338 also lawfully established a firefighters' pension trust fund, or
339 a municipal services taxing unit receiving fire protection
340 services from a municipality participating under this chapter,
341 that portion of the tax receipts attributable to insurance
342 policies covering property situated both within the municipality
343 or municipal services taxing unit and the special fire control
344 district shall be given to the fire service provider. For the
345 purpose of this section, the boundaries of a special fire
346 control district include an area that has been annexed until the
347 completion of the 4-year period provided for in s. 171.093(4),
348 or other agreed-upon extension, or if a special fire control
349 district is providing services under an interlocal agreement
350 executed in accordance with s. 171.093(3). The agent shall

351 identify the fire service provider on the property owner's
352 application for insurance. Remaining revenues collected under
353 ~~pursuant to~~ this chapter shall be distributed to the
354 municipality or special fire control district according to the
355 location of the insured property.
356 (2) In the case of multiple peril policies with a single
357 premium for both the property and casualty coverages in such
358 policies, 70 percent of such premium shall be used as the basis
359 for the 1.85-percent tax.
360 (3) This excise tax is ~~shall be~~ payable annually on March
361 1 of each year after the passage of an ordinance, in the case of
362 a municipality or municipal services taxing unit, or resolution,
363 in the case of a special fire control district, assessing and
364 imposing the tax authorized by this section. Installments of
365 taxes shall be paid according to ~~the provision of~~ s.
366 624.5092(2)(a), (b), and (c).
367
368 This section also applies to any municipality consisting of a
369 single consolidated government which is made up of a former
370 county and one or more municipalities, consolidated under
371 ~~pursuant to~~ the authority in s. 3 or s. 6(e), Art. VIII of the
372 State Constitution, and to property insurance policies covering
373 property within the boundaries of the consolidated government,
374 regardless of whether the properties are located within one or
375 more separately incorporated areas within the consolidated

376 government, provided the properties are being provided fire
377 protection services by the consolidated government. This section
378 also applies to any municipality or municipal services taxing
379 unit in an unincorporated area, as provided in s. 175.041(3)(c),
380 which has entered into an interlocal agreement to receive fire
381 protection services from another municipality participating
382 under this chapter. The excise tax may be levied on all premiums
383 collected on property insurance policies covering property
384 located within the corporate limits of the municipality or
385 municipality services taxing unit receiving the fire protection
386 services, but will be available for distribution to the
387 municipality providing the fire protection services.
388 Section 5. Section 175.111, Florida Statutes, is amended
389 to read:
390 175.111 Certified copy of ordinance or resolution filed;
391 insurance companies' annual report of premiums; duplicate files;
392 book of accounts.—For any municipality, municipal services
393 taxing unit, special fire control district, chapter plan, local
394 law municipality, local law special fire control district, or
395 local law plan under this chapter, whenever any municipality, or
396 any county on behalf of a municipal services taxing unit, passes
397 an ordinance or whenever any special fire control district
398 passes a resolution establishing a chapter plan or local law
399 plan assessing and imposing the taxes authorized in s. 175.101,
400 a certified copy of such ordinance or resolution shall be

401 deposited with the division. Thereafter every insurance company,
402 association, corporation, or other insurer carrying on the
403 business of property insurance on real or personal property, on
404 or before the succeeding March 1 after <u>the</u> date of the passage
405 of the ordinance or resolution, shall report fully in writing
406 and under oath to the division and the Department of Revenue a
407 just and true account of all premiums by such insurer received
408 for property insurance policies covering or insuring any real or
409 personal property located within the corporate limits of each
410 such municipality<u>, municipal services taxing unit,</u> or special
411 fire control district during the period of time elapsing between
412 the date of the passage of the ordinance or resolution and the
413 end of the calendar year. The report shall include the code
414 designation as prescribed by the division for each piece of
415 insured property, real or personal, located within the corporate
416 limits of each municipality and within the legally defined
417 boundaries of each special fire control district <u>and municipal</u>
418 <u>services taxing unit</u>. The ~~aforesaid~~ insurer shall annually
419 thereafter, on March 1, file with the Department of Revenue a
420 similar report covering the preceding year's premium receipts,
421 and every such insurer at the same time of making such reports
422 shall pay to the Department of Revenue the amount of the <u>imposed</u>
423 tax ~~hereinbefore mentioned~~. Every insurer engaged in carrying on
424 such insurance business in the state shall keep accurate books
425 of accounts of all such business done by it within the corporate

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

426 limits of each such municipality and within the legally defined
427 boundaries of each such special fire control district and
428 municipal services taxing unit, and in such manner as to be able
429 to comply with ~~the provisions of~~ this chapter. Based on the
430 insurers' reports of premium receipts, the division shall
431 prepare a consolidated premium report and shall furnish to any
432 municipality, municipal services taxing unit, or special fire
433 control district requesting the same a copy of the relevant
434 section of that report.
435 Section 6. Section 175.121, Florida Statutes, is amended
436 to read:
437 175.121 Department of Revenue and Division of Retirement
438 to keep accounts of deposits; disbursements.—For any
439 municipality, municipal services taxing unit, or special fire
440 control district having a chapter or local law plan established
441 under ~~pursuant to~~ this chapter:
442 (1) The Department of Revenue shall keep a separate
443 account of all moneys collected for each municipality, municipal
444 services taxing unit, and ~~each~~ special fire control district
445 under ~~the provisions of~~ this chapter. All moneys so collected
446 must be transferred to the Police and Firefighters' Premium Tax
447 Trust Fund and shall be separately accounted for by the
448 division. The moneys budgeted as necessary to pay the expenses
449 of the division for the daily oversight and monitoring of the
450 firefighters' pension plans under this chapter and for the

451 oversight and actuarial reviews conducted under part VII of
452 chapter 112 are annually appropriated from the interest and
453 investment income earned on the moneys collected for each
454 municipality, municipal services taxing unit, or special fire
455 control district and deposited in the Police and Firefighters'
456 Premium Tax Trust Fund. Interest and investment income remaining
457 thereafter in the trust fund which is unexpended and otherwise
458 unallocated by law shall revert to the General Revenue Fund on
459 June 30 of each year.
460 (2) The Chief Financial Officer shall, on or before July 1
461 of each year, and at such other times as authorized by the
462 division, draw his or her warrants on the full net amount of
463 money then on deposit in the Police and Firefighters' Premium
464 Tax Trust Fund under ~~pursuant to~~ this chapter, specifying the
465 municipalities, municipal services taxing units, and special
466 fire control districts to which the moneys must be paid and the
467 net amount collected for and to be paid to each municipality,
468 municipal services taxing unit, or special fire control
469 district, respectively, subject to the limitation on
470 disbursement under s. 175.122. The sum payable to each
471 municipality, municipal services taxing unit, or special fire
472 control district is appropriated annually out of the Police and
473 Firefighters' Premium Tax Trust Fund. The warrants of the Chief
474 Financial Officer shall be payable to the respective
475 municipalities, municipal services taxing units, and special

476 fire control districts entitled to receive them and shall be
477 remitted annually by the division to the respective
478 municipalities, municipal services taxing units, and special
479 fire control districts. In lieu thereof, the municipality,
480 municipal services taxing unit, or special fire control district
481 may provide authorization to the division for the direct payment
482 of the premium tax to the board of trustees. In order for a
483 municipality, municipal services taxing unit, or special fire
484 control district and its pension fund to participate in the
485 distribution of premium tax moneys under this chapter, all the
486 provisions shall be complied with annually, including state
487 acceptance under ~~pursuant to~~ part VII of chapter 112.
488 (3)(a) All moneys not distributed to municipalities,
489 municipal services taxing units, and special fire control
490 districts under this section as a result of the limitation on
491 disbursement contained in s. 175.122, or as a result of any
492 municipality, municipal services taxing unit, or special fire
493 control district not having qualified in any given year, or
494 portion thereof, shall be transferred to the Firefighters'
495 Supplemental Compensation Trust Fund administered by the
496 Department of Revenue, as provided in s. 633.422.
497 (b)1. Moneys transferred under paragraph (a) but not
498 needed to support the supplemental compensation program in a
499 given year shall be redistributed pro rata to those
500 participating municipalities, municipal services taxing units,

501 and special fire control districts that transfer any portion of
502 their funds to support the supplemental compensation program in
503 that year. Such additional moneys shall be used to cover or
504 offset costs of the retirement plan.
505 2. To assist the Department of Revenue, the division shall
506 identify those municipalities, municipal services taxing units,
507 and special fire control districts that are eligible for
508 redistribution as provided in s. 633.422(3)(c)2., by listing the
509 municipalities, municipal services taxing units, and special
510 fire control districts from which funds were transferred under
511 paragraph (a) and specifying the amount transferred by each.
512 Section 7. Section 175.122, Florida Statutes, is amended
513 to read:
514 175.122 Limitation of disbursement.—For any municipality,
515 municipal services taxing unit, special fire control district,
516 chapter plan, local law municipality, local law special fire
517 control district, or local law plan under this chapter, any
518 municipality, municipal services taxing unit, or special fire
519 control district participating in the firefighters' pension
520 trust fund under ~~pursuant to the provisions of~~ this chapter,
521 whether under a chapter plan or local law plan, is ~~shall be~~
522 limited to receiving any moneys from such fund in excess of that
523 produced by one-half of the excise tax, as provided for in s.
524 175.101; however, any such municipality, municipal services
525 taxing unit, or special fire control district receiving less

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

526 than 6 percent of its fire department payroll from such fund is
527 ~~shall be~~ entitled to receive from such fund the amount
528 determined under s. 175.121, in excess of one-half of the excise
529 tax, not to exceed 6 percent of its fire department payroll.
530 Payroll amounts of members included in the Florida Retirement
531 System are ~~shall~~ not ~~be~~ included.
532 Section 8. Section 175.351, Florida Statutes, is amended
533 to read:
534 175.351 Municipalities, municipal services taxing units,
535 and special fire control districts that have their own
536 retirement plans for firefighters.—In order for a municipality,
537 municipal services taxing unit, or special fire control district
538 that has its own retirement plan for firefighters, or for
539 firefighters and police officers if both are included, to
540 participate in the distribution of the tax fund established
541 under s. 175.101, a local law plan must meet minimum benefits
542 and minimum standards, except as provided in the mutual consent
543 provisions in paragraph (1)(g) with respect to the minimum
544 benefits not met as of October 1, 2012.
545 (1) If a municipality, municipal services taxing unit, or
546 special fire control district has a retirement plan for
547 firefighters, or for firefighters and police officers if both
548 are included, which in the opinion of the division meets minimum
549 benefits and minimum standards, the board of trustees of the
550 retirement plan must place the income from the premium tax in s.

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

551 175.101 in such plan for the sole and exclusive use of its
552 firefighters, or for firefighters and police officers if both
553 are included, where it shall become an integral part of that
554 plan and be used to fund benefits as provided herein. Effective
555 October 1, 2015, for noncollectively bargained service or upon
556 entering into a collective bargaining agreement on or after July
557 1, 2015:
558 (a) The base premium tax revenues must be used to fund
559 minimum benefits or other retirement benefits in excess of the
560 minimum benefits as determined by the municipality, municipal
561 services taxing unit, or special fire control district.
562 (b) Of the additional premium tax revenues received that
563 are in excess of the amount received for the 2012 calendar year,
564 50 percent must be used to fund minimum benefits or other
565 retirement benefits in excess of the minimum benefits as
566 determined by the municipality, municipal services taxing unit,
567 or special fire control district, and 50 percent must be placed
568 in a defined contribution plan to fund special benefits.
569 (c) Additional premium tax revenues not described in
570 paragraph (b) must be used to fund benefits that are not
571 included in the minimum benefits. If the additional premium tax
572 revenues subject to this paragraph exceed the full annual cost
573 of benefits provided through the plan which are in excess of the
574 minimum benefits, any amount in excess of the full annual cost
575 must be used as provided in paragraph (b).

576 (d) Of any accumulations of additional premium tax
577 revenues which have not been allocated to fund benefits in
578 excess of the minimum benefits, 50 percent of the amount of the
579 accumulations must be used to fund special benefits, and 50
580 percent must be applied to fund any unfunded actuarial
581 liabilities of the plan; provided that any amount of
582 accumulations in excess of the amount required to fund the
583 unfunded actuarial liabilities must be used to fund special
584 benefits.
585 (e) For a plan created after March 1, 2015, 50 percent of
586 the insurance premium tax revenues must be used to fund defined
587 benefit plan component benefits, with the remainder used to fund
588 defined contribution plan component benefits.
589 (f) If a plan offers benefits in excess of the minimum
590 benefits, such benefits, excluding supplemental plan benefits in
591 effect as of September 30, 2014, may be reduced if the plan
592 continues to meet minimum benefits and minimum standards. The
593 amount of insurance premium tax revenues previously used to fund
594 benefits in excess of minimum benefits before the reduction,
595 excluding the amount of any additional premium tax revenues
596 distributed to a supplemental plan for the 2012 calendar year,
597 must be used as provided in paragraph (b). However, benefits in
598 excess of minimum benefits may not be reduced if a plan does not
599 meet the minimum percentage amount of 2.75 percent of the
600 average final compensation of a full-time firefighter, as

601 required by s. 175.162(2)(a)1., or provides an effective benefit
602 that is below 2.75 percent as a result of a maximum benefit
603 limitation as described in s. 175.162(2)(a)2.
604 (g) Notwithstanding paragraphs (a)-(f), the use of premium
605 tax revenues, including any accumulations of additional premium
606 tax revenues which have not been allocated to fund benefits in
607 excess of minimum benefits, may deviate from the provisions of
608 this subsection by mutual consent of the members' collective
609 bargaining representative or, if there is no representative, by
610 a majority of the firefighter members, or firefighter and police
611 officer members if both are included, of the fund, and by
612 consent of the municipality, municipal services taxing unit, or
613 special fire control district, provided that the plan continues
614 to meet minimum benefits and minimum standards; however, a plan
615 that operates under ~~pursuant to~~ this paragraph and does not meet
616 minimum benefits as of October 1, 2012, may continue to provide
617 the benefits that do not meet the minimum benefits at the same
618 level as was provided as of October 1, 2012, and all other
619 benefit levels must continue to meet the minimum benefits. Such
620 mutually agreed deviation must continue until modified or
621 revoked by subsequent mutual consent of the members' collective
622 bargaining representative or, if none, by a majority of the
623 firefighter members, or firefighter and police officer members
624 if both are included, of the fund, and the municipality,
625 municipal services taxing unit, or special fire control

626 district. An existing arrangement for the use of premium tax
627 revenues contained within a special act plan or a plan within a
628 supplemental plan municipality is considered, as of July 1,
629 2015, to be a deviation for which mutual consent has been
630 granted.
631 (2) The premium tax provided by this chapter must be used
632 in its entirety to provide retirement benefits to firefighters,
633 or to firefighters and police officers if both are included.
634 Local law plans created by special act before May 27, 1939, are
635 deemed to comply with this chapter.
636 (3) A retirement plan or amendment to a retirement plan
637 may not be proposed for adoption unless the proposed plan or
638 amendment contains an actuarial estimate of the costs involved.
639 Such proposed plan or proposed plan change may not be adopted
640 without the approval of the municipality, municipal services
641 taxing unit, special fire control district, or, if ~~where~~
642 required, the Legislature. Copies of the proposed plan or
643 proposed plan change and the actuarial impact statement of the
644 proposed plan or proposed plan change shall be furnished to the
645 division before the last public hearing on the proposal is held.
646 Such statement must also indicate whether the proposed plan or
647 proposed plan change is in compliance with s. 14, Art. X of the
648 State Constitution and those provisions of part VII of chapter
649 112 which are not expressly provided in this chapter.
650 Notwithstanding any other provision, only those local law plans

651 created by special act of legislation before May 27, 1939, are
652 deemed to meet minimum benefits and minimum standards.
653 (4) Notwithstanding any other provision, with respect to
654 any supplemental plan municipality:
655 (a) A local law plan and a supplemental plan may continue
656 to use their definition of compensation or salary in existence
657 on March 12, 1999.
658 (b) Section 175.061(1)(b) does not apply, and a local law
659 plan and a supplemental plan shall continue to be administered
660 by a board or boards of trustees numbered, constituted, and
661 selected as the board or boards were numbered, constituted, and
662 selected on December 1, 2000.
663 (5) The retirement plan setting forth the benefits and the
664 trust agreement, if any, covering the duties and
665 responsibilities of the trustees and the regulations of the
666 investment of funds must be in writing, and copies made
667 available to the participants and to the general public.
668 (6) In addition to the defined benefit plan component of
669 the local law plan, each plan sponsor must have a defined
670 contribution plan component within the local law plan by October
671 1, 2015, for noncollectively bargained service, upon entering
672 into a collective bargaining agreement on or after July 1, 2015,
673 or upon the creation date of a new participating plan. Depending
674 upon the application of subsection (1), a defined contribution
675 plan component may or may not receive any funding.

676 (7) Notwithstanding any other provision of this chapter, a
677 municipality, municipal services taxing unit, or special fire
678 control district that has implemented or proposed changes to a
679 local law plan based on the municipality's, municipal services
680 taxing unit's, or district's reliance on an interpretation of
681 this chapter by the Department of Management Services on or
682 after August 14, 2012, and before March 3, 2015, may continue
683 the implemented changes or continue to implement proposed
684 changes. Such reliance must be evidenced by a written collective
685 bargaining proposal or agreement, or formal correspondence
686 between the municipality, municipal services taxing unit, or
687 district and the Department of Management Services which
688 describes the specific changes to the local law plan, with the
689 initial proposal, agreement, or correspondence from the
690 municipality, municipal services taxing unit, or district dated
691 before March 3, 2015. Changes to the local law plan which are
692 otherwise contrary to minimum benefits and minimum standards may
693 continue in effect until the earlier of October 1, 2018, or the
694 effective date of a collective bargaining agreement that is
695 contrary to the changes to the local law plan.
696 Section 9. Section 175.381, Florida Statutes, is amended
697 to read:
698 175.381 Applicability.—This act shall apply to all
699 municipalities, municipal services taxing units, special fire
700 control districts, chapter plans, local law municipalities,

701 local law special fire control districts, or local law plans
702 presently existing or to be created under ~~pursuant to~~ this
703 chapter. Those plans presently existing under ~~pursuant to~~ s.
704 175.351 and not in compliance with ~~the provisions of~~ this act
705 must comply no later than December 31, 1999. However, the plan
706 sponsor of any plan established by special act of the
707 Legislature shall have until July 1, 2000, to comply with ~~the~~
708 ~~provisions of~~ this act, except as otherwise provided in this act
709 with regard to establishment and election of board members. ~~The~~
710 ~~provisions of~~ This act shall be construed to establish minimum
711 standards and minimum benefit levels, and nothing contained in
712 this act or in chapter 175 operates ~~shall operate~~ to reduce
713 presently existing rights or benefits of any firefighter,
714 directly, indirectly, or otherwise.
715 Section 10. Section 175.411, Florida Statutes, is amended
716 to read:
717 175.411 Optional participation.—A municipality, municipal
718 services taxing unit, or special fire control district may
719 revoke its participation under this chapter by rescinding the
720 legislative act, ordinance, or resolution which assesses and
721 imposes the taxes authorized in s. 175.101, and by furnishing a
722 certified copy of such legislative act, ordinance, or resolution
723 to the division. Thereafter, the municipality, municipal
724 services taxing unit, or special fire control district is ~~shall~~
725 ~~be~~ prohibited from participating under this chapter, and is

726 ~~shall~~ not ~~be~~ eligible for future premium tax moneys. Premium tax
727 moneys previously received shall continue to be used for the
728 sole and exclusive benefit of firefighters, or firefighters and
729 police officers <u>if both are</u> ~~where~~ included, and no amendment,
730 legislative act, ordinance, or resolution shall be adopted which
731 <u>has</u> ~~shall have~~ the effect of reducing the then-vested accrued
732 benefits of the firefighters<u>, or firefighters and police</u>
733 <u>officers if both are included</u>, retirees, or their beneficiaries.
734 The municipality<u>, municipal services taxing unit,</u> or special
735 fire control district shall continue to furnish an annual report
736 to the division as provided in s. 175.261. If the municipality<u>,</u>
737 <u>municipal services taxing unit,</u> or special fire control district
738 subsequently terminates the defined benefit plan, they shall do
739 so in compliance with ~~the provisions of~~ s. 175.361.
740 Section 11. Subsection (13) of section 191.006, Florida
741 Statutes, is amended to read:
742 191.006 General powers.—The district shall have, and the
743 board may exercise by majority vote, the following powers:
744 (13) To cooperate or contract with other persons or
745 entities, including other governmental agencies, as necessary,
746 convenient, incidental, or proper in connection with providing
747 effective mutual aid and furthering any power, duty, or purpose
748 authorized by this act. <u>The district shall have, and the board</u>
749 <u>may exercise, all powers and duties provided in s. 163.01,</u>
750 <u>chapter 189, and this chapter, including such powers within or</u>

751 without the district's boundary in cooperation with another
752 governmental agency when such agency shares such powers in
753 common with the district.
754 Section 12. Paragraph (c) of subsection (3) of section
755 633.422, Florida Statutes, is amended to read:
756 633.422 Firefighters; supplemental compensation.—
757 (3) FUNDING.—
758 (c) There is appropriated from the Police and
759 Firefighter's Premium Tax Trust Fund to the Firefighters'
760 Supplemental Compensation Trust Fund, which is created under the
761 Department of Revenue, all moneys which have not been
762 distributed to municipalities, municipal services taxing units,
763 and special fire control districts in accordance with s. 175.121
764 as a result of the limitation contained in s. 175.122 on the
765 disbursement of revenues collected under ~~pursuant to~~ chapter 175
766 or as a result of any municipality, municipal services taxing
767 unit, or special fire control district not having qualified in
768 any given year, or portion thereof, for participation in the
769 distribution of the revenues collected under ~~pursuant to~~ chapter
770 175. The total required annual distribution from the
771 Firefighters' Supplemental Compensation Trust Fund shall equal
772 the amount necessary to pay supplemental compensation as
773 provided in this section, provided that:
774 1. Any deficit in the total required annual distribution
775 shall be made up from accrued surplus funds existing in the

776 Firefighters' Supplemental Compensation Trust Fund on June 30,
777 1990, for as long as such funds last. If the accrued surplus is
778 insufficient to cure the deficit in any given year, the
779 proration of the appropriation among the counties,
780 municipalities, municipal services taxing units, and special
781 fire service taxing districts shall equal the ratio of
782 compensation paid in the prior year to county, municipal,
783 municipal services taxing unit, and special fire service taxing
784 district firefighters under ~~pursuant to~~ this section. This ratio
785 shall be provided annually to the Department of Revenue by the
786 division. Surplus funds that have accrued or accrue on or after
787 July 1, 1990, shall be redistributed to municipalities,
788 municipal services taxing units, and special fire control
789 districts as provided in subparagraph 2.
790 2. By October 1 of each year, any funds that have accrued
791 or accrue on or after July 1, 1990, and remain in the
792 Firefighters' Supplemental Compensation Trust Fund following the
793 required annual distribution shall be redistributed by the
794 Department of Revenue pro rata to those municipalities,
795 municipal services taxing units, and special fire control
796 districts identified by the Department of Management Services as
797 being eligible for additional funds under ~~pursuant to~~ s.
798 175.121(3)(b).
799 Section 13. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1409 Pub. Rec./Records of Insurers/Department of Financial Services
SPONSOR(S): Grant, M.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1188

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N	Salter	Cooper
2) Oversight, Transparency & Public Management Subcommittee		Toliver	Smith
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government. However, the Legislature may provide by general law for the exemption of records from the constitutional requirements.

Currently, personal financial and health information of a consumer, all underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to lines transacted by the insurer, all personnel and payroll records of the insurer, and consumer claim files are protected from disclosure when held by insurers or insurance company. However, when insurance companies become insolvent, this information is no longer protected and can be disclosed.

