



Governmental Affairs Policy Committee

**Wednesday, March 10, 2010
8:00 AM – 10:30 AM
306 House Office Building**

**Larry Cretul
Speaker**

**Robert C. "Rob" Schenck
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Governmental Affairs Policy Committee

Start Date and Time: Wednesday, March 10, 2010 08:00 am

End Date and Time: Wednesday, March 10, 2010 10:30 am

Location: 306 HOB

Duration: 2.50 hrs

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

PCS for HB 393 -- Pub. Rec./Public Transit Provider

PCS for HB 485 -- Pub. Rec./Public Defenders/Regional Counsel

Consideration of the following bill(s):

CS/HB 395 Direct-Support Organization for the Department of Military Affairs by Military & Local Affairs Policy Committee, Abruzzo

HB 551 Pub. Rec. & Meetings/County/Complaints on Conduct/Disclosure by Eisnaugle

HB 1307 State Financial Matters by Schenck

Consideration of the following proposed committee bill(s):

PCB GAP 10-03a -- Public Record Exemption for E911 Recordings

PCB GAP 10-05 -- OGSR Information Held by Guardians Ad Litem

PCB GAP 10-09 -- OGSR State Child Abuse Death Review Committee

PCB GAP 10-10 -- OGSR Identification of a Minor

PCB GAP 10-13 -- OGSR Board of Funeral, Cemetery, & Consumer Services

PCB GAP 10-14 -- OGSR Florida Commission on Hurricane Loss Projection Methodology

PCB GAP 10-15 -- OGSR Hurricane Loss and Exposure Data

PCB GAP 10-17 -- OGSR Address Confidentiality Program for Victims of Domestic Violence

PCB GAP 10-23 -- Voter Interface Device Requirements

NOTICE FINALIZED on 03/08/2010 16:05 by Ellinor.Martha

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 393 Pub. Rec./Public Transit Provider
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: IDEN./SIM. BILLS: CS/SB 688

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Governmental Affairs Policy Committee, Williamson, Williamson. Rows 2-5 are empty.

SUMMARY ANALYSIS

Current law provides a public record exemption for personal identifying information held by the Department of Transportation, a county, or an expressway authority for the purpose of prepayment of electronic toll facilities charges. This exemption does not apply to information provided by bus or rail passengers. Therefore, while there is an exemption for a program such as SunPass, currently there is no such exemption for a transit payment mechanism like Miami-Dade's EASY Card.

The bill creates a public record exemption for personal identifying information held by a public transit provider for the purpose of prepaying transit fares or acquiring a prepaid transit fare card or similar device. It provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill requires a two-thirds vote of the members present and voting for passage.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The 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, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

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

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

Disclosure of Personal Information for Transportation Purposes

Current law provides a public record exemption for personal identifying information held by the Department of Transportation, a county, or an expressway authority for the purpose of prepayment of electronic toll facilities charges.³ This exemption has been interpreted to include personal identifying information "on an application and agreement for a transponder that enables travelers to prepay toll

¹ Article I, s. 24(c) of the State Constitution.

² Section 119.15, F.S.

³ Section 338.155(6), F.S.

collections and avoid stopping for tolls when such service is paid for by credit card, charge card, or check."⁴ This exemption does not apply to information provided by bus or rail passengers. Therefore, while there is an exemption for a program such as SunPass,⁵ currently there is no such exemption for a transit payment mechanism like Miami-Dade's EASY Card.⁶

Effect of Bill

The bill creates a public record exemption for personal identifying information held by a public transit provider⁷ for the purpose of prepaying transit fares or acquiring a prepaid transit fare card or similar device. Such information is made exempt from public records requirements.⁸

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity.

B. SECTION DIRECTORY:

Section 1 creates s. 341.3026, F.S., to create a public record exemption for certain information held by a public transit provider for the purpose of prepaying transit fares.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2010.

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.

⁴ Florida Attorney General Opinion 99-61 (1999).

⁵ See <http://www.sunpass.com/>.

⁶ See <http://easycard.miamidade.gov/>.

⁷ Section 341.031(1), F.S., defines "public transit provider" to mean a public agency providing public transit service, including rail authorities created in chapter 343, F.S.

⁸ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to public records; creating s. 341.3026,
 3 F.S.; providing an exemption from the public records law
 4 for personal identifying information held by a public
 5 transit provider for the purpose of facilitating the
 6 purchase of prepaid fare cards; providing for future
 7 repeal and legislative review of the exemption under the
 8 Open Government Sunset Review Act; providing a statement
 9 of public necessity; providing an effective date.

10

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

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13 Section 1. Section 341.3026, Florida Statutes, is created
 14 to read:

15 341.3026 Public record exemption.-

16 (1) Personal identifying information held by a public
 17 transit provider, as defined in s. 341.031, for the purpose of
 18 prepaying transit fares or acquiring a prepaid transit fare card
 19 or similar device, is exempt from s. 119.07(1) and s. 24(a),
 20 Art. I of the State Constitution.

21 (2) This section is subject to the Open Government Sunset
 22 Review Act in accordance with s. 119.15, and shall stand
 23 repealed on October 2, 2015, unless reviewed and saved from
 24 repeal through reenactment by the Legislature.

25 Section 2. The Legislature finds that it is a public
 26 necessity to exempt from public records requirements personal
 27 identifying information held by a public transit provider for
 28 the purpose of facilitating the prepayment of transit fares. The

BILL

ORIGINAL

YEAR

29 exemption puts individuals who prepay transit fares using a
 30 prepaid transit fare card on an equal footing with those who pay
 31 cash. Allowing individuals to use a prepaid transit fare card is
 32 a more efficient and effective system for collecting transit
 33 fares, and not only saves individuals time in accessing the
 34 transit system in comparison with individuals who pay cash, but
 35 also costs significantly less to administer. Finally, the
 36 effective and efficient administration of the prepayment option
 37 for public transit programs would be hindered without the
 38 exemption as individuals would be less inclined to use this
 39 payment method if their personal information were made available
 40 to the public.

41 Section 3. This act shall take effect July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 2005, the Legislature created the Family Readiness Program under the Department of Military Affairs.¹ The purpose of the program is to provide need-based assistance to families of members of the Florida National Guard on active duty serving in the Global War on Terrorism or Homeland Defense operations. The program is dependent on appropriation expressly provided for the program.² Program funds could be used in emergency situations to purchase critically needed services, including, but not limited to, reasonable living expenses, housing, vehicles, equipment or renovations necessary to meet disability needs and health care.³ Five million dollars was appropriated in 2005 and that amount has decreased each year to \$200,000 for fiscal year 2009.

The president of the Board of the Direct-Support Organization (DSO) is appointed by the Adjutant General. The board president is authorized to appoint up to 15 board members who serve terms of office of 3 years. Qualifications for appointment include Florida residents who are highly knowledgeable about the United States military, its service personnel, its mission, and consideration is given to the potential member's background in community service. The board is authorized to remove a member for cause and fill vacancies that occur.

Effect of Proposed Changes

The bill creates the Soldiers and Airmen Assistance Program. The program provides financial assistance and services to eligible servicemembers of the Florida National Guard and eligible members of their families.⁴ The program will be implemented through funding provided by the direct-support organization authorized under s. 250.115, F.S. The assistance available under the program includes: housing assistance, living expenses, vehicles, health care, and other services. The bill provides for procedures to request assistance, and for review and approval of such requests.

¹ Chapter 2005-51, L.O.F., codified at s. 250.5206, F.S.

² Section 250.5206(2), F.S.

³ Section 250.5206(3), F.S.

⁴ Eligible individuals include servicemembers who are members of the Florida National Guard who are: on active duty serving in the Global War on terrorism or Overseas Contingency Operation or request assistance within 120 days after the termination of orders for such service and return to home of record; deployed by the Federal Government and participating in state operations for homeland defense or request assistance within 120 days after the termination of orders for such service and return to home of record; beneficiaries of an eligible servicemember designated on the United States Department of Defense Form 93; and individuals demonstrating a financial need for authorized assistance who are dependents or family members of an eligible servicemember.

The bill adds a provision requiring the direct-support organization to operate under a written contract with the Department of Military Affairs. The written contract must provide for:

- Annual certification by the department that the DSO is complying with the terms for the contract and is doing so consistent with the goals and purposes of the department and in the best interests of the state.
- The reversion of moneys and property held by the DSO if the DSO is no longer approved to operate by the department; if the DSO ceases to exist; or if the department ceases to exist.
- The disclosure to donors of the material provisions of the contract and the distinction between the department and the DSO.

The financial committee of the direct-support organization must conduct quarterly reviews of the financial transactions of the program and may request the Office of Inspector General to conduct additional reviews.

The bill also revises the composition of the board of directors of the direct-support organization by removing the limitation on the number of members that may serve on the board as well as the terms of office and criteria for selecting members.

B. SECTION DIRECTORY:

Section 1: Amends s. 250.115, F.S., to authorize the direct-support organization of the Department of Military Affairs to administer the Soldiers and Airmen Assistance Program or similar programs and revises the composition of the board.

Section 2: Creates the Soldiers and Airmen Assistance Program.

Section 3: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None. The bill provides a privately funded alternative to a state funded program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a shared state tax or premium sales tax received by cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of Military Affairs to adopt rules to administer the program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A strike all amendment was adopted by the Military & Local Affairs Policy Committee on February 17, 2010, that requires the DSO to operate pursuant to a contract with the DMA and provides for reversion of funds to DMA if the DSO ceases operation; restates that the program will be administered by DMA instead of the Director of Financial Management of DMA; and changes a reference of "gasoline" to "motor vehicle fuel."

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A bill to be entitled
 An act relating to the direct-support organization for the Department of Military Affairs; amending s. 250.115, F.S.; authorizing the direct-support organization to support the processing of requests for assistance from the Soldiers and Airmen Assistance Program or similar programs; authorizing the president of the direct-support organization to appoint all members of the board of directors; requiring the direct-support organization to operate pursuant to a contract with the Department of Military Affairs; requiring the direct-support organization to submit its annual budget and financial reports to the Department of Military Affairs; creating s. 250.116, F.S.; creating the Soldiers and Airmen Assistance Program; authorizing the program to provide specified types of assistance to certain members of the Florida National Guard and their families; providing for the review of requests for assistance; requiring the financial committee of the board of directors of the direct-support organization for the Department of Military Affairs to review the financial transactions of the program quarterly; authorizing the financial committee of the board of directors to request additional reviews by the Office of Inspector General; authorizing the Department of Military Affairs to adopt rules to administer the Soldiers and Airmen Assistance Program; providing an effective date.

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

30

31 Section 1. Section 250.115, Florida Statutes, is amended
32 to read:

33 250.115 Department of Military Affairs direct-support
34 organization.—

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

36 (a) "Direct-support organization" means an organization
37 that is:

38 1. A Florida corporation not for profit, incorporated
39 under chapter 617, and approved by the Department of State.

40 2. Organized and operated exclusively to raise funds;
41 request and receive grants, gifts, and bequests of moneys;
42 acquire, receive, hold, invest, and administer in its own name
43 securities, funds, or property; support the processing of
44 requests for assistance from the Soldiers and Airmen Assistance
45 Program or similar programs as directed by the Adjutant General;
46 and make expenditures to or for the direct or indirect benefit
47 of the Department of Military Affairs or the Florida National
48 Guard.

49 3. Determined by the Department of Military Affairs to be
50 operating in a manner consistent with the goals of the
51 Department of Military Affairs and the Florida National Guard
52 and in the best interest of the state. Any organization that is
53 denied certification by the Adjutant General may not use the
54 name of the Florida National Guard or the Department of Military
55 Affairs in any part of its name or its publications.

56 (b) "Personal services" includes full-time or part-time

57 personnel as well as payroll processing.

58 (2) BOARD OF DIRECTORS.—The organization shall be governed
 59 by a board of directors. The Adjutant General, or his or her
 60 designee, shall appoint a president of the board. The board of
 61 directors shall ~~consist of up to 15 members appointed by the~~
 62 ~~president of the board. Up to 15 additional members may be~~
 63 ~~appointed by the president of the board of directors. The terms~~
 64 ~~of office of the members shall be 3 years. Members must be~~
 65 ~~residents of the state and highly knowledgeable about the United~~
 66 ~~States military, its service personnel, and its missions. In~~
 67 ~~making appointments, the board must consider a potential~~
 68 ~~member's background in community service. The board may remove~~
 69 ~~any member for cause and shall fill vacancies that occur.~~

70 (3) CONTRACT.—The direct-support organization shall
 71 operate under a written contract with the department. The
 72 written contract must provide for:

73 (a) Certification by the department that the direct-
 74 support organization is complying with the terms of the contract
 75 and is doing so consistent with the goals and purposes of the
 76 department and in the best interests of the state. This
 77 certification must be made annually and reported in the official
 78 minutes of a meeting of the direct-support organization.

79 (b) The reversion of moneys and property held by the
 80 direct-support organization:

81 1. To the department if the direct-support organization is
 82 no longer approved to operate for the department;

83 2. To the department if the direct-support organization
 84 ceases to exist; or

85 3. To the state if the department ceases to exist.

86 (c) The disclosure of the material provisions of the
 87 contract and the distinction between the department and the
 88 direct-support organization to donors of gifts, contributions,
 89 or bequests, including such disclosure on all promotional and
 90 fundraising publications.

91 (4)(3) USE OF PROPERTY.-

92 (a) The Department of Military Affairs may permit the use
 93 of property, facilities, and personal services of the Department
 94 of Military Affairs by the direct-support organization, subject
 95 to the provisions of this section.

96 (b) The Department of Military Affairs may prescribe by
 97 rule any condition with which a direct-support organization
 98 organized under this section must comply in order to use
 99 property, facilities, or personal services of the Department of
 100 Military Affairs.

101 (c) The Department of Military Affairs may not permit the
 102 use of its property, facilities, or personal services by any
 103 direct-support organization organized under this section which
 104 does not provide equal employment opportunities to all persons
 105 regardless of race, color, national origin, gender, age, or
 106 religion.

107 (5)(4) ACTIVITIES; RESTRICTIONS.-Any transaction or
 108 agreement between the direct-support organization organized
 109 pursuant to this section and another direct-support organization
 110 or center of technology innovation designated under s. 1004.77
 111 must be approved by the Department of Military Affairs.

112 (6)(5) ANNUAL BUDGETS AND REPORTS.-The direct-support

113 organization shall submit to the Department of Military Affairs
 114 its annual budget and financial reports, its federal Internal
 115 Revenue Service Application for Recognition of Exemption form
 116 (Form 1023), and its federal Internal Revenue Service Return of
 117 Organization Exempt from Income Tax form (Form 990).

118 ~~(7)(6)~~ ANNUAL AUDIT.—The direct-support organization shall
 119 provide for an annual financial audit in accordance with s.
 120 215.981.

121 Section 2. Section 250.116, Florida Statutes, is created
 122 to read:

123 250.116 Soldiers and Airmen Assistance Program.—

124 (1) PROGRAM PURPOSE.—The purpose of the program is to
 125 provide financial assistance and services to eligible
 126 servicemembers of the Florida National Guard and eligible
 127 members of their families. The program shall be administered by
 128 the Department of Military Affairs. The department may be
 129 assisted in the processing of applications and the
 130 administration of the program by the direct-support organization
 131 authorized under s. 250.115.

132 (2) FUNDING.—The program shall be implemented through
 133 funding provided by the direct-support organization.

134 (3) AUTHORIZED ASSISTANCE.—The assistance available under
 135 the program may include:

136 (a) Housing.—The program may provide housing assistance.
 137 Housing assistance includes assistance with emergency repairs,
 138 renovations, or replacements that are needed for a
 139 servicemember's primary residential property in order to address
 140 health or safety issues or meet disability needs. Housing

141 assistance also includes assistance with lease deposits,
 142 mortgage payments, and rent payments.

143 (b) Living expenses.—The program may provide assistance
 144 for living expenses that are reasonable and necessary to meet
 145 basic needs for eligible members of the Florida National Guard
 146 and eligible members of their families. Living expenses include
 147 expenses for clothing, groceries, utility services, motor
 148 vehicle fuel and transportation, insurance, and child care that
 149 is necessary to obtain or maintain employment.