The bill provides that the following records held by the Department of Financial Services (DFS) are exempt from public records requirements:

- All personal financial and health information of a consumer, including a family member or dependent;
- Underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to lines transacted by the insurer;
- Personnel and payroll records of the insurer; and
- Consumer claim files.

The bill also provides that that following records held by DFS are confidential and exempt from public records requirements:

- A U.S. Own Risk and Solvency Assessment (ORSA) summary report, a substantially similar ORSA summary report, and any supporting documents submitted to OIR;
- A corporate governance annual disclosure and any supporting documents submitted to Office of Insurance Regulation; and
- Information received from the National Association of Insurance Commissioners, a governmental entity of any state, the Federal Government, or a government of another nation which is confidential and is held by Department of Financial Services for use relating to insurer solvency.

The bill provides specified circumstances under which the confidential and exempt information may be released.

The exemptions in the bill are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025 unless reviewed and reenacted by the Legislature.

The bill has no fiscal impact on state or local government revenue or expenditures.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly-created or substantially-amended public records or open meetings exemptions.[5] A public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served, if the exemption:

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

The Act requires the automatic repeal of an exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

Insurer Solvency Regulation and NAIC Accreditation
The regulatory oversight of insurance companies is generally reserved to the states. In Florida, the Office of Insurance Regulation (OIR) within the Department of Financial Services (DFS)[7] is responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, and premium financing. Solvency regulation is designed to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities, namely, the payment of claims. Solvency regulations include the initial and maintenance requirements for an insurer's authority to transact insurance in this state, monitoring the financial condition of insurers through examinations, audits, and procedures for the rehabilitation, or liquidation of an insurance company if found to be in an unsound financial condition or insolvent.[8]

The National Association of Insurance Commissioners (NAIC) is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance departments that regulate the conduct and solvency of insurers in their respective states or territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate their regulatory oversight.[9] As a member of the NAIC, the OIR is required to participate in the organization's

---

[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(c).
[3] *Id.*
[4] *Id.*
[5] S. 119.15, F.S.
[6] S. 119.15(6)(b), F.S.
[7] *See* s. 20.121(3)(a), F.S.
[8] *See* ch. 631, F.S.
[9] NAIC, *About the NAIC*, http://www.naic.org/index_about.htm (last visited Jan. 31, 2020).

Financial Regulation Standards and Accreditation Program.[10] NAIC accreditation is a certification that legal, regulatory, and organizational oversight standards and practices are being fulfilled by a state insurance department to promote sound insurer financial solvency regulation.

Insurer Regulatory Reporting

The NAIC has adopted two insurance model acts that give state insurance regulators like the OIR new solvency regulatory tools – the Own Risk and Solvency Assessment (ORSA) and the Corporate Governance Annual Disclosure (CGAD).[11]

ORSA

In 2011, as part of the NAIC's Solvency Modernization Initiative, the NAIC adopted the ORSA as a new insurance regulatory tool. The ORSA[12] requires insurance companies to issue their own assessment of their current and future risk through an internal risk self-assessment process, allowing regulators to form an enhanced view of an insurer's ability to withstand financial stress.[13] In conducting an ORSA, an insurer or insurance group references highly sensitive and strategic financial information. Each insurer must submit a ORSA summary report[14] to OIR every year.[15]

CGAD

Insurers must submit a CGAD[16] to OIR each year.[17] In the CGAD, insurers must document highly confidential information about their corporate governance framework, including the structure and policies of their boards of directors and key committees, the frequency of their meetings, and procedure for the oversight of critical risk areas and appointment practices, among other things. Insurers must also disclose the policies and practices used by their board of directors for directing senior management on critical areas, including a description of codes of business conduct and ethics, and processes for performance evaluation, compensation practices, corrective action, succession planning and suitability standards. The disclosure must be as descriptive as possible,[18] and include material and relevant information sufficient to enable OIR to understand the corporate governance structure, policies, and practices used by the insurer or insurance group.[19]

Insurer Solvency Records

Insurers and insurance companies routinely keep records of policyholders and claimants during the normal course of business. As long as the business remains solvent, these records are not freely available to any person who requests such information, unless there is a valid reason for the request. DFS's current ability to withhold information is limited to the exemptions outlined in s. 119.071, F.S. Current law does not provide a public record exemption for family member medical and health history, private financial information, or insurance coverage. If an insurance company becomes insolvent, policyholders and claimants no longer receive the same protections and anyone can request access to their information.

---

[10] NAIC, *Financial Regulation Standards and Accreditation Program,* https://www.naic.org/documents/cmte_f_frsa_pamphlet.pdf (last visited Jan. 30, 2020).
[11] S. 628.8015, F.S.
[12] The term "own-risk and solvency assessment" means an internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group, of the material and relevant risks associated with the business plan of an insurer or insurance group and the sufficiency of capital resources to support those risks. S. 628.8015, F.S.
[13] NAIC, *Own Risk and Solvency Assessment*, http://www.naic.org/cipr_topics/topic_own_risk_solvency_assessment.htm (last visited Jan. 31, 2020).
[14] The term "ORSA summary report" means a high-level ORSA summary of an insurer or insurance group, consisting of a single report or combination of reports. S. 628.8015(1)(f), F.S.
[15] S. 628.8015(2)(c)1.a.(I), F.S.
[16] *See* s. 628.8015(1)(a), F.S.
[17] S. 628.8015(3)(b)1.a., F.S.
[18] S. 628.8015 (3)(c)2., F.S.
[19] S. 628.8015 (3)(c)3., F.S.

Effect of the Bill

The bill provides that the following records held by DFS are exempt[20] from public records requirements:

- All personal financial and health information of a consumer, including a family member or dependent;
- Underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to lines transacted by the insurer;
- Personnel and payroll records of the insurer; and
- Consumer claim files.

The bill defines personal financial and health information as:

- A consumer's personal health condition, disease or injury;
- A history of a consumer's personal medical diagnosis or treatment;
- The existence, nature, source, or amount of a consumer's personal income or expenses;
- Records of, or relating to, a consumer's personal financial transactions of any kind;
- The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;
- The existence or content of, or any individual coverage or status under a consumer's beneficial interest in, any insurance policy or annuity contract; or
- The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

The bill provides public records exemptions for several internal documents required by OIR and held by DFS before, on, or after July 1, 2020. The following records are confidential and exempt from public records requirements:

- An ORSA summary report, a substantially similar ORSA summary report, and any supporting documents submitted to OIR;[21]
- A CGAD and any supporting documents submitted to OIR;[22] and
- Information received from the NAIC, a governmental entity of any state, the Federal Government, or a government of another nation which is confidential and is held by DFS for use relating to insurer solvency.

Records or portions of records made confidential and exempt by this bill may be released under the following circumstances:

- To any state or federal agency, upon written request, if disclosure is necessary for the agency's performance of its duties and responsibilities. The receiving agency must maintain the confidential and exempt status of the records.
- To comply with a properly authorized civil, criminal, or regulatory investigation or a subpoena or summons by a federal, state, or local authority.
- To the NAIC, or its affiliates and subsidiaries, if the recipient agrees in writing to maintain the confidential and exempt status of the records.
- To the guaranty associations and funds of the various states which are receiving, adjudicating, and paying claims of an insolvent insurer subject to delinquency proceedings. The receiving association must maintain the confidential and exempt status of the records.
- To persons identified as employees whose responsibilities include the investigation and disposition of claims relating to suspected fraudulent insurance acts[23] upon written request.

---

[20] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

[21] *See* s. 628.8015, F.S.

[22] *Id.*

[23] *See* s. 626.989(4)(d), F.S.

- Records containing personal financial and health information of a consumer may be released upon written request of the consumer or the consumer's legally authorized representative.

The listed exemptions are applicable even when an insurer or insurance company becomes insolvent.

The public records exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1: Creates s. 631.195, F.S., related to records of insurers; public records exemptions.

Section 2: Provides a public necessity statement as required by the Florida Constitution.

Sections 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to public records; creating s.
3 631.195, F.S.; defining the terms "consumer" and
4 "personal financial and health information"; exempting
5 from public records requirements consumer personal
6 financial and health information, certain underwriting
7 files, insurer personnel and payroll records, and
8 consumer claim files that are made or received by the
9 Department of Financial Services acting as receiver as
10 to an insurer; exempting from public records
11 requirements certain reports and documents held by the
12 department relating to insurer own-risk and solvency
13 assessments and corporate governance annual
14 disclosures and certain information received from the
15 National Association of Insurance Commissioners or
16 governments; providing retroactive applicability;
17 providing that exempted records may be released under
18 specified circumstances; providing for future
19 legislative review and repeal of the exemptions;
20 providing statements of public necessity; providing an
21 effective date.
22
23 Be It Enacted by the Legislature of the State of Florida:
24
25 Section 1. Section 631.195, Florida Statutes, is created

26 to read:
27 631.195 Records of insurers; public records exemptions.—
28 (1) As used in this section, the term:
29 (a) "Consumer" means a prospective purchaser of, a
30 purchaser of, a beneficiary of, or an applicant for any
31 insurance product or service. The term also includes a family
32 member or dependent of such person.
33 (b) "Personal financial and health information" means:
34 1. A consumer's personal health condition, disease, or
35 injury;
36 2. A history of a consumer's personal medical diagnosis or
37 treatment;
38 3. The existence, nature, source, or amount of a
39 consumer's personal income or expenses;
40 4. Records of, or relating to, a consumer's personal
41 financial transactions of any kind;
42 5. The existence, identification, nature, or value of a
43 consumer's assets, liabilities, or net worth;
44 6. The existence or content of, or any individual coverage
45 or status under a consumer's beneficial interest in, any
46 insurance policy or annuity contract; or
47 7. The existence, identification, nature, or value of a
48 consumer's interest in any insurance policy, annuity contract,
49 or trust.
50 (2) The following records, in whatever form, of an insurer

51 which are made or received by the department, acting as receiver
52 pursuant to this chapter, are exempt from s. 119.07(1) and s.
53 24(a), Art. I of the State Constitution:
54 (a) All personal financial and health information of a
55 consumer.
56 (b) Underwriting files of a type customarily maintained by
57 an insurer transacting lines of insurance similar to those lines
58 transacted by the insurer.
59 (c) Personnel and payroll records of the insurer.
60 (d) Consumer claim files.
61 (3) The following records held by the department are
62 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
63 of the State Constitution:
64 (a) An ORSA summary report, a substantially similar ORSA
65 summary report, and supporting documents submitted to the office
66 pursuant to s. 628.8015.
67 (b) A corporate governance annual disclosure and
68 supporting documents submitted to the office pursuant to s.
69 628.8015.
70 (c) Information received from the National Association of
71 Insurance Commissioners, a governmental entity in this or
72 another state, the Federal Government, or a government of
73 another nation which is confidential or exempt if held by that
74 entity and which is held by the department for use in the
75 performance of its duties relating to insurer solvency.

76 (4) The exemptions in subsections (2) and (3) apply to
77 records held by the department before, on, and after July 1,
78 2020.
79 (5) Records or portions of records made confidential and
80 exempt by this section may be released under any of the
81 following circumstances:
82 (a) To any state or federal agency, upon written request,
83 if disclosure is necessary for the receiving entity to perform
84 its duties and responsibilities. The receiving agency shall
85 maintain the confidential and exempt status of such record or
86 portion of such record.
87 (b) To comply with a properly authorized civil, criminal,
88 or regulatory investigation or a subpoena or summons by a
89 federal, state, or local authority.
90 (c) To the National Association of Insurance Commissioners
91 and its affiliates and subsidiaries, if the recipient agrees in
92 writing to maintain the confidential and exempt status of the
93 records.
94 (d) To the guaranty associations and funds of the various
95 states which are receiving, adjudicating, and paying claims of
96 the insolvent insurer subject to delinquency proceedings
97 pursuant to this chapter. The receiving guaranty association
98 shall maintain the confidential and exempt status of such record
99 or portion of such record.
100 (e) Upon written request, to persons identified as

101 designated employees as described in s. 626.989(4)(d), whose
102 responsibilities include the investigation and disposition of
103 claims relating to suspected fraudulent insurance acts.
104 (f) In the case of personal financial and health
105 information of a consumer, upon written request of the consumer
106 or the consumer's legally authorized representative.
107 (6) This section is subject to the Open Government Sunset
108 Review Act in accordance with s. 119.15 and shall stand repealed
109 on October 2, 2025, unless reviewed and saved from repeal
110 through reenactment by the Legislature.
111 Section 2. (1) The Legislature finds it is a public
112 necessity to exempt from s. 119.07(1), Florida Statutes, and s.
113 24(a), Article I of the State Constitution all personal
114 financial and health information of a consumer, underwriting
115 files of a type customarily maintained by an insurer transacting
116 lines of insurance similar to those lines transacted by the
117 insurer, personnel and payroll records of an insurer, and
118 consumer claim files that are made or received by the Department
119 of Financial Services acting as receiver as to an insurer.
120 Disclosure of financial, health, underwriting, personnel,
121 payroll, or consumer claim information would create the
122 opportunity for theft or fraud, thereby jeopardizing the
123 financial security of a person. Limiting disclosure of such
124 information held by the department is also necessary in order to
125 protect the financial interests of the persons to whom that

126 information pertains. Such information could be used for
127 fraudulent or other illegal purposes, including identity theft,
128 and could result in substantial financial harm. Furthermore,
129 every person has an expectation of and a right to privacy in all
130 matters concerning his or her financial interests. The
131 Legislature further finds that it is a public necessity that
132 health information held by the department be made confidential
133 and exempt because matters of personal health are traditionally
134 private and confidential concerns between the patient and his or
135 her health care provider. The private and confidential nature of
136 personal health matters pervades both the public and private
137 health care sectors. Moreover, public disclosure of health
138 information could have a negative effect upon a person's
139 business and personal relationships and could also have
140 detrimental financial consequences.
141 (2)(a) The Legislature further finds that it is a public
142 necessity to exempt from s. 119.07(1), Florida Statutes, and s.
143 24(a), Article I of the State Constitution the following records
144 held by the department:
145 1. An own-risk and solvency assessment (ORSA) summary
146 report, a substantially similar ORSA summary report, and
147 supporting documents submitted to the Office of Insurance
148 Regulation pursuant to s. 628.8015, Florida Statutes;
149 2. A corporate governance annual disclosure and supporting
150 documents submitted to the office pursuant to s. 628.8015,

151 Florida Statutes; and
152 3. Information received from the National Association of
153 Insurance Commissioners, a governmental entity in this or
154 another state, the Federal Government, or a government of
155 another nation which is confidential or exempt if held by that
156 entity and which is held by the department for use in the
157 performance of its duties relating to insurer solvency.
158 (b) In conducting an ORSA, an insurer or insurance group
159 identifies and evaluates the material and relevant risks to the
160 insurer or insurance group and the adequacy of capital resources
161 to support these risks. The ORSA summary report, substantially
162 similar ORSA report, and supporting documents contain highly
163 sensitive and strategic financial information about an insurer
164 or insurer group. Having a comprehensive and unbiased assessment
165 provides the office with an effective early warning mechanism
166 for preventing insolvencies and protecting policyholders and
167 promotes a stable insurance market. Divulging the ORSA summary
168 report, substantially similar ORSA summary report, and
169 supporting documents will injure the insurer or insurance group
170 by providing competitors with detailed insight into their
171 financial position, risk management strategies, business plans,
172 pricing and marketing strategies, management systems, and
173 operational protocols.
174 (c) The corporate governance annual disclosure describes
175 an insurer's governance structure and the internal practices and

176 procedures used in conducting the business affairs of the
177 company, making strategic operational decisions affecting its
178 competitive position, and managing its financial condition.
179 Release of the corporate governance annual disclosure and
180 supporting documents will injure the insurer or insurance group
181 in the marketplace by providing competitors with the insurer's
182 or the insurance group's confidential business information.
183 Broad disclosure will give state regulators a thorough
184 understanding of the corporate governance structure and internal
185 policies and practices used by insurers and promote market
186 integrity. Effective governance mechanisms will enable insurers
187 to take any necessary corrective actions and achieve strategic
188 goals while allowing the office to perform its regulatory duties
189 effectively and efficiently.
190 (d) Divulgence of confidential or exempt information
191 received from the National Association of Insurance
192 Commissioners or governments could impede the exchange of
193 information and communication among regulators across multiple
194 agencies and jurisdictions and jeopardize the ability of
195 regulators to effectively supervise insurers and groups
196 operating in multiple jurisdictions and engaged in significant
197 cross-border activities.
198 Section 3. This act shall take effect July 1, 2020.

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Oversight, Transparency &
2 Public Management Subcommittee
3 Representative Grant, M. offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Section 631.195, Florida Statutes, is created
8 to read:
9 631.195 Records of insurers; public records exemptions.—
10 (1) As used in this section, the term:
11 (a) "Consumer" means a prospective purchaser of, a
12 purchaser of, a beneficiary of, or an applicant for any
13 insurance product or service. The term also includes a family
14 member or dependent of such person.
15 (b) "Personal financial and health information" means:

16 1. A consumer's personal health condition, disease, or
17 injury;
18 2. A history of a consumer's personal medical diagnosis or
19 treatment;
20 3. The existence, nature, source, or amount of a
21 consumer's personal income or expenses;
22 4. Records of, or relating to, a consumer's personal
23 financial transactions of any kind;
24 5. The existence, identification, nature, or value of a
25 consumer's assets, liabilities, or net worth;
26 6. The existence or content of, or any individual coverage
27 or status under a consumer's beneficial interest in, any
28 insurance policy or annuity contract; or
29 7. The existence, identification, nature, or value of a
30 consumer's interest in any insurance policy, annuity contract,
31 or trust.
32 (2) The following records, in whatever form, of an insurer
33 which are made or received by the department, acting as receiver
34 pursuant to this chapter, are confidential and exempt from s.
35 119.07(1) and s. 24(a), Art. I of the State Constitution:
36 (a) All personal financial and health information of a
37 consumer.
38 (b) Underwriting files of a type customarily maintained by
39 an insurer transacting lines of insurance similar to those lines
40 transacted by the insurer.

41 (c) Personnel and payroll records of the insurer.
42 (d) Consumer claim files.
43 (e) An ORSA summary report, a substantially similar ORSA
44 summary report, and supporting documents submitted to the office
45 pursuant to s. 628.8015.
46 (f) A corporate governance annual disclosure and
47 supporting documents submitted to the office pursuant to s.
48 628.8015.
49 (g) Information received from the National Association of
50 Insurance Commissioners, a governmental entity in this or
51 another state, the Federal Government, or a government of
52 another nation which is confidential or exempt if held by that
53 entity and which is held by the department for use in the
54 performance of its duties relating to insurer solvency.
55 (3) The exemptions in subsection (2) applies to records
56 held by the department before, on, and after July 1, 2020.
57 (4) Records or portions of records made confidential and
58 exempt by this section may be released under any of the
59 following circumstances:
60 (a) To any state or federal agency, upon written request,
61 if disclosure is necessary for the receiving entity to perform
62 its duties and responsibilities. The receiving agency shall
63 maintain the confidential and exempt status of such record or
64 portion of such record.

65 (b) To comply with a properly authorized civil, criminal,
66 or regulatory investigation or a subpoena or summons by a
67 federal, state, or local authority.
68 (c) To the National Association of Insurance Commissioners
69 and its affiliates and subsidiaries, if the recipient agrees in
70 writing to maintain the confidential and exempt status of the
71 records.
72 (d) To the guaranty associations and funds of the various
73 states which are receiving, adjudicating, and paying claims of
74 the insolvent insurer subject to delinquency proceedings
75 pursuant to this chapter. The receiving guaranty association
76 shall maintain the confidential and exempt status of such record
77 or portion of such record.
78 (e) Upon written request, to persons identified as
79 designated employees as described in s. 626.989(4)(d), whose
80 responsibilities include the investigation and disposition of
81 claims relating to suspected fraudulent insurance acts.
82 (f) In the case of personal financial and health
83 information of a consumer, upon written request of the consumer
84 or the consumer's legally authorized representative.
85 (5) This section is subject to the Open Government Sunset
86 Review Act in accordance with s. 119.15 and shall stand repealed
87 on October 2, 2025, unless reviewed and saved from repeal
88 through reenactment by the Legislature.

89 Section 2. (1) The Legislature finds it is a public
90 necessity to make confidential and exempt from s. 119.07(1),
91 Florida Statutes, and s. 24(a), Article I of the State
92 Constitution:
93 1. All personal financial and health information of a
94 consumer;
95 2. Underwriting files of a type customarily maintained by
96 an insurer transacting lines of insurance similar to those lines
97 transacted by the insurer;
98 3. Personnel and payroll records of an insurer;
99 4. Consumer claim files;
100 5. An own-risk and solvency assessment (ORSA) summary
101 report, a substantially similar ORSA summary report, and
102 supporting documents submitted to the Office of Insurance
103 Regulation pursuant to s. 628.8015, Florida Statutes;
104 6. A corporate governance annual disclosure and supporting
105 documents submitted to the office pursuant to s. 628.8015,
106 Florida Statutes; and
107 7. Information received from the National Association of
108 Insurance Commissioners, a governmental entity in this or
109 another state, the Federal Government, or a government of
110 another nation which is confidential or exempt if held by that
111 entity and which is held by the department for use in the
112 performance of its duties relating to insurer solvency.

113 (2)(a) Disclosure of financial, health, underwriting,
114 personnel, payroll, or consumer claim information would create
115 the opportunity for theft or fraud, thereby jeopardizing the
116 financial security of a person. Limiting disclosure of such
117 information held by the department is also necessary in order to
118 protect the financial interests of the persons to whom that
119 information pertains. Such information could be used for
120 fraudulent or other illegal purposes, including identity theft,
121 and could result in substantial financial harm. Furthermore,
122 every person has an expectation of and a right to privacy in all
123 matters concerning his or her financial interests. Additionally,
124 matters of personal health are traditionally private and
125 confidential concerns between the patient and his or her health
126 care provider. The private and confidential nature of personal
127 health matters pervades both the public and private health care
128 sectors. Public disclosure of health information could have a
129 negative effect upon a person's business and personal
130 relationships and could also have detrimental financial
131 consequences.
132 (b) In conducting an ORSA, an insurer or insurance group
133 identifies and evaluates the material and relevant risks to the
134 insurer or insurance group and the adequacy of capital resources
135 to support these risks. The ORSA summary report, substantially
136 similar ORSA report, and supporting documents contain highly
137 sensitive and strategic financial information about an insurer

138 or insurer group. Having a comprehensive and unbiased assessment
139 provides the office with an effective early warning mechanism
140 for preventing insolvencies and protecting policyholders and
141 promotes a stable insurance market. Divulging the ORSA summary
142 report, substantially similar ORSA summary report, and
143 supporting documents will injure the insurer or insurance group
144 by providing competitors with detailed insight into their
145 financial position, risk management strategies, business plans,
146 pricing and marketing strategies, management systems, and
147 operational protocols.
148 (c) The corporate governance annual disclosure describes
149 an insurer's governance structure and the internal practices and
150 procedures used in conducting the business affairs of the
151 company, making strategic operational decisions affecting its
152 competitive position, and managing its financial condition.
153 Release of the corporate governance annual disclosure and
154 supporting documents will injure the insurer or insurance group
155 in the marketplace by providing competitors with the insurer's
156 or the insurance group's confidential business information.
157 Broad disclosure will give state regulators a thorough
158 understanding of the corporate governance structure and internal
159 policies and practices used by insurers and promote market
160 integrity. Effective governance mechanisms will enable insurers
161 to take any necessary corrective actions and achieve strategic

162 goals while allowing the office to perform its regulatory duties
163 effectively and efficiently.
164 (d) Divulgence of confidential or exempt information
165 received from the National Association of Insurance
166 Commissioners or governments could impede the exchange of
167 information and communication among regulators across multiple
168 agencies and jurisdictions and jeopardize the ability of
169 regulators to effectively supervise insurers and groups
170 operating in multiple jurisdictions and engaged in significant
171 cross-border activities.
172 (3) The legislature finds that the harm that may result
173 from the release of such location information outweighs any
174 public benefit that may be derived from the disclosure of the
175 information.
176 Section 3. This act shall take effect July 1, 2020.
177
178 ---
179 **T I T L E A M E N D M E N T**
180 Remove everything before the enacting clause and insert:
181 An act relating to public records; creating s. 631.195, F.S.;
182 defining the terms "consumer" and "personal financial and health
183 information"; exempting from public records requirements when
184 made or received by the Department of Financial Services acting
185 as receiver as to an insurer: consumer personal financial and
186 health information, certain underwriting files, insurer

187 personnel and payroll records, consumer claim files, certain
188 reports and documents held by the department relating to insurer
189 own-risk, solvency assessments, corporate governance annual
190 disclosures, and certain information received from the National
191 Association of Insurance Commissioners or governments; providing
192 retroactive applicability; providing that exempted records may
193 be released under specified circumstances; providing for future
194 legislative review and repeal of the exemptions; providing
195 statements of public necessity; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1455 Division of Library and Information Services
SPONSOR(S): Rodriguez, A. M.
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The Division of Library and Information Services (Division), within the Department of State, is responsible for managing and administering the State Aid to Libraries Grant Program, the Florida State Archives, the Records Management Program, the State Records Center, and the Library Cooperative Grants Program.

By December 1 of each year, the Division must certify to the Chief Financial Officer the amount to be paid to a political subdivision under the State Aid to Libraries Grant Program. The bill maintains an annual certification, but removes the December 1 deadline.

The Division is responsible for encouraging and initiating efforts to preserve, collect, process, transcribe, index, and research the oral history of Florida government. The Division is also responsible for making preservation duplicates of official state records, or designating existing copies as preservation duplicates. The bill relieves the Division of these responsibilities.

The Division operates the State Records Center that stores official state records transferred to it by state agencies. When a record stored at the facility is eligible for destruction the Division must notify the transferring agency via certified mail. The transferring agency has 90 days upon receipt to request continued storage or authorize destruction or disposal. If the agency does not respond within 90 days, title to the record is transferred to the Division. The bill amends this process and requires the agency to respond and specify their desired management of the record.

Currently, each agency must designate a records management liaison officer. The bill specifies that the liaison officer will serve as the primary point of contact between the Division and agency for records management purposes, and provides that the liaison officer shall conduct any records management function the agency assigns.

Library cooperatives can receive an annual grant of not more than $400,000 from the state for resource sharing activities. The bill removes the $400,000 annual cap.

The bill may have a positive fiscal impact on local governments. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Division of Library and Information Services

The Florida Department of State's Division of Library and Information Services (Division)[1] manages the State Library and Archives, supports public libraries, directs record management services, and is the designated information resource provider of the state.[2]

The Division may receive gifts of money, books, or other property and may purchase books, periodicals, furniture, and equipment it deems necessary to carry out its mission. The Division may also give aid and assistance to all school, state, academic, free, and public libraries, and to all communities in the state which may establish libraries. The Division is required to maintain a library for state officials and employees and provide research and informational services for all state agencies. The Division must also provide library services to blind and physically handicapped persons within the state.[3]

State Aid to Libraries Grant Program

The State Aid to Libraries Grant Program (Grant Program), established in 1961, is an incentive program designed to encourage local governments to establish and continue development of free library service to residents and to provide funding to support that library service.[4] A political subdivision designated by a county or municipality as the single library administrative unit is eligible to receive from the state an annual operating grant of not more than 25 percent of all local funds expended by that political subdivision for the operation and maintenance of a library.[5] Three types of grants are available under the Grant Program. The grants and criteria are:

- Multicounty grants are awarded to systems of two or more counties that qualify for operating grants and have joined together to provide library service to their residents.
- Equalization grants are awarded to county library systems that also meet the requirements for operating grants and have limited financial resources.
- Operating grants are awarded to any county or municipality that meets basic criteria for professional library services.

The Division is tasked with the administration and allocation of grants under the Grant Program.[6] By December 1 of each year, the Division must certify to the Chief Financial Officer the amount to be paid to each political subdivision.[7] By January 1, the Division must complete an evaluation and review of applications submitted under the Grant Program.[8] The Division must verify the amount of local expenditures submitted by a political subdivision as a part of their application.[9] After the applications are determined sufficient and complete, the Division will award the grant amounts based on the appropriation of funds by the Legislature.[10]

<u>Effect of the Bill</u>

---

[1] Section 20.10(2)(d), F.S.
[2] Florida Department of State, *Division of Library and Information Services*, https://dos.myflorida.com/library-archives/ (last visited January 24, 2020).
[3] Section 257.04, F.S.
[4] *See* R. 1B-2.011(2)(a), F.A.C.
[5] Section 257.17, F.S.
[6] Section 257.22, F.S.
[7] *Id.*
[8] *See* R. 1B-2.011(2)(a), F.A.C.
[9] *Id.*
[10] *Id.*

The bill provides that the certification of funds to be paid to a political subdivision must be made annually – as opposed to December 1 of each year.

Florida State Archives

The Florida State Archives (Archives) collect, preserve, and make available for research the historically significant records of the state, as well as private manuscripts, photographs, and other materials that complement the official state records.[11] The Archives are open to anyone interested in learning about Florida history, government, and people.[12] The Division is tasked with the operation, organization, and administration of the Archives.[13] It is the duty and responsibility of the Division to:

- Preserve and administer the records transferred to its custody;
- Assist in the determination of retention values for records;
- Cooperate with and assist state institutions, departments, agencies, counties, municipalities, and individuals engaged in activities in the field of state archives, manuscripts, and history;
- Accept from any person any paper, book, record, or similar material that the Division believes warrants preservation in the Archives;
- Provide a public research room where the materials in the Archives may be studied;
- Conduct, promote, and encourage research in Florida history, government, and culture;
- Maintain a program of information, assistance, coordination, and guidance for public officials, educational institutions, libraries, the scholarly community, and the general public engaged in such research;
- Cooperate with and assist agencies, libraries, institutions, and individuals in projects designed to preserve original source materials relating to Florida history, government, and culture;
- Prepare and publish handbooks, guides, indexes, and other literature directed toward encouraging the preservation and use of the state's documentary resources; and
- Encourage and initiate efforts to preserve, collect, process, transcribe, index, and research the oral history of Florida government.

Effect of the Bill

The bill amends the Division's duties and responsibilities regarding the Florida State Archives. Specifically, the bill deletes the provision requiring the Division to "[e]ncourage and initiate efforts to preserve, collect, process, transcribe, index, and research the oral history of Florida government."[14] According to the Division, the Division has never performed these activities and has neither the resources nor the staff expertise to do so.[15]

Records Management Program

The Division is tasked with administering a records management program responsible for establishing best practices for the creation, utilization, maintenance, retention, preservation, and disposal of records.[16] To that end, it is the duty and responsibility of the Division to:

- Analyze, develop, establish, and coordinate standards, procedures, and techniques of record making and recordkeeping;
- Maintain a training and information program in all phases of records and information management to bring current practices for the efficient and economical management of records to the attention of all agencies;
- Maintain a training and information program regarding laws regulating public record access;
- Make continuous surveys of recordkeeping operations; and
- Recommend improvements in current record management practices.[17]

---

[11] Florida Department of State, *supra* note 2.
[12] *Id.*
[13] Section 257.35(1), F.S.
[14] Section 257.35(1)(h), F.S.
[15] Department of State, Agency Analysis of 2020 House Bill 1455, p. 2 (January 22, 2020).
[16] Section 257.36(1), F.S.
[17] *Id.*

The Division must also cooperate with each agency[18] in the selection and preservation of records considered essential to the operation of government.[19] Each agency must:

- Cooperate with the Division in complying with the provisions of ch. 257, F.S.;
- Designate a records management liaison officer; and
- Establish and maintain an active and continuing program for the economical and efficient management of records.

In the interest of records management, the Division must also make or have made preservation duplicates, or designate existing copies of records as preservation duplicates, to be preserved in a place and manner of safekeeping.[20] Any preservation duplicate has the same force and effect as the original record.[21]

Effect of the Bill

The bill amends the records management program and removes the requirement for the Division to make preservation duplicates, or designate existing copies of records as preservation duplicates. The bill also removes the provision specifying that preservation duplicates have the same force and effect as the original record.

State Records Center

The Division is responsible for establishing and operating a records center or centers for the storage, processing, servicing, and security of public records that must be retained for varying periods of time but need not be retained in an agency's office equipment or space.[22] The Division must:

- Ensure the maintenance and security of records deemed appropriate for preservation;
- Establish safeguards against unauthorized or unlawful removal or loss of records;
- Initiate appropriate action to recover records removed unlawfully or without authorization.[23]

To accomplish this, the Division operates the Edward N. Johnson Records and Information Center (State Records Center), which is equipped to store paper records, microfilm, and electronic media.[24] All records transferred to the Division for storage can be held in the State Records Center, or any other records center the state may operate, for such time as the Division deems necessary.[25] Title of any record stored by the Division will remain in the agency transferring such record to the Division.[26] When a record stored by the Division is eligible for destruction, the Division must provide notice to the agency in writing by certified mail.[27] The agency has 90 days to respond and request continued retention or authorize destruction or disposal of the record.[28] If the agency does not respond within that timeframe, title to the record will pass to the Division.[29]

Effect of the Bill

---

[18] The term "agency" is defined to mean any state, county, district, or municipal officer, department, division, bureau, board, commission, or other separate unit of government created or established by law. Section 257.36(5), F.S.
[19] Section 257.36(1)(j), F.S.
[20] Section 257.36(1)(k), F.S.
[21] Section 257.36(4), F.S.
[22] Section 257.36(1), F.S.
[23] *Id.*
[24] Florida Department of State Division of Library and Information Services, *The Basics of Records Management*, (October 2017), https://dos.myflorida.com/media/698456/final-basics-of-records-management-2017.pdf (last visited January 26, 2020).
[25] Section 257.36(2)(a), F.S.
[26] Section 257.36(2)(b), F.S.
[27] Section 257.36(2)(c), F.S.
[28] *Id.*
[29] *Id.*

The bill amends the process by which the Division must notify an agency that a record held in a records center is eligible for destruction or disposal. Specifically, the bill deletes the requirement for the Division to notify the agency via certified mail, and the provision demanding title of the record to pass to the Division in the case the agency does not respond. Instead, the bill requires the agency to respond to the Division's written notification.

The bill specifies the duties and responsibilities of an agency records management liaison officer is to serve as the primary point of contact between the agency and the Division for records management purposes and to conduct any records management functions the agency assigns.

Library Cooperative Grants Program

Libraries that are under separate governance may establish nonprofit library cooperatives for the purpose of sharing resources.[30] The administrative unit of a library cooperative is eligible to receive an annual grant from the state of not more than $400,000 to be expended on library resource sharing activities such as:

- Bibliographic record enhancement;
- Statewide delivery service support;
- Union catalog support and development;
- Reciprocal borrowing;
- Cooperative cataloging;
- Cooperative reference services;
- Cooperative development;
- Digitization;
- Innovation of technologies related to resource sharing.[31]

<u>Effect of the Bill</u>

The bill removes the annual cap of $400,000 that a library cooperative is eligible to receive.

B. SECTION DIRECTORY:

Section 1 amends s. 257.22, F.S., relating to the allocation of funds.

Section 2 amends s. 257.35, F.S., relating to the Florida State Archives.

Section 3 amends s. 257.36, F.S., relating to records and information management.

Section 4 amends s. 257.42, F.S., relating to library cooperative grants.

Section 5 amends s. 120.54, F.S., to correct a cross reference.

Section 6 amends s. 257.34, F.S., to correct a cross reference.

Section 7 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

---

[30] Section 257.41(1), F.S.

[31] Section 257.42, F.S. *See also* R. 1B-2.011(2)(c), F.A.C.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Local governments that receive a library cooperative grant may experience a positive fiscal impact as the bill removes the current $400,000 annual award cap.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.

1 A bill to be entitled
2 An act relating to the Division of Library and
3 Information Services; amending s. 257.22, F.S.;
4 removing the deadline for certain information to be
5 certified to the Chief Financial Officer; amending s.
6 257.35, F.S.; removing duties of the division related
7 to the oral history of Florida government; amending s.
8 257.36, F.S.; revising duties and responsibilities of
9 the division related to records and information
10 management; providing that certain activities of the
11 division only apply to stored records; revising
12 certain requirements for records eligible for
13 destruction; deleting provisions relating to
14 preservation duplicates of records; providing
15 responsibilities for a records management liaison
16 officer; amending s. 257.42, F.S.; deleting a
17 limitation on the amount of a certain annual grant;
18 amending ss. 120.54 and 257.34, F.S.; conforming
19 cross-references; providing an effective date.
20
21 Be It Enacted by the Legislature of the State of Florida:
22
23 Section 1. Section 257.22, Florida Statutes, is amended to
24 read:
25 257.22 Division of Library and Information Services;

26 allocation of funds.—Any moneys that may be appropriated for use
27 by a county, a municipality, a special district, or a special
28 tax district for the maintenance of a library or library service
29 shall be administered and allocated by the Division of Library
30 and Information Services in the manner prescribed by law. ~~On or~~
31 ~~before December 1 of~~ Each year, the division shall certify to
32 the Chief Financial Officer the amount to be paid to each
33 county, municipality, special district, or special tax district.
34 Section 2. Paragraphs (h) and (i) of subsection (1) of
35 section 257.35, Florida Statutes, are amended to read:
36 257.35 Florida State Archives.—
37 (1) There is created within the Division of Library and
38 Information Services of the Department of State the Florida
39 State Archives for the preservation of those public records, as
40 defined in s. 119.011(12), manuscripts, and other archival
41 material that have been determined by the division to have
42 sufficient historical or other value to warrant their continued
43 preservation and have been accepted by the division for deposit
44 in its custody. It is the duty and responsibility of the
45 division to:
46 ~~(h) Encourage and initiate efforts to preserve, collect,~~
47 ~~process, transcribe, index, and research the oral history of~~
48 ~~Florida government.~~
49 <u>(h)</u>~~(i)~~ Assist and cooperate with the records and
50 information management program in the training and information

51 program described in s. 257.36(1)(d) ~~257.36(1)(g)~~.
52 Section 3. Section 257.36, Florida Statutes, is amended to
53 read:
54 257.36 Records and information management.—
55 (1) There is created within the Division of Library and
56 Information Services of the Department of State a records and
57 information management program. It is the duty and
58 responsibility of the division to:
59 (a) Establish and administer a records management program
60 directed to the application of efficient and economical
61 management methods relating to the creation, utilization,
62 maintenance, retention, preservation, and disposal of records.
63 (b) Establish and operate a records center or centers
64 primarily for the storage, processing, servicing, and security
65 of public records that must be retained for varying periods of
66 time but need not be retained in an agency's office equipment or
67 space. The division must:
68 1. Ensure the maintenance and security of stored records.
69 2. Establish safeguards against unauthorized or unlawful
70 access, removal, or loss of stored records.
71 3. Initiate appropriate action to recover stored records
72 removed unlawfully or without authorization.
73 (c) Analyze, develop, establish, and coordinate standards,
74 procedures, and techniques of recordmaking and recordkeeping,
75 including, but not limited to, standards and guidelines for the

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

76 retention, storage, security, and disposal of records.
77 ~~(d) Ensure the maintenance and security of records which~~
78 ~~are deemed appropriate for preservation.~~
79 ~~(e) Establish safeguards against unauthorized or unlawful~~
80 ~~removal or loss of records.~~
81 ~~(f) Initiate appropriate action to recover records removed~~
82 ~~unlawfully or without authorization.~~
83 (d) ~~(g)~~ Institute and maintain a training and information
84 program in:
85 1. All phases of records and information management to
86 bring approved and current practices, methods, procedures, and
87 devices for the efficient and economical management of records
88 to the attention of all agencies.
89 2. The requirements relating to access to public records
90 under chapter 119.
91 (e) ~~(h)~~ Make continuous surveys of recordkeeping
92 operations.
93 (f) ~~(i)~~ Recommend improvements in current records
94 management practices, including the use of space, equipment,
95 supplies, and personnel in creating, maintaining, and servicing
96 records.
97 (g) ~~(j)~~ Establish and maintain a program in cooperation
98 with each agency for the selection and preservation of records
99 considered essential to the operation of government and to the
100 protection of the rights and privileges of citizens.

101 ~~(k) Make, or have made, preservation duplicates, or~~
102 ~~designate existing copies as preservation duplicates, to be~~
103 ~~preserved in the place and manner of safekeeping as prescribed~~
104 ~~by the division.~~
105 (2)(a) All records transferred to the division for storage
106 may be held by it in a records center or centers, to be
107 designated by it, for such time as in its judgment retention
108 therein is deemed necessary. At such time as it is established
109 by the division, such records as are determined by it as having
110 historical or other value warranting continued preservation
111 shall be transferred to the Florida State Archives.
112 (b) Title to any record stored ~~detained~~ in any records
113 center operated by the division shall remain in the agency
114 transferring such record to the division. When the Legislature
115 transfers any duty or responsibility of an agency to another
116 agency, the receiving agency shall be the custodian of public
117 records with regard to the public records associated with that
118 transferred duty or responsibility, and shall be responsible for
119 the records storage service charges of the division. If an
120 agency is dissolved and the legislation dissolving that agency
121 does not assign an existing agency as the custodian of public
122 records for the dissolved agency's records, then the Cabinet is
123 the custodian of public records for the dissolved agency, unless
124 the Cabinet otherwise designates a custodian. The Cabinet or the
125 agency designated by the Cabinet shall be responsible for the

126 records storage service charges of the division.
127 (c) When a record held in a records center is eligible for
128 destruction, the division shall notify, in writing, ~~by certified~~
129 ~~mail,~~ the agency that ~~which~~ transferred the record. The agency
130 must ~~shall have 90 days from receipt of that notice to~~ respond
131 requesting continued retention or authorizing destruction or
132 disposal of the record. ~~If the agency does not respond within~~
133 ~~that time, title to the record shall pass to the division.~~
134 (3) The division may charge fees for supplies and
135 services, including, but not limited to, shipping containers,
136 pickup, delivery, reference, and storage. Fees shall be based
137 upon the actual cost of the supplies and services and shall be
138 deposited in the Records Management Trust Fund.
139 ~~(4) Any preservation duplicate of any record made pursuant~~
140 ~~to this chapter shall have the same force and effect for all~~
141 ~~purposes as the original record. A transcript, exemplification,~~
142 ~~or certified copy of such preservation duplicate shall be~~
143 ~~deemed, for all purposes, to be a transcript, exemplification,~~
144 ~~or certified copy of the original record.~~
145 (4)~~(5)~~ For the purposes of this section, the term "agency"
146 shall mean any state, county, district, or municipal officer,
147 department, division, bureau, board, commission, or other
148 separate unit of government created or established by law. It is
149 the duty of each agency to:
150 (a) Cooperate with the division in complying with the

151 provisions of this chapter ~~and designate a records management~~
152 ~~liaison officer~~.
153 (b) Establish and maintain an active and continuing
154 program for the economical and efficient management of records.
155 (c) Designate a records management liaison officer to
156 serve as the primary point of contact between the agency and the
157 division for records management purposes and to conduct any
158 records management functions the agency assigns.
159 (5) ~~(6)~~ A public record may be destroyed or otherwise
160 disposed of only in accordance with retention schedules
161 established by the division. The division shall adopt reasonable
162 rules not inconsistent with this chapter which shall be binding
163 on all agencies relating to the destruction and disposition of
164 records. Such rules shall provide, but not be limited to:
165 (a) Procedures for complying and submitting to the
166 division records-retention schedules.
167 (b) Procedures for the physical destruction or other
168 disposal of records.
169 (c) Standards for the reproduction of records for security
170 or with a view to the disposal of the original record.
171 Section 4. Section 257.42, Florida Statutes, is amended to
172 read:
173 257.42 Library cooperative grants.—The administrative unit
174 of a library cooperative is eligible to receive an annual grant
175 from the state ~~of not more than $400,000~~ for the purpose of

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

176 sharing library resources based upon an annual plan of service
177 and expenditure and an annually updated 5-year, long-range plan
178 of cooperative library resource sharing. Those plans, which must
179 include a component describing how the cooperative will share
180 technology and the use of technology, must be submitted to the
181 Division of Library and Information Services of the Department
182 of State for evaluation and possible recommendation for funding
183 in the division's legislative budget request. Grant funds may
184 not be used to supplant local funds or other funds. A library
185 cooperative must provide from local sources matching cash funds
186 equal to 10 percent of the grant award.
187 Section 5. Subsection (8) of section 120.54, Florida
188 Statutes, is amended to read:
189 120.54 Rulemaking.—
190 (8) RULEMAKING RECORD.—In all rulemaking proceedings the
191 agency shall compile a rulemaking record. The record shall
192 include, if applicable, copies of:
193 (a) All notices given for the proposed rule.
194 (b) Any statement of estimated regulatory costs for the
195 rule.
196 (c) A written summary of hearings on the proposed rule.
197 (d) The written comments and responses to written comments
198 as required by this section and s. 120.541.
199 (e) All notices and findings made under subsection (4).
200 (f) All materials filed by the agency with the committee

201 under subsection (3).
202 (g) All materials filed with the Department of State under
203 subsection (3).
204 (h) All written inquiries from standing committees of the
205 Legislature concerning the rule.
206
207 Each state agency shall retain the record of rulemaking as long
208 as the rule is in effect. When a rule is no longer in effect,
209 the record may be destroyed pursuant to the records-retention
210 schedule developed under s. 257.36(5) ~~s. 257.36(6)~~.
211 Section 6. Paragraph (h) of subsection (1) of section
212 257.34, Florida Statutes, is amended to read:
213 257.34 Florida International Archive and Repository.—
214 (1) There is created within the Division of Library and
215 Information Services of the Department of State the Florida
216 International Archive and Repository for the preservation of
217 those public records, as defined in s. 119.011, manuscripts,
218 international judgments involving disputes between domestic and
219 foreign businesses, and all other public matters that the
220 department or the Florida Council of International Development
221 deems relevant to international issues. It is the duty and
222 responsibility of the division to:
223 (h) Assist and cooperate with the records and information
224 management program in the training and information program
225 described in s. 257.36(1)(d) ~~s. 257.36(1)(g)~~.

226 Section 7. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7043 PCB JDC 20-02 Contingency Fees
SPONSOR(S): Judiciary Committee, Gregory
TIED BILLS: **IDEN./SIM. BILLS:** SB 1574

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	9 Y, 8 N	Jones	Luczynski
1) Oversight, Transparency & Public Management Subcommittee		Darden	Smith
2) State Affairs Committee			

SUMMARY ANALYSIS

A contingency fee is a fee for an attorney's services that is received only if the lawsuit is successful or favorably settled out of court.

Both the Legislature and the Florida Supreme Court have placed restrictions on certain contingency fee contracts. Section 16.0155, F.S., prohibits the Department of Legal Affairs (DLA) from entering into a contingency fee contract that allows the attorney to receive an aggregate contingency fee in excess of:

- Twenty-five percent of any recovery of up to $10 million; plus
- Twenty percent of any portion of such recovery between $10 million and $15 million; plus
- Fifteen percent of any portion of such recovery between $15 million and $20 million; plus
- Ten percent of any portion of such recovery between $20 million and $25 million; plus
- Five percent of any portion of such recovery exceeding $25 million.

In addition, the aggregate contingency fee may not exceed $50 million, excluding costs and expenses.