150 (c) Vehicles.—The program may provide assistance for
 151 repairs or short-term rentals required to maintain the primary
 152 vehicle of a servicemember's family in a safe operating
 153 condition. If a repair will not restore the primary vehicle to a
 154 safe operating condition or if there is no vehicle, assistance
 155 with the purchase of a vehicle may be provided if such a vehicle
 156 is necessary.

157 (d) Health care.—The program may provide assistance for
 158 services that are documented by a medical authority as necessary
 159 for the health and welfare of the individual. Assistance is not
 160 available for elective procedures or medical care that is
 161 covered by insurance.

162 (e) Other services.—The program may provide assistance for
 163 a service or expense that is not specifically enumerated in this
 164 subsection if the service or expense is reasonable under the
 165 circumstances.

166 (4) ELIGIBILITY.—Persons eligible for assistance from the
 167 program include:

168 (a) Servicemembers who are members of the Florida National

169 Guard who are:

170 1. On active duty serving in the Global War on Terrorism
 171 or Overseas Contingency Operation or request assistance within
 172 120 days after the termination of orders for such service and
 173 return to home of record.

174 2. Deployed by the Federal Government and participating in
 175 state operations for homeland defense or request assistance
 176 within 120 days after the termination of orders for such service
 177 and return to home of record.

178 (b)1. Beneficiaries of an eligible servicemember
 179 designated on the United States Department of Defense Form 93.

180 2. Individuals demonstrating a financial need for
 181 authorized assistance who are dependents or family members of an
 182 eligible servicemember.

183 (5) REQUESTS FOR ASSISTANCE; REVIEW; AWARDS.-

184 (a) A request for assistance shall be reviewed and
 185 processed at the local level by an official designated by the
 186 Adjutant General. During the initial review and processing of
 187 the request, the Department of Military Affairs may accept
 188 assistance from the direct-support organization. Final review
 189 and approval of requests for assistance shall be made by the
 190 Department of Military Affairs.

191 (b) Requests for assistance shall be reviewed and
 192 evaluated based on the following criteria:

193 1. The impact of a servicemember's absence and inability
 194 to assist in home and vehicle repairs or meet other family
 195 needs;

196 2. The economic impact of deployment;

CS/HB 395

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2010

- 197 3. The overall financial situation of the applicant;
 198 4. The assistance authorized under the program; and
 199 5. Other relevant information.

200 (6) QUARTERLY FINANCIAL REVIEW.—The financial committee of
 201 the board of directors of the direct-support organization shall
 202 review financial transactions of the program each quarter. This
 203 review shall be provided to the Department of Military Affairs
 204 in order to determine whether the direct-support organization is
 205 being operated in a manner that is consistent with the purposes
 206 of the Soldiers and Airmen Assistance Fund, and in the best
 207 interests of the department. The financial committee may request
 208 the Office of Inspector General to conduct additional reviews.

209 (7) RULES.—The Department of Military Affairs may adopt
 210 rules to administer this section.

211 Section 3. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 485 Pub. Rec./Public Defenders/Regional Counsel
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 312

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson <i>Law</i>	Williamson <i>Law</i>
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

Current law provides several public record exemptions for identification and location information of certain public employees and their spouses and children. Examples of protected information include home addresses, telephone numbers, and photographs of law enforcement personnel, firefighters, investigators for the Department of Children and Family Services, state attorneys, and code enforcement officers. Similar information concerning the spouses and children of such employees also is protected. Public defenders and criminal conflict and civil regional counsel currently do not enjoy the protections afforded other agency personnel.

The bill creates a public record exemption for identification and location information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel. The following information is exempt from public records requirements:

- Home addresses, telephone numbers, and photographs of such defenders or counsel;
- Home addresses, telephone numbers, and places of employment of the spouses and children of such defenders or counsel; and
- Names and locations of schools and day care facilities attended by the children of such defenders or counsel.

Such defenders or counsel also may protect identification and location information held by any other agency if he or she provides written notification to that custodial agency that he or she is a public defender or criminal conflict and civil regional counsel who receives an exemption under the Public Records Act.

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill requires a two-thirds vote of the members present and voting for passage.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The 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, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

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

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

Public Record Exemptions for Identification and Location Information

Current law provides several public record exemptions for identification and location information of certain public employees and their spouses and children.³ Examples of protected information include home addresses, telephone numbers, and photographs of law enforcement personnel, firefighters, investigators for the Department of Children and Family Services, state attorneys, and code

¹ Article I, s. 24(c) of the State Constitution.

² Section 119.15, F.S.

³ See s. 119.071(4)(d), F.S.

enforcement officers. Similar information concerning the spouses and children of such employees also is protected.

Public Defenders and Criminal Conflict and Civil Regional Counsel

Public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are appointed by the courts to represent defendants in criminal cases. Criminal conflict and civil regional counsel also represent clients in matters before the courts involving alleged child abuse, alleged child neglect, and potential termination of parental rights.

Clients of public defenders and criminal conflict and civil regional counsel have a great deal at stake in the outcome of their legal matters, which can lead to violent outbursts. According to the Office of the Public Defender, such outbursts have included battery and threats of physical harm.

Effect of Bill

The bill creates a public record exemption for identification and location information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel. The following information is exempt⁴ from public records requirements:

- Home addresses, telephone numbers, and photographs of such defenders or counsel;
- Home addresses, telephone numbers, and places of employment of the spouses and children of such defenders or counsel; and
- Names and locations of schools and day care facilities attended by the children of such defenders or counsel.

Such defenders or counsel also may protect identification and location information held by any other agency⁵ if he or she provides written notification to that custodial agency that he or she is a public defender or criminal conflict and civil regional counsel who receives an exemption under the Public Records Act.⁶

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to create a public record exemption for identification and location information of public defenders and criminal conflict and civil regional counsel, and their spouses and children.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2010.

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

⁵ Section 119.011(2), F.S., defines "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

⁶ Chapter 119, F.S., is referred to as the Public Records Act.

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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1 A bill to be entitled
 2 An act relating to public records; amending s. 119.071,
 3 F.S.; creating a public records exemption for specified
 4 personal information of current and former public
 5 defenders and criminal conflict and civil regional
 6 counsel, as well as their spouses and children; providing
 7 for future legislative review and repeal of the exemption
 8 under the Open Government Sunset Review Act; providing a
 9 statement of public necessity; providing an effective
 10 date.

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

13
 14 Section 1. Paragraph (d) of subsection (4) of section
 15 119.071, Florida Statutes, is amended to read:

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

18 (4) AGENCY PERSONNEL INFORMATION.—

19 (d)1.a. The home addresses, telephone numbers, social
 20 security numbers, and photographs of active or former law
 21 enforcement personnel, including correctional and correctional
 22 probation officers, personnel of the Department of Children and
 23 Family Services whose duties include the investigation of abuse,
 24 neglect, exploitation, fraud, theft, or other criminal
 25 activities, personnel of the Department of Health whose duties
 26 are to support the investigation of child abuse or neglect, and
 27 personnel of the Department of Revenue or local governments
 28 whose responsibilities include revenue collection and

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29 | enforcement or child support enforcement; the home addresses,
 30 | telephone numbers, social security numbers, photographs, and
 31 | places of employment of the spouses and children of such
 32 | personnel; and the names and locations of schools and day care
 33 | facilities attended by the children of such personnel are exempt
 34 | from s. 119.07(1).

35 | b. The home addresses, telephone numbers, and photographs
 36 | of firefighters certified in compliance with s. 633.35; the home
 37 | addresses, telephone numbers, photographs, and places of
 38 | employment of the spouses and children of such firefighters; and
 39 | the names and locations of schools and day care facilities
 40 | attended by the children of such firefighters are exempt from s.
 41 | 119.07(1).

42 | c. The home addresses and telephone numbers of justices of
 43 | the Supreme Court, district court of appeal judges, circuit
 44 | court judges, and county court judges; the home addresses,
 45 | telephone numbers, and places of employment of the spouses and
 46 | children of justices and judges; and the names and locations of
 47 | schools and day care facilities attended by the children of
 48 | justices and judges are exempt from s. 119.07(1).

49 | d. The home addresses, telephone numbers, social security
 50 | numbers, and photographs of current or former state attorneys,
 51 | assistant state attorneys, statewide prosecutors, or assistant
 52 | statewide prosecutors; the home addresses, telephone numbers,
 53 | social security numbers, photographs, and places of employment
 54 | of the spouses and children of current or former state
 55 | attorneys, assistant state attorneys, statewide prosecutors, or
 56 | assistant statewide prosecutors; and the names and locations of

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57 | schools and day care facilities attended by the children of
 58 | current or former state attorneys, assistant state attorneys,
 59 | statewide prosecutors, or assistant statewide prosecutors are
 60 | exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 61 | Constitution.

62 | e. The home addresses and telephone numbers of general
 63 | magistrates, special magistrates, judges of compensation claims,
 64 | administrative law judges of the Division of Administrative
 65 | Hearings, and child support enforcement hearing officers; the
 66 | home addresses, telephone numbers, and places of employment of
 67 | the spouses and children of general magistrates, special
 68 | magistrates, judges of compensation claims, administrative law
 69 | judges of the Division of Administrative Hearings, and child
 70 | support enforcement hearing officers; and the names and
 71 | locations of schools and day care facilities attended by the
 72 | children of general magistrates, special magistrates, judges of
 73 | compensation claims, administrative law judges of the Division
 74 | of Administrative Hearings, and child support enforcement
 75 | hearing officers are exempt from s. 119.07(1) and s. 24(a), Art.
 76 | I of the State Constitution if the general magistrate, special
 77 | magistrate, judge of compensation claims, administrative law
 78 | judge of the Division of Administrative Hearings, or child
 79 | support hearing officer provides a written statement that the
 80 | general magistrate, special magistrate, judge of compensation
 81 | claims, administrative law judge of the Division of
 82 | Administrative Hearings, or child support hearing officer has
 83 | made reasonable efforts to protect such information from being
 84 | accessible through other means available to the public. This

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85 sub-subparagraph is subject to the Open Government Sunset Review
 86 Act in accordance with s. 119.15, and shall stand repealed on
 87 October 2, 2013, unless reviewed and saved from repeal through
 88 reenactment by the Legislature.

89 f. The home addresses, telephone numbers, and photographs
 90 of current or former human resource, labor relations, or
 91 employee relations directors, assistant directors, managers, or
 92 assistant managers of any local government agency or water
 93 management district whose duties include hiring and firing
 94 employees, labor contract negotiation, administration, or other
 95 personnel-related duties; the names, home addresses, telephone
 96 numbers, and places of employment of the spouses and children of
 97 such personnel; and the names and locations of schools and day
 98 care facilities attended by the children of such personnel are
 99 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 100 Constitution.

101 g. The home addresses, telephone numbers, and photographs
 102 of current or former code enforcement officers; the names, home
 103 addresses, telephone numbers, and places of employment of the
 104 spouses and children of such personnel; and the names and
 105 locations of schools and day care facilities attended by the
 106 children of such personnel are exempt from s. 119.07(1) and s.
 107 24(a), Art. I of the State Constitution.

108 h. The home addresses, telephone numbers, places of
 109 employment, and photographs of current or former guardians ad
 110 litem, as defined in s. 39.820, and the names, home addresses,
 111 telephone numbers, and places of employment of the spouses and
 112 children of such persons, are exempt from s. 119.07(1) and s.

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113 24(a), Art. I of the State Constitution, if the guardian ad
 114 litem provides a written statement that the guardian ad litem
 115 has made reasonable efforts to protect such information from
 116 being accessible through other means available to the public.
 117 This sub-subparagraph is subject to the Open Government Sunset
 118 Review Act in accordance with s. 119.15 and shall stand repealed
 119 on October 2, 2010, unless reviewed and saved from repeal
 120 through reenactment by the Legislature.

121 i. The home addresses, telephone numbers, and photographs
 122 of current or former juvenile probation officers, juvenile
 123 probation supervisors, detention superintendents, assistant
 124 detention superintendents, senior juvenile detention officers,
 125 juvenile detention officer supervisors, juvenile detention
 126 officers, house parents I and II, house parent supervisors,
 127 group treatment leaders, group treatment leader supervisors,
 128 rehabilitation therapists, and social services counselors of the
 129 Department of Juvenile Justice; the names, home addresses,
 130 telephone numbers, and places of employment of spouses and
 131 children of such personnel; and the names and locations of
 132 schools and day care facilities attended by the children of such
 133 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 134 the State Constitution. This sub-subparagraph is subject to the
 135 Open Government Sunset Review Act in accordance with s. 119.15
 136 and shall stand repealed on October 2, 2011, unless reviewed and
 137 saved from repeal through reenactment by the Legislature.

138 j. The home addresses, telephone numbers, and photographs
 139 of current or former public defenders, assistant public
 140 defenders, criminal conflict and civil regional counsel, and

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141 assistant criminal conflict and civil regional counsel; the home
 142 addresses, telephone numbers, and places of employment of the
 143 spouses and children of such defenders or counsel; and the names
 144 and locations of schools and day care facilities attended by the
 145 children of such defenders or counsel are exempt from s.
 146 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 147 sub-subparagraph is subject to the Open Government Sunset Review
 148 Act in accordance with s. 119.15 and shall stand repealed on
 149 October 2, 2015, unless reviewed and saved from repeal through
 150 reenactment by the Legislature.

151 2. An agency that is the custodian of the information
 152 specified in subparagraph 1. and that is not the employer of the
 153 officer, employee, justice, judge, or other person specified in
 154 subparagraph 1. shall maintain the exempt status of that
 155 information only if the officer, employee, justice, judge, other
 156 person, or employing agency of the designated employee submits a
 157 written request for maintenance of the exemption to the
 158 custodial agency.

159 Section 2. The Legislature finds that it is a public
 160 necessity to exempt specified personal information relating to
 161 current and former public defenders, assistant public defenders,
 162 criminal conflict and civil regional counsel, and assistant
 163 criminal conflict and civil regional counsel, as well as their
 164 spouses and children, from disclosure under the public records
 165 laws of the state. In the course of representing defendants in
 166 criminal prosecutions, these attorneys routinely interact with
 167 individuals who have criminal records or who are currently
 168 engaged in or suspected of criminal activity. These attorneys

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169 also interact with the victims of crimes. In addition, criminal
 170 conflict and civil regional counsel and their assistants also
 171 provide representation in sensitive civil matters, such as those
 172 in which a person's parental rights may be terminated based on
 173 allegations of perpetrating abuse and neglect against a child.
 174 By providing legal representation in criminal and civil matters,
 175 these attorneys provide a valuable service. However, individuals
 176 may become disgruntled by the proceedings or the outcome of a
 177 criminal or civil case, which could result in these attorneys
 178 and their families becoming targets for acts of violence.
 179 Disclosure of the information protected by the public-records
 180 exemption created by this act would jeopardize the safety of
 181 these attorneys and their families. Therefore, it is a public
 182 necessity to exempt from disclosure the home addresses,
 183 telephone numbers, and photographs of current or former public
 184 defenders, assistant public defenders, criminal conflict and
 185 civil regional counsel, and assistant criminal conflict and
 186 civil regional counsel; the home addresses, telephone numbers,
 187 and places of employment of the spouses and children of such
 188 defenders or counsel; and the names and locations of schools and
 189 day care facilities attended by the children of such defenders
 190 or counsel.

191 Section 3. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 551

Pub. Rec. & Meetings/County/Complaints on Conduct/Disclosure

SPONSOR(S): Eisnaugle

TIED BILLS:

IDEN./SIM. BILLS: SB 1054

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee		Williamson <i>Raw</i>	Williamson <i>Raw</i>
2)	Economic Development & Community Affairs Policy Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

Current law provides a public record exemption for a complaint or any records relating to the complaint or to any preliminary investigation by the Commission on Ethics or a Commission on Ethics and Public Trust established by a county or a municipality. In addition, any proceedings regarding a complaint or preliminary investigation are exempt from public meetings requirements.