The bill limits contingency fee contracts entered into by a local government in a similar manner as s. 16.0155, F.S., limits DLA. The PCB prohibits an aggregate contingency fee in excess of:

- Twenty-five percent of any recovery up to $10 million; plus
- Twenty percent of any portion of recovery between $10 million and $15 million; plus
- Fifteen percent of any portion of recovery between $15 million and $20 million; plus
- Ten percent of any portion of recovery between $20 million and $25 million; plus
- Five percent of any portion of recovery exceeding $25 million.

However, a local government attorney services contract may not provide for an aggregate contingency fee exceeding $20 million, excluding costs and expenses.

The bill appears to have no fiscal impact on state government and appears to have an indeterminate positive fiscal impact on local governments.

The bill has an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Contingency Fee Contracts

A contingency fee is an attorney fee that is charged only if the lawsuit is successful or favorably settled out of court.[1] In turn, a contingency fee contract between a client and an attorney provides that the attorney will receive a fee only if he or she successfully recovers for the client.

The Florida Supreme Court, through its Rules Regulating the Florida Bar, allows contingency fee contracts but restricts their use.[2] Rule 4-1.5(f) prohibits contingency fees in criminal defense and certain family law proceedings.[3] The rule also requires a contingency fee agreement to:

- Be in writing.
- State the method by which the fee is to be determined.
- State whether expenses are to be deducted before or after the contingency fee is calculated.
- In certain types of cases, include other provisions ensuring the client is aware of the agreement's terms.[4]

The rate for contingent fees may be set by the contract for representation, but is limited without prior court approval to the following rates, based on the status of the litigation:[5]

	Portion of Recovery		
	Up to $1,000,000	**$1,000,000-$2,000,000**	**Exceeding $2,000,000**
Before the filing of an answer or demand for appointment of arbitrators, or the expiration of the period for such action	33 1/3%	30%	20%
After the filing of an answer or demand for appointment of arbitrators, or through entry of judgment	40%	30%	20%
All defendants admit liability at the time of filing their answers and request a trial only on damages	33 1/3%	20%	15%

If the case involves any appellate proceeding or post-judgment relief or action, the fee may be increased by an additional five percent of any recovery.

Upon conclusion of a contingency fee case, the attorney must provide the client with a written statement stating the outcome of the case, the amount remitted to the client, and how the attorney calculated the amount.[6]

Statutory Limits on Contingency Fee Contracts

Current law requires that if a state agency enters into a contingency fee contract with an attorney, the contract must be "commercially reasonable" and comply with Rule Regulating the Florida Bar 4-1.5.[7]

---

[1] *See* Black's Law Dictionary 338 (8th ed. 2004).
[2] R. Regulating Fla. Bar 4-1.5(f).
[3] R. Regulating Fla. Bar 4-1.5(f)(3).
[4] R. Regulating Fla. Bar 4-1.5(f)(1) and (4).
[5] R. Regulating Fla. Bar 4-1.5(f)(4)(B).
[6] R. Regulation Fla. Bar 4-1.5(f)(1).
[7] S. 287.059(7)(a), F.S.

Moreover, s. 16.0155, F.S., prohibits the Department of Legal Affairs (DLA) within the Attorney General's office from entering into a contingency fee contract that allows for excessive attorney fees. Specifically, DLA may not contract with a private attorney or law firm in a manner that allows the attorney to receive an aggregate contingency fee in excess of:

- Twenty-five percent of any recovery of up to $10 million; plus
- Twenty percent of any portion of such recovery between $10 million and $15 million; plus
- Fifteen percent of any portion of such recovery between $15 million and $20 million; plus
- Ten percent of any portion of such recovery between $20 million and $25 million; plus
- Five percent of any portion of such recovery exceeding $25 million.[8]

In addition, the total contingency fee may not exceed $50 million, excluding costs and expenses.[9]

Although s. 16.0155, F.S., caps the attorney fees in a contingency fee contract entered into by DLA, there is no similar restriction on a local government contingency fee contract.

Effect of Proposed Changes

The bill limits the amount of contingency fees that a "local or regional government entity" may agree to pay a private attorney or law firm. For purposes of the bill, a local or regional government entity includes each:

- Municipality;
- County;
- School board;
- Special district;
- Other local entity within the jurisdiction of a single county;
- Regional planning council;
- Metropolitan planning organization;
- Water supply authority including more than one county;
- Local health council;
- Water management district; and
- Any other regional entity authorized and created by general or special law, which has duties extending beyond a single county's jurisdiction.

The bill limits contingency fee contracts entered into by a local or regional government entity in a similar manner as s. 16.0155, F.S., limits DLA. The contract cannot include an aggregate contingency fee in excess of:

- Twenty-five percent of any recovery up to $10 million; plus
- Twenty percent of any portion of recovery between $10 million and $15 million; plus
- Fifteen percent of any portion of recovery between $15 million and $20 million; plus
- Ten percent of any portion of recovery between $20 million and $25 million; plus
- Five percent of any portion of recovery exceeding $25 million.

However, the bill also provides that the total contingency fee may not exceed $20 million, excluding costs and expenses, which is less than the $50 million cap for DLA.

The bill has an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Creates s. 287.05905, F.S., relating to private attorney or law firm services for local or regional governmental entities.
Section 2: Provides an effective date of July 1, 2020.

---

[8] S. 16.0155(5), F.S.
[9] *Id.*

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:

   The bill may have a positive fiscal impact on local governments by limiting the amount of attorney fees that local governments may pay in certain cases.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill limits the amount of attorney fees that may be paid by a local government, which may reduce the amount of contingency fees attorneys are able to recover.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to contingency fees; creating s.
3 287.05905, F.S.; providing a definition; prohibiting
4 local and regional governmental entities from entering
5 into certain contingency fee contracts with private
6 attorneys or law firms; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 287.05905, Florida Statutes, is created
11 to read:
12 287.05905 Private attorney or law firm services for local
13 or regional governmental entities.—
14 (1) As used in this section, the term "local or regional
15 governmental entity" includes a municipality, county, school
16 board, special district, any other local entity within the
17 jurisdiction of a single county created by general or special
18 law or local ordinance, regional planning council, metropolitan
19 planning organization, water supply authority that includes more
20 than one county, local health council, water management
21 district, and any other regional entity that is authorized and
22 created by general or special law that has duties or
23 responsibilities extending beyond the jurisdiction of a single
24 county.
25 (2) A local or regional governmental entity may not enter

26 into a contingency fee contract that authorizes a private
27 attorney or law firm to receive an aggregate contingency fee in
28 excess of:
29 (a) Twenty-five percent of any recovery up to $10 million;
30 plus
31 (b) Twenty percent of any portion of such recovery over
32 $10 million and up to $15 million; plus
33 (c) Fifteen percent of any portion of such recovery over
34 $15 million and up to $20 million; plus
35 (d) Ten percent of any portion of such recovery over $20
36 million and up to $25 million; plus
37 (e) Five percent of any portion of such recovery exceeding
38 $25 million.
39
40 The aggregate contingency fee may not exceed $20 million,
41 exclusive of reasonable costs and expenses and irrespective of
42 the number of lawsuits filed or the number of private attorneys
43 or law firms retained to achieve the recovery.
44 Section 2. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 729 Regulatory Reform
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1238

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee		Toliver	Smith

SUMMARY ANALYSIS

The Administrative Procedure Act (APA) sets forth a uniform set of procedures agencies must follow when exercising delegated rulemaking authority. A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms. Agencies do not have the discretion in and of themselves to engage in rulemaking. To adopt a rule, an agency must have a general grant of authority to implement a specific law.

The bill amends the APA to increase transparency in rulemaking and provide a mechanism to ensure agencies reduce unnecessary rules. Specifically, the bill:

- Requires each agency to review its rules for consistency with the powers and duties granted by the agency's enabling statutes. If, after reviewing a rule, the agency determines substantive changes to update a rule are not required, the agency must repromulgate the rule;
- Specifies the economic impacts and compliance costs an agency must consider in creating a statement of estimated regulatory costs (SERC). Each agency is required to have a website where each of its SERCs may be viewed in their entirety;
- Requires an agency, in all notices of rulemaking that include material incorporated by reference, to submit the incorporated material in the prescribed electronic format to DOS with the full text available for free public access through an electronic hyperlink;
- Requires changes to material incorporated by reference to be in a strike-through and underline format;
- Requires the annual regulatory plan to identify and describe each rule, by rule number or proposed rule number, which the agency expects to develop, adopt, or repeal for the 12-month period beginning October 1 and ending September 30. The bill also requires the annual regulatory plan to contain a declaration that the agency head and the general counsel understand that regulatory accountability is necessary to ensure public confidence in the integrity of state government and to that end the agency is diligently working toward lowering the total number of rules adopted;
- Specifies that an adverse impact on small business exists if certain specific criteria is met;
- Specifies that a lower cost regulatory alternative may be submitted after a notice of proposed rule *or* a notice of change;
- Defines the term "technical change" and requires technical changes to be documented in the history of the rule;
- Requires a period of at least seven days between the publication of a notice of rule development and a notice of proposed rule; and
- Requires the Joint Administrative Procedures Committee to review all existing rules.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Rulemaking

Background

The Legislature, as the sole branch of government with the inherent power to create laws,[1] may delegate to agencies in the executive branch the quasi-legislative ability, or authority, to create rules.[2] The Administrative Procedure Act (APA)[3] sets forth a uniform set of procedures agencies must follow when exercising delegated rulemaking authority. A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[4] Rulemaking authority is delegated by the Legislature through statute and authorizes agencies to "adopt, develop, establish, or otherwise create"[5] rules. Usually, the Legislature delegates rulemaking authority to a given agency because an agency has "expertise in a particular area for which they are charged with oversight."[6] Agencies do not have the discretion in and of themselves to engage in rulemaking.[7] To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.[8] The grant of rulemaking authority itself need not be detailed. The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[9]

An agency begins the formal rulemaking process[10] by filing a notice of rule development of proposed rules in the Florida Administrative Register (FAR) indicating the subject area to be addressed by the rule development and including a short, plain explanation of the purpose and effect of the rule.[11] The notice may include the preliminary text of the proposed rule, but it is not necessary. Such notice is required for all rulemaking, except for rule repeals. Next, an agency must file, upon approval of the agency head, a notice of proposed rule.[12] The notice of proposed rule is published by the Department of State (DOS) in the FAR[13] and must contain the full text of the proposed rule or amendment and a summary thereof.[14] Prior to 2012, the FAR was published weekly, resulting in a period of at least seven days between the publication of a notice of rule development and a notice of proposed rule.[15] In 2012, the Legislature passed HB 541 (2012) that changed the FAR from a weekly publication to a publication that is continuously revised and, as a result, eliminated the seven day period between the two notices.[16]

---

[1] Article III, s. 1, FLA. CONST.; *see also* art. II, s. 3, FLA. CONST.
[2] *See Whiley v. Scott*, 79 So. 3d 702, 710 (Fla. 2011), stating "[r]ulemaking is a derivative of lawmaking."
[3] Chapter 120, F.S.
[4] Section 120.52(16), F.S.
[5] Section 120.52(17), F.S.
[6] *Whiley v. Scott*, 79 So. 3d 702, 711 (Fla. 2011).
[7] Section 120.54(1)(a), F.S.
[8] Sections 120.52(8) and 120.536(1), F.S.
[9] *Sloban v. Fla. Bd. of Pharmacy,* 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Bd. of Trustees of the Internal Improvement Trust Fund v. Day Cruise Assoc., Inc.,* 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[10] Alternatively, a person regulated by an agency or having substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule. Section 120.54(7), F.S.
[11] Section 120.54(2), F.S.
[12] Section 120.54(3)(a)1., F.S.
[13] Section 120.55(1)(b), F.S.
[14] Section 120.54(3)(a)1., F.S.
[15] Chapter 2012-63, L.O.F.
[16] *Id.*

After publication of a notice of proposed rule, an agency must hold a hearing on the proposed rule if a person requests a hearing within 21 days.[17] If, after the hearing is held or after the time for requesting a hearing has expired, the agency does not change the rule, other than a technical change, the agency must file a notice stating no changes have been made to the rule with the Joint Administrative Procedures Committee (JAPC) at least seven days before filing the rule for adoption.[18] However, if a hearing is requested, the agency may, based upon the comments received at the hearing, publish a notice of change.[19]

As an alternative to the agency initiated process delineated above, a person regulated by the agency or having a substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule.[20] The petitioner must specify the proposed rule and action requested.[21] The agency can either initiate rulemaking or decline to do so; however, if the agency chooses the latter it must issue a written statement of the reasons for the denial.[22]

Once an agency has completed the steps of rulemaking, the agency may file for rule adoption with DOS and the rule becomes effective 20 days later, unless a different date is indicated in the rule.[23] Most adopted rules are published in the Florida Administrative Code (FAC).[24]

The validity of a rule or a proposed rule may be challenged at the Division of Administrative Hearings (DOAH)[25] as an invalid delegation of legislative authority.[26] An invalid delegation of legislative authority is an action that goes beyond the powers, functions, and duties delegated by the Legislature.[27] A rule or proposed rule is an invalid delegation of legislative authority if:

- The agency has materially failed to follow the rulemaking procedures in the APA;
- The agency has exceeded its grant of rulemaking authority;
- The rule enlarges, modifies, or contravenes the specific provisions of the law implemented;
- The rule is vague, fails to establish adequate standards for agency decisions; or vests the agency with unbridled discretion;
- The rule is arbitrary or capricious; or
- The rule imposes regulatory costs on the regulated person, county, or municipality that could have been reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.[28]

An administrative law judge (ALJ) at DOAH hears the rule challenge in a de novo proceeding and, within 30 days of the hearing, makes a determination on the rule's validity based upon a preponderance of the evidence standard.[29] The ALJ's decision constitutes final agency action, which means an agency may not alter the decision after its issuance,[30] but an agency may appeal the decision to the District Court of Appeal where the agency maintains its headquarters.[31]

---

[17] Section 120.54(3)(c), F.S.
[18] Section 120.54(3)(d)1., F.S.
[19] Section 120.54(3)(d)1., F.S.
[20] Section 120.54(7)(a), F.S.
[21] *Id.*
[22] *Id.*
[23] Section 120.54(3)(e)6., F.S.
[24] Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or a state university rules relating to internal personnel or business and finance are not published in the FAC. Forms are not published in the FAC. Section 120.55(1)(a), F.S. Emergency rules are also not published in the FAC.
[25] DOAH is an agency in the executive branch, administratively housed under the Department of Management Services but not subject to its control. DOAH employs ALJs who serve as neutral arbiters presiding over disputes arising under the APA. Section 120.65, F.S.
[26] Section 120.56(1), F.S.
[27] Section 120.52(8), F.S.
[28] Section 120.52(8)(a)-(f), F.S.
[29] Section 120.56(1)(e), F.S.
[30] *Id.*
[31] Section 120.68(2)(a), F.S.

Effect of the Bill

The bill requires a notice of proposed rule to be filed within 12 months of a notice of rule development. If a notice of proposed rule is not filed within 12 months of the notice of rule development, the agency must withdraw the rule and give notice of the withdrawal in the next issue of the FAR. The bill also reestablishes the mandatory seven day period between the publication of a notice of rule development and the publication of a notice of proposed rule in the FAR.

The bill further requires that a proposed rule be withdrawn if, *after issuing a notice of proposed rule*, the agency fails to adopt it within the prescribed timeframes in the APA. Once an agency has exceeded the timeframe to adopt the rule, the bill requires JAPC to notify the agency of the failure. If the agency has not withdrawn the rule within 30 days following the notice, JAPC must notify DOS that the date for adoption of the rule has expired. DOS must then publish a notice of withdrawal of the proposed rule.

The bill requires an agency to file a copy of a petition to initiate rulemaking with JAPC.

The bill defines the term “technical change” to mean a change limited to correcting grammatical, typographical, and similar errors not affecting the substance of the rule.

Joint Administrative Procedures Committee

Background

JAPC is a standing committee of the Legislature established by joint rule and created to maintain a continuous review of administrative rules, the statutory authority upon which those rules are based, and the administrative rulemaking process.[32] Specifically, JAPC may examine existing rules and must examine each proposed rule to determine whether:

- The rule is an invalid exercise of delegated legislative authority;
- The statutory authority for the rule has been repealed;
- The rule reiterates or paraphrases statutory material;
- The rule is in proper form;
- The notice given prior to adoption was sufficient;
- The rule is consistent with expressed legislative intent;
- The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law that the rule implements;
- The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule;
- The rule could be made less complex or more easily comprehensible to the general public;
- The rule’s statement of estimated regulatory cost complies with the requirements of the APA and whether the rule does not impose regulatory costs on the regulated person, county, or municipality that could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives; or
- The rule will require additional appropriations.[33]

Effect of the Bill

The bill removes the permissive authority of JAPC to examine existing rules and makes such examination mandatory to align with JAPCs mandate to examine proposed rules.

[32] Fla. Leg. J. Rule 4.6; *see also* s. 120.545, F.S.

[33] Section 120.545(1), F.S.

Agency Review of Rules

Background
The APA requires each agency to annually review its rules.[34] Although an agency may amend or repeal the rule, rules generally do not expire or sunset and many agencies have adopted rules that have not been updated in years.

Effect of the Bill
The bill creates a process called "repromulgation," whereby each agency is required to review its rules for consistency with the powers and duties granted by the agency's enabling statutes. If, after reviewing the rule, the agency determines that substantive changes are not required, the agency must repromulgate the rule to reflect the date of the review. The bill defines the term "repromulgated" to mean the publication and adoption of an existing rule following an agency's review of the rule for consistency with the power and duties granted by its enabling statute. Each agency must review its rules according to the following schedule:

- If the rule was adopted *before* January 1, 2012, within five years after July 1, 2020; or
- If the rule was adopted *after* January 1, 2012, within 10 years after the rule is adopted.

An agency, before repromulgation of a rule and upon approval of its agency head, must:

- Publish a notice of repromulgation in the FAR, which is not required to include the text of the rule; and
- File the rule with DOS. The rule may not be filed for repromulgation less than 28 days before or more than 90 days after the publication of the notice.

An agency must file a notice of repromulgation with JAPC at least 14 days before filing the rule with DOS. JAPC must certify at the time of filing whether the agency has responded to all of JAPC's material or written inquiries. The bill specifies that a repromulgated rule is not subject to the hearing requirements of the APA nor is it subject to challenge.

The bill requires each agency, upon approval of the agency head, to submit three certified copies of the repromulgated rule it proposes to adopt with DOS and one certified copy of any material incorporated by reference in the rule. The repromulgated rule is adopted upon its filing with DOS and becomes effective 20 days later. DOS must then update the history of the rule in the FAC to reflect the new effective date. The bill requires DOS to adopt rules to implement the bill's repromulgation provision by December 31, 2020.

If either an agency fails to meet the deadline to review the rule or the timeframe to file the rule for repromulgation, the rule is deemed repealed. After such a failure, JAPC notifies DOS that the agency has elected to repeal the rule. Thereafter DOS must publish a notice of the repeal in the next issue of the FAR and the rule is then stricken from the files of DOS and the agency.

Statement of Estimated Regulatory Cost

Background
A statement of estimated regulatory cost (SERC) is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.[35] Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule.[36] However, a SERC is required if the proposed rule will have an adverse impact on small businesses or increase regulatory costs by more than $200,000 in the aggregate within one year after implementation of the rule.[37] If the

[34] *See* s. 120.74, F.S.
[35] Section 120.541(2), F.S.
[36] Section 120.54(3)(b)1., F.S.
[37] *Id.*

agency revises a rule before adoption and the revision increases the regulatory costs of the rule, the agency must revise the SERC to reflect that alteration.[38]

A SERC must include:
- A good faith estimate of the number of people and entities affected by the proposed rule;
- A good faith estimate of the cost to the agency and other governmental entities to implement the proposed rule;
- A good faith estimate of transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and municipalities.[39]

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 five years of implementation on:
- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness, productivity, or innovation; or
- Regulatory costs, including any transactional costs.[40]

If the economic analysis results in an adverse impact or regulatory costs in excess of $1 million within five years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.[41]

An agency's failure to prepare a SERC can be raised in a proceeding at DOAH to invalidate a rule as an invalid exercise of delegated legislative authority, if it is raised within one year of the effective date of the rule and is raised by a person whose substantial interests are affected by the regulatory costs of the rule.[42]

<u>Effect of the Bill</u>
The bill requires each agency to have a website where each of its SERCs may be viewed in their entirety. DOS must include on the FAR website the agency website addresses where the SERCs can be viewed. An agency must provide in its notice of intended action the agency website address where the SERC can be viewed. If an agency revises a SERC, it must provide a notice that a revision has been made and include an agency website address where the revision can be viewed for publication on the FAR website.

The bill clarifies the elements an agency must consider in a SERC when evaluating the economic impacts of the rule. Specifically, the bill requires agency estimates of economic, market, and small business impacts likely to result from compliance with the proposed rule to consider elements such as:
- Increased or decreased consumer prices or value of goods and services;
- Increased costs due to obtaining substitute or alternative products or services;
- The value of time expended by business owners and other business personnel to comply with the proposed rule;
- Capital costs incurred to comply with the proposed rule; and
- Other impacts suggested by the rules ombudsman, the agency head's appointing authority, or interested persons.

In addition, the bill replaces the term "transactional costs" with "compliance costs," requires agencies to consider all direct and indirect costs of compliance, and provides 18 specific types of compliance costs as examples for agencies to consider in their evaluation, including:
- Filing fees;

---

[38] Section 120.541(1)(c), F.S.
[39] Section 120.541(2)(b)-(e), F.S.
[40] Section 120.541(2)(a), F.S.
[41] Section 120.541(3), F.S.
[42] Section 120.541(1)(f), F.S.

- Costs of obtaining a license;
- Costs to obtain, install, and maintain equipment necessary for compliance;
- Costs related to accounting, financial, and information management processes, as well as other administrative processes;
- Labor costs;
- Costs of education, training, and testing necessary for compliance; and
- Allocation of administrative and other overhead costs.

The bill allows agencies to survey individuals, businesses, business organizations, counties, and municipalities to collect data helpful to estimate the costs and impacts of the proposed rule. Each notice of proposed rule must also contain a summary of the SERC describing the regulatory impact of the rule in readable language. Additionally, if an agency holds a hearing on a proposed rule, the bill requires the agency to ensure that the person responsible for preparing the SERC be made available to respond to questions or comments.

Lower Cost Regulatory Alternative

Background
A person substantially affected by a proposed rule may, within 21 days after publication of a notice of adoption, amendment, or repeal of a rule, submit a lower cost regulatory alternative (LCRA).[43] The LCRA must be a written proposal, made in good faith, that substantially accomplishes the objectives of the law being implemented.[44] A LCRA may recommend that a rule not be adopted at all, if it explains how the "lower costs and objectives of the law will be achieved by not adopting any rule."[45] If a LCRA is submitted to an agency, the agency must prepare a SERC if one has not been previously prepared, or revise its prior SERC, and either adopt the LCRA or provide a statement to explain the reasons for rejecting the LCRA.[46] Additionally, if a LCRA is submitted, the 90-day period for filing a rule is extended an additional 21 days.[47] At least 21 days before filing a rule for adoption, an agency that is required to revise a SERC in response to a LCRA must provide the SERC to the person who submitted the LCRA and to JAPC and must provide notice on the agency's website that it is available to the public.[48]

Just as in the case of an agency's failure to prepare a SERC, an agency's failure to respond to a LCRA may be raised in a proceeding at DOAH to invalidate a rule as an invalid delegation of legislative authority if its raised within one year of the effective date of the rule and is raised by a person whose substantial interests are affected by the regulatory costs of the rule.[49]

Effect of the Bill
The bill specifies that a LCRA may be submitted after a notice of proposed rule or a notice of change. If submitted after the latter, the LCRA is deemed to have been made in good faith only if the person reasonably believes, and the proposal states the reasons for believing, that the proposed rule *as changed by the notice of change* increases the regulatory costs or creates an adverse impact on small business.

The bill allows an agency receiving a LCRA to have the choice of modifying the proposed rule to substantially reduce regulatory costs in addition to either adopting the LCRA or stating its reasons for rejecting it in favor of the proposed rule. If the rule is modified, the agency must revise its SERC, if one has been prepared. If the agency rejects the LCRA or modifies the proposed rule, the agency must state its reasons for rejecting the LCRA in favor of the proposed or modified rule. When a SERC is

[43] Section 120.541(1)(a), F.S.
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] Section 120.541(1)(d), F.S.
[49] Section 120.541(1)(f), F.S.

revised because a change to a proposed rule increases the projected regulatory costs or the agency modified the rule in response to a LCRA, a summary of the revised SERC must be included in subsequent published rulemaking notices. Under the bill, the revised SERC must be provided to the rules ombudsman, the party submitting the LCRA, and JAPC, and must be published in the same manner as the original SERC.

The bill requires an agency to provide a copy of a LCRA to JAPC at least 21 days prior to filing the rule for adoption.

Emergency Rules

Background

Agencies are authorized to respond to immediate dangers to the public health, safety, or welfare by adopting emergency rules.[50] Emergency rules are not adopted using the same procedures required of other rules.[51] The notice of the emergency rule and the text of the rule is published in the first available issue of the FAR, however, there is no requirement that an emergency rule be published in the FAC.[52] The agency must publish prior to, or contemporaneous with, the rule's promulgation the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare.[53] Emergency rules are effective immediately, or on a date less than 20 days after filing if specified in the rule,[54] but are only effective for a period of no longer than 90 days.[55] An emergency rule is not renewable, except when the agency has initiated rulemaking to adopt rules relating to the subject of the emergency rule and a challenge to the proposed rules has been filed and remains pending or the proposed rule is awaiting ratification by the Legislature.[56] The validity of an emergency rule may be challenged at DOAH subject to an expedited filing and hearing schedule.[57]

Effect of the Bill

The bill requires emergency rules to be published in the FAC. The bill also allows an agency to make technical changes to the emergency rule within the first seven days after adoption and prohibits an agency from superseding an emergency rule currently in effect. The bill clarifies that an emergency rule is not subject to the legislative ratification process.[58]

Small Business Impact in Rulemaking

Background

Each agency, before the adoption, amendment, or repeal of a rule, must consider the impact of the rule on small businesses.[59] If the agency determines that the proposed action will affect small businesses, the agency must send written notice to the rules ombudsman[60] in the Executive Office of the Governor

[50] Section 120.54(4), F.S.
[51] Section 120.54(4)(a)1., F.S.
[52] Section 120.54(4)(a)3., F.S.
[53] *Id.*
[54] Section 120.54(4)(d), F.S.
[55] Section 120.54(4)(c), F.S.;
[56] *Id.*
[57] *Id.*
[58] In 2011, the Legislature passed two bills, CS/CS/HB 993 (2011) and CS/CS/CS/HB 849 (2011) that contained conflicting provisions concerning the exemption of emergency rules from the legislative ratification process. In one bill, CS/CS/HB 993 (2011), the provision exempting emergency rules in s. 120.541(4), F.S., from the legislative ratification process was expressly included in the bill. In the other, CS/CS/CS/HB 849 (2011), the provision was erroneously deleted, leading to a statutory conflict. In 2013, the Legislature passed CS/CS/SB 1410 (2013), which amended s. 120.541(4), F.S., to correct a cross reference and in the process the bill erroneously continued the omission of the provision exempting emergency rules. This bill corrects those previous errors by reinstating the provision exempting emergency rules from the legislative ratification process.
[59] Section 120.54(3)(b)2., F.S.
[60] The Governor must appoint a rules ombudsman in the Executive Office of the Governor for the purpose of considering the impact of agency rules on the state citizens and businesses. The rules ombudsman must carry out the duties related to rule adoption procedures with respect to small businesses; review agency rules that adversely or disproportionately impact businesses, particularly

at least 28 days before the intended action.[61] The agency must adopt the regulatory alternatives offered by the rules ombudsman if it finds the alternatives are feasible and consistent with the stated objectives of the proposed rule and would reduce the impact on small businesses.[62]

If the agency does not adopt the alternatives offered, before rule adoption or amendment, the agency must file a detailed written statement with JAPC explaining the reasons for failure to adopt such alternatives.[63]

Effect of the Bill

The bill requires an adverse impact on small business to be found if:

- An owner, officer, operator, or manager of a small business must complete any education, training, or testing to comply with the proposed rule;
- An owner, officer, operator, or manager of a small business is likely to expend 10 hours or purchase professional advice to understand and comply with the rule in the first year;
- Taxes or fees assessed on transactions are likely to increase by $500 or more in the aggregate in one year;
- Prices charged for goods and services are restricted or are likely to increase because of the rule;
- Specially trained, licensed, or tested employees will be required;
- Operating costs are expected to increase by at least $1,000 annually; or
- Capital expenditures in excess of $1,000 are necessary to comply with the rule.

If the rules ombudsman of the Executive Office of the Governor provides a regulatory alternative to the agency to lessen the impact of the rule on small businesses, the bill requires the agency to provide the regulatory alternative to JAPC at least 21 days before filing the rule for adoption.

Incorporation by Reference

Background

The APA allows an agency to incorporate material external to the text of the rule by reference.[64] The material to be incorporated must exist on the date the rule is adopted.[65] If after the rule has been adopted the agency wishes to alter the material incorporated by reference, the rule itself must be amended for the change to be effective.[66] However, an agency rule that incorporates another rule by reference automatically incorporates subsequent amendments to the referenced rule.[67] A rule cannot be amended by reference only.[68] An agency may not incorporate a rule by reference unless:

- The material has been submitted in the prescribed electronic format to DOS and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the FAC; or
- The agency has determined that posting the material publicly on the Internet would constitute a violation of federal copyright law, in which case a statement stating such, along with the address of locations at DOS and the agency at which the material is available for public inspection and examination, must be included in the notice.[69]

---

those relating to small and minority businesses; and make recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to business. Each agency must cooperate fully with the rules ombudsman in identifying such rules, and take the necessary steps to waive, modify, or otherwise minimize the adverse effects of any such rules. Section 288.7015, F.S.

[61] Section 120.54(3)(b)2.b.(I), F.S.

[62] Section 120.54(3)(b)2.b.(II), F.S.

[63] Section 120.54(3)(b)2.b.(III), F.S.

[64] Section 120.54(1)(i), F.S.; *see also* r. 1-1.013, F.A.C.

[65] Section 120.54(1)(i)1., F.S.

[66] *Id.*

[67] Section 120.54(1)(i)2., F.S.

[68] Section 120.54(1)(i)4., F.S.

[69] Section 120.54(1)(i)3., F.S.

DOS has adopted a rule governing the requirements for materials incorporated by reference through an adopted rule.[70] The rule requires each agency incorporating material by reference in an administrative rule to certify that the materials incorporated have been filed with DOS electronically or, if the agency claims the posting of the material would constitute a violation of federal copyright law, the location where the public may view the material.[71]

Effect of the Bill
Beginning July 1, 2020, the bill requires an agency, in all notices of rulemaking, repromulgated rules, or rule modifications that include material incorporated by reference, to submit the incorporated material in the prescribed electronic format to DOS with the full text available for free public access through an electronic hyperlink. Alternatively, if an agency determines that posting the incorporated material on the internet would constitute a violation of federal copyright law, the agency must include in the notice a statement to that effect, along with the addresses of locations at DOS and the agency at which the material is available for public inspection and examination.

The bill requires DOS to prescribe by rule that material incorporated by reference included in a notice of proposed rule and a notice of change be formatted in such a way that additions to the text appear underlined and deletions appear as text stricken through.

Annual Regulatory Review

Background
Annually, each agency must prepare a regulatory plan that includes a list of each law enacted during the previous 12 months, which creates or modifies the duties or authority of the agency, and state whether the agency must adopt rules to implement the newly adopted laws.[72] The plan must also include a list of each additional law not otherwise listed that the agency expects to implement by rulemaking before the following July 1, except emergency rules. The plan must include a certification by the agency head or, if the agency head is a collegial body, the presiding officer, and the individual acting as principal legal advisor to the agency verifying the persons have reviewed the plan, verifying the agency regularly reviews all of its rules, and identifying the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.[73] By October 1 of each year, the plan must be published on the agency's website or on another state website established for publication of administrative law records with a hyperlink to the plan. The agency must also deliver a copy of the certification to JAPC and publish a notice in the FAR identifying the date of publication of the agency's regulatory plan.[74]

Effect of the Bill
The bill replaces the requirement that the annual regulatory plan include a listing of each law it expects to implement with rulemaking with the requirement that the plan identify and describe each rule, by rule number or proposed rule number, that the agency expects to develop, adopt, or repeal for the 12 month period beginning October 1 and ending September 30. The annual regulatory plan must also identify any rules required to be repromulgated for the 12-month period.

The bill also requires that the annual regulatory plan contain a declaration that the agency head and the general counsel understand that regulatory accountability is necessary to ensure public confidence in the integrity of state government and to that end the agency is diligently working toward lowering the total number of rules adopted.

[70] Rule. 1-1.013, F.A.C.
[71] Rule 1-1.013(5)(d), F.A.C.
[72] Section 120.74(1), F.S.
[73] Section 120.74(1)(d), F.S.
[74] Section 120.74(2), F.S.

Florida Administrative Code

Background
The FAC is an electronic compilation of all rules adopted by each agency and maintained by DOS.[75] DOS retains the copyright over the FAC.[76]

Each rule in the FAC must cite the grant of rulemaking authority and the specific law implemented, as well as a history note detailing the initial promulgation of the rule and any subsequent changes.[77] Rules applicable to only one school district, community college district, or county or state university rules relating to internal personnel or business and finance are not required to be included in the FAC.[78] DOS is required to publish the following information at the beginning of each section of the code concerning an agency:

- The address and telephone number of the executive offices of the agency;
- The manner by which the agency indexes its rules; and
- A listing of all rules of that agency excluded from publication in the FAC and a statement as to where those rules may be inspected.[79]

DOS is required to adopt rules allowing adopted rules and material incorporated by reference to be filed in electronic form.[80] Further, DOS is required to prescribe by rule the style and form required for rules, notices, and other materials submitted for filing in the FAC.[81] The rule DOS has adopted requires rules that are being amended to be coded by underlining new text and by striking through deleted text.[82]

Effect of the Bill
The bill requires the FAC be published once daily, by no later than 8 a.m. If, after publication, a rule is corrected and replaced, the FAC must indicate the rule has been republished and indicate DOS has corrected it. The bill also requires the history note appended to each rule include the date of any technical changes to the rule.

B. SECTION DIRECTORY:

Section 1 amends s. 120.52, F.S., relating to definitions applicable to the APA.

Section 2 amends s. 120.54, F.S., relating to rulemaking procedures.

Section 3 amends s. 120.541, F.S., relating to SERCs.

Section 4 creates s. 120.5435, F.S., relating to the repromulgation of rules.

Section 5 amends s. 120.545, F.S., relating to JAPC review of agency rules.

Section 6 amends s. 120.55, F.S., relating to publication requirements in the APA.

Section 7 amends s. 120.74, F.S., relating to agency annual rulemaking and regulatory plans.

Section 8 amends s. 120.80, F.S., relating to exemptions and special requirements.

Section 9 amends s. 120.81, F.S., relating to exceptions to the APA and special requirements.

---

[75] Section 120.55(1)a.1., F.S.
[76] *Id.*
[77] *Id.*
[78] Section 120.55(1)(a)2., F.S.
[79] Section 120.55(1)(a)3., F.S.
[80] Section 120.55(1)(a)5., F.S.
[81] Section 120.55(1)(c), F.S.
[82] Rule 1-1.015(5)(a), F.A.C. *referencing* r. 1-1.011(3)(c), F.A.C.

Section 10 amends s. 420.9072, F.S., relating to the State Housing Initiatives Partnership Program.

Section 11 amends s. 420.9075, F.S., relating to local housing assistance plans.

Section 12 amends s. 443.091, F.S., relating to reemployment benefit eligibility conditions.

Section 13 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 bill requires each agency to review and repromulgate its rules, which may require agencies to expend funds to institute this new process. While the review process the bill creates is neither intensive nor time-consuming, it would still require agencies to dedicate staff to review existing rules and engage in rulemaking to repromulgate the rules. It is unclear whether this new activity could be absorbed into each agency's current budget.

State agencies currently are required to comply with the notice, publication, and hearing requirements for rulemaking and the requirements for preparing SERCs. The bill adds to these requirements. Compliance with these additional requirements may require agencies to devote more resources to rulemaking. It is unclear whether these new requirements could be absorbed into each agency's current budget.

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 requires DOS to adopt rules to implement the provisions of the bill concerning repromulgation. The bill gives DOS until December 31, 2020, to adopt such rules. The bill's provisions regarding repromulgation provide DOS with sufficient direction to guide the department in the creation of the rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to administrative procedures; amending
3 s. 120.52, F.S.; defining the terms "repromulgation"
4 and "technical change"; amending s. 120.54, F.S.;
5 applying certain provisions applicable to all rules
6 other than emergency rules to repromulgated rules;
7 requiring a notice of rule development to cite the
8 grant of rulemaking authority; requiring a notice of
9 rule development to contain a proposed rule number and
10 certain statements; requiring a notice of withdrawal
11 if a notice of proposed rule is not filed within a
12 certain timeframe; requiring a notice of proposed rule
13 to include a website address where a statement of
14 regulatory costs may be viewed; requiring that
15 material proposed to be incorporated by reference and
16 the statement of estimated regulatory costs be
17 available to the public; requiring that material
18 proposed to be incorporated by reference be made
19 available in a specified manner; authorizing
20 electronic delivery of notices to persons who have
21 requested advance notice of agency rulemaking
22 proceedings; revising the circumstances under which a
23 proposed rule's adverse impact on small businesses is
24 considered to exist; requiring an agency to provide
25 notice of a regulatory alternative to the

26 Administrative Procedures Committee within a certain
27 timeframe; requiring an agency to publish a notice of
28 convening a separate proceeding in certain
29 circumstances; providing that rulemaking deadlines are
30 tolled during such separate proceedings; revising the
31 requirements for the contents of a notice of change;
32 requiring the committee to notify the Department of
33 State that the date for an agency to adopt a rule has
34 expired under certain circumstances; requiring the
35 department to publish a notice of withdrawal under
36 certain circumstances; requiring emergency rules to be
37 published in the Florida Administrative Code;
38 prohibiting agencies from making changes to emergency
39 rules by superseding the rule; authorizing an agency
40 to make technical changes to an emergency rule during
41 a specified timeframe; requiring an agency to file a
42 copy of a certain petition with the committee;
43 amending s. 120.541, F.S.; conforming provisions to
44 changes made by the act; requiring an agency to
45 provide a copy of any proposal for a lower cost
46 regulatory alternative to the committee within a
47 certain timeframe; specifying the circumstances under
48 which such a proposal is made in good faith; revising
49 requirements for an agency's consideration of a lower
50 cost regulatory alternative; providing for an agency's

51 revision and publication of a revised statement of
52 estimated regulatory costs in response to such lower
53 cost regulatory alternatives; conforming a cross-
54 reference; revising the statement of estimated
55 regulatory costs; deleting the definition of the term
56 "transactional costs"; revising the applicability of
57 specified provisions; providing additional
58 requirements for the calculation of estimated
59 regulatory costs; creating s. 120.5435, F.S.;
60 providing legislative intent; requiring agency review
61 of rules and repromulgation of rules that do not
62 require substantive changes within a specified
63 timeframe; requiring an agency to publish a notice of
64 repromulgation in the Florida Administrative Register
65 and file a rule for promulgation with the Department
66 of State within a specified timeframe; requiring an
67 agency to file a notice of repromulgation with the
68 committee within a specified timeframe; requiring
69 withdrawal of a rule proposed for repromulgation if
70 the rule is not filed within a specified timeframe;
71 providing that a repromulgated rule is not subject to
72 challenge as a proposed rule and that certain hearing
73 requirements do not apply; requiring an agency to file
74 a specified number of certified copies of a proposed
75 repromulgated rule and any material incorporated by

76 reference; providing that a repromulgated rule is
77 adopted upon filing with the department and becomes
78 effective after a specified time; requiring the
79 department to update certain information in the
80 Florida Administrative Code; requiring the department
81 to adopt rules by a certain date; amending s. 120.545,
82 F.S.; requiring the committee to examine existing
83 rules; amending s. 120.55, F.S.; requiring the Florida
84 Administrative Code to be published once daily;
85 requiring materials incorporated by reference to be
86 filed in a specified manner; requiring the department
87 to include the date of a technical rule change in the
88 Florida Administrative Code; providing that a
89 technical change does not affect the effective date of
90 a rule; requiring specified rules; amending s. 120.74,
91 F.S.; requiring an agency to list each rule it plans
92 to develop, adopt, or repeal during the forthcoming
93 year in the agency's annual regulatory plan; requiring
94 that an agency's annual regulatory plan identify any
95 rules that are required to be repromulgated during the
96 forthcoming year; requiring the agency to make certain
97 declarations concerning the annual regulatory plan;
98 amending ss. 120.80, 120.81, 420.9072, 420.9075,
99 443.091, F.S.; conforming cross-references; providing
100 an effective date.

101
102 Be It Enacted by the Legislature of the State of Florida:
103
104 Section 1. Subsections (16) through (19) and subsections
105 (20) through (22) of section 120.52, Florida Statutes, are
106 renumbered as subsections (17) through (20) and subsections (22)
107 through (24), respectively, and new subsections (16) and (21)
108 are added to that section, to read:
109 120.52 Definitions.—As used in this act:
110 <u>(16) "Repromulgation" means the publication and adoption</u>
111 <u>of an existing rule following an agency's review of the rule for</u>
112 <u>consistency with the powers and duties granted by its enabling</u>
113 <u>statute.</u>
114 <u>(21) "Technical change" means a change limited to</u>
115 <u>correcting grammatical, typographical, and similar errors not</u>
116 <u>affecting the substance of the rule.</u>
117 Section 2. Paragraph (i) of subsection (1), subsections
118 (2) and (3), and paragraph (a) of subsection (7) of section
119 120.54, Florida Statutes, are amended, and paragraphs (e) and
120 (f) are added to subsection (4) of that section, to read:
121 120.54 Rulemaking.—
122 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
123 EMERGENCY RULES.—
124 (i)1. A rule may incorporate material by reference but
125 only as the material exists on the date the rule is adopted. For

126 purposes of the rule, changes in the material are not effective
127 unless the rule is amended to incorporate the changes.
128 2. An agency rule that incorporates by specific reference
129 another rule of that agency automatically incorporates
130 subsequent amendments to the referenced rule unless a contrary
131 intent is clearly indicated in the referencing rule. A notice of
132 amendments to a rule that has been incorporated by specific
133 reference in other rules of that agency must explain the effect
134 of those amendments on the referencing rules.
135 3. In rules adopted after December 31, 2010, and rules
136 repromulgated on or after July 1, 2020, material may not be
137 incorporated by reference unless:
138 a. The material has been submitted in the prescribed
139 electronic format to the Department of State and the full text
140 of the material can be made available for free public access
141 through an electronic hyperlink from the rule making the
142 reference in the Florida Administrative Code; or
143 b. The agency has determined that posting the material on
144 the Internet for purposes of public examination and inspection
145 would constitute a violation of federal copyright law, in which
146 case a statement to that effect, along with the address of
147 locations at the Department of State and the agency at which the
148 material is available for public inspection and examination,
149 must be included in the notice required by subparagraph (3)(a)1.
150 4. A rule may not be amended by reference only. Amendments

151 must set out the amended rule in full in the same manner as
152 required by the State Constitution for laws.
153 5. Notwithstanding any contrary provision in this section,
154 when an adopted rule of the Department of Environmental
155 Protection or a water management district is incorporated by
156 reference in the other agency's rule to implement a provision of
157 part IV of chapter 373, subsequent amendments to the rule are
158 not effective as to the incorporating rule unless the agency
159 incorporating by reference notifies the committee and the
160 Department of State of its intent to adopt the subsequent
161 amendment, publishes notice of such intent in the Florida
162 Administrative Register, and files with the Department of State
163 a copy of the amended rule incorporated by reference. Changes in
164 the rule incorporated by reference are effective as to the other
165 agency 20 days after the date of the published notice and filing
166 with the Department of State. The Department of State shall
167 amend the history note of the incorporating rule to show the
168 effective date of such change. Any substantially affected person
169 may, within 14 days after the date of publication of the notice
170 of intent in the Florida Administrative Register, file an
171 objection to rulemaking with the agency. The objection shall
172 specify the portions of the rule incorporated by reference to
173 which the person objects and the reasons for the objection. The
174 agency shall not have the authority under this subparagraph to
175 adopt those portions of the rule specified in such objection.