The bill expands those exemptions for the Commission on Ethics and the Commission on Ethics and Public Trust established by a county or municipality by extending its application to any county that has established a local investigatory process. It provides for repeal of the exemptions on October 2, 2015, unless reviewed and saved from repeal by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

The bill requires a two-thirds vote of the members present and voting for passage.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records and Open Meetings Laws

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24 of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its stated purpose. In addition, the State Constitution requires enactment of the exemption by a two-thirds vote of the members present and voting.¹

Public policy regarding access to government records and meetings also is addressed in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Section 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public.

Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

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

² Section 119.15, F.S.

- Protects trade or business secrets.

Commission on Ethics

The Commission on Ethics (Commission) is a non-paid, appointed body consisting of nine members.³ The Commission serves as guardian of the standards of conduct for officers and employees of the state and of a county, city, or other political subdivision of the state.⁴

Current law establishes the duties and powers of the Commission.⁵ Chief among these responsibilities is the duty to receive and investigate sworn complaints of violation of the code of ethics and of any other breach of the public trust,⁶ including investigation of all facts and parties materially related to the complaint.

A county or municipality also has the authority to create a Commission on Ethics and Public Trust.

Current Applicable Public Record and Public Meeting Exemptions

Current law provides a public record exemption for a complaint or any records relating to the complaint or to any preliminary investigation by the Commission or a Commission on Ethics and Public Trust established by a county or a municipality. In addition, any proceedings regarding a complaint or preliminary investigation are exempt from public meetings requirements. Such exemptions no longer apply when the:

- Complaint is dismissed as legally insufficient;
- Alleged violator requests in writing that the records and proceedings be made public; or
- Commission or Commission on Ethics and Public Trust determines whether probable cause exists to believe that a violation has occurred.⁷

The exemptions currently are subject to the Open Government Sunset Review Act and are scheduled to repeal October 2, 2010, unless reviewed and saved from repeal by the Legislature.⁸ HB 7085 has been introduced for the 2010 Regular Session and provides for reenactment of those exemptions.

Effect of Bill

The bill expands the current public record and public meeting exemptions for the Commission and the Commission on Ethics and Public Trust established by a county or municipality by extending its application to any county that has established a local investigatory process. It provides for repeal of the exemptions on October 2, 2015, unless reviewed and saved from repeal by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 112.324, F.S., to revise the current public record and public meeting exemptions for certain complaints and related records and proceedings by expanding its application to those investigations performed by a county that has established a local investigatory process.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

³ Section 112.321(1), F.S.

⁴ Section 112.320, F.S.

⁵ See s. 112.322, F.S.

⁶ As provided in s. 8(f), Art. II of the State Constitution.

⁷ Section 112.324(2)(a), F.S.

⁸ Section 112.324(2)(b), F.S.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill likely could create a minimal fiscal impact on counties with an established local investigatory process, because staff responsible for complying with public records requests could require training related to expansion of the public record exemption. In addition, those counties could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the county.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to public records and meetings; amending
 3 s. 112.324, F.S.; revising an exemption from public record
 4 and public meeting requirements which is provided for
 5 complaints and related records in the custody of and
 6 proceedings conducted by a county that has established a
 7 local investigatory process to enforce more stringent
 8 standards of conduct and disclosure requirements;
 9 providing for future repeal and legislative review under
 10 the Open Government Sunset Review Act of revisions to the
 11 exemption; providing a statement of public necessity;
 12 providing an effective date.

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

15
 16 Section 1. Subsection (2) of section 112.324, Florida
 17 Statutes, is amended to read:

18 112.324 Procedures on complaints of violations; public
 19 records and meeting exemptions.—

20 (2) (a) The complaint and records relating to the complaint
 21 or to any preliminary investigation held by the commission or
 22 its agents, ~~or~~ by a Commission on Ethics and Public Trust
 23 established by any county defined in s. 125.011(1) or by any
 24 municipality defined in s. 165.031, or by any county that has
 25 established a local investigatory process to enforce more
 26 stringent standards of conduct and disclosure requirements as
 27 provided in s. 112.326 are confidential and exempt from the
 28 provisions of s. 119.07(1) and s. 24(a), Art. I of the State

29 Constitution, ~~and~~

30 (b) Any proceeding conducted by the commission, ~~or~~ a
 31 Commission on Ethics and Public Trust, or a county that has
 32 established such local investigatory process, pursuant to a
 33 complaint or preliminary investigation, is exempt from the
 34 provisions of s. 286.011, s. 24(b), Art. I of the State
 35 Constitution, and s. 120.525.

36 (c) The exemptions apply until the complaint is dismissed
 37 as legally insufficient, until the alleged violator requests in
 38 writing that such records and proceedings be made public, or
 39 until the commission, ~~or~~ a Commission on Ethics and Public
 40 Trust, or a county that has established such local investigatory
 41 process determines, based on such investigation, whether
 42 probable cause exists to believe that a violation has occurred.
 43 In no event shall a complaint under this part against a
 44 candidate in any general, special, or primary election be filed
 45 or any intention of filing such a complaint be disclosed on the
 46 day of any such election or within the 5 days immediately
 47 preceding the date of the election.

48 ~~(d)(b)~~ This subsection ~~Paragraph (a)~~ is subject to the
 49 Open Government Sunset Review Act in accordance with s. 119.15
 50 and shall stand repealed on October 2, 2015 ~~2010~~, unless
 51 reviewed and saved from repeal through reenactment by the
 52 Legislature.

53 Section 2. The Legislature finds that it is a public
 54 necessity that all complaints and related records in the custody
 55 of a county that has established a local investigatory process
 56 to enforce more stringent standards of conduct and disclosure

57 requirements as provided in s. 112.326, Florida Statutes, which
 58 relate to a complaint of a local ethics violation be exempted
 59 from public-record and public-meeting requirements until the
 60 complaint is dismissed as legally insufficient, until the
 61 alleged violator requests in writing that such records and
 62 proceedings be made public, or until it is determined, based on
 63 the investigation, whether probable cause exists to believe that
 64 a violation has occurred. This exemption is necessary because
 65 the release of such information could potentially be defamatory
 66 to an individual under investigation, cause unwarranted damage
 67 to the good name or reputation of such individual, or
 68 significantly impair the investigation. The exemption creates a
 69 secure environment in which a county may conduct its
 70 investigation.

71 Section 3. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1307

State Financial Matters

SPONSOR(S): Schenck

TIED BILLS:

IDEN./SIM. BILLS: CS/SB 1078

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Affairs Policy Committee		Haug <i>EH</i>	Williamson <i>raw</i>
2) Government Operations Appropriations Committee			
3) Economic Development & Community Affairs Policy Council			
4)			
5)			

SUMMARY ANALYSIS

The State Board of Administration (SBA or Board) is established by Article IV, Section 4(e) of the Florida Constitution and is composed of the Governor as chair, the Chief Financial Officer and the Attorney General. The powers and duties of the Board include the management of 36 separate statutory investment portfolios, the largest one of which is the multi-employer Florida Retirement System (FRS).

This bill includes changes to the FRS Investment Plan that codify practices and policies being used in administration of the plan since its inception. The bill:

- Makes changes to the investment authorizations for the FRS Pension Plan by increasing the permitted holdings for foreign equity from 25 percent to 35 percent of the total fund.
- Permits proceeds of bonds issued on behalf of the Florida Hurricane Catastrophe Fund (CAT Fund) to be invested without limitation in certain federal tax-exempt obligations.
- Permits the SBA executive director to extend an expiration of moratoriums on contributions and withdrawals to the Local Government Investment Pool in cases where an emergency meeting of the Trustees of the SBA cannot be convened within the current 48 hour moratorium window.
- Provides FRS Investment Plan administrative rate reductions.
- Provides additional time for FRS employers to pay invoices for member losses.
- Authorizes the SBA to secure trademarks, copyrights, and patents on behalf of the FRS or any other fund under its jurisdiction.

Finally, the bill addresses governance changes to the SBA. It requires the Board to produce annual financial statements as reported by an independent audit firm, requires minimum qualifications for the executive director, increases the number of members on the Investment Advisory Council from six to nine, and provides for transparency and accountability of the Board through implementing policies, guidelines and procedures.

The bill is expected to generate recurring revenues of \$9.45 million in fiscal years 2010-11, 2011-12, and 2012-13. It is expected to create recurring expenditures to the PEORP Trust Fund of \$12.7 million in fiscal years 2010-11, 2011-12, and 2012-13. In addition, it is expected to create recurring expenditures to the Forfeiture Trust Fund of \$9 million to \$10 million in the same fiscal years. The expenditures can be attributed to a decrease in employer contribution rates.

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Board of Administration

The State Board of Administration (SBA or Board) is established by Article IV, Section 4(e) of the Florida Constitution and is composed of the Governor as chair, the Chief Financial Officer and the Attorney General. The Board members commonly are referred to as "Trustees."

The powers and duties of the Board include the management of 36 separate statutory investment portfolios, the largest one of which is the multi-employer Florida Retirement System (FRS).¹ Since 1999, the FRS has been partitioned into two separate benefits types:

- A defined benefit, or percent of final pay ("Pension") plan with a guaranteed annuitized benefit at retirement and an equity, and
- A defined contribution ("Investment") plan in which assets are self-directed by the participant.

Participating public employers make all payroll contributions with no employee participation or cost sharing. The Board manages the assets of both plans but benefit payments in the Pension Plan are the responsibility of the Division of Retirement in the Department of Management Services.

The SBA also appoints an Investment Advisory Council to review investments and make recommendations to the Trustees regarding investment policy, strategy and procedures.² The council currently consists of six members, appointed to a four year term, who must be confirmed by the Senate.

Administratively, the SBA is managed by an executive director who is hired by the Trustees. The Trustees determine the qualifications for the position of executive director.

The Public Employee Optional Retirement Program

The Public Employee Optional Retirement Program (FRS Investment Plan) is a voluntary alternative retirement plan to the FRS Pension Plan.³ It offers participants a range of individually allocated or

¹ Section 215.44, F.S.

² Section 215.444(1), F.S.

³ Section 121.4501, F.S.

unallocated investment products modeled after private sector 401(k) plans. The FRS Investment Plan enables members to play an active role in selecting and managing their retirement benefits through a diverse set of 20 investment options, including three balanced funds. Fees for the investment offerings range from .02 percent to .93 percent. As of December, 31, 2009, the Investment Plan had 122,769 active accounts and \$4.8 billion in assets.⁴

Currently, all new employees hired with an FRS-covered employer are enrolled in the FRS Pension Plan upon employment. New employees have until 4:00 p.m. eastern time of the last business day of the fifth month following their month of hire to elect membership in the FRS Investment Plan. If they fail to elect membership in the plan by the designated choice end date, the member is defaulted into the FRS Pension Plan.⁵

After their initial election, all FRS members have a one-time 2nd election to switch retirement plans so long as they are working and earning retirement service credit.⁶ The member must submit a 2nd election enrollment form that must be received by the Plan Choice Administrator prior to their employment termination date. The plan change is effective the first day of the month following receipt of the enrollment form by the Plan Choice Administrator.⁷

Some members of the FRS Investment Plan currently have excess account balances.⁸ Distributions of those excess account balances prior to retirement could be violative of Internal Revenue Service regulations regarding in-service distributions.

FRS Investment Plan Dispute Process

Issues between participants of the FRS Investment Plan and the third-party administrator or providers of investment products are handled through a dispute process.⁹ There currently is no process to handle disputes between FRS Investment Plan participants and the program itself. Additionally, there is no third-party records retention requirement to insure the availability of the information in the event a participant files a complaint. A retention requirement is important in order to insure that all records are transferred to the new vendor when there is a change of vendors.

The FRS Pension Plan

The State Board of Administration is responsible for the investment of the FRS Pension Plan assets. In doing so, it must follow the Florida Statutes' fiduciary standards of care, subject to certain limitations. A six-member Investment Advisory Council provides independent oversight of the FRS Pension Plan's general objectives, policies and strategies. The SBA's ability to invest the FRS assets is governed by section 215.47, Florida Statutes, which provides a "legal list" of the types of investments and for how much of the total fund may be invested in each investment type.¹⁰ One of the guidelines is that no more than 25 percent of the FRS Pension Plan's assets can be invested in foreign securities.

⁴ State Board of Administration HB 1307 (2010) Substantive Bill Analysis (March 17, 2010) at 1 (on file with the Governmental Affairs Policy Committee).

⁵ Section 121.4501(4), F.S.; Rule 19-11.006(3), F.A.C.

⁶ Section 121.4501(4)(e), F.S.

⁷ Rule 19-11.007, F.A.C.

⁸ As of January 15, 2010, 1338 FRS Investment Plan participants had excess account balances.

⁹ Rule 19-11.005, F.A.C.

¹⁰ Section 215.47, F.S., provides the "legal list" of types of investments summarized as follows:

- No more than 80 percent of assets can be invested in domestic common stocks.
- No more than 75 percent of assets can be invested in internally managed common stocks.
- No more than 3 percent of equity assets can be invested in the equity securities of any one corporation, except when the securities of that corporation are included in any broad equity index or with approval of the Board; and in such case, no more than 10 percent of equity assets can be invested in the equity securities of any one corporation.
- No more than 80 percent of assets should be placed in corporate fixed income securities.
- No more than 25 percent of assets should be invested in notes secured by FHA-insured or VA-guaranteed first mortgages on Florida real property, or foreign government general obligations with a 25-year default-free history.
- No more than 20 percent of assets should be invested in foreign corporate or commercial securities or obligations.
- No more than 5 percent of any fund should be invested in private equity through participation in limited partnerships and limited liability companies.

Effect of Proposed Changes

This bill includes changes to the FRS Investment Plan that codify practices and policies being used in administration of the plan since its inception. It makes changes to the investment authorizations for the FRS Pension Plan by increasing the permitted holdings for foreign equity from 25 percent to 35 percent of the total fund. The bill also permits proceeds of bonds issued on behalf of the Florida Hurricane Catastrophe Fund (CAT Fund) to be invested without limitation in certain federal tax-exempt obligations.

The bill permits the SBA executive director to extend an expiration of moratoriums on contributions and withdrawals to the Local Government Investment Pool in cases where an emergency meeting of the Trustees of the SBA cannot be convened within the current 48 hour moratorium window.

The bill also provides FRS Investment Plan administrative rate reductions. Effective July 1, 2010, the employer contribution rate is reduced from 0.05 percent to 0.03 percent. The contribution increases to 0.04 percent effective July 1, 2014. It is anticipated that these rate changes will reduce the balance of the Investment Plan Trust Fund over the next four years to achieve approximately a one-year surplus in the fund.¹¹ The Investment Plan Trust Fund balance was approximately \$34 million as of July 1, 2009.¹² The projections on the proposed rate reduction would leave the Trust Fund at approximately \$18 million in 2014. It is anticipated that a 0.04 percent contribution rate would carry the plan for several years after 2014.

Additional time is provided in the bill for FRS employers to pay invoices for member losses. The current 10 day limitation is expanded to 30 days to coincide with monthly payroll practices. Should an Act of God or other force majeure event prevent the posting of an employer contribution to a participant's account any market losses are not payable to such participant.

The bill authorizes the SBA to secure trademarks, copyrights, and patents on behalf of the FRS or any other fund under its jurisdiction.

Finally, the bill addresses governance changes to the SBA. It requires the Board to produce annual financial statements as reported by an independent audit firm, requires minimum qualifications for the executive director, increases the number of members on the Investment Advisory Council from six to nine, and provides for transparency and accountability of the Board through implementing policies, guidelines and procedures.

B. SECTION DIRECTORY:

Section 1. Amends section 121.4501, F.S., to revise and provide definitions, to provide for use of excess account balances in the FRS Investment Plan, to require the SBA to develop procedures to resolve complaints, and to clarify the rulemaking authority of the Board.

Section 2. Amends section 121.4502, F.S., to establish a forfeiture account in the Public Employee Optional Retirement Program Trust Fund.

Section 3. Amends section 121.591, F.S., to authorize an application for benefits under the FRS Investment Plan to be submitted by electronic means.

Section 4. Amends section 121.74, F.S., to revise employer contribution rates.