176 The agency shall publish notice of the objection and of its
177 action in response in the next available issue of the Florida
178 Administrative Register.
179 6. The Department of State may adopt by rule requirements
180 for incorporating materials pursuant to this paragraph.
181 (2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—
182 (a)1. Except when the intended action is the repeal of a
183 rule, agencies shall provide notice of the development of
184 proposed rules by publication of a notice of rule development in
185 the Florida Administrative Register before providing notice of a
186 proposed rule as required by paragraph (3)(a). The notice of
187 rule development must ~~shall~~ indicate the subject area to be
188 addressed by rule development, provide a short, plain
189 explanation of the purpose and effect of the proposed rule, cite
190 the grant of rulemaking authority for the proposed rule and the
191 law being implemented ~~specific legal authority for the proposed~~
192 ~~rule~~, and include the proposed rule number and the preliminary
193 text of the proposed rules, if available, or a statement of how
194 a person may promptly obtain, without cost, a copy of any
195 preliminary draft, when ~~if~~ available.
196 2. If a notice of a proposed rule is not filed within 12
197 months after the notice of rule development, the agency shall
198 withdraw the rule and give notice of the withdrawal in the next
199 available issue of the Florida Administrative Register.
200 (b) All rules should be drafted in readable language. The

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

201 language is readable if:
202 1. It avoids the use of obscure words and unnecessarily
203 long or complicated constructions; and
204 2. It avoids the use of unnecessary technical or
205 specialized language that is understood only by members of
206 particular trades or professions.
207 (c) An agency may hold public workshops for purposes of
208 rule development. If requested in writing by any affected
209 person, an agency must hold public workshops, including
210 workshops in various regions of the state or the agency's
211 service area, for purposes of rule development ~~if requested in~~
212 ~~writing by any affected person~~, unless the agency head explains
213 in writing why a workshop is unnecessary. The explanation is not
214 final agency action subject to review pursuant to ss. 120.569
215 and 120.57. The failure to provide the explanation when required
216 may be a material error in procedure pursuant to s.
217 120.56(1)(c). When a workshop or public hearing is held, the
218 agency must ensure that the persons responsible for preparing
219 the proposed rule are available to receive public input, to
220 explain the agency's proposal, and to respond to questions or
221 comments regarding the rule being developed. The workshop may be
222 facilitated or mediated by a neutral third person, or the agency
223 may employ other types of dispute resolution alternatives for
224 the workshop that are appropriate for rule development. Notice
225 of a workshop for rule development must ~~workshop shall~~ be by

226 publication in the Florida Administrative Register not less than
227 14 days before ~~prior to~~ the date on which the workshop is
228 scheduled to be held and must ~~shall~~ indicate the subject area
229 that ~~which~~ will be addressed; the agency contact person; and the
230 place, date, and time of the workshop.
231 (d)1. An agency may use negotiated rulemaking in
232 developing and adopting rules. The agency should consider the
233 use of negotiated rulemaking when complex rules are being
234 drafted or strong opposition to the rules is anticipated. The
235 agency should consider, but is not limited to considering,
236 whether a balanced committee of interested persons who will
237 negotiate in good faith can be assembled, whether the agency is
238 willing to support the work of the negotiating committee, and
239 whether the agency can use the group consensus as the basis for
240 its proposed rule. Negotiated rulemaking uses a committee of
241 designated representatives to draft a mutually acceptable
242 proposed rule.
243 2. An agency that chooses to use the negotiated rulemaking
244 process described in this paragraph shall publish in the Florida
245 Administrative Register a notice of negotiated rulemaking that
246 includes a listing of the representative groups that will be
247 invited to participate in the negotiated rulemaking process. Any
248 person who believes that his or her interest is not adequately
249 represented may apply to participate within 30 days after
250 publication of the notice. All meetings of the negotiating

251 committee shall be noticed and open to the public pursuant to
252 ~~the provisions of~~ this chapter. The negotiating committee shall
253 be chaired by a neutral facilitator or mediator.
254 3. The agency's decision to use negotiated rulemaking, its
255 selection of the representative groups, and approval or denial
256 of an application to participate in the negotiated rulemaking
257 process are not agency action. ~~Nothing in~~ This subparagraph is
258 <u>not</u> intended to affect the rights of <u>a substantially</u> ~~an~~ affected
259 person to challenge a proposed rule developed under this
260 paragraph in accordance with s. 120.56(2).
261 (3) ADOPTION PROCEDURES.—
262 (a) Notices.—
263 1. <u>Before</u> ~~Prior to~~ the adoption, amendment, or repeal of
264 any rule other than an emergency rule, an agency, upon approval
265 of the agency head, shall give notice of its intended action,
266 setting forth a short, plain explanation of the purpose and
267 effect of the proposed action; the <u>rule number and</u> full text of
268 the proposed rule or amendment and a summary thereof; a
269 reference to the grant of rulemaking authority pursuant to which
270 the rule is adopted; and a reference to the section or
271 subsection of the Florida Statutes or the Laws of Florida being
272 implemented or interpreted. The notice must include a <u>concise</u>
273 summary of the agency's statement of the estimated regulatory
274 costs, if one has been prepared, based on the factors set forth
275 in s. 120.541(2)<u>, which describes the regulatory impact of the</u>

276 rule in readable language; an agency website address where the
277 statement of estimated regulatory costs can be viewed in its
278 entirety, if one has been prepared; a statement that any person
279 who wishes to provide the agency with information regarding the
280 statement of estimated regulatory costs, or to provide a
281 proposal for a lower cost regulatory alternative as provided by
282 s. 120.541(1), must do so in writing within 21 days after
283 publication of the notice; and a statement as to whether, based
284 on the statement of the estimated regulatory costs or other
285 information expressly relied upon and described by the agency if
286 no statement of regulatory costs is required, the proposed rule
287 is expected to require legislative ratification pursuant to s.
288 120.541(3). The notice must state the procedure for requesting a
289 public hearing on the proposed rule. Except when the intended
290 action is the repeal of a rule, the notice must include a
291 reference both to the date on which and to the place where the
292 notice of rule development that is required by subsection (2)
293 appeared.
294 2. The notice shall be published in the Florida
295 Administrative Register at least 7 days after the publication of
296 the notice of rule development and at least ~~not less than~~ 28
297 days before ~~prior to~~ the intended action. The proposed rule,
298 including all materials proposed to be incorporated by reference
299 and the statement of estimated regulatory costs, if one has been
300 prepared, must ~~shall~~ be available for inspection and copying by

301 the public at the time of the publication of notice. Material
302 proposed to be incorporated by reference in the notice must be
303 made available in the manner prescribed by sub-subparagraph
304 (1)(i)3.a. or sub-subparagraph (1)(i)3.b.
305 3. The notice shall be mailed to all persons named in the
306 proposed rule and mailed or delivered electronically to all
307 persons who, at least 14 days before publication of the notice
308 prior to such mailing, have made requests of the agency for
309 advance notice of its proceedings. The agency shall also give
310 such notice as is prescribed by rule to those particular classes
311 of persons to whom the intended action is directed.
312 4. The adopting agency shall file with the committee, at
313 least 21 days before prior to the proposed adoption date, a copy
314 of each rule it proposes to adopt; a copy of any material
315 incorporated by reference in the rule; a detailed written
316 statement of the facts and circumstances justifying the proposed
317 rule; a copy of any statement of estimated regulatory costs that
318 has been prepared pursuant to s. 120.541; a statement of the
319 extent to which the proposed rule relates to federal standards
320 or rules on the same subject; and the notice required by
321 subparagraph 1.
322 (b) Special matters to be considered in rule adoption.—
323 1. Statement of estimated regulatory costs.—Before the
324 adoption , amendment, or repeal of any rule other than an
325 emergency rule, an agency is encouraged to prepare a statement

326 of estimated regulatory costs of the proposed rule, as provided
327 by s. 120.541. However, an agency must prepare a statement of
328 estimated regulatory costs of the proposed rule, as provided by
329 s. 120.541, if:
330 a. The proposed rule will have an adverse impact on small
331 business; or
332 b. The proposed rule is likely to directly or indirectly
333 increase regulatory costs in excess of $200,000 in the aggregate
334 in this state within 1 year after the implementation of the
335 rule.
336 2. Small businesses, small counties, and small cities.—
337 a. For purposes of this subsection and s. 120.541(2), an
338 adverse impact on small businesses, as defined in s. 288.703 or
339 sub-subparagraph b., exists if, for any small business:
340 (I) An owner, officer, operator, or manager must complete
341 any education, training, or testing to comply, or is likely to
342 spend at least 10 hours or purchase professional advice to
343 understand and comply, with the rule in the first year;
344 (II) Taxes or fees assessed on transactions are likely to
345 increase by $500 or more in the aggregate in 1 year;
346 (III) Prices charged for goods and services are restricted
347 or are likely to increase because of the rule;
348 (IV) Specially trained, licensed, or tested employees will
349 be required because of the rule;
350 (V) Operating costs are expected to increase by at least

351 $1,000 annually because of the rule; or
352 (VI) Capital expenditures in excess of $1,000 are
353 necessary to comply with the rule.
354 b. Each agency, before the adoption, amendment, or repeal
355 of a rule, shall consider the impact of the rule on small
356 businesses as defined in ~~by~~ s. 288.703 and the impact of the
357 rule on small counties or small cities as defined in ~~by~~ s.
358 120.52. Whenever practicable, an agency shall tier its rules to
359 reduce disproportionate impacts on small businesses, small
360 counties, or small cities to avoid regulating small businesses,
361 small counties, or small cities that do not contribute
362 significantly to the problem the rule is designed to address. An
363 agency may define "small business" to include businesses
364 employing more than 200 persons, may define "small county" to
365 include those with populations of more than 75,000, and may
366 define "small city" to include those with populations of more
367 than 10,000, if it finds that such a definition is necessary to
368 adapt a rule to the needs and problems of small businesses,
369 small counties, or small cities. The agency shall consider each
370 of the following methods for reducing the impact of the proposed
371 rule on small businesses, small counties, and small cities, or
372 any combination of these entities:
373 (I) Establishing less stringent compliance or reporting
374 requirements in the rule.
375 (II) Establishing less stringent schedules or deadlines in

376 the rule for compliance or reporting requirements.
377 (III) Consolidating or simplifying the rule's compliance
378 or reporting requirements.
379 (IV) Establishing performance standards or best management
380 practices to replace design or operational standards in the
381 rule.
382 (V) Exempting small businesses, small counties, or small
383 cities from any or all requirements of the rule.
384 c. ~~b.~~(I) If the agency determines that the proposed action
385 will affect small businesses as defined by the agency as
386 provided in sub-subparagraph b. ~~a.~~, the agency shall send
387 written notice of the rule to the rules ombudsman in the
388 Executive Office of the Governor at least 28 days before the
389 intended action.
390 (II) Each agency shall adopt those regulatory alternatives
391 offered by the rules ombudsman in the Executive Office of the
392 Governor and provided to the agency no later than 21 days after
393 the rules ombudsman's receipt of the written notice of the rule
394 which it finds are feasible and consistent with the stated
395 objectives of the proposed rule and which would reduce the
396 impact on small businesses. When regulatory alternatives are
397 offered by the rules ombudsman in the Executive Office of the
398 Governor, the 90-day period for filing the rule in subparagraph
399 (e)2. is extended for a period of 21 days. The agency shall
400 provide notice to the committee of any regulatory alternative

401 offered to the agency pursuant to this sub-subparagraph at least
402 21 days before filing the rule for adoption.
403 (III) If an agency does not adopt all alternatives offered
404 pursuant to this sub-subparagraph, it shall, before rule
405 adoption or amendment and pursuant to subparagraph (d)1., file a
406 detailed written statement with the committee explaining the
407 reasons for failure to adopt such alternatives. Within 3 working
408 days after the filing of such notice, the agency shall send a
409 copy of such notice to the rules ombudsman in the Executive
410 Office of the Governor.
411 (c) Hearings.—
412 1. If the intended action concerns any rule other than one
413 relating exclusively to procedure or practice, the agency shall,
414 on the request of any affected person received within 21 days
415 after the date of publication of the notice of intended agency
416 action, give affected persons an opportunity to present evidence
417 and argument on all issues under consideration. The agency may
418 schedule a public hearing on the proposed rule and, if requested
419 by any affected person, shall schedule a public hearing on the
420 proposed rule. When a public hearing is held, the agency must
421 ensure that the persons responsible for preparing the proposed
422 rule and the statement of estimated regulatory costs, if one has
423 been prepared, ~~staff~~ are available to explain the agency's
424 proposal and to respond to questions or comments regarding the
425 proposed rule, the statement of estimated regulatory costs, if

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

V

426 one has been prepared, and the agency's decision whether to
427 adopt a lower cost regulatory alternative submitted pursuant to
428 s. 120.541(1)(a). If the agency head is a board or other
429 collegial body created under s. 20.165(4) or s. 20.43(3)(g), and
430 one or more requested public hearings is scheduled, the board or
431 other collegial body shall conduct at least one of the public
432 hearings itself and may not delegate this responsibility without
433 the consent of those persons requesting the public hearing. Any
434 material pertinent to the issues under consideration submitted
435 to the agency within 21 days after the date of publication of
436 the notice or submitted to the agency between the date of
437 publication of the notice and the end of the final public
438 hearing shall be considered by the agency and made a part of the
439 record of the rulemaking proceeding.
440 2. Rulemaking proceedings shall be governed solely by the
441 provisions of this section unless a person timely asserts that
442 the person's substantial interests will be affected in the
443 proceeding and affirmatively demonstrates to the agency that the
444 proceeding does not provide adequate opportunity to protect
445 those interests. If the agency determines that the rulemaking
446 proceeding is not adequate to protect the person's interests, it
447 shall suspend the rulemaking proceeding and convene a separate
448 proceeding under the provisions of ss. 120.569 and 120.57. The
449 agency shall publish notice of convening a separate proceeding
450 in the Florida Administrative Register. Similarly situated

451 persons may be requested to join and participate in the separate
452 proceeding. Upon conclusion of the separate proceeding, the
453 rulemaking proceeding shall be resumed. All timelines in this
454 section are tolled during any suspension of the rulemaking
455 proceeding under this subparagraph, beginning on the date the
456 notice of convening a separate proceeding is published and
457 resuming on the day after conclusion of the separate proceeding.
458 (d) Modification or withdrawal of proposed rules.—
459 1. After the final public hearing on the proposed rule, or
460 after the time for requesting a hearing has expired, if the
461 proposed rule has not been changed from the proposed rule as
462 previously filed with the committee, or contains only technical
463 changes, the adopting agency shall file a notice to that effect
464 with the committee at least 7 days before ~~prior to~~ filing the
465 proposed rule for adoption. Any change, other than a technical
466 change ~~that does not affect the substance of the rule~~, must be
467 supported by the record of public hearings held on the proposed
468 rule, must be in response to written material submitted to the
469 agency within 21 days after the date of publication of the
470 notice of intended agency action or submitted to the agency
471 between the date of publication of the notice and the end of the
472 final public hearing, or must be in response to a proposed
473 objection by the committee. Any change, other than a technical
474 change, to a statement of estimated regulatory costs requires a
475 notice of change. In addition, ~~when~~ any change, other than a

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

476 technical change, to ~~is made in~~ a proposed rule text or any
477 material incorporated by reference requires, ~~other than a~~
478 ~~technical change,~~ the adopting agency to ~~shall~~ provide a copy of
479 a notice of change by certified mail or actual delivery to any
480 person who requests it in writing no later than 21 days after
481 the notice required in paragraph (a). The agency shall file the
482 notice of change with the committee, along with the reasons for
483 the change, and provide the notice of change to persons
484 requesting it, at least 21 days before ~~prior to~~ filing the
485 proposed rule for adoption. The notice of change shall be
486 published in the Florida Administrative Register at least 21
487 days before ~~prior to~~ filing the proposed rule for adoption. The
488 notice of change must include a summary of any revision to a
489 statement of estimated regulatory costs required by s.
490 120.541(1)(d). This subparagraph does not apply to emergency
491 rules adopted pursuant to subsection (4). Material proposed to
492 be incorporated by reference in the notice required by this
493 subparagraph must be made available in the manner prescribed by
494 sub-subparagraph (1)(i)3.a. or sub-subparagraph (1)(i)3.b.
495 2. After the notice required by paragraph (a) and before
496 ~~prior to~~ adoption, the agency may withdraw the proposed rule in
497 whole or in part.
498 3. After the notice required by paragraph (a), the agency
499 shall withdraw the proposed rule if the agency has failed to
500 adopt it within the prescribed timeframes in this chapter. If,

501 30 days after notice by the committee that the agency has failed
502 to adopt the proposed rule within the prescribed timeframes in
503 this chapter, the agency has not given notice of the withdrawal
504 of the rule, the committee shall notify the Department of State
505 that the date for adoption of the rule has expired, and the
506 Department of State shall publish a notice of withdrawal of the
507 proposed rule.
508 4.~~3.~~ After adoption and before the rule becomes effective,
509 a rule may be modified or withdrawn only in the following
510 circumstances:
511 a. When the committee objects to the rule;
512 b. When a final order, which is not subject to further
513 appeal, is entered in a rule challenge brought pursuant to s.
514 120.56 after the date of adoption but before the rule becomes
515 effective pursuant to subparagraph (e)6.;
516 c. If the rule requires ratification, when more than 90
517 days have passed since the rule was filed for adoption without
518 the Legislature ratifying the rule, in which case the rule may
519 be withdrawn but may not be modified; or
520 d. When the committee notifies the agency that an
521 objection to the rule is being considered, in which case the
522 rule may be modified to extend the effective date by not more
523 than 60 days.
524 5.~~4.~~ The agency shall give notice of its decision to
525 withdraw or modify a rule in the first available issue of the

526 publication in which the original notice of rulemaking was
527 published, shall notify those persons described in subparagraph
528 (a)3. in accordance with the requirements of that subparagraph,
529 and shall notify the Department of State if the rule is required
530 to be filed with the Department of State.
531 6.~~5.~~ After a rule has become effective, it may be repealed
532 or amended only through the rulemaking procedures specified in
533 this chapter.
534 (e) Filing for final adoption; effective date.—
535 1. If the adopting agency is required to publish its rules
536 in the Florida Administrative Code, the agency, upon approval of
537 the agency head, shall file with the Department of State three
538 certified copies of the rule it proposes to adopt; one copy of
539 any material incorporated by reference in the rule, certified by
540 the agency; a summary of the rule; a summary of any hearings
541 held on the rule; and a detailed written statement of the facts
542 and circumstances justifying the rule. Agencies not required to
543 publish their rules in the Florida Administrative Code shall
544 file one certified copy of the proposed rule, and the other
545 material required by this subparagraph, in the office of the
546 agency head, and such rules shall be open to the public.
547 2. A rule may not be filed for adoption less than 28 days
548 or more than 90 days after the notice required by paragraph (a),
549 until 21 days after the notice of change required by paragraph
550 (d), until 14 days after the final public hearing, until 21 days

551 after a statement of estimated regulatory costs required under
552 s. 120.541 has been provided to all persons who submitted a
553 lower cost regulatory alternative and made available to the
554 public at a readily accessible page on the agency's website, or
555 until the administrative law judge has rendered a decision under
556 s. 120.56(2), whichever applies. When a required notice of
557 change is published before prior to the expiration of the time
558 to file the rule for adoption, the period during which a rule
559 must be filed for adoption is extended to 45 days after the date
560 of publication. If notice of a public hearing is published
561 before ~~prior to~~ the expiration of the time to file the rule for
562 adoption, the period during which a rule must be filed for
563 adoption is extended to 45 days after adjournment of the final
564 hearing on the rule, 21 days after receipt of all material
565 authorized to be submitted at the hearing, or 21 days after
566 receipt of the transcript, if one is made, whichever is latest.
567 The term "public hearing" includes any public meeting held by
568 any agency at which the rule is considered. If a petition for an
569 administrative determination under s. 120.56(2) is filed, the
570 period during which a rule must be filed for adoption is
571 extended to 60 days after the administrative law judge files the
572 final order with the clerk or until 60 days after subsequent
573 judicial review is complete.
574 3. At the time a rule is filed, the agency shall certify
575 that the time limitations prescribed by this paragraph have been

576 complied with, that all statutory rulemaking requirements have
577 been met, and that there is no administrative determination
578 pending on the rule.
579 4. At the time a rule is filed, the committee shall
580 certify whether the agency has responded in writing to all
581 material and timely written comments or written inquiries made
582 on behalf of the committee. The Department <u>of State</u> shall reject
583 any rule that is not filed within the prescribed time limits;
584 that does not comply with all statutory rulemaking requirements
585 and rules of the Department <u>of State</u>; upon which an agency has
586 not responded in writing to all material and timely written
587 inquiries or written comments; upon which an administrative
588 determination is pending; or which does not include a statement
589 of estimated regulatory costs, if required.
590 5. If a rule has not been adopted within the time limits
591 imposed by this paragraph or has not been adopted in compliance
592 with all statutory rulemaking requirements, the agency proposing
593 the rule shall withdraw the <u>proposed</u> rule and give notice of its
594 action in the next available issue of the Florida Administrative
595 Register.
596 6. The proposed rule shall be adopted on being filed with
597 the Department of State and become effective 20 days after being
598 filed, on a later date specified in the notice required by
599 subparagraph (a)1., on a date required by statute, or upon
600 ratification by the Legislature pursuant to s. 120.541(3). Rules

601 not required to be filed with the Department of State shall
602 become effective when adopted by the agency head, on a later
603 date specified by rule or statute, or upon ratification by the
604 Legislature pursuant to s. 120.541(3). If the committee notifies
605 an agency that an objection to a rule is being considered, the
606 agency may postpone the adoption of the rule to accommodate
607 review of the rule by the committee. When an agency postpones
608 adoption of a rule to accommodate review by the committee, the
609 90-day period for filing the rule is tolled until the committee
610 notifies the agency that it has completed its review of the
611 rule.
612
613 For the purposes of this paragraph, the term "administrative
614 determination" does not include subsequent judicial review.
615 (4) EMERGENCY RULES.—
616 (e) Emergency rules shall be published in the Florida
617 Administrative Code.
618 (f) An agency may not supersede an emergency rule
619 currently in effect. Technical changes to an emergency rule may
620 be made within the first 7 days after adoption of the rule.
621 (7) PETITION TO INITIATE RULEMAKING.—
622 (a) Any person regulated by an agency or having
623 substantial interest in an agency rule may petition an agency to
624 adopt, amend, or repeal a rule or to provide the minimum public
625 information required by this chapter. The petition shall specify

626 the proposed rule and action requested. The agency shall file a
627 copy of the petition with the committee. Not later than 30
628 calendar days following the date of filing a petition, the
629 agency shall initiate rulemaking proceedings under this chapter,
630 otherwise comply with the requested action, or deny the petition
631 with a written statement of its reasons for the denial.
632 Section 3. Section 120.541, Florida Statutes, is amended
633 to read:
634 120.541 Statement of estimated regulatory costs.—
635 (1)(a) Within 21 days after publication of the notice of a
636 proposed rule or notice of change ~~required under s.~~
637 ~~120.54(3)(a)~~, a substantially affected person may submit to an
638 agency a good faith written proposal for a lower cost regulatory
639 alternative to a proposed rule which substantially accomplishes
640 the objectives of the law being implemented. The agency shall
641 provide a copy of any proposal for a lower cost regulatory
642 alternative to the committee at least 21 days before filing the
643 rule for adoption. The proposal may include the alternative of
644 not adopting any rule if the proposal explains how the lower
645 costs and objectives of the law will be achieved by not adopting
646 any rule. If submitted after a notice of change, a proposal for
647 a lower cost regulatory alternative is deemed to be made in good
648 faith only if the person reasonably believes, and the proposal
649 states, the person's reasons for believing that the proposed
650 rule as changed by the notice of change increases the regulatory

651 costs or creates an adverse impact on small businesses that was
652 not created by the previous proposed rule. If such a proposal is
653 submitted, the 90-day period for filing the rule is extended 21
654 days. Upon the submission of the lower cost regulatory
655 alternative, the agency shall prepare a statement of estimated
656 regulatory costs as provided in subsection (2), or shall revise
657 its prior statement of estimated regulatory costs, and either
658 adopt the alternative proposal, reject the alternative proposal,
659 or modify the proposed rule to reduce the regulatory costs. If
660 the agency rejects the alternative proposal or modifies the
661 proposed rule, the agency shall or provide a statement of the
662 reasons for rejecting the alternative in favor of the proposed
663 rule.
664 (b) If a proposed rule will have an adverse impact on
665 small business or if the proposed rule is likely to directly or
666 indirectly increase regulatory costs in excess of $200,000 in
667 the aggregate within 1 year after the implementation of the
668 rule, the agency shall prepare a statement of estimated
669 regulatory costs as required by s. 120.54(3)(b).
670 (c) The agency shall revise a statement of estimated
671 regulatory costs if any change to the rule made under s.
672 120.54(3)(d) increases the regulatory costs of the rule or if
673 the rule is modified in response to the submission of a lower
674 cost regulatory alternative. A summary of the revised statement
675 must be included with any subsequent notice published under s.

676 120.54(3).
677 (d) At least 21 days before filing the proposed rule for
678 adoption, an agency that is required to revise a statement of
679 estimated regulatory costs shall provide the statement to the
680 person who submitted the lower cost regulatory alternative, to
681 the rules ombudsman in the Executive Office of the Governor, and
682 to the committee. The revised statement shall be published and
683 made available in the same manner as the original statement of
684 estimated regulatory costs ~~and shall provide notice on the~~
685 ~~agency's website that it is available to the public~~.
686 (e) Notwithstanding s. 120.56(1)(c), the failure of the
687 agency to prepare and publish a statement of estimated
688 regulatory costs or to respond to a written lower cost
689 regulatory alternative as provided in this subsection is a
690 material failure to follow the applicable rulemaking procedures
691 or requirements set forth in this chapter.
692 (f) An agency's failure to prepare a statement of
693 estimated regulatory costs or to respond to a written lower cost
694 regulatory alternative may not be raised in a proceeding
695 challenging the validity of a rule pursuant to s. 120.52(8)(a)
696 unless:
697 1. Raised in a petition filed no later than 1 year after
698 the effective date of the rule; and
699 2. Raised by a person whose substantial interests are
700 affected by the rule's regulatory costs.