-
- No more than 25 percent of assets can be invested in foreign securities.

¹¹ Projections on reductions are contingent on budget projections holding over the next four years and no unpredicted changes in the Forfeiture Account patterns or other Legislative actions that might affect Investment Plan operations.

¹² State Board of Administration HB 1307 (2010) Substantive Bill Analysis (March 17, 2010) at 3 (on file with the Governmental Affairs Policy Committee).

Section 5. Amends section 121.78, F.S., to exempt the Division of Retirement, SBA, and the third-party administrator from liability for market losses due to acts of God.

Section 6. Amends section 215.44, F.S., to provide reporting requirements for the SBA.

Section 7. Amends section 215.441, F.S., to provide for minimum qualifications for the executive director of the SBA.

Section 8. Amends section 215.444, F.S., to increase membership and to revise the membership requirements of the Investment Advisory Council.

Section 9. Amends section 215.47, F.S., to permit proceeds of bonds issued on behalf of the Florida Hurricane Catastrophe Fund to be invested, without limitation, in specified federal tax-exempt obligations. The asset allocation in foreign equities is increased from 25 to 35 percent of the total fund.

Section 10. Amends section 215.52, F.S., to revise the rule making authority of the SBA.

Section 11. Amends section 218.409, F.S., to permit the SBA executive director to extend the expiration of moratoriums on contributions and withdrawals to the Local Government Investment Pool in the event the trustees cannot convene an emergency meeting.

Section 12. Permits the SBA to secure and enforce letters of patent, copyrights, and trademarks on any work products developed by or for the SBA.

Section 13. Provides for an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Recurring	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13¹³</u>
	\$9,450,000	\$9,450,000	\$9,450,000
Non-Recurring	Unknown	Unknown	Unknown

2. Expenditures:

Recurring	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13¹⁴</u>
DC Trust Fund	\$12,700,000	\$12,700,000	\$12,700,000
Forfeiture	\$9-10 million	\$9-10 million	\$9-10 million
Non-Recurring	Unknown	Unknown	Unknown

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

It is expected that local governments will experience a slight saving due to the reduction of the DC administrative contribution from 0.05 percent to 0.03 percent over the next four years.

¹³ State Board of Administration HB 1307 (2010) Substantive Bill Analysis (March 17, 2010) at 5 (on file with the Governmental Affairs Policy Committee).

¹⁴ *Id.*

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There should be little impact on the private sector. Some money managers may receive some additional assets to invest.

D. FISCAL COMMENTS:

The SBA reviews each invoice as it is submitted to determine if some or all of it can be paid using monies from the Forfeiture Account. This review and use of the account has allowed the SBA to hold down payments from the PEORP Administrative Trust Fund which, in turn, has allowed the Trust Fund to grow to approximately \$34 million as of July 1, 2009. The 2009-2010 fiscal year PEORP budget allocates expenditures of \$9 million to \$10 million from the Forfeiture Account. The beginning balance for the Forfeiture Account for the fiscal year is approximately \$4.9 million, with expected inflows during the year of approximately \$8.5 million. The Forfeiture Account is generated through FRS Investment Plan participants terminating employment prior to vesting and not returning within the five year suspense window or by participants that commit a forfeitable offense.¹⁵

Revenues for the FRS Investment Plan are generated through a 0.05 percent retirement contribution on the gross salaries of all FRS members. The contributions are paid by all FRS employers on behalf of their FRS-covered employees. The current fiscal year revenues are projected at \$15.9 million, however, this could prove to be slightly high since new hires across the FRS have dropped considerably and salary increases are not as great or widespread as historically seen. Above revenue projections are based on a total payroll of \$31.8 billion for the FRS.¹⁶

The reduction from 0.05 percent to 0.03 percent will result in projected revenues of approximately \$9,450,000, a reduction of \$6,360,000 annually. The savings would be passed on to FRS employers.¹⁷

Expenditures for the FRS Investment Plan and MyFRS Financial Guidance Program are paid through two sources; the Investment Plan Administrative Trust Fund generated by the above revenues and the Investment Plan Forfeiture Account. The Forfeiture Account can only be used for two purposes, payment of FRS Investment Plan expenses and the reduction of future employer contributions to the plan. Current year administrative budget is \$12.7 million and it is expected that \$9 million to \$10 million will be used from the Forfeiture Account for a total of approximately \$21 million to \$22 million. Expenditures are expected to hold steady unless a major project or unanticipated vendor change is under taken.¹⁸

Additionally, there will be some minimal increases in costs for the Investment Advisory Council by adding three new members.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a shared state tax or premium sales tax received by cities or counties.

¹⁵ State Board of Administration HB 1307 (2010) Substantive Bill Analysis (March 17, 2010) at 3 (on file with the Governmental Affairs Policy Committee).

¹⁶ *Id.* at 5

¹⁷ *Id.*

¹⁸ *Id.*

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill expands rule making authority regarding administration of the FRS Investment Plan beyond the current limiting language of “establishing the role and responsibilities of affected state, local government, and education-related employers, the state board, the department, and third-party contractors” by preceding that language with the phrase “including, but not limited to.”¹⁹ As such, this appears to be an overly broad grant of rule making authority.

The bill also requires the SBA to develop procedures to receive and resolve participant complaints against the program, the third-party administrator, or any program vendor or provider. This appears to be a process that should be created through the rule making process.²⁰

Finally, the bill requires the SBA to implement any policies, restrictions, or guidelines necessary in order to ensure full transparency and accountability in fulfillment of its fiduciary duties. This appears to be another grant of rule making authority and, as such, should be made more explicit.²¹

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Amendments are needed to limit the scope of rule making authority. At line 294 the words “but not limited to” are an unnecessary expansion of rule making authority. Also, at line 302 the words “develop procedures to” implies rule making authority and is redundant of the authority provided in Section 121.4501(8), F.S. Additionally, the words “or appropriate” needs to be removed from line 647 and language needs to be added to line 648 to clarify that the Board’s authority is included in current rulemaking authority.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

¹⁹ Lines 294-297 of the bill

²⁰ Line 302 of the bill

²¹ Lines 647-655 of the bill

1 A bill to be entitled
 2 An act relating to state financial matters; amending s.
 3 121.4501, F.S.; revising and providing definitions;
 4 providing for excess account balances in the Public
 5 Employee Optional Retirement Program when an employee
 6 transfers to the defined benefit program; providing for
 7 the use of such excess balance; requiring the State Board
 8 of Administration to develop procedures to resolve
 9 complaints; providing for the use of records in resolving
 10 such complaints; clarifying the state board's rule
 11 authority with respect to the program; amending s.
 12 121.4502, F.S.; establishing a forfeiture account in the
 13 Public Employee Retirement Program Trust Fund; providing
 14 for the use of funds in the account; amending s. 121.591,
 15 F.S.; conforming a cross-reference; permitting an
 16 application for benefits under the optional retirement
 17 program to be submitted by electronic means; amending s.
 18 121.74, F.S.; revising the contribution rates for
 19 employers participating in the Florida Retirement System;
 20 amending s. 121.78, F.S.; exempting the Division of
 21 Retirement, the state board, and the third-party
 22 administrator from liability for market losses due to acts
 23 of God; amending s. 215.44, F.S.; providing reporting
 24 requirements for the state board; amending s. 215.441,
 25 F.S.; providing minimum qualifications for the executive
 26 director of the state board; amending s. 215.444, F.S.;
 27 increasing membership of the Investment Advisory Council;
 28 revising membership requirements; providing council

29 meeting and reporting requirements; providing certain
 30 immunity from liability with respect to authorized actions
 31 for members of the council; amending s. 215.47, F.S.;
 32 authorizing moneys available for investment by the state
 33 board to be invested in certain federally tax-exempt
 34 bonds, notes, or obligations not subject to the federal
 35 alternative minimum tax; increasing the fund amount that
 36 may be invested in a foreign entity; amending s. 215.52,
 37 F.S.; providing the state board with certain powers;
 38 amending s. 218.409, F.S.; providing for extending a
 39 moratorium on contributions to or withdrawals from the
 40 Local Government Surplus Funds Trust Fund under certain
 41 circumstances; authorizing the state board to develop work
 42 products that are subject to trademark, copyright, or
 43 patent; providing an effective date.

44
 45 Be It Enacted by the Legislature of the State of Florida:

46
 47 Section 1. Subsection (2), paragraph (e) of subsection
 48 (4), subsection (6), and paragraphs (a) and (g) of subsection
 49 (8) of section 121.4501, Florida Statutes, are amended to read:

50 121.4501 Public Employee Optional Retirement Program.—

51 (2) DEFINITIONS.—As used in this part, the term:

52 (a) "Approved provider" or "provider" means a private
 53 sector company that is selected and approved by the state board
 54 to offer one or more investment products or services to the
 55 ~~Public Employee~~ optional retirement program. The term includes a
 56 bundled provider that offers participants a range of

57 | individually allocated or unallocated investment products and
 58 | may offer a range of administrative and customer services, which
 59 | may include accounting and administration of individual
 60 | participant benefits and contributions; individual participant
 61 | recordkeeping; asset purchase, control, and safekeeping; direct
 62 | execution of the participant's instructions as to asset and
 63 | contribution allocation; calculation of daily net asset values;
 64 | direct access to participant account information; periodic
 65 | reporting to participants, at least quarterly, on account
 66 | balances and transactions; guidance, advice, and allocation
 67 | services directly relating to the provider's ~~its~~ own investment
 68 | options or products, but only if the bundled provider complies
 69 | with the standard of care of s. 404(a)(1)(A-B) of the Employee
 70 | Retirement Income Security Act of 1974 (ERISA) and if providing
 71 | such guidance, advice, or allocation services does not
 72 | constitute a prohibited transaction under s. 4975(c)(1) of the
 73 | Internal Revenue Code or s. 406 of ERISA, notwithstanding that
 74 | such prohibited transaction provisions do not apply to the
 75 | optional retirement program; a broad array of distribution
 76 | options; asset allocation; and retirement counseling and
 77 | education. Private sector companies include investment
 78 | management companies, insurance companies, depositories, and
 79 | mutual fund companies.

80 | (b) "Average monthly compensation" means one-twelfth of
 81 | average final compensation as defined in s. 121.021~~(24)~~.

82 | (c) "Covered employment" means employment in a regularly
 83 | established position as defined in s. 121.021~~(52)~~.

84 | (d) "Defined benefit program" means the defined benefit

85 program of the Florida Retirement System administered under part
 86 I of this chapter ~~"Department" means the Department of~~
 87 ~~Management Services.~~

88 (e) "Division" means the Division of Retirement within the
 89 department ~~of Management Services.~~

90 (f) "Electronic means" means by telephone, if the required
 91 information is received on a recorded line, or through Internet
 92 access, if the required information is captured online.

93 ~~(g)(f)~~ "Eligible employee" means an officer or employee,
 94 as defined in s. 121.021, who:

95 1. Is a member of, or is eligible for membership in, the
 96 Florida Retirement System, including any renewed member of the
 97 Florida Retirement System initially enrolled before July 1,
 98 2010; or

99 2. Participates in, or is eligible to participate in, the
 100 Senior Management Service Optional Annuity Program as
 101 established under s. 121.055(6), the State Community College
 102 System Optional Retirement Program as established under s.
 103 121.051(2)(c), or the State University System Optional
 104 Retirement Program established under s. 121.35.

105
 106 The term does not include any member participating in the
 107 Deferred Retirement Option Program established under s.
 108 121.091(13), a retiree of a state-administered retirement system
 109 initially reemployed on or after July 1, 2010, or a mandatory
 110 participant of the State University System Optional Retirement
 111 Program established under s. 121.35.

112 ~~(h)(g)~~ "Employer" means an employer, as defined in s.

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113 121.021~~(10)~~, of an eligible employee.

114 (i) "Optional retirement program" or "optional program"
 115 means the Public Employee Optional Retirement Program
 116 established under this part.

117 ~~(j)(h)~~ "Participant" means an eligible employee who ~~elects~~
 118 ~~to participate in the Public Employee Optional Retirement~~
 119 ~~Program and enrolls in the~~ such optional program as provided in
 120 subsection (4) or a terminated Deferred Retirement Option
 121 Program participant as described in subsection (21).

122 ~~(i) "Public Employee Optional Retirement Program,"~~
 123 ~~"optional program," or "optional retirement program" means the~~
 124 ~~alternative defined contribution retirement program established~~
 125 ~~under this section.~~

126 ~~(k)(j)~~ "Retiree" means a former participant of the ~~Florida~~
 127 ~~Retirement System Public Employee~~ optional retirement program
 128 who has terminated employment and has taken a distribution as
 129 provided in s. 121.591, except for a mandatory distribution of a
 130 de minimis account authorized by the state board.

131 ~~(k) "State board" or "board" means the State Board of~~
 132 ~~Administration.~~

133 ~~(l) "Trustees" means Trustees of the State Board of~~
 134 ~~Administration.~~

135 ~~(l)(m)~~ "Vested" or "vesting" means the guarantee that a
 136 participant is eligible to receive a retirement benefit upon
 137 completion of the required years of service under the ~~Public~~
 138 ~~Employee~~ optional retirement program.

139 (4) PARTICIPATION; ENROLLMENT.—

140 (e) After the period during which an eligible employee had

141 the choice to elect the defined benefit program or the ~~Public~~
 142 ~~Employee~~ optional retirement program, or the month following the
 143 receipt of the eligible employee's plan election, if sooner, the
 144 employee shall have one opportunity, at the employee's
 145 discretion, to choose to move from the defined benefit program
 146 to the ~~Public Employee~~ optional retirement program or from the
 147 ~~Public Employee~~ optional retirement program to the defined
 148 benefit program. Eligible employees may elect to move between
 149 Florida Retirement System programs only if they are earning
 150 service credit in an employer-employee relationship consistent
 151 with ~~the requirements under~~ s. 121.021(17) (b), excluding leaves
 152 of absence without pay. Effective July 1, 2005, such elections
 153 are ~~shall be~~ effective on the first day of the month following
 154 the receipt of the election by the third-party administrator and
 155 are not subject to the requirements regarding an employer-
 156 employee relationship or receipt of contributions for the
 157 eligible employee in the effective month, except ~~that the~~
 158 ~~employee must meet the conditions of the previous sentence~~ when
 159 the election is received by the third-party administrator. This
 160 paragraph is ~~shall be~~ contingent upon approval from the Internal
 161 Revenue Service for including the choice described herein within
 162 the programs offered by the Florida Retirement System.

163 1. If the employee chooses to move to the ~~Public Employee~~
 164 optional retirement program, the applicable provisions of this
 165 section shall govern the transfer.

166 2. If the employee chooses to move to the defined benefit
 167 program, the employee must transfer from his or her ~~Public~~
 168 ~~Employee~~ optional retirement program account, and from other

169 employee moneys as necessary, a sum representing the present
 170 value of that employee's accumulated benefit obligation
 171 immediately following the time of such movement, determined
 172 assuming that attained service equals the sum of service in the
 173 defined benefit program and service in the ~~Public-Employee~~
 174 optional retirement program. Benefit commencement occurs on the
 175 first date the employee is ~~would become~~ eligible for unreduced
 176 benefits, using the discount rate and other relevant actuarial
 177 assumptions that were used to value the ~~Florida Retirement~~
 178 ~~System~~ defined benefit plan liabilities in the most recent
 179 actuarial valuation. For any employee who, at the time of the
 180 second election, already maintains an accrued benefit amount in
 181 the defined benefit program plan, the then-present value of the
 182 ~~such~~ accrued benefit shall be deemed part of the required
 183 transfer amount ~~described in this subparagraph~~. The division
 184 shall ensure that the transfer sum is prepared using a formula
 185 and methodology certified by an enrolled actuary.

186 3. Notwithstanding subparagraph 2., an employee who
 187 chooses to move to the defined benefit program and who became
 188 eligible to participate in the ~~Public-Employee~~ optional
 189 retirement program by reason of employment in a regularly
 190 established position with a state employer after June 1, 2002; a
 191 district school board employer after September 1, 2002; or a
 192 local employer after December 1, 2002, must transfer from his or
 193 her ~~Public-Employee~~ optional retirement program account, and
 194 from other employee moneys as necessary, a sum representing the
 195 ~~that~~ employee's actuarial accrued liability.