701 (g) A rule that is challenged pursuant to s. 120.52(8)(f)
702 may not be declared invalid unless:
703 1. The issue is raised in an administrative proceeding
704 within 1 year after the effective date of the rule;
705 2. The challenge is to the agency's rejection of a lower
706 cost regulatory alternative offered under paragraph (a) or s.
707 120.54(3)(b)2.c. ~~s. 120.54(3)(b)2.b.~~; and
708 3. The substantial interests of the person challenging the
709 rule are materially affected by the rejection.
710 (2) A statement of estimated regulatory costs must ~~shall~~
711 include:
712 (a) An economic analysis showing whether the rule directly
713 or indirectly:
714 1. Is likely to have an adverse impact on economic growth,
715 private sector job creation or employment, or private sector
716 investment in excess of $1 million in the aggregate within 5
717 years after the implementation of the rule;
718 2. Is likely to have an adverse impact on business
719 competitiveness, including the ability of persons doing business
720 in the state to compete with persons doing business in other
721 states or domestic markets, productivity, or innovation in
722 excess of $1 million in the aggregate within 5 years after the
723 implementation of the rule; or
724 3. Is likely to increase regulatory costs, including all
725 ~~any transactional~~ costs and impacts estimated in the statement,

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

726 in excess of $1 million in the aggregate within 5 years after
727 the implementation of the rule.
728 (b) A good faith estimate of the number of individuals,
729 small businesses, and other entities likely to be required to
730 comply with the rule, together with a general description of the
731 types of individuals likely to be affected by the rule.
732 (c) A good faith estimate of the cost to the agency, and
733 to any other state and local government entities, of
734 implementing and enforcing the proposed rule, and any
735 anticipated effect on state or local revenues.
736 (d) A good faith estimate of the compliance ~~transactional~~
737 costs likely to be incurred by individuals and entities,
738 including local government entities, required to comply with the
739 requirements of the rule. ~~As used in this section,~~
740 ~~"transactional costs" are direct costs that are readily~~
741 ~~ascertainable based upon standard business practices, and~~
742 ~~include filing fees, the cost of obtaining a license, the cost~~
743 ~~of equipment required to be installed or used or procedures~~
744 ~~required to be employed in complying with the rule, additional~~
745 ~~operating costs incurred, the cost of monitoring and reporting,~~
746 ~~and any other costs necessary to comply with the rule.~~
747 (e) An analysis of the impact on small businesses as
748 defined by s. 288.703, and an analysis of the impact on small
749 counties and small cities as defined in s. 120.52. The impact
750 analysis for small businesses must include the basis for the

751 agency's decision not to implement alternatives that would
752 reduce adverse impacts on small businesses.
753 (f) Any additional information that the agency determines
754 may be useful.
755 (g) In the statement or revised statement, whichever
756 applies, a description of any regulatory alternatives submitted
757 under paragraph (1)(a) and a statement adopting the alternative
758 or a statement of the reasons for rejecting the alternative in
759 favor of the proposed rule.
760 (3) If the adverse impact or regulatory costs of the rule
761 exceed any of the criteria established in paragraph (2)(a), the
762 rule shall be submitted to the President of the Senate and
763 Speaker of the House of Representatives no later than 30 days
764 before ~~prior to~~ the next regular legislative session, and the
765 rule may not take effect until it is ratified by the
766 Legislature.
767 (4) Subsection (3) does not apply to the adoption of:
768 (a) Federal standards pursuant to s. 120.54(6).
769 (b) Triennial updates of and amendments to the Florida
770 Building Code which are expressly authorized by s. 553.73.
771 (c) Triennial updates of and amendments to the Florida
772 Fire Prevention Code which are expressly authorized by s.
773 633.202.
774 (d) Emergency rules adopted pursuant to s. 120.54(4).
775 (5) For purposes of subsections (2) and (3), adverse

776 impacts and regulatory costs likely to occur within 5 years
777 after implementation of the rule include adverse impacts and
778 regulatory costs estimated to occur within 5 years after the
779 effective date of the rule. However, if any provision of the
780 rule is not fully implemented upon the effective date of the
781 rule, the adverse impacts and regulatory costs associated with
782 such provision must be adjusted to include any additional
783 adverse impacts and regulatory costs estimated to occur within 5
784 years after implementation of such provision.
785 (6)(a) In evaluating the impacts described in paragraphs
786 (2)(a) and (2)(e), an agency shall include good faith estimates
787 of market impacts likely to result from compliance with the
788 proposed rule, including:
789 1. Increased customer charges for goods or services.
790 2. Decreased market value of goods or services produced,
791 provided, or sold.
792 3. Increased costs resulting from the purchase of
793 substitute or alternative goods or services.
794 4. The reasonable value of time to be spent by owners,
795 officers, operators, and managers to understand and comply with
796 the proposed rule, including, but not limited to, time to be
797 spent to complete required education, training, or testing.
798 5. Capital costs.
799 6. Any other impacts suggested by the rules ombudsman in
800 the Executive Office of the Governor or interested persons.

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

V

801 (b) In estimating the information required in paragraphs
802 (2)(b)-(e), the agency may use surveys of individuals,
803 businesses, business organizations, counties, and municipalities
804 to collect data helpful to estimate the costs and impacts.
805 (c) In estimating compliance costs under paragraph (2)(d),
806 the agency shall consider, among other matters, all direct and
807 indirect costs necessary to comply with the proposed rule that
808 are readily ascertainable based upon standard business
809 practices, including, but not limited to, costs related to:
810 1. Filing fees.
811 2. Expenses to obtain a license.
812 3. Necessary equipment.
813 4. Installation, utilities, and maintenance of necessary
814 equipment.
815 5. Necessary operations and procedures.
816 6. Accounting, financial, information management, and
817 other administrative processes.
818 7. Other processes.
819 8. Labor based on relevant rates of wages, salaries, and
820 benefits.
821 9. Materials and supplies.
822 10. Capital expenditures, including financing costs.
823 11. Professional and technical services, including
824 contracted services necessary to implement and maintain
825 compliance.

826 12. Monitoring and reporting.
827 13. Qualifying and recurring education, training, and
828 testing.
829 14. Travel.
830 15. Insurance and surety requirements.
831 16. A fair and reasonable allocation of administrative
832 costs and other overhead.
833 17. Reduced sales or other revenues.
834 18. Other items suggested by the rules ombudsman in the
835 Executive Office of the Governor or any interested person,
836 business organization, or business representative.
837 (7)(a) The Department of State shall include on the
838 Florida Administrative Register website the agency website
839 addresses where statements of estimated regulatory costs can be
840 viewed in their entirety.
841 (b) An agency that prepares a statement of estimated
842 regulatory costs must provide, as part of the notice required
843 under s. 120.54(3)(a), the agency website address where the
844 statement of estimated regulatory costs can be read in its
845 entirety to the Department of State for publication in the
846 Florida Administrative Register.
847 (c) If an agency revises its statement of estimated
848 regulatory costs, the agency must provide notice that a revision
849 has been made. Such notice must include the agency website
850 address where the revision can be viewed in its entirety.

851 Section 4. Section 120.5435, Florida Statutes, is created
852 to read:
853 120.5435 Repromulgation of rules.—
854 (1) It is the intent of the Legislature that each agency
855 periodically review its rules for consistency with the powers
856 and duties granted by its enabling statutes.
857 (2) If an agency determines after review that substantive
858 changes to update a rule are not required, such agency shall
859 repromulgate the rule to reflect the date of the review. Each
860 agency shall review its rules pursuant to this section either 5
861 years after July 1, 2020, if the rule was adopted before January
862 1, 2012, or 10 years after the rule is adopted, if the rule was
863 adopted on or after January 1, 2012. Failure of an agency to
864 adhere to the deadlines imposed in this section constitutes
865 repeal of any affected rule. In the event of such a failure, the
866 committee shall notify the Department of State that the agency,
867 by its failure to repromulgate the affected rule, has elected to
868 repeal the rule. Upon receipt of the committee's notice, the
869 Department of State shall publish a notice to that effect in the
870 next available issue of the Florida Administrative Register.
871 Upon publication of the notice, the rule shall be stricken from
872 the files of the Department of State and the files of the
873 agency.
874 (3) Before repromulgation of a rule, the agency must, upon
875 approval by the agency head or his or her designee:

876 (a) Publish a notice of repromulgation in the Florida
877 Administrative Register. A notice of repromulgation is not
878 required to include the text of the rule being repromulgated.
879 (b) File the rule for repromulgation with the Department
880 of State. A rule may not be filed for repromulgation less than
881 28 days, and not more than 90 days, after the date of
882 publication of the notice required by paragraph (a).
883 (4) The agency must file a notice of repromulgation with
884 the committee at least 14 days before filing the rule for
885 repromulgation. At the time the rule is filed for
886 repromulgation, the committee shall certify whether the agency
887 has responded in writing to all material and timely written
888 comments or written inquiries made on behalf of the committee.
889 (5) A repromulgated rule is not subject to challenge as a
890 proposed rule pursuant to s. 120.56(2).
891 (6) The hearing requirements of s. 120.54 do not apply to
892 repromulgation of a rule.
893 (7)(a) The agency, upon approval of the agency head or his
894 or her designee, shall file with the Department of State three
895 certified copies of the repromulgated rule it proposes to adopt
896 and one certified copy of any material incorporated by reference
897 in the rule.
898 (b) The repromulgated rule shall be adopted upon filing
899 with the Department of State and becomes effective 20 days after
900 the date it is filed.

901 (c) The Department of State shall update the history note
902 of the rule in the Florida Administrative Code to reflect the
903 effective date of the repromulgated rule.
904 (8) The Department of State shall adopt rules to implement
905 this section by December 31, 2020.
906 Section 5. Subsection (1) of section 120.545, Florida
907 Statutes, is amended to read:
908 120.545 Committee review of agency rules.—
909 (1) As a legislative check on legislatively created
910 authority, the committee shall examine each existing rule and
911 proposed rule, except for those proposed rules exempted by s.
912 120.81(1)(e) and (2), and its accompanying material, and each
913 emergency rule, and may examine any existing rule, for the
914 purpose of determining whether:
915 (a) The rule is an invalid exercise of delegated
916 legislative authority.
917 (b) The statutory authority for the rule has been
918 repealed.
919 (c) The rule reiterates or paraphrases statutory material.
920 (d) The rule is in proper form.
921 (e) The notice given prior to its adoption was sufficient
922 to give adequate notice of the purpose and effect of the rule.
923 (f) The rule is consistent with expressed legislative
924 intent pertaining to the specific provisions of law which the
925 rule implements.

926 (g) The rule is necessary to accomplish the apparent or
927 expressed objectives of the specific provision of law which the
928 rule implements.
929 (h) The rule is a reasonable implementation of the law as
930 it affects the convenience of the general public or persons
931 particularly affected by the rule.
932 (i) The rule could be made less complex or more easily
933 comprehensible to the general public.
934 (j) The rule's statement of estimated regulatory costs
935 complies with the requirements of s. 120.541 and whether the
936 rule does not impose regulatory costs on the regulated person,
937 county, or city which could be reduced by the adoption of less
938 costly alternatives that substantially accomplish the statutory
939 objectives.
940 (k) The rule will require additional appropriations.
941 (l) If the rule is an emergency rule, there exists an
942 emergency justifying the adoption of such rule, the agency is
943 within its statutory authority, and the rule was adopted in
944 compliance with the requirements and limitations of s.
945 120.54(4).
946 Section 6. Paragraphs (a) and (c) of subsection (1) of
947 section 120.55, Florida Statutes, are amended to read:
948 120.55 Publication.—
949 (1) The Department of State shall:
950 (a)1. Through a continuous revision and publication

951 system, compile and publish electronically, on a website managed
952 by the department, the "Florida Administrative Code." The
953 Florida Administrative Code shall contain all rules adopted by
954 each agency, citing the grant of rulemaking authority and the
955 specific law implemented pursuant to which each rule was
956 adopted, all history notes as authorized in s. 120.545(7),
957 complete indexes to all rules contained in the code, and any
958 other material required or authorized by law or deemed useful by
959 the department. The electronic code shall display each rule
960 chapter currently in effect in browse mode and allow full text
961 search of the code and each rule chapter. The department may
962 contract with a publishing firm for a printed publication;
963 however, the department shall retain responsibility for the code
964 as provided in this section. The electronic publication shall be
965 the official compilation of the administrative rules of this
966 state. The Florida Administrative Code shall be published once
967 daily by 8 a.m. If, after publication, a rule is corrected and
968 replaced, the Florida Administrative Code shall indicate:
969 a. That the Florida Administrative Code has been
970 republished.
971 b. The rule that has been corrected by the Department of
972 State.
973
974 The Department of State shall retain the copyright over the
975 Florida Administrative Code.

976 2. Not publish in the Florida Administrative Code rules
977 general in form but applicable to only one school district,
978 community college district, or county, or a part thereof, or
979 state university rules relating to internal personnel or
980 business and finance ~~shall not be published in the Florida~~
981 ~~Administrative Code~~. Exclusion from publication in the Florida
982 Administrative Code does ~~shall~~ not affect the validity or
983 effectiveness of such rules.
984 3. At the beginning of the section of the code dealing
985 with an agency that files copies of its rules with the
986 department, ~~the department shall~~ publish the address and
987 telephone number of the executive offices of each agency, the
988 manner by which the agency indexes its rules, a listing of all
989 rules of that agency excluded from publication in the code, and
990 a statement as to where those rules may be inspected.
991 4. Not publish forms ~~shall not be published~~ in the Florida
992 Administrative Code; but any form which an agency uses in its
993 dealings with the public, along with any accompanying
994 instructions, shall be filed with the committee before it is
995 used. Any form or instruction which meets the definition of
996 "rule" provided in s. 120.52 shall be incorporated by reference
997 into the appropriate rule. The reference shall specifically
998 state that the form is being incorporated by reference and shall
999 include the number, title, and effective date of the form and an
1000 explanation of how the form may be obtained. Each form created

1001 by an agency which is incorporated by reference in a rule notice
1002 of which is given under s. 120.54(3)(a) after December 31, 2007,
1003 must clearly display the number, title, and effective date of
1004 the form and the number of the rule in which the form is
1005 incorporated.
1006 5. Require all materials incorporated by reference in any
1007 part of an adopted rule and in any part of a repromulgated rule
1008 ~~The department shall allow adopted rules and material~~
1009 ~~incorporated by reference~~ to be filed in the manner prescribed
1010 by s. 120.54(1)(i)3.a. or s. 120.54(1)(i)3.b. ~~electronic form as~~
1011 ~~prescribed by department rule~~. When a rule is filed for adoption
1012 or repromulgation with incorporated material in electronic form,
1013 the department's publication of the Florida Administrative Code
1014 on its website must contain a hyperlink from the incorporating
1015 reference in the rule directly to that material. The department
1016 may not allow hyperlinks from rules in the Florida
1017 Administrative Code to any material other than that filed with
1018 and maintained by the department, but may allow hyperlinks to
1019 incorporated material maintained by the department from the
1020 adopting agency's website or other sites.
1021 6. Include the date of any technical changes to a rule in
1022 the history note of the rule in the Florida Administrative Code.
1023 A technical change does not affect the effective date of the
1024 rule.
1025 (c) Prescribe by rule the style and form required for

1026 rules, notices, and other materials submitted for filing,
1027 including a rule requiring documents created by an agency that
1028 are proposed to be incorporated by reference in notices
1029 published pursuant to s. 120.54(3)(a) and (d) to be coded in the
1030 same manner as notices published pursuant to s. 120.54(3)(a)1.
1031 Section 7. Subsection (1) and paragraph (a) of subsection
1032 (2) of section 120.74, Florida Statutes, are amended to read:
1033 120.74 Agency annual rulemaking and regulatory plans;
1034 reports.—
1035 (1) REGULATORY PLAN.—By October 1 of each year, each
1036 agency shall prepare a regulatory plan.
1037 (a) The plan must include a listing of each law enacted or
1038 amended during the previous 12 months which creates or modifies
1039 the duties or authority of the agency. If the Governor or the
1040 Attorney General provides a letter to the committee stating that
1041 a law affects all or most agencies, the agency may exclude the
1042 law from its plan. For each law listed by an agency under this
1043 paragraph, the plan must state:
1044 1. Whether the agency must adopt rules to implement the
1045 law.
1046 2. If rulemaking is necessary to implement the law:
1047 a. Whether a notice of rule development has been published
1048 and, if so, the citation to such notice in the Florida
1049 Administrative Register.
1050 b. The date by which the agency expects to publish the

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

1051 notice of proposed rule under s. 120.54(3)(a).
1052 3. If rulemaking is not necessary to implement the law, a
1053 concise written explanation of the reasons why the law may be
1054 implemented without rulemaking.
1055 (b) The plan must also identify and describe each rule,
1056 including each rule number or proposed rule number, ~~include a~~
1057 ~~listing of each law not otherwise listed pursuant to paragraph~~
1058 ~~(a)~~ which the agency expects to develop, adopt, or repeal for
1059 the 12-month period beginning on October 1 and ending on
1060 September 30 ~~implement by rulemaking before the following July~~
1061 ~~1~~, excluding emergency rules ~~except emergency rulemaking~~. For
1062 each rule ~~law~~ listed under this paragraph, the plan must state
1063 whether the rulemaking is intended to simplify, clarify,
1064 increase efficiency, improve coordination with other agencies,
1065 reduce regulatory costs, or delete obsolete, unnecessary, or
1066 redundant rules.
1067 (c) The plan must include any desired update to the prior
1068 year's regulatory plan or supplement published pursuant to
1069 subsection (7). If, in a prior year, a law was identified under
1070 this paragraph or under subparagraph (a)1. as a law requiring
1071 rulemaking to implement but a notice of proposed rule has not
1072 been published:
1073 1. The agency shall identify and again list such law,
1074 noting the applicable notice of rule development by citation to
1075 the Florida Administrative Register; or

1076 2. If the agency has subsequently determined that
1077 rulemaking is not necessary to implement the law, the agency
1078 shall identify such law, reference the citation to the
1079 applicable notice of rule development in the Florida
1080 Administrative Register, and provide a concise written
1081 explanation of the reason why the law may be implemented without
1082 rulemaking.
1083 (d) The plan must identify any rules that are required to
1084 be repromulgated pursuant to s. 120.5435 for the 12-month period
1085 beginning on October 1 and ending on September 30.
1086 (e) ~~(d)~~ The plan must include a certification executed on
1087 behalf of the agency by both the agency head, or, if the agency
1088 head is a collegial body, the presiding officer; and the
1089 individual acting as principal legal advisor to the agency head.
1090 The certification must declare:
1091 1. ~~Verify~~ That the persons executing the certification
1092 have reviewed the plan.
1093 2. ~~Verify~~ That the agency regularly reviews all of its
1094 rules and identify the period during which all rules have most
1095 recently been reviewed to determine if the rules remain
1096 consistent with the agency's rulemaking authority and the laws
1097 implemented.
1098 3. That the agency understands that regulatory
1099 accountability is necessary to ensure public confidence in the
1100 integrity of state government and, to that end, the agency is

1101 diligently working toward lowering the total number of rules
1102 adopted.
1103 4. The total number of rules adopted and repealed during
1104 the previous 12 months.
1105 (2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—
1106 (a) By October 1 of each year, each agency shall:
1107 1. Publish its regulatory plan on its website or on
1108 another state website established for publication of
1109 administrative law records. A clearly labeled hyperlink to the
1110 current plan must be included on the agency's primary website
1111 homepage.
1112 2. Electronically deliver to the committee a copy of the
1113 certification required in paragraph (1)(e) ~~(1)(d)~~.
1114 3. Publish in the Florida Administrative Register a notice
1115 identifying the date of publication of the agency's regulatory
1116 plan. The notice must include a hyperlink or website address
1117 providing direct access to the published plan.
1118 Section 8. Subsection (11) of section 120.80, Florida
1119 Statutes, is amended to read:
1120 120.80 Exceptions and special requirements; agencies.—
1121 (11) NATIONAL GUARD.—Notwithstanding s. 120.52(17) ~~s.~~
1122 ~~120.52(16)~~, the enlistment, organization, administration,
1123 equipment, maintenance, training, and discipline of the militia,
1124 National Guard, organized militia, and unorganized militia, as
1125 provided by s. 2, Art. X of the State Constitution, are not

1126 rules as defined by this chapter.
1127 Section 9. Paragraph (c) of subsection (1) of section
1128 120.81, Florida Statutes, is amended to read:
1129 120.81 Exceptions and special requirements; general
1130 areas.—
1131 (1) EDUCATIONAL UNITS.—
1132 (c) Notwithstanding s. 120.52(17) ~~s. 120.52(16)~~, any
1133 tests, test scoring criteria, or testing procedures relating to
1134 student assessment which are developed or administered by the
1135 Department of Education pursuant to s. 1003.4282, s. 1008.22, or
1136 s. 1008.25, or any other statewide educational tests required by
1137 law, are not rules.
1138 Section 10. Paragraph (a) of subsection (1) of section
1139 420.9072, Florida Statutes, is amended to read:
1140 420.9072 State Housing Initiatives Partnership Program.—
1141 The State Housing Initiatives Partnership Program is created for
1142 the purpose of providing funds to counties and eligible
1143 municipalities as an incentive for the creation of local housing
1144 partnerships, to expand production of and preserve affordable
1145 housing, to further the housing element of the local government
1146 comprehensive plan specific to affordable housing, and to
1147 increase housing-related employment.
1148 (1)(a) In addition to the legislative findings set forth
1149 in s. 420.6015, the Legislature finds that affordable housing is
1150 most effectively provided by combining available public and

1151 private resources to conserve and improve existing housing and
1152 provide new housing for very-low-income households, low-income
1153 households, and moderate-income households. The Legislature
1154 intends to encourage partnerships in order to secure the
1155 benefits of cooperation by the public and private sectors and to
1156 reduce the cost of housing for the target group by effectively
1157 combining all available resources and cost-saving measures. The
1158 Legislature further intends that local governments achieve this
1159 combination of resources by encouraging active partnerships
1160 between government, lenders, builders and developers, real
1161 estate professionals, advocates for low-income persons, and
1162 community groups to produce affordable housing and provide
1163 related services. Extending the partnership concept to encompass
1164 cooperative efforts among small counties as defined in s.
1165 120.52(20) ~~s. 120.52(19)~~, and among counties and municipalities
1166 is specifically encouraged. Local governments are also intended
1167 to establish an affordable housing advisory committee to
1168 recommend monetary and nonmonetary incentives for affordable
1169 housing as provided in s. 420.9076.
1170 Section 11. Subsection (7) of section 420.9075, Florida
1171 Statutes, is amended to read:
1172 420.9075 Local housing assistance plans; partnerships.—
1173 (7) The moneys deposited in the local housing assistance
1174 trust fund shall be used to administer and implement the local
1175 housing assistance plan. The cost of administering the plan may

1176 not exceed 5 percent of the local housing distribution moneys
1177 and program income deposited into the trust fund. A county or an
1178 eligible municipality may not exceed the 5-percent limitation on
1179 administrative costs, unless its governing body finds, by
1180 resolution, that 5 percent of the local housing distribution
1181 plus 5 percent of program income is insufficient to adequately
1182 pay the necessary costs of administering the local housing
1183 assistance plan. The cost of administering the program may not
1184 exceed 10 percent of the local housing distribution plus 5
1185 percent of program income deposited into the trust fund, except
1186 that small counties, as defined in s. 120.52(20) ~~s. 120.52(19)~~,
1187 and eligible municipalities receiving a local housing
1188 distribution of up to $350,000 may use up to 10 percent of
1189 program income for administrative costs.
1190 Section 12. Paragraph (d) of subsection (1) of section
1191 443.091, Florida Statutes, is amended to read:
1192 443.091 Benefit eligibility conditions.—
1193 (1) An unemployed individual is eligible to receive
1194 benefits for any week only if the Department of Economic
1195 Opportunity finds that:
1196 (d) She or he is able to work and is available for work.
1197 In order to assess eligibility for a claimed week of
1198 unemployment, the department shall develop criteria to determine
1199 a claimant's ability to work and availability for work. A
1200 claimant must be actively seeking work in order to be considered

1201 available for work. This means engaging in systematic and
1202 sustained efforts to find work, including contacting at least
1203 five prospective employers for each week of unemployment
1204 claimed. The department may require the claimant to provide
1205 proof of such efforts to the one-stop career center as part of
1206 reemployment services. A claimant's proof of work search efforts
1207 may not include the same prospective employer at the same
1208 location in 3 consecutive weeks, unless the employer has
1209 indicated since the time of the initial contact that the
1210 employer is hiring. The department shall conduct random reviews
1211 of work search information provided by claimants. As an
1212 alternative to contacting at least five prospective employers
1213 for any week of unemployment claimed, a claimant may, for that
1214 same week, report in person to a one-stop career center to meet
1215 with a representative of the center and access reemployment
1216 services of the center. The center shall keep a record of the
1217 services or information provided to the claimant and shall
1218 provide the records to the department upon request by the
1219 department. However:
1220 1. Notwithstanding any other provision of this paragraph
1221 or paragraphs (b) and (e), an otherwise eligible individual may
1222 not be denied benefits for any week because she or he is in
1223 training with the approval of the department, or by reason of s.
1224 443.101(2) relating to failure to apply for, or refusal to
1225 accept, suitable work. Training may be approved by the

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

V

1226 department in accordance with criteria prescribed by rule. A
1227 claimant's eligibility during approved training is contingent
1228 upon satisfying eligibility conditions prescribed by rule.
1229 2. Notwithstanding any other provision of this chapter, an
1230 otherwise eligible individual who is in training approved under
1231 s. 236(a)(1) of the Trade Act of 1974, as amended, may not be
1232 determined ineligible or disqualified for benefits due to
1233 enrollment in such training or because of leaving work that is
1234 not suitable employment to enter such training. As used in this
1235 subparagraph, the term "suitable employment" means work of a
1236 substantially equal or higher skill level than the worker's past
1237 adversely affected employment, as defined for purposes of the
1238 Trade Act of 1974, as amended, the wages for which are at least
1239 80 percent of the worker's average weekly wage as determined for
1240 purposes of the Trade Act of 1974, as amended.
1241 3. Notwithstanding any other provision of this section, an
1242 otherwise eligible individual may not be denied benefits for any
1243 week because she or he is before any state or federal court
1244 pursuant to a lawfully issued summons to appear for jury duty.
1245 4. Union members who customarily obtain employment through
1246 a union hiring hall may satisfy the work search requirements of
1247 this paragraph by reporting daily to their union hall.
1248 5. The work search requirements of this paragraph do not
1249 apply to persons who are unemployed as a result of a temporary
1250 layoff or who are claiming benefits under an approved short-time

1251 compensation plan as provided in s. 443.1116.
1252 6. In small counties as defined in s. 120.52(20) ~~s.~~
1253 ~~120.52(19)~~, a claimant engaging in systematic and sustained
1254 efforts to find work must contact at least three prospective
1255 employers for each week of unemployment claimed.
1256 7. The work search requirements of this paragraph do not
1257 apply to persons required to participate in reemployment
1258 services under paragraph (e).
1259 Section 13. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 757 Cultural Affairs
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1632

REFERENCE	**ACTION**	**ANALYST**	**STAFF DIRECTOR** or **BUDGET/POLICY CHIEF**
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee		Villa	Smith

SUMMARY ANALYSIS

The Florida Arts and Culture Act (Act) was established to provide support to Florida artist, art agencies, museums, and nonprofit art organizations. The Division of Cultural Affairs (division), within the Department of State, is responsible for administering the Act. As such, the division has direct administrative authority to oversee all of the programs authorized by the Act. Assisting the division in its mission to advance, support, and promote the arts and culture in Florida is the Florida Council on Arts and Culture, an advisory body. The Secretary of State is the head administrator of the division and is known as "Florida's Chief Cultural Officer."