196 4. An employee's ~~Employees'~~ ability to transfer from the

197 ~~Florida Retirement System~~ defined benefit program to the Public
 198 ~~Employee~~ optional retirement program pursuant to paragraphs (a)-
 199 (d), and the ability of a for current employee ~~employees~~ to have
 200 an option to later transfer back into the defined benefit
 201 program under subparagraph 2., shall be deemed a significant
 202 system amendment. Pursuant to s. 121.031(4), any ~~such~~ resulting
 203 unfunded liability arising from actual original transfers from
 204 the defined benefit program to the optional program must ~~shall~~
 205 be amortized within 30 plan years as a separate unfunded
 206 actuarial base independent of the reserve stabilization
 207 mechanism defined in s. 121.031(3)(f). For the first 25 years, a
 208 ~~ne~~ direct amortization payment may not ~~shall~~ be calculated for
 209 this base. During this 25-year period, the ~~such~~ separate base
 210 shall be used to offset the impact of employees exercising their
 211 second program election under this paragraph. It is the
 212 legislative intent of the Legislature that the actuarial funded
 213 status of the ~~Florida Retirement System~~ defined benefit program
 214 not be affected ~~plan is neither beneficially nor adversely~~
 215 ~~impacted~~ by such second program elections in any significant
 216 manner, after due recognition of the separate unfunded actuarial
 217 base. Following the ~~this~~ initial 25-year period, any remaining
 218 balance of the original separate base shall be amortized over
 219 the remaining 5 years of the required 30-year amortization
 220 period.

221 5. If the employee chooses to transfer from the optional
 222 retirement program to the defined benefit program and retains an
 223 excess account balance in the optional program after satisfying
 224 the buy-in requirements under this paragraph, the excess may not

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225 be distributed until the member retires from the defined benefit
 226 program. The excess account balance may be rolled over to the
 227 defined benefit program and used to purchase service credit or
 228 upgrade creditable service in that program.

229 (6) VESTING REQUIREMENTS.-

230 (a)1. With respect to employer contributions paid on
 231 behalf of the participant to the ~~Public Employee~~ optional
 232 retirement program, plus interest and earnings thereon and less
 233 investment fees and administrative charges, a participant is
 234 ~~shall be~~ vested after completing 1 work year, ~~as defined in s.~~
 235 ~~121.021(54),~~ with an employer, including any service while the
 236 participant was a member of the defined benefit ~~retirement~~
 237 program or an optional retirement program authorized under s.
 238 121.051(2) (c) or s. 121.055(6).

239 2. If the participant terminates employment before ~~prior~~
 240 ~~to~~ satisfying the vesting requirements, the nonvested
 241 accumulation must ~~shall~~ be transferred from the participant's
 242 accounts to the state board for deposit and investment by the
 243 state board in the suspense account created within ~~of~~ the Public
 244 Employee Optional Retirement Program Trust Fund ~~of the board~~. If
 245 the terminated participant is reemployed as an eligible employee
 246 within 5 years, the state board shall transfer to the
 247 participant's account any amount ~~of the moneys~~ previously
 248 transferred from the participant's accounts to the suspense
 249 account ~~of the Public Employee Optional Retirement Program Trust~~
 250 ~~Fund~~, plus ~~the~~ actual earnings on such amount while in the
 251 suspense account.

252 (b)1. With respect to amounts transferred from the defined

253 benefit program to the investment program, plus interest and
 254 earnings, and less investment fees and administrative charges, a
 255 participant shall be vested in the amount transferred ~~from the~~
 256 ~~defined benefit program, plus interest and earnings thereon and~~
 257 ~~less administrative charges and investment fees,~~ upon meeting
 258 the service requirements for the participant's membership class
 259 as set forth in s. 121.021(29). The third-party administrator
 260 shall account for such amounts for each participant. The
 261 division shall notify the participant and the third-party
 262 administrator when the participant has satisfied the vesting
 263 period for Florida Retirement System purposes.

264 2. If the participant terminates employment before ~~prior~~
 265 ~~to~~ satisfying the vesting requirements, the nonvested
 266 accumulation must ~~shall~~ be transferred from the participant's
 267 accounts to the state board for deposit and investment by the
 268 state board in the suspense account created within ~~of~~ the Public
 269 Employee Optional Retirement Program Trust Fund ~~of the board~~. If
 270 the terminated participant is reemployed as an eligible employee
 271 within 5 years, the state board shall transfer to the
 272 participant's account any amount ~~of the moneys~~ previously
 273 transferred from the participant's accounts to the suspense
 274 account ~~of the Public Employee Optional Retirement Program Trust~~
 275 ~~Fund~~, plus the actual earnings on such amount while in the
 276 suspense account.

277 (c) Any nonvested accumulations transferred from a
 278 participant's account to the suspense account shall be forfeited
 279 by the participant if the participant is not reemployed as an
 280 eligible employee within 5 years after termination.

281 (8) ADMINISTRATION OF PROGRAM.—

282 (a) The ~~Public Employee~~ optional retirement program shall
 283 be administered by the state board and affected employers. The
 284 board may ~~is authorized to~~ require oaths, by affidavit or
 285 otherwise, and acknowledgments from persons in connection with
 286 the administration of its statutory duties and responsibilities
 287 for this program under this chapter. ~~An~~ ~~No~~ oath, by affidavit or
 288 otherwise, may not ~~shall~~ be required of an employee participant
 289 at the time of enrollment ~~election~~. Acknowledgment of an
 290 employee's election to participate in the program shall be no
 291 greater than necessary to confirm the employee's election. The
 292 state board shall adopt rules to carry out its statutory duties
 293 with respect to administering the optional retirement program,
 294 including, but not limited to, establishing the roles ~~role~~ and
 295 responsibilities of affected state, local government, and
 296 education-related employers, the state board, the department,
 297 and third-party contractors ~~in administering the Public Employee~~
 298 ~~optional retirement program~~. The department shall adopt rules
 299 necessary to administer ~~implement~~ the optional program in
 300 coordination with the defined benefit ~~retirement~~ program and the
 301 disability benefits available under the optional program.

302 (g) The state board shall develop procedures to receive
 303 and resolve participant complaints against the program, the
 304 third-party administrator, or any program vendor or provider;
 305 shall resolve any conflict between the third-party administrator
 306 and an approved provider if ~~when~~ such conflict threatens the
 307 implementation or administration of the program or the quality
 308 of services to employees; and may resolve any other conflicts.

309 The third-party administrator shall retain all participant
 310 records for at least 5 years for use in resolving any
 311 participant conflicts. The state board, the third-party
 312 administrator, or a provider is not required to produce
 313 documentation or an audio recording to justify action taken with
 314 regard to a participant if the action occurred 5 or more years
 315 before the complaint is submitted to the state board. It is
 316 presumed that all action taken 5 or more years before the
 317 complaint is submitted was taken at the request of the
 318 participant and with the participant's full knowledge and
 319 consent. To overcome this presumption, the participant must
 320 present documentary evidence or an audio recording demonstrating
 321 otherwise.

322 Section 2. Subsection (3) is added to section 121.4502,
 323 Florida Statutes, to read:

324 121.4502 Public Employee Optional Retirement Program Trust
 325 Fund.—

326 (3) A forfeiture account shall be created within the
 327 Public Employee Optional Retirement Program Trust Fund to hold
 328 the assets derived from the forfeiture of benefits by
 329 participants. Pursuant to a private letter ruling from the
 330 Internal Revenue Service, the forfeiture account may be used
 331 only for paying expenses of the Public Employee Optional
 332 Retirement Program and reducing future employer contributions to
 333 the program. Consistent with Rulings 80-155 and 74-340 of the
 334 Internal Revenue Service, unallocated reserves within the
 335 forfeiture account must be used as quickly and as prudently as
 336 possible considering the state board's fiduciary duty. Expected

337 withdrawals from the account must endeavor to reduce the account
 338 to zero each fiscal year.

339 Section 3. Paragraphs (a) and (b) of subsection (1) of
 340 section 121.591, Florida Statutes, are amended to read:

341 121.591 Benefits payable under the Public Employee
 342 Optional Retirement Program of the Florida Retirement System.—
 343 Benefits may not be paid under this section unless the member
 344 has terminated employment as provided in s. 121.021(39) (a) or is
 345 deceased and a proper application has been filed in the manner
 346 prescribed by the state board or the department. The state board
 347 or department, as appropriate, may cancel an application for
 348 retirement benefits when the member or beneficiary fails to
 349 timely provide the information and documents required by this
 350 chapter and the rules of the state board and department. In
 351 accordance with their respective responsibilities as provided
 352 herein, the State Board of Administration and the Department of
 353 Management Services shall adopt rules establishing procedures
 354 for application for retirement benefits and for the cancellation
 355 of such application when the required information or documents
 356 are not received. The State Board of Administration and the
 357 Department of Management Services, as appropriate, are
 358 authorized to cash out a de minimis account of a participant who
 359 has been terminated from Florida Retirement System covered
 360 employment for a minimum of 6 calendar months. A de minimis
 361 account is an account containing employer contributions and
 362 accumulated earnings of not more than \$5,000 made under the
 363 provisions of this chapter. Such cash-out must either be a
 364 complete lump-sum liquidation of the account balance, subject to

365 the provisions of the Internal Revenue Code, or a lump-sum
 366 direct rollover distribution paid directly to the custodian of
 367 an eligible retirement plan, as defined by the Internal Revenue
 368 Code, on behalf of the participant. If any financial instrument
 369 issued for the payment of retirement benefits under this section
 370 is not presented for payment within 180 days after the last day
 371 of the month in which it was originally issued, the third-party
 372 administrator or other duly authorized agent of the State Board
 373 of Administration shall cancel the instrument and credit the
 374 amount of the instrument to the suspense account of the Public
 375 Employee Optional Retirement Program Trust Fund authorized under
 376 s. 121.4501(6). Any such amounts transferred to the suspense
 377 account are payable upon a proper application, not to include
 378 earnings thereon, as provided in this section, within 10 years
 379 after the last day of the month in which the instrument was
 380 originally issued, after which time such amounts and any
 381 earnings thereon shall be forfeited. Any such forfeited amounts
 382 are assets of the Public Employee Optional Retirement Program
 383 Trust Fund and are not subject to the provisions of chapter 717.

384 (1) NORMAL BENEFITS.—Under the Public Employee Optional
 385 Retirement Program:

386 (a) Benefits in the form of vested accumulations as
 387 described in s. 121.4501(6) are payable under this subsection in
 388 accordance with the following terms and conditions:

389 1. To the extent vested, benefits are payable only to a
 390 participant.

391 2. Benefits shall be paid by the third-party administrator
 392 or designated approved providers in accordance with the law, the

393 contracts, and any applicable board rule or policy.

394 3. To receive benefits, the participant must be terminated
 395 from all employment with all Florida Retirement System
 396 employers, as provided in s. 121.021(39).

397 4. Benefit payments may not be made until the participant
 398 has been terminated for 3 calendar months, except that the board
 399 may authorize by rule for the distribution of up to 10 percent
 400 of the participant's account after being terminated for 1
 401 calendar month if the participant has reached the normal
 402 retirement date as defined in s. 121.021 of the defined benefit
 403 plan.

404 5. If a member or former member of the Florida Retirement
 405 System receives an invalid distribution from the Public Employee
 406 Optional Retirement Program Trust Fund, such person must repay
 407 the full invalid distribution to the trust fund within 90 days
 408 after receipt of final notification by the state board or the
 409 third-party administrator that the distribution was invalid. If
 410 such person fails to repay the full invalid distribution within
 411 90 days after receipt of final notification, the person may be
 412 deemed retired from the optional retirement program by the state
 413 board, as provided pursuant to s. 121.4501(2) (k) ~~(j)~~, and is
 414 subject to s. 121.122. If such person is deemed retired by the
 415 state board, any joint and several liability set out in s.
 416 121.091(9)(d)2. becomes null and void, and the state board, the
 417 department, or the employing agency is not liable for gains on
 418 payroll contributions that have not been deposited to the
 419 person's account in the retirement program, pending resolution
 420 of the invalid distribution. The member or former member who has

421 | been deemed retired or who has been determined by the board to
 422 | have taken an invalid distribution may appeal the agency
 423 | decision through the complaint process as provided under s.
 424 | 121.4501(9)(g)3. As used in this subparagraph, the term "invalid
 425 | distribution" means any distribution from an account in the
 426 | optional retirement program which is taken in violation of this
 427 | section, s. 121.091(9), or s. 121.4501.

428 | (b) If a participant elects to receive his or her benefits
 429 | upon termination of employment as defined in s. 121.021, the
 430 | participant must submit a written application or an application
 431 | by electronic means ~~an equivalent form~~ to the third-party
 432 | administrator indicating his or her preferred distribution date
 433 | and selecting an authorized method of distribution as provided
 434 | in paragraph (c). The participant may defer receipt of benefits
 435 | until he or she chooses to make such application, subject to
 436 | federal requirements.

437 | Section 4. Section 121.74, Florida Statutes, is amended to
 438 | read:

439 | 121.74 Administrative and educational expenses.—In
 440 | addition to contributions required under s. 121.71, effective
 441 | July 1, 2010, through June 30, 2014, employers participating in
 442 | the Florida Retirement System shall contribute an amount equal
 443 | to 0.03 ~~0.05~~ percent of the payroll reported for each class or
 444 | subclass of Florida Retirement System membership; effective July
 445 | 1, 2014, the contribution rate shall be 0.04 percent of the
 446 | payroll reported for each class or subclass of membership. The
 447 | ~~which~~ amount contributed shall be transferred by the Division of
 448 | Retirement from the Florida Retirement System Contributions

449 Clearing Trust Fund to the State Board of Administration's
 450 Administrative Trust Fund to offset the costs of administering
 451 the optional retirement program and the costs of providing
 452 educational services to participants in the defined benefit
 453 program and the optional retirement program. Approval of the
 454 trustees ~~of the State Board of Administration~~ is required before
 455 ~~prior to~~ the expenditure of these funds. Payments for third-
 456 party administrative or educational expenses shall be made only
 457 pursuant to the terms of the approved contracts for such
 458 services.

459 Section 5. Subsection (3) of section 121.78, Florida
 460 Statutes, is amended to read:

461 121.78 Payment and distribution of contributions.—

462 (3) (a) Employer contributions and accompanying payroll
 463 data received after the 5th working day of the month are ~~shall~~
 464 ~~be~~ considered late. The employer shall be assessed by the
 465 Division of Retirement a penalty of 1 percent of the
 466 contributions due for each calendar month or part thereof that
 467 the contributions or accompanying payroll data are late.
 468 Proceeds from the 1-percent assessment against contributions
 469 made on behalf of participants of the defined benefit program
 470 shall be deposited in the Florida Retirement System Trust Fund,
 471 and proceeds from the 1-percent assessment against contributions
 472 made on behalf of participants of the optional retirement
 473 program shall be transferred to the third-party administrator
 474 for deposit into participant accounts, as provided in paragraph
 475 (b).

476 (b) If contributions made by an employer on behalf of

477 participants of the optional retirement program or accompanying
 478 payroll data are not received within the calendar month they are
 479 due, including, but not limited to, contribution adjustments as
 480 a result of employer errors or corrections, and if that
 481 delinquency results in market losses to participants, the
 482 employer shall reimburse each participant's account for market
 483 losses resulting from the late contributions. If a participant
 484 has terminated employment and taken a distribution, the
 485 participant is responsible for returning any excess
 486 contributions erroneously provided by employers, adjusted for
 487 any investment gain or loss incurred during the period such
 488 excess contributions were in the participant's ~~Public Employee~~
 489 ~~Optional Retirement Program~~ account. The state board of
 490 ~~Administration~~ or its designated agent shall communicate to
 491 terminated participants any obligation to repay such excess
 492 contribution amounts. However, the state board of
 493 ~~Administration~~, its designated agents, the Public Employee
 494 Optional Retirement Program Trust Fund, the department of
 495 ~~Management Services~~, or the Florida Retirement System Trust Fund
 496 may ~~shall~~ not incur any loss or gain as a result of an
 497 employer's correction of such excess contributions. The third-
 498 party administrator, hired by the state board pursuant to s.
 499 121.4501(8), shall calculate the market losses for each affected
 500 participant. If ~~When~~ contributions made on behalf of
 501 participants of the optional retirement program or accompanying
 502 payroll data are not received within the calendar month due, the
 503 employer shall also pay the cost of the third-party
 504 administrator's calculation and reconciliation adjustments

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505 resulting from the late contributions. The third-party
 506 administrator shall notify the employer of the results of the
 507 calculations and the total amount due from the employer for such
 508 losses and the costs of calculation and reconciliation. The
 509 employer shall remit to the Division of Retirement the amount
 510 due within 30 ~~10~~ working days after the date of the penalty
 511 notice sent by the division. The division shall transfer that
 512 ~~said~~ amount to the third-party administrator, which ~~who~~ shall
 513 deposit proceeds from the 1-percent assessment and from
 514 individual market losses into participant accounts, as
 515 appropriate. The state board may ~~is authorized to~~ adopt rules to
 516 administer ~~implement~~ the provisions regarding late
 517 contributions, late submission of payroll data, the process for
 518 reimbursing participant accounts for resultant market losses,
 519 and the penalties charged to the employers.

520 (c) Delinquency fees may be waived by the Division of
 521 Retirement, with regard to defined benefit program
 522 contributions, and by the state board ~~of Administration~~, with
 523 regard to optional retirement program contributions, only if
 524 ~~when~~, in the opinion of the division or the board, as
 525 appropriate, exceptional circumstances beyond the employer's
 526 control prevented remittance by the prescribed due date
 527 notwithstanding the employer's good faith efforts to effect
 528 delivery. Such a waiver of delinquency may be granted an
 529 employer only once ~~one time~~ each state fiscal year.

530 (d) If contributions made by an employer on behalf of
 531 participants in the optional retirement program are delayed in
 532 posting to participant accounts due to acts of God beyond the

533 control of the Division of Retirement, the state board, or the
 534 third-party administrator, as applicable, market losses
 535 resulting from the late contributions are not payable to the
 536 participants.

537 Section 6. Subsections (1) and (2) of section 215.44,
 538 Florida Statutes, are amended to read:

539 215.44 Board of Administration; powers and duties in
 540 relation to investment of trust funds.-

541 (1) Except when otherwise specifically provided by the
 542 State Constitution and subject to any limitations of the trust
 543 agreement relating to a trust fund, the Board of Administration,
 544 ~~hereinafter~~ sometimes referred to in this chapter as "board," or
 545 "Trustees of the State Board of Administration," composed of the
 546 Governor as chair, the Chief Financial Officer, and the Attorney
 547 General, shall invest all the funds in the System Trust Fund, as
 548 defined in s. 121.021(36), and all other funds specifically
 549 required by law to be invested by the board pursuant to ss.
 550 215.44-215.53 to the fullest extent that is consistent with the
 551 cash requirements, trust agreement, and investment objectives of
 552 the fund. Notwithstanding any other law to the contrary, the
 553 State Board of Administration may invest any funds of any state
 554 agency or any unit of local government pursuant to the terms of
 555 a trust agreement with the head of the state agency or the
 556 governing body of the unit of local government, which trust
 557 agreement shall govern the investment of such funds, provided
 558 that the board shall approve the undertaking of such investment
 559 before execution of the trust agreement by the State Board of
 560 Administration. The funds and the earnings therefrom are exempt

561 from the service charge imposed by s. 215.20. As used in this
 562 subsection, the term "state agency" has the same meaning as that
 563 provided in s. 216.001, and the terms "governing body" and "unit
 564 of local government" have the same meaning as that provided in
 565 s. 218.403.

566 (2) (a) The board shall have the power to make purchases,
 567 sales, exchanges, investments, and reinvestments for and on
 568 behalf of the funds referred to in subsection (1), and it shall
 569 be the duty of the board to see that moneys invested under the
 570 provisions of ss. 215.44-215.53 are at all times handled in the
 571 best interests of the state.

572 (b) In exercising investment authority pursuant to s.
 573 215.47, the board may retain investment advisers or managers, or
 574 both, external to in-house staff, to assist the board in
 575 carrying out the power specified in paragraph (a).

576 (c) The board shall produce a set of financial statements
 577 for the Florida Retirement System on an annual basis which shall
 578 be reported to the Legislature and audited by a commercial
 579 independent third-party audit firm.

580 Section 7. Section 215.441, Florida Statutes, is amended
 581 to read:

582 215.441 Board of Administration; appointment of executive
 583 director.—The appointment of the executive director of the State
 584 Board of Administration shall be subject to the approval by a
 585 majority vote of the Board of Trustees of the State Board of
 586 Administration, and the Governor must vote on the prevailing
 587 side. Such appointment must be reaffirmed in the same manner by
 588 the board of trustees on an annual basis. The executive director

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589 shall, at a minimum, possess substantial experience, knowledge,
 590 and expertise in the oversight of investment portfolios and must
 591 meet any other requirements determined by the board to be
 592 necessary to the overall management and investment of funds.

593 Section 8. Section 215.444, Florida Statutes, is amended
 594 to read:

595 215.444 Investment Advisory Council.—

596 (1) There is created a nine-member ~~six-member~~ Investment
 597 Advisory Council to review the investments made by the staff of
 598 the Board of Administration and to make recommendations to the
 599 board regarding investment policy, strategy, and procedures. The
 600 council shall meet with staff of the board no less than
 601 quarterly and shall provide a quarterly report directly to the
 602 Trustees of the State Board of Administration at a meeting of
 603 the board.

604 (2) The members of the council shall be appointed by the
 605 board as a resource to the Trustees of the State Board of
 606 Administration and shall be subject to confirmation by the
 607 Senate. These individuals shall possess special knowledge,
 608 experience, and familiarity with ~~financial investments and~~
 609 portfolio management, institutional investments, and fiduciary
 610 responsibilities. Members shall be appointed for 4-year terms. A
 611 vacancy shall be filled for the remainder of the unexpired term.
 612 The council shall annually elect a chair and a vice chair from
 613 its membership. A member may not be elected to consecutive terms
 614 as chair or vice chair.

615 (3) In carrying out the provisions of this chapter,
 616 members of the Investment Advisory Council shall be officers,

617 employees, or agents of the state for the purposes of s. 768.28.

618 Section 9. Paragraph (o) is added to subsection (1) of
 619 section 215.47, Florida Statutes, and subsection (5) of that
 620 section is amended, to read:

621 215.47 Investments; authorized securities; loan of
 622 securities.—Subject to the limitations and conditions of the
 623 State Constitution or of the trust agreement relating to a trust
 624 fund, moneys available for investments under ss. 215.44-215.53
 625 may be invested as follows:

626 (1) Without limitation in:

627 (o) Bonds, notes, or obligations described in 26 U.S.C. s.
 628 149(g)(3)(B) if investment in such bonds, notes, or obligations
 629 is necessary in order to comply with covenants in documents or
 630 proceedings relating to bonds issued pursuant to s. 215.555(6).
 631 Investments made pursuant to this paragraph may be purchased
 632 only from the proceeds of bonds issued pursuant to s. 215.555(6)
 633 and must be authorized under documents or proceedings relating
 634 to such bonds.

635 (5) With no more than 35 ~~25~~ percent of any fund in
 636 corporate obligations and securities of any kind of a foreign
 637 corporation or a foreign commercial entity having its principal
 638 office located in any country other than the United States ~~of~~
 639 ~~America~~ or its possessions or territories, not including United
 640 States dollar-denominated securities listed and traded on a
 641 United States exchange which are a part of the ordinary
 642 investment strategy of the board.

643 Section 10. Section 215.52, Florida Statutes, is amended
 644 to read:

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645 215.52 Rules and regulations.—The board shall have the
 646 power and authority to make reasonable rules and regulations
 647 necessary or appropriate to carry out the provisions of ss.
 648 215.44-215.53. To ensure full transparency and accountability in
 649 fulfillment of its fiduciary duties, the board may implement any
 650 policies, restrictions, or guidelines necessary to the
 651 application of such provisions, including, but not limited to,
 652 policies, restrictions, or guidelines in the areas of
 653 compliance, ethics, training, audit procedures, service
 654 providers, vendors, and third parties doing business with the
 655 board.

656 Section 11. Paragraph (a) of subsection (8) of section
 657 218.409, Florida Statutes, is amended to read:

658 218.409 Administration of the trust fund; creation of
 659 advisory council.—

660 (8) (a) The principal, and any part thereof, of each ~~and~~
 661 ~~every~~ account constituting the trust fund is ~~shall be~~ subject to
 662 payment at any time from the moneys in the trust fund. However,
 663 the executive director may, in good faith, on the occurrence of
 664 an event that has a material impact on liquidity or operations
 665 of the trust fund, for 48 hours limit contributions to or
 666 withdrawals from the trust fund to ensure that the board can
 667 invest moneys entrusted to it in exercising its fiduciary
 668 responsibility. Such action must ~~shall~~ be immediately disclosed
 669 to all participants, the trustees, the Joint Legislative
 670 Auditing Committee, the Investment Advisory Council, and the
 671 Participant Local Government Advisory Council. The trustees
 672 shall convene an emergency meeting as soon as practicable from

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673 the time the executive director has instituted such measures and
 674 review the necessity of those measures. If the trustees are
 675 unable to convene an emergency meeting before the expiration of
 676 the 48-hour moratorium on contributions and withdrawals, the
 677 moratorium may be extended by the executive director until the
 678 trustees are able to meet to review the necessity for the
 679 moratorium. If the trustees agree with such measures, the
 680 trustees shall vote to continue the measures for up to an
 681 additional 15 days. The trustees must convene and vote to
 682 continue any such measures before ~~prior to~~ the expiration of the
 683 time limit set, but in no case may the time limit set by the
 684 trustees exceed 15 days.

685 Section 12. Trademarks, copyrights, or patents.—The State
 686 Board of Administration, on behalf of the Florida Retirement
 687 System or any other trust fund under its jurisdiction, may
 688 develop work products that are subject to trademark, copyright,
 689 or patent statutes. The board may, in its own name or through
 690 the growth initiative program created pursuant to s. 215.47(7),
 691 Florida Statutes, or any other program developed with or for the
 692 board:

693 (1) Perform all things necessary to secure letters of
 694 patent, copyrights, or trademarks on any work products and
 695 enforce its rights therein.

696 (2) License, lease, assign, or otherwise give written
 697 consent to any person for the manufacture or use of its work
 698 products on a royalty basis or for such other consideration as
 699 the board deems proper.

700 (3) Take any action necessary, including legal action, to

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701 protect its work products against improper or unlawful use or
702 infringement.

703 (4) Enforce the collection of any sums due the board for
704 the manufacture or use of its work products by any other party.

705 (5) Sell any of its work products and execute all
706 instruments necessary to consummate any such sale.

707 (6) Do all other acts necessary and proper for the
708 execution of powers and duties provided under this section.

709 Section 13. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-03 **Public Record Exemption for E911 Recordings**
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson <i>AW</i>	Williamson <i>AW</i>
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

Since 1973, Florida's state and local governments have been building and updating technology to support a 911 system that serves its citizens and visitors in emergency situations. In May 1997, the system achieved statewide implementation. The system was upgraded to Enhanced 911 (E911) services, which identifies callers' telephone numbers and addresses to local dispatchers, for wireline and landline calls in September 2005. In March 2008, the system was upgraded to E911 services for wireless calls. E911 service currently is available in all 67 counties.

Current law provides a public record exemption for the name, address, telephone number or personal information about, or information that may identify any person requesting emergency services or reporting an emergency. The exemption applies to such information in any record or recording, or portions thereof, obtained by a public agency or a public safety agency for the purpose of providing services in an emergency. The confidential and exempt information may be shared only with another public safety agency.

The bill expands the current public record exemption to include any recording of a request for emergency services or report of an emergency using an emergency communications E911 system. Sixty days after the date of a request for emergency services or a report of an emergency, a transcript of the recording may be made available pursuant to a public records request; however, the name, address, telephone number, or other personal information remains confidential and exempt and must be redacted from the transcript. The person requesting the transcript is responsible for paying the actual cost of transcribing the recording.

The confidential and exempt E911 recording may be disclosed to a public safety agency or by court order upon a showing of good cause. Further, this bill does not provide an express privilege from discovery for E911 recordings or identifying information contained in those recordings and transcripts. As such, recordings and identifying information are available through the discovery process. See DRAFTING ISSUES OR OTHER COMMENTS section for further details.

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It provides a public necessity statement as required by the State Constitution and it provides for retroactive application of the exemption.

The bill requires a two-thirds vote of the members present and voting for passage.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution, sets forth the state's public policy regarding access to government records. The 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, s. 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

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

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

E911 System

Since 1973, Florida's state and local governments have been building and updating technology to support a 911 system that serves its citizens and visitors in emergency situations.³ In May 1997, the system achieved statewide implementation. The system was upgraded to Enhanced 911 (E911)

¹ Article I, s. 24(c) of the State Constitution.

² Section 119.15, F.S.

³ Section 365.171, F.S., also known as the Florida Emergency Communications Number E911 State Plan Act, required the Technology program within the Department of Management Services to develop, maintain, and implement appropriate modifications for a statewide emergency communications E911 system plan.

services, which identifies callers' telephone numbers and addresses to local dispatchers, for wireline and landline calls in September 2005. In March 2008, the system was upgraded to E911 services for wireless calls. E911 service is available currently in all 67 counties.⁴

Florida currently has 235 public safety answering points, also known as call centers, which receive emergency 911 calls. Staff in these call centers include call-takers, dispatchers, and dual call-taker/dispatchers. Call-takers answer calls and record necessary information such as the caller's name and the nature of the emergency, and relay this information to dispatchers who assess the information, determine the type of emergency response needed, and direct appropriate emergency services to respond to the call. In some call centers, call-taking and dispatch functions are performed by the same individual (dual call-taker/dispatcher).⁵

State, county, and local government entities administer Florida's E911 system.

The Department of Management Services coordinates the statewide system but has no authority to monitor emergency services. The department provides technical assistance to counties on technology standards and operational capabilities, helps design and implement new communications and data systems, and assists with staff training. The department also develops and updates a statewide emergency communications E911 system plan, which provides guidance to counties but permits them to design and maintain their own 911 systems and plans.⁶ The department's statewide 911 coordinator reviews county plans and inspects call centers for compliance with the state plan.

E911 Board

The E911 Board was established by the Legislature in 2007 to administer the Emergency Communications Number E911 System Fund (E911 Trust Fund),⁷ which is the main funding source for 911 communications in the state.⁸ The board consists of nine members, including the Department of Management Services' E911 system director, who is designated by the Secretary of the Department of Management Services and serves as chair.⁹ With oversight by the department, the board administers the fund and disburses revenues to the department, wireless providers, and counties for specific authorized expenses.

Boards of County Commissioners

Boards of County Commissioners are the responsible fiscal agent and ultimate authority for 911 services in each county. Each board designates a county 911 coordinator who serves as a point of contact for local call centers, reports on system status, and submits the county 911 plan to the department. These plans describe county 911 system infrastructure and staffing for each call center. Call centers are operated typically by city police departments and county sheriffs' offices. Call centers may establish their own training protocols and quality assurance measures.¹⁰

Public Record Exemption for the E911 System

Current law provides that

⁴ Office of Program Policy Analysis & Government Accountability Report No. 10-12, *911 Call Center Training in Florida Varies; Options Exist for Creating Minimum Standards*, January 2010, at 1 and 2.

⁵ *Id.* at 2.

⁶ Section 365.171(4), F.S.

⁷ Section 365.172(5)(a), F.S.

⁸ The E911 Trust Fund is derived from a monthly fee (not to exceed 50 cents) on each wireless and non-wireless voice communication subscriber with a Florida billing address. The E911 Board makes disbursements from the E911 Trust Fund for wireless service provider E911 deployment and services, county E911 funding for equipment and services, rural county grants, E911 state grants, and E911 Board administration and operations.