The division is recognized by the National Endowment for the Arts (NEA), an independent federal agency that awards art related grants, as Florida's official State Arts Agency. Most of the State Arts Agencies recognized by the NEA have the word "Arts" in their title.

The bill changes the division's title from the "Division of Cultural Affairs" to the "Division of Arts and Culture" and the Secretary of State's title from "Florida's Chief Cultural Officer" to "Florida's Chief Arts and Culture Officer." The changes greater align the division's title with their mission to advance, support, and promote arts and culture.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Arts and Culture Act

The Florida Arts and Culture Act[1] (Act) was established to provide support for, and gain national and international recognition of, the efforts, works, and performances of Florida artists, art agencies, museums, and nonprofit organizations. The intent of the act is to foster and ensure that arts and culture have a significant and positive effect on Florida residents.[2]

Division of Cultural Affairs

The Secretary of State (Secretary) is Florida's Chief Cultural Officer.[3] The Secretary oversees the Department of State Division of Cultural Affairs (division),[4] which is designated as Florida's state arts administrative agency.[5] As such, the division has direct administrative authority to oversee all of the programs authorized by the Act.[6] The division's mission is to advance, support, and promote arts and culture to strengthen the economy and quality of life for all Floridians.[7] To that end, it is the responsibility of the Division to:

- Advance funds for grants on a quarterly basis;
- Enter into agreements for awarding grants or other contracts with any person, firm, corporation, or governmental entity as may be necessary to carry out its functions under the Act;
- Consult with and advise other individuals, organizations, state agencies, and particularly the Governor and Cabinet, concerning the acquisition of fine art works and the appropriate use and display of state-owned art treasures for maximum public benefit;
- Accept on behalf of the state donations of money, property, art objects, and antiquities;
- Sponsor performances and exhibits;
- Promote and encourage the study and appreciation of arts and culture;
- Collect, publish, and print pamphlets, papers, newsletters, and other materials related to arts and cultural programs available throughout the state.
- Conduct and support cultural exchanges by coordinating with the appropriate state agencies and other organizations; and
- Enter into contracts to insure museum collections, artifacts, relics, and fine arts to which it holds title or which are on loan to the Division.[8]

Florida Council on Arts and Culture

The Florida Council on Arts and Culture (council), within the Department of State, is an advisory body consisting of 15 members appointed by the Governor, President of the Senate, and Speaker of the House.[9] Council member qualifications include a substantial history of community service in the performing or visual arts, service on boards of cultural institutions, and common recognition as a patron of the arts.[10] It is the duty and responsibility of the council to:

---

[1] Sections 265.281-265.709, F.S., are cited as the Florida Arts and Culture Act. Section 265.281, F.S.
[2] Section 265.282, F.S.
[3] Section 15.18, F.S.; *see also* s. 265.284(1), F.S.
[4] *Id.*
[5] Section 265.284(2), F.S.
[6] Section 265.284(3), F.S.
[7] Florida Department of State Division of Cultural Affairs, *Strategic Plan 2020-2025*, (August 5, 2019), https://dos.myflorida.com/media/702139/2020-2025-strategic-plan.pdf (last visited January 27, 2020).
[8] Section 265.284(3), F.S.
[9] Section 265.285(1)(a), F.S.
[10] *Id.*

- Advocate for arts and culture by encouraging the study and presentation of arts and cultural activities and to encourage participation in such activities;
- Advise the Secretary in matters pertaining to arts and cultural programs;
- Advise the Secretary in matters concerning the awarding of grants authorized by the Act;
- Advise the Secretary in matters pertaining to grants administered by the division;
- Encourage the participation in and appreciation of arts and culture to meet the needs and aspirations of persons in all parts of the state;
- Encourage public interest in the state's cultural heritage and expand its cultural resources; and
- Encourage and assist freedom of artistic expression that is essential for the well-being of the arts.[11]

National Endowment for the Arts

The National Endowment for the Arts (NEA) is an independent, federal agency with substantial discretion to award financial grants to support the arts. The NEA awards grants to groups and individuals whose artistic endeavors have substantial artistic and cultural significance or are otherwise worthy of public support, and to state agencies established to serve the same purpose.[12] The division is recognized by the NEA as Florida's official State Arts Agency and receives an annual partnership grant from the NEA.[13] All 50 states have a State Arts Agency recognized by the NEA. Of those 50 State Arts Agencies, 47 include the word "Arts" in their name.[14]

Effect of the Bill

The bill changes the division's title from the "Division of Cultural Affairs" to the "Division of Arts and Culture" and the Secretary of State's title from "Florida's Chief Cultural Officer" to "Florida's Chief Arts and Culture Officer." The changes greater align the division's title with their mission to advance, support, and promote arts and culture

B. SECTION DIRECTORY:

Section 1 amends s. 20.10, F.S., relating to the Department of State.

Section 2 amends s. 15.18, F.S., relating to international and cultural relations.

Section 3 amends s. 265.283, F.S., relating to definitions.

Section 4 amends s. 265.284, F.S., relating to the chief cultural officer.

Section 5 amends s. 265.2865, F.S., relating to the Florida Artist Hall of Fame.

Section 6 amends s. 265.603, F.S., relating to Cultural Endowment Program definitions.

Section 7 amends s. 265.701, F.S., relating to cultural facilities.

Section 8 amends s. 265.7025, F.S., relating to historic program definitions.

Section 9 amends s. 265.704, F.S., relating to historical museums.

Section 10 amends s. 468.401, F.S., relating to regulation of talent agencies.

[11] Section 265.285(2), F.S.
[12] 20 U.S.C. § 954 (2018).
[13] Florida Department of State, *Division of Cultural Affairs - National Endowment for the Arts*, https://dos.myflorida.com/cultural/about-us/partners/national-endowment-for-the-arts/ (last visited January 28, 2020).
[14] National Assembly of State Arts Agencies, *State Arts Agency Directory*, https://nasaa-arts.org/state-arts-agencies/saa-directory/ (last visited January 28, 2020).

Section 11 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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

This bill does not confer rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.

1 A bill to be entitled
2 An act relating to cultural affairs; amending s.
3 20.10, F.S.; renaming the Division of Cultural Affairs
4 as the Division of Arts and Culture; amending s.
5 15.18, F.S.; providing that the Secretary of State
6 shall be known as "Florida's Chief Arts and Culture
7 Officer"; amending ss. 265.283, 265.284, 265.2865,
8 265.603, 265.701, 265.7025, 265.704, and 468.401,
9 F.S.; conforming provisions to changes made by the
10 act; providing an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Paragraph (e) of subsection (2) of section
15 20.10, Florida Statutes, is amended to read:
16 20.10 Department of State.—There is created a Department
17 of State.
18 (2) The following divisions of the Department of State are
19 established:
20 (e) Division of Arts and Culture ~~Cultural Affairs~~.
21 Section 2. Section 15.18, Florida Statutes, is amended to
22 read:
23 15.18 International and cultural relations.—The Divisions
24 of Arts and Culture ~~Cultural Affairs~~, Historical Resources, and
25 Library and Information Services of the Department of State

26 promote programs having substantial cultural, artistic, and
27 indirect economic significance that emphasize American
28 creativity. The Secretary of State, as the head administrator of
29 these divisions, shall hereafter be known as "Florida's Chief
30 Arts and Culture ~~Cultural~~ Officer." As this officer, the
31 Secretary of State is encouraged to initiate and develop
32 relationships between the state and foreign cultural officers,
33 their representatives, and other foreign governmental officials
34 in order to promote Florida as the center of American
35 creativity. The Secretary of State shall coordinate
36 international activities pursuant to this section with
37 Enterprise Florida, Inc., and any other organization the
38 secretary deems appropriate. For the accomplishment of this
39 purpose, the Secretary of State shall have the power and
40 authority to:
41 (1) Disseminate any information pertaining to the State of
42 Florida which promotes the state's cultural assets.
43 (2) Plan and carry out activities designed to cause
44 improved cultural and governmental programs and exchanges with
45 foreign countries.
46 (3) Plan and implement cultural and social activities for
47 visiting foreign heads of state, diplomats, dignitaries, and
48 exchange groups.
49 (4) Encourage and cooperate with other public and private
50 organizations or groups in their efforts to promote the cultural

51 advantages of Florida.
52 (5) Serve as the liaison with all foreign consular and
53 ambassadorial corps, as well as international organizations,
54 that are consistent with the purposes of this section.
55 (6) Provide, arrange, and make expenditures for the
56 achievement of any or all of the purposes specified in this
57 section.
58 Section 3. Subsections (3) and (4) of section 265.283,
59 Florida Statutes, are amended to read:
60 265.283 Definitions.—The following definitions shall apply
61 to ss. 265.281-265.709:
62 (3) "Director" means the Director of the Division of Arts
63 and Culture ~~Cultural Affairs~~ of the Department of State.
64 (4) "Division" means the Division of Arts and Culture
65 ~~Cultural Affairs~~ of the Department of State.
66 Section 4. Subsection (1) of section 265.284, Florida
67 Statutes, is amended to read:
68 265.284 Chief arts and culture ~~cultural~~ officer; director
69 of division; powers and duties.—
70 (1) The Secretary of State is the chief arts and culture
71 ~~cultural~~ officer of the state.
72 Section 5. Subsection (6) of section 265.2865, Florida
73 Statutes, is amended to read:
74 265.2865 Florida Artists Hall of Fame.—
75 (6) The Division of Arts and Culture ~~Cultural Affairs~~ of

76 the Department of State shall adopt rules necessary to carry out
77 the purposes of this section, including, but not limited to,
78 procedures for accepting nominations to, making recommendations
79 for, selecting members of the Florida Artists Hall of Fame, and
80 providing travel expenses for such recipients. Notwithstanding
81 the provisions of s. 112.061, the Secretary of State may approve
82 first-class travel accommodations for recipients of the Florida
83 Artists Hall of Fame award and their representatives for health
84 or security purposes.
85 Section 6. Subsection (2) of section 265.603, Florida
86 Statutes, is amended to read:
87 265.603 Definitions relating to Cultural Endowment
88 Program.—The following terms and phrases when used in ss.
89 265.601-265.606 shall have the meaning ascribed to them in this
90 section, except where the context clearly indicates a different
91 meaning:
92 (2) "Division" means the Division of Arts and Culture
93 ~~Cultural Affairs~~ of the Department of State.
94 Section 7. Subsections (1) and (5) of section 265.701,
95 Florida Statutes, are amended to read:
96 265.701 Cultural facilities; grants for acquisition,
97 renovation, or construction; funding; approval; allocation.—
98 (1) The Division of Arts and Culture ~~Cultural Affairs~~ may
99 accept and administer moneys appropriated to it for providing
100 grants to counties, municipalities, and qualifying nonprofit

101 corporations for the acquisition, renovation, or construction of
102 cultural facilities.
103 (5) The Division of Arts and Culture ~~Cultural Affairs~~
104 shall adopt rules prescribing the criteria to be applied by the
105 Florida Council on Arts and Culture in recommending applications
106 for the award of grants and rules providing for the
107 administration of the other provisions of this section.
108 Section 8. Subsection (2) of section 265.7025, Florida
109 Statutes, is amended to read:
110 265.7025 Definitions relating to historic programs.—For
111 the purposes of ss. 265.7025-265.709, the term:
112 (2) "Division" means the Division of Arts and Culture
113 ~~Cultural Affairs~~ of the Department of State.
114 Section 9. Section 265.704, Florida Statutes, is amended
115 to read:
116 265.704 Historical museums; powers and duties of the
117 Division of Arts and Culture ~~Cultural Affairs~~.—
118 (1) The division shall adopt rules pursuant to ss.
119 120.536(1) and 120.54 to administer the provisions of ss.
120 265.7025-265.709.
121 (2) The division may make and enter into all contracts and
122 agreements with other agencies, organizations, associations,
123 corporations, and individuals or with federal agencies as it may
124 determine are necessary, expedient, or incidental to the
125 performance of its duties or the execution of its powers under

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

hb0757-00

126 ss. 265.7025-265.709.
127 (3) The division may accept gifts, grants, bequests,
128 loans, and endowments for purposes not inconsistent with its
129 responsibilities under this chapter. The division may also
130 establish an endowment that is consistent with the
131 responsibilities under ss. 265.7025-265.709.
132 (4) It is the duty of the division to:
133 (a) Promote and encourage throughout the state knowledge
134 and appreciation of Florida history by encouraging the people of
135 the state to engage in the preservation and care of artifacts,
136 museum items, treasure troves, and other historical properties;
137 the collection, research, fabrication, exhibition, preservation,
138 and interpretation of historical materials; the publicizing of
139 the state's history through public information media; and other
140 activities in historical and allied fields.
141 (b) Encourage, promote, maintain, and operate historical
142 museums, including, but not limited to, mobile museums, junior
143 museums, and the Museum of Florida History in the state capital.
144 (c) Plan and develop, in cooperation with other state
145 agencies and with municipalities, programs to promote and
146 encourage the teaching of Florida's history and heritage in
147 Florida schools and other educational institutions and other
148 such educational programs as may be appropriate.
149 (d) Establish professional standards for the preservation,
150 exclusive of acquisition, of historical resources in state

ownership or control.

(e) Take such other actions as are necessary or appropriate to locate, acquire, protect, preserve, operate, interpret, and promote the location, acquisition, protection, preservation, operation, and interpretation of historical resources to foster an appreciation of Florida history and culture.

Section 10. Subsection (4) of section 468.401, Florida Statutes, is amended to read:

468.401 Regulation of talent agencies; definitions.—As used in this part or any rule adopted pursuant hereto:

(4) "Engagement" means any employment or placement of an artist, where the artist performs in his or her artistic capacity. However, the term "engagement" shall not apply to procuring opera, music, theater, or dance engagements for any organization defined in s. 501(c)(3) of the Internal Revenue Code or any nonprofit Florida arts organization that has received a grant from the Division of Arts and Culture ~~Cultural Affairs~~ of the Department of State or has participated in the state touring program of the Division of Arts and Culture ~~Cultural Affairs~~.

Section 11. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTM 20-10 OGSR/Animal Medical Records
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 7008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee		Villa	Smith

SUMMARY ANALYSIS

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

Current law provides a public record exemption for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2020, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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

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

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[3]

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

Animal Medical Records Held by Licensed Veterinarians
Currently, animal medical records generated or held by licensed veterinarians must be furnished, upon request, to a client in a timely manner.[5] Otherwise, such records may not be furnished to any person other than the client except under the following circumstances:

- To any person, firm, or corporation that has procured or furnished such examination or treatment with the client's consent.
- In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the client or the client's legal representative by the party seeking such records.
- For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient and the client, or provided written permission is received from the client or the client's legal representative.
- In any criminal action or situation where a veterinarian suspects a criminal violation.[6]

Public Record Exemption under Review
In 2015, the Legislature created a public record exemption for animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association

[1] Section 119.15, F.S.
[2] Section 119.15(3), F.S.
[3] Section 119.15(6)(b), F.S.
[4] Section 24(c), Art. I, FLA. CONST.
[5] Section 474.2165(3), F.S.
[6] Section 474.2165(4), F.S.

Council on Education.[7,8] Specifically, the exemption provides that the following records are confidential and exempt[9] from public record requirements:

- Medical records generated that relate to diagnosing the medical condition of an animal; prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal; or performing a manual procedure for the diagnosis of or treatment for pregnancy, fertility, or infertility of an animal; and
- Any such medical records that are transferred by a previous record owner in connection with the transaction of official business by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education.[10]

Such records may be disclosed to a governmental entity in the performance of its duties and responsibilities, and pursuant to existing laws governing animal medical records held by licensed veterinarians.[11]

The 2015 public necessity statement[12] for the exemption provides that:

> [T]he release of such animal medical records compromises the confidentiality protections otherwise afforded the owners of such animals treated by licensed veterinarians in this state pursuant to [chapter 474, F.S.] The Legislature finds that the owners of animals have the right to privacy of the medical records of their animals. The Legislature finds that this exemption permits a state college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education to effectively and efficiently carry out its mission to educate students in veterinary medicine. Without this exemption, this mission would be significantly impaired. The Legislature finds that the privacy concerns that result from the release of animal medical records outweigh any public benefit that may be derived from the disclosure of the information.[13]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2020, unless reenacted by the Legislature.[14]

During the 2019 interim, subcommittee staff sent a questionnaire to the University of Florida College of Veterinary Medicine (UF-CVM).[15] UF-CVM explained that its core business is training the next

---

[7] Chapter 2015-62, L.O.F.; codified as s. 474.2167, F.S.

[8] The American Veterinary Medical Association Council on Education is recognized by the Council of Higher Education Accreditation as the accrediting body for schools and programs that offer the professional Doctor of Veterinary Medicine degree (or its equivalent) in the US and Canada, and may also approve foreign veterinary colleges. *See* American Veterinary Medical Association, *COE Accreditation Policies and Procedures: Overview*, https://www.avma.org/education/accreditation/colleges/coe-accreditation-policies-and-procedures-overview (last visited January 26, 2020).

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

[10] Section 474.2167(1), F.S.

[11] Section 474.2165, F.S., relates to ownership and control of veterinary medical patient records and provides instances when animal medical records can be released.

[12] Article I, s. 24(c), FLA. CONST., requires each public record exemption state with specificity the public necessity justifying the exemption.

[13] Section 2, ch. 2015-62, L.O.F.

[14] Section 474.2167(4), F.S.

[15] UF-CVM is Florida's only veterinary medical college, and is the only Florida University accredited by the American Veterinary Medical Association Council on Education. *See* University of Florida College of Veterinary Medicine, *About the College*,

generation of veterinarians. Over 90 percent of the clinical teaching and almost 100 percent of the resident training is based on patient care cases in the UF-CVM Hospital. If the exemption is repealed, the UF-CVM Hospital would be the only veterinary medical practice in the state without confidentiality protections for records and information concerning veterinary medical service. As such, maintaining the public record exemption for the animal medical records is critical to the success of the program and in "providing the caliber of public service that Florida taxpayers support and expect."[16]

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the public record exemption for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education.

B. SECTION DIRECTORY:

Section 1 amends s. 474.2167, F.S., to save from repeal the public record exemption for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education.

Section 2 provides an effective date of October 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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

---

https://www.vetmed.ufl.edu/about-the-college/ (last visited October 29, 2019); *See also* American Veterinary Medical Association, *Accredited Veterinary Colleges*, https://www.avma.org/ProfessionalDevelopment/Education/Accreditation/Colleges/Pages/colleges-accredited_results.aspx?college=Florida (last visited October 29, 2019).

[16] Open Government Sunset Review Questionnaire, UF-CVM Response, July 8, 2019, on file with the House Oversight, Transparency & Public Management Subcommittee.

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None. The bill does not authorize or require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 474.2167, F.S., which
4 provides a public record exemption for animal medical
5 records held by any state college of veterinary
6 medicine that is accredited by the American Veterinary
7 Medical Association Council on Education; removing the
8 scheduled repeal of the exemption; providing an
9 effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Section 474.2167, Florida Statutes, is amended
14 to read:
15 474.2167 Confidentiality of animal medical records.—
16 (1) The following records held by any state college of
17 veterinary medicine that is accredited by the American
18 Veterinary Medical Association Council on Education are
19 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
20 of the State Constitution:
21 (a) A medical record generated which relates to diagnosing
22 the medical condition of an animal; prescribing, dispensing, or
23 administering drugs, medicine, appliances, applications, or
24 treatment of whatever nature for the prevention, cure, or relief
25 of a wound, fracture, bodily injury, or disease of an animal; or

26 performing a manual procedure for the diagnosis of or treatment
27 for pregnancy, fertility, or infertility of an animal; and
28 (b) A medical record described in paragraph (a) which is
29 transferred by a previous record owner in connection with the
30 transaction of official business by a state college of
31 veterinary medicine that is accredited by the American
32 Veterinary Medical Association Council on Education.
33 (2) A record made confidential and exempt under subsection
34 (1) may be disclosed to another governmental entity in the
35 performance of its duties and responsibilities and may be
36 disclosed pursuant to s. 474.2165.
37 (3) The exemption from public records requirements under
38 subsection (1) applies to animal medical records held before,
39 on, or after the effective date of this exemption.
40 ~~(4) This section is subject to the Open Government Sunset~~
41 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
42 ~~on October 2, 2020, unless reviewed and saved from repeal~~
43 ~~through reenactment by the Legislature.~~
44 Section 2. This act shall take effect October 1, 2020.