⁹ Pursuant to s. 365.172(5)(b), F.S., the Governor appoints the remaining eight members: four county coordinators from a large, medium, and rural county and an at-large representative recommended by the Florida Association of Counties, two local exchange carrier members, and two members from the wireless telecommunications industry.

¹⁰ Office of Program Policy Analysis & Government Accountability Report No. 10-12, *911 Call Center Training in Florida Varies; Options Exist for Creating Minimum Standards*, January 2010, at 2.

[a]ny record, recording, or information, or portions thereof, obtained by a public agency¹¹ or a public safety agency¹² for the purpose of providing services in an emergency and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency communications E911 system is confidential and exempt¹³ from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. . .¹⁴

In short, the name, address, telephone number or personal information about, or information that may identify any person requesting emergency services or reporting an emergency is confidential and exempt from public records requirements. Such information may be released only to a public safety agency.¹⁵

Due to technological advances, more and more E911 recordings are accessible to the public via the Internet, radio, and television. E911 recordings provide the listener with an eyewitness account of the emergency at hand. The emergency often times is a very personal and traumatizing event. As such, states have begun prohibiting the release of E911 recordings.

Protections in Other States

In Maine, the audio recording of a call placed to a 911 system for the purpose of requesting service from a law enforcement, fire, or medical agency is deemed private data on individuals with respect to the individual making the call. However, a written transcript of the audio recording is considered public except for certain circumstances. A transcript is prepared upon request and the person requesting the transcript is required to pay the actual cost of transcribing the call, in addition to any other applicable costs.¹⁶

Mississippi provides that all emergency telephone calls and telephone call transmissions and all recordings of such calls are confidential. The recordings may be used only for the purposes as may be needed for law enforcement, fire, medical rescue, or other emergency services.¹⁷

In Pennsylvania, “[r]ecords or parts of records . . . pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings” are not a public record. However, an agency or a court may release 911 recordings if it determines the public interest in disclosure outweighs the interest in nondisclosure.¹⁸ South Dakota has similar protections and release standards as those in Pennsylvania.¹⁹

Rhode Island provides that all 911 telephone calls and telephone call transmissions and all tapes containing records of 911 telephone calls are confidential.²⁰

¹¹ Section 365.171(3)(c), F.S., defines “public agency” to mean the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services.

¹² Section 365.171(3)(d), F.S., defines “public safety agency” to mean a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

¹³ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹⁴ Section 365.171(12), F.S.

¹⁵ *Id.*

¹⁶ Minn. Stat. s. 13.82.

¹⁷ Miss. Code s. 19-5-319.

¹⁸ 65 P.S. s. 67.708.

¹⁹ S.D. Cod. Laws s. 1-27-1.5.

²⁰ R.I. Gen. Laws s. 39-21.1-17.

Effect of Bill

The bill expands the current public record exemption to include any recording of a request for emergency services or report of an emergency using an emergency communications E911 system. Sixty days after the date of a request for emergency services or a report of an emergency, a transcript of the recording may be made available pursuant to a public records request; however, the name, address, telephone number, or other personal information remains confidential and exempt and must be redacted from the transcript. The person requesting the transcript is responsible for paying the actual cost of transcribing the recording.

The confidential and exempt E911 recording may be disclosed to a public safety agency. In addition, the court may order release of the recording or information upon a showing of good cause.

The bill provides for retroactive application of the public record exemption.²¹ It also provides a public necessity statement as required by the State Constitution.²²

In accordance with the Open Government Sunset Review Act,²³ the exemption will sunset on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1 amends s. 365.171, F.S., to expand the current public record exemption to include the recording of an E911 call.

Section 2 provides a public necessity statement.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector will incur costs associated with this bill if a public records request is made for a transcript of a recording of a request for emergency services or report of an emergency through the

²¹ In 2001, the Supreme Court of Florida ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. See *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

²² Section 24(c), Art. I of the State Constitution.

²³ Section 119.15, F.S.

E911 system. The requestor will be responsible for paying the actual cost of transcribing the recording in addition to any other costs associated with the redaction of confidential and exempt information from the transcript.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Are Exempt Records Discoverable?²⁴

It has been held that an exemption from disclosure under the Public Records Act does not render a record automatically privileged for purposes of discovery under the Florida Rules of Civil Procedure.²⁵ For example, in *B.B. v. Department of Children and Family Services*²⁶ the court ruled that as a party to a dependency proceeding involving her daughters, a mother was entitled to discovery of the criminal investigative records relating to the death of her infant. The court found that the statutory exemption for active criminal investigative information did not "override the discovery authorized by the Rules of Juvenile Procedure."²⁷

²⁴ Exert from the *Government-In-The-Sunshine Manual*, 2009 Edition, Volume 31, at 123.

²⁵ *Department of Professional Regulation v. Spiva*, 478 So. 2d 382 (Fla. 1st DCA 1985). *Cf.*, *State, Department of Highway Safety and Motor Vehicles v. Kropff*, 445 So. 2d 1068, 1069n.1 (Fla. 3d DCA 1984) ("Although the Rules of Civil Procedure and the Public Records Act may overlap in certain areas, they are not coextensive in scope.").

²⁶ 731 So. 2d 30 (Fla. 4th DCA 1999).

²⁷ *Id.* at 34. *And see State, Department of Highway Safety and Motor Vehicles v. Krejci Company Inc.*, 570 So. 2d 1322 (Fla. 2d DCA 1990), *review denied*, 576 So. 2d 286 (Fla. 1991) (records which are exempt from public inspection may be subject to discovery in a civil action upon a showing of exceptional circumstances and if the trial court takes all precautions to ensure the confidentiality of the records). *Compare, Henderson v. Perez*, 835 So. 2d 390, 392 (Fla. 2d DCA 2003) (trial court order compelling sheriff to produce

However, in some cases, legislative confidentiality requirements provide an express privilege from discovery.²⁸ This bill does not provide an express privilege from discovery for E911 recordings or identifying information contained in those recordings and transcripts. As such, recordings and identifying information are available through the discovery process.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

exempt home addresses and photographs of 10 active law enforcement officers in a civil lawsuit filed by Perez predicated on his arrest, quashed because "Perez has not shown that the photographs and home addresses of the law enforcement officers are essential to the prosecution of his suit").

²⁸ See, e.g., *Cruger v. Love*, 599 So. 2d 111 (Fla. 1992) (records of medical review committees are statutorily privileged from discovery). See also, *Department of Health v. Grinberg*, 795 So. 2d 1136 (Fla. 1st DCA 2001).

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BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to a public record exemption for E911
 3 recordings; amending s. 365.171, F.S.; expanding the
 4 public record exemption for certain identification
 5 information of a person reporting or requesting emergency
 6 services to include the recording of such report or
 7 request; authorizing the release of a transcript of such
 8 recording 60 days after the date of a request for
 9 emergency services or a report of an emergency; requiring
 10 the requestor to pay the actual cost of transcribing the
 11 recording; authorizing the release of such recording to a
 12 public safety agency; authorizing release by court order
 13 upon a showing of good cause; providing for retroactive
 14 application of the public record exemption; providing for
 15 future legislative review and repeal of the exemption
 16 under the Open Government Sunset Review Act; providing a
 17 statement of public necessity; providing an effective
 18 date.

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

21
 22 Section 1. Subsection (12) of section 365.171, Florida
 23 Statutes, is amended to read:

24 365.171 Emergency communications number E911 state plan.—

25 (12) CONFIDENTIALITY OF RECORDS.—

26 (a)1. Any recording of a request for emergency services or
 27 report of an emergency using an emergency communications E911
 28 system held by a public agency or a public safety agency is

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

31 2. Upon receipt of a public records request, a transcript
 32 of the confidential and exempt recording may be made available
 33 by a public agency or a public safety agency 60 days after the
 34 date of a request for emergency services or a report of an
 35 emergency using such system; however, ~~Any record, recording, or~~
 36 ~~information, or portions thereof, obtained by a public agency or~~
 37 ~~a public safety agency for the purpose of providing services in~~
 38 ~~an emergency and which reveals the name, address, telephone~~
 39 ~~number, or personal information about, or information which may~~
 40 ~~identify any person requesting emergency service or reporting an~~
 41 ~~emergency by accessing an emergency communications E911 system~~
 42 shall be redacted from the transcript. The person requesting the
 43 transcript shall pay the actual cost of transcribing the
 44 recording, in addition to any other applicable costs provided
 45 under s. 119.07. ~~is confidential and exempt from the provisions~~
 46 ~~of s. 119.07(1) and s. 24(a), Art. I of the State Constitution,~~
 47 ~~except that~~

48 3. Such recording and ~~record or~~ information may be
 49 disclosed:

50 a. To a public safety agency.

51 b. By court order upon a showing of good cause. The
 52 ~~exemption applies only to the name, address, telephone number or~~
 53 ~~personal information about, or information which may identify~~
 54 ~~any person requesting emergency services or reporting an~~
 55 ~~emergency while such information is in the custody of the public~~
 56 ~~agency or public safety agency providing emergency services.~~

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57 | 4. This exemption is remedial in nature and it is the
 58 | intent of the Legislature that the exemption be applied to
 59 | requests for recordings received before, on, or after the
 60 | effective date of this paragraph.

61 | 5. This paragraph is subject to the Open Government Sunset
 62 | Review Act in accordance with s. 119.15 and shall stand repealed
 63 | on October 2, 2015, unless reviewed and saved from repeal
 64 | through reenactment by the Legislature.

65 | (b) A telecommunications company or commercial mobile
 66 | radio service provider shall not be liable for damages to any
 67 | person resulting from or in connection with such telephone
 68 | company's or commercial mobile radio service provider's
 69 | provision of any lawful assistance to any investigative or law
 70 | enforcement officer of the State of Florida or political
 71 | subdivisions thereof, of the United States, or of any other
 72 | state or political subdivision thereof, in connection with any
 73 | lawful investigation or other law enforcement activity by such
 74 | law enforcement officer unless the telecommunications company or
 75 | commercial mobile radio service provider acted in a wanton and
 76 | willful manner.

77 | Section 2. The Legislature finds that it is a public
 78 | necessity that any recording of a request for emergency services
 79 | or report of an emergency using an emergency communications E911
 80 | system held by a public agency or a public safety agency be made
 81 | confidential and exempt from public records requirements. The
 82 | need for emergency services bespeaks a very personal and often
 83 | traumatizing event. To have the recordings made publicly
 84 | available is an invasion of privacy that could result in trauma,

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85 sorrow, humiliation, or emotional injury to the person reporting
 86 the emergency or requiring emergency services, or to the
 87 immediate family of those persons. Additionally, to have such
 88 recordings publicly available could jeopardize the health and
 89 safety of those needing emergency services in that people, other
 90 than emergency service providers, could actually gain access to
 91 the scene of the emergency and thereby impede the effective and
 92 efficient provision of emergency services. Furthermore, there
 93 are those persons, who, for personal, private gain or for
 94 business purposes, would seek to capitalize on individuals in
 95 their time of need. Those reporting or needing emergency
 96 services should not be subjected to this type of possible
 97 harassment. Furthermore, to allow such recording to become
 98 public could chill the reporting of emergency situations to the
 99 detriment of public health and safety. Finally, the public
 100 record exemption still provides for public oversight by
 101 authorizing the release, upon request, of a transcript of such
 102 recordings 60 days after the report while maintaining
 103 protections for the individuals involved in the report or
 104 receipt of emergency services. In addition, a person may
 105 petition the court for an order directing release of the
 106 recording upon a showing of good cause.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-05 OGSR Information Held by Guardians Ad Litem
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: IDEN./SIM. BILLS: SB 888

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Governmental Affairs Policy Committee, Williamson, Williamson. Rows 2-6 are empty.

SUMMARY ANALYSIS

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

The Florida Guardian ad Litem (GAL) Program is a partnership of community advocates and professional staff acting on behalf of Florida's abused and neglected children. As of December 14, 2009, approximately 23,000 children were represented by close to 7,000 volunteers in the GAL program.

Current law provides a public record exemption for any information related to the best interests of a child as determined by a GAL. Such information includes medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records; and any other information maintained by a GAL that is confidential information under chapter 39, F.S.

The bill reenacts the public record exemption, which will repeal on October 2, 2010, if this bill does not become law. The bill amends the exemption to specify the specific information made confidential and exempt from public records requirements. It removes the ability of the GAL to protect any other information if the GAL determines that such protection is in the best interest of the child. The State Constitution provides that only the Legislature can create an exemption from public records or public meetings requirements. Thus, authorizing the GAL to determine whether additional information should be made confidential and exempt violates this directive and appears to be an unlawful delegation of legislative authority.

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

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ 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.

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:

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

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.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

Guardians ad Litem

The Florida Guardian ad Litem (GAL) Program is a partnership of community advocates and professional staff acting on behalf of Florida's abused and neglected children. As of December 14,

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

2009, approximately 23,000 children were represented by close to 7,000 volunteers in the GAL program.⁴

Guardians ad Litem⁵ are responsible for making independent recommendations to the court based on the best interests of a child. In order to accomplish this goal, some of the responsibilities of a GAL include:

- Visiting the child and keeping the child informed about the court proceedings;
- Gathering and assessing independent information on a consistent basis about the child in order to recommend a resolution that is in the child's best interest;
- Reviewing records;
- Interviewing appropriate parties involved in the case, including the child;
- Determining whether a permanent plan, which establishes the placement intended to serve as the child's permanent home, has been created for the child in accordance with federal and state laws and whether appropriate services are being provided to the child and family;
- Submitting a signed written report with recommendations to the court on what placement, visitation plan, services, and permanent plan are in the best interest of the child;
- Attending and participating in court hearings and other related meetings to advocate for a permanent plan that serves the child's best interest; and
- Maintaining complete records about the case, including appointments scheduled, interviews held, and information gathered about the child and the child's life circumstances.⁶

The GAL Program receives information of a sensitive nature from third-party sources, such as medical providers, mental health providers, schools, and law enforcement. These records are maintained by a GAL and relate exclusively to children who allegedly have been abused, neglected, or abandoned and are in the dependency court system through no fault of their own. These records contain information that could harm the child should they be released.⁷

Public Record Exemption under Review

In 2005, the Legislature created a public record exemption for any information related to the best interests of a child as determined by a GAL.⁸ Such confidential and exempt⁹ information includes but is not limited to medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records; and any other information maintained by a GAL that is confidential information under chapter 39, F.S.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2010, unless reenacted by the Legislature.¹⁰

⁴ Bill analysis by the Statewide Guardian ad Litem Office, December 15, 2009, at 1. (on file with the Governmental Affairs Policy Committee).

⁵ Section 39.820(1), F.S., defines "guardian ad litem" to mean: as referred to in any civil or criminal proceeding includes the following: a certified guardian ad litem program, a duly certified volunteer, a staff attorney, contract attorney, or certified pro bono attorney working on behalf of a guardian ad litem or the program; staff members of a program office; a court-appointed attorney; or a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding as provided for by law, including, but not limited to, this chapter, who is a party to any judicial proceeding as a representative of the child, and who serves until discharged by the court.

⁶ Bill analysis by the Statewide Guardian ad Litem Office, December 15, 2009, at 1. (on file with the Governmental Affairs Policy Committee).

⁷ *Id.* at 2.

⁸ Section 2 of chapter 2005-213, L.O.F., codified at s. 39.0132(4)(a)2., F.S.

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 the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹⁰ Section 39.0132(4)(a)2., F.S.

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public record exemption. It amends the exemption to specify the specific information made confidential and exempt from public records requirements. The bill makes it explicit that medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records, in addition to any other information that is confidential under chapter 39, F.S., is confidential and exempt when held by a GAL.

The bill removes the ability of the GAL to protect any other information if the GAL determines that such protection is in the best interest of the child. Article I, s. 24(c) of the State Constitution provides that *only* the Legislature can create an exemption from public records or public meetings requirements. Thus, authorizing the GAL to determine whether additional information should be made confidential and exempt violates this directive and appears to be an unlawful delegation of legislative authority.

Finally, the bill reorganizes the exemption.

B. SECTION DIRECTORY:

Section 1 amends s. 39.0132, F.S., to reenact the public record exemption for certain information regarding a child held by a GAL.

Section 2 provides an effective date of October 1, 2009.

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:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 39.0132, F.S., which
 4 provides an exemption from public records requirements for
 5 certain information regarding a child held by a guardian
 6 ad litem; clarifying the public record exemption;
 7 reorganizing the exemption; removing the scheduled repeal
 8 of the exemption; providing an effective date.

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

11
 12 Section 1. Paragraph (a) of subsection (4) of section
 13 39.0132, Florida Statutes, is amended to read:

14 39.0132 Oaths, records, and confidential information.—

15 (4)(a)1. All information obtained pursuant to this part in
 16 the discharge of official duty by any judge, employee of the
 17 court, authorized agent of the department, correctional
 18 probation officer, or law enforcement agent is confidential and
 19 exempt from s. 119.07(1) and may not be disclosed to anyone
 20 other than the authorized personnel of the court, the department
 21 and its designees, correctional probation officers, law
 22 enforcement agents, guardian ad litem, and others entitled under
 23 this chapter to receive that information, except upon order of
 24 the court.

25 2.a. The following Any information related to the best
 26 interests of a child, as determined by a guardian ad litem,
 27 which is held by a guardian ad litem is confidential and exempt
 28 from s. 119.07(1) and s. 24(a), Art. I of the State

BILL

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29 Constitution; ~~including but not limited to~~

30 I. Medical, mental health, substance abuse, child care,
31 education, law enforcement, court, social services, and
32 financial records; ~~and~~

33 II. Any other information maintained by a guardian ad
34 litem which is identified as confidential information under this
35 chapter; ~~is confidential and exempt from s. 119.07(1) and s.~~
36 ~~24(a), Art. I of the State Constitution.~~

37 b. Such confidential and exempt information may not be
38 disclosed to anyone other than the authorized personnel of the
39 court, the department and its designees, correctional probation
40 officers, law enforcement agents, guardians ad litem, and others
41 entitled under this chapter to receive that information, except
42 upon order of the court. ~~This subparagraph is subject to the~~
43 ~~Open Government Sunset Review Act in accordance with s. 119.15,~~
44 ~~and shall stand repealed on October 2, 2010, unless reviewed and~~
45 ~~saved from repeal through reenactment by the Legislature.~~

46 Section 2. This act shall take effect October 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ 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.

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:

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

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.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

Child Abuse Death Review

Current law establishes the State Child Abuse Death Review Committee and local child abuse death review committees within the Department of Health.⁴ The committees must review the facts and

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Section 383.402, F.S.

circumstances of all deaths of children from birth through age 18 that occurred in Florida as the result of verified child abuse or neglect. The state committee must prepare an annual statistical report on the incidence and causes of death resulting from child abuse in the state. The report must include recommendations for:

- State and local action, including specific policy, procedural, regulatory, or statutory changes; and
- Any other recommended preventive action.⁵

Exemptions under Review

Current law provides a public record and public meeting exemption for the State Child Abuse Death Review Committee and local child abuse death review committees.⁶

Information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by the state or a local committee is confidential and exempt⁷ from public records requirements.⁸ In addition, confidential or exempt information obtained by the state committee or a local committee retains its confidential or exempt status.⁹ The state and local committees may share with each other any relevant confidential or exempt information regarding case reviews.¹⁰

Portions of meetings of the State Child Abuse Death Review Committee or a local committee wherein confidential and exempt information is discussed is exempt from public meetings requirements.¹¹ Current law does not require a recording of the closed portions of meetings. As such, one could argue the public has no assurance that the state or local committees actually discuss confidential or exempt information during those closed sessions.

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.¹²

Effect of Bill

The bill reenacts the public record and public meeting exemptions. In addition, any portion of a closed meeting must be recorded and maintained by the state committee or a local committee. No portion of the closed meeting may be off the record.

The bill creates a public record exemption for the recording of a closed portion of a meeting. As such, the bill extends the repeal date for the exemptions from October 2, 2010, to October 2, 2015. It also provides a public necessity statement as required by the State Constitution.

Finally, for purposes of the exemptions, the bill defines "local committee" to mean a local child abuse death review committee or a panel or committee assembled by the State Child Abuse Death Review Committee or a local child abuse death review committee.

⁵ Section 383.402(3)(c), F.S.

⁶ Section 383.412, F.S.

⁷ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

⁸ Section 383.412(1)(a), F.S.

⁹ Section 383.412(1)(b), F.S.

¹⁰ Section 383.412(3), F.S.

¹¹ Section 383.412(2), F.S.

¹² Section 383.412(5), F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 383.412, F.S., to reenact and expand the public record and public meeting exemptions for the State Child Abuse Death Review Committee and local committees.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 1, 2010.

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 State Child Abuse Death Review Committee and local committees could incur costs associated with recording closed portions of meetings; however, those costs should be minimal.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 383.412, F.S., which
 4 provides an exemption from public records and public
 5 meetings requirements for the State Child Abuse Death
 6 Review Committee and any local committees; providing a
 7 definition for the term "local committee"; requiring a
 8 recording of any portion of a closed meeting; providing a
 9 public record exemption for the recording of the closed
 10 meeting; providing for future legislative review and
 11 repeal of the exemption under the Open Government Sunset
 12 Review Act; reorganizing the section; providing a
 13 statement of public necessity; providing an effective
 14 date.

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

17
 18 Section 1. Section 383.412, Florida Statutes, is amended
 19 to read:

20 383.412 Public records and public meetings exemptions.--

21 (1) For purposes of this section, the term "local
 22 committee" means a local child abuse death review committee or a
 23 panel or committee assembled by the State Child Abuse Death
 24 Review Committee or a local child abuse death review committee
 25 pursuant to s. 383.402.

26 (2)~~(1)~~(a) Any information that reveals the identity of the
 27 surviving siblings, family members, or others living in the home

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ORIGINAL

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28 of a deceased child who is the subject of review by~~7~~ and which
 29 information is held by~~7~~ the State Child Abuse Death Review
 30 Committee ~~or local committee, or a panel or committee assembled~~
 31 ~~by the state committee or a local committee pursuant to s.~~
 32 ~~383.402,~~ is confidential and exempt from s. 119.07(1) and s.
 33 24(a), Art. I of the State Constitution.

34 (b) Information made confidential or exempt from s.
 35 119.07(1) and s. 24(a), Art. I of the State Constitution that is
 36 obtained by the State Child Abuse Death Review Committee or a
 37 local committee, ~~or a panel or committee assembled by the state~~
 38 ~~committee or a local committee pursuant to s. 383.402,~~ shall
 39 retain its confidential or exempt status.

40 (3) (a) (2) Portions of meetings of the State Child Abuse
 41 Death Review Committee ~~or local committee, or a panel or~~
 42 ~~committee assembled by the state committee or a local committee~~
 43 ~~pursuant to s. 383.402,~~ at which information made confidential
 44 and exempt pursuant to subsection (2) (1) is discussed are exempt
 45 from s. 286.011 and s. 24(b), Art. I of the State Constitution.
 46 The closed portion of a meeting must be recorded and no portion
 47 of the closed meeting may be off the record. The recording shall
 48 be maintained by the State Child Abuse Death Review Committee or
 49 a local committee.

50 (b) The recording of a closed portion of a meeting is
 51 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 52 Constitution.

53 (4) (3) The State Child Abuse Death Review Committee and
 54 local committees may share with each other any relevant

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55 information regarding case reviews involving child death, which
 56 information is made confidential and exempt by this section.

57 ~~(5)(4)~~ Any person who knowingly or willfully makes public
 58 or discloses to any unauthorized person any information made
 59 confidential and exempt under this section commits a misdemeanor
 60 of the first degree, punishable as provided in s. 775.082 or s.
 61 775.083.

62 ~~(6)(5)~~ This section is subject to the Open Government
 63 Sunset Review Act in accordance with s. 119.15, and shall stand
 64 repealed on October 2, ~~2015~~ 2010, unless reviewed and saved from
 65 repeal through reenactment by the Legislature.

66 Section 2. The Legislature finds that it is a public
 67 necessity to make confidential and exempt from public records
 68 requirements recordings of any portion of a closed meeting of
 69 the State Child Abuse Death Review Committee or a local
 70 committee. Release of such recordings would compromise those
 71 discussions of the committee members which took place during a
 72 closed meeting and negates the public meeting exemption.

73 Section 3. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-10

OGSR Identification of a Minor

SPONSOR(S): Governmental Affairs Policy Committee

TIED BILLS:

IDEN./SIM. BILLS: SB 1198

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson <i>haw</i>	Williamson <i>Raw</i>
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

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

In 2005, the Legislature enacted the Parental Notice of Abortion Act (Act). The Act requires a treating physician to provide actual notice, in person or by telephone, to a parent or other legal guardian of a minor seeking to have an abortion at least 48 hours before the performance of the abortion on the minor. The Act provides exceptions to the notice requirement. Under the Act, a minor may petition any circuit court in a judicial circuit within the jurisdiction of the District Court of Appeal, in which she resides, for a waiver of the notice requirements under the Act.

In conjunction with the enactment of the Florida Parental Notice of Abortion Act (Act), the Legislature created a public record exemption for judicial records related to parental notification bypass proceedings. Any information in a court record that could be used to identify a minor in a proceeding to bypass parental notification under the Act is confidential and exempt from public records requirements.

The bill reenacts the public record exemption for information in judicial records that would identify a minor participating in a parental notification bypass proceeding. It expands the exemption to also include such information when held by the Office of Criminal Conflict and Civil Regional Counsel or the Justice Administrative Commission. During representation of minors in judicial-waiver cases under the Act, the Office of Criminal Conflict and Civil Regional Counsel may obtain identifying information from the minors. Similarly, the Justice Administrative Commission may receive identifying information of minors that is related to the processing of attorney billing and payment requests for representation in such cases.

The bill extends the repeal date from October 2, 2010, to October 2, 2015. In addition, it provides a public necessity statement.

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

The bill requires a two-thirds vote of the members present and voting for passage.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ 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.

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:

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

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.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

Public Access to Court Records

Although Florida courts have consistently held that the judiciary is not considered an "agency" for purposes of the Public Records Act,^{4,5} the Florida Supreme Court has found that "both civil and criminal

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Chapter 119, F.S., is known as the Public Records Act.

proceedings in Florida are public events” and that it will “adhere to the well established common law right of access to court proceedings and records.”⁶ Furthermore, there is a constitutional guarantee of access to judicial records.⁷ This constitutional provision provides for public access to judicial records, except for those records expressly exempted by the Florida Constitution, Florida law in effect on July 1, 1993, court rules in effect on November 3, 1992, or by future acts of the Legislature in accordance with the Constitution.⁸

Parental Notice of Abortion Act

In 1999, the Legislature enacted a law requiring parents of minors to be notified prior to the minor’s termination of her pregnancy. This law was constitutionally challenged on grounds that the act violated a person’s right to privacy under the Florida Constitution. The Florida Supreme Court concluded that the act violated Florida’s constitutional right to privacy⁹ because the minor was not afforded a mechanism by which to bypass parental notification if certain exigent circumstances existed.¹⁰ In response to the court’s decision, the Legislature proposed a constitutional amendment authorizing the Florida Legislature, notwithstanding a minor’s right to privacy under the Florida Constitution, to require a physician to notify a minor’s parent or guardian prior to termination of the minor’s pregnancy, which was subsequently ratified by Florida voters. The amendment provides:

The Legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor’s right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor’s pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.¹¹

The Legislature responded to this authorization by enacting the Parental Notice of Abortion Act (Act).¹² The Act requires a treating physician to provide actual notice, in person or by telephone, to a parent or other legal guardian of a minor seeking to have an abortion at least 48 hours before the performance of the abortion on the minor.^{13, 14} Notice under the Act is not required if:

- In the physician’s good faith clinical judgment, a medical emergency exists and there is insufficient time for the attending physician to comply with the notification requirements;
- Notice is waived in writing by the person who is entitled to notice;
- Notice is waived by a minor who is or has been married or has had the disability of nonage removed under statute;
- Notice is waived by the patient because the patient has a minor child dependent on her; or
- A court waives the parental notification process via a bypass proceeding.¹⁵

Parental Notification Judicial-Bypass Proceeding

Under the Act, a minor may petition any circuit court in a judicial circuit within the jurisdiction of the District Court of Appeal, in which she resides, for a waiver of the notice requirements under the Act.¹⁶

⁵ *Times Publishing Co. v. Ake*, 660 So. 2d 255 (Fla. 1995) (holding that the judiciary, as a coequal branch of government, is not an “agency” subject to control by another coequal branch of government).

⁶ *Barron v. Florida Freedom Newspapers*, 531 So. 2d 113, 116 (Fla. 1988).

⁷ Section 24(a), Art. I of the State Constitution.

⁸ Section 24, Art. I of the State Constitution.

⁹ Section 23, Art. I of the State Constitution.

¹⁰ *North Florida Women’s Health and Counseling Services v. State*, 866 So. 2d 612 (Fla. 2003).

¹¹ Section 22, Art. X of the State Constitution.

¹² Section 2 of chapter 2005-52, L.O.F.

¹³ Section 390.01114(2)(a) and (3)(a), F.S.

¹⁴ Constructive notice may be provided after a physician has made reasonable efforts to contact the parents. To accomplish legally valid constructive notice, the physician must provide written notice, signed by the physician, and mailed at least 72 hours before the inducement or performance of the termination of pregnancy, to the last known address of the parent or legal guardian of the minor, by certified mail, return receipt requested, and delivery restricted to the parent or legal guardian. After 72 hours, delivery is deemed to have occurred. (Section 390.01114(2)(c), F.S.)

¹⁵ Section 390.01114(3)(b), F.S.

To initiate the proceeding, a minor must file a petition with the court under a pseudonym or through the use of initials.^{17,18} The court must advise the minor that she is entitled to court-appointed counsel upon her request at no charge.¹⁹

After a petition is filed, the court must rule and issue written findings of fact and conclusions of law within 48 hours.²⁰ In order to grant the petition, the court must find:

- By clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy;
- By a preponderance of the evidence, that there is evidence of child abuse or sexual abuse of the minor by one or both of her parents or her guardian; or
- By a preponderance of the evidence that the notification of a parent or guardian is not in the best interest of the minor.²¹

If the court fails to issue a ruling within the 48-hour period and an extension of time has not been requested by the minor, the petition is granted and the notice requirement is waived.²²

Exemption under Review

In conjunction with the enactment of the Florida Parental Notice of Abortion Act (Act), the Legislature created a public record exemption for judicial records related to parental notification bypass proceedings. Any information in a court record that could be used to identify a minor in a proceeding to bypass parental notification under the Act is confidential and exempt²³ from public records requirements.²⁴

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2010, unless reenacted by the Legislature.²⁵

EFFECT OF BILL

The bill reenacts the public record exemption for information in judicial records that would identify a minor participating in a parental notification bypass proceeding. It expands the exemption to also include such information when held by the Office of Criminal Conflict and Civil Regional Counsel or the Justice Administrative Commission. During representation of minors in judicial-waiver cases under the Act, the Office of Criminal Conflict and Civil Regional Counsel may obtain identifying information from the minors. Similarly, the Justice Administrative Commission may receive identifying information of minors that is related to the processing of attorney billing and payment requests for representation in such cases.

¹⁶ Section 390.01114(4)(a), F.S.

¹⁷ *Id.*

¹⁸ No filing fees or court costs are required of any pregnant minor who petitions a court for a waiver of parental notification under the Act. (Section 390.01114(4)(g), F.S.)

¹⁹ Section 390.01114(4)(a), F.S.

²⁰ The 48-hour period may be extended only upon the request of the minor. (Section 390.01114(4)(b), F.S.)

²¹ Section 390.01114(4)(c) and (d), F.S.

²² Section 390.01114(4)(b), F.S.

²³ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

²⁴ Section 390.01116, F.S. This exemption is not the first public-records exemption related to juveniles and domestic cases. All dependency court records, including cases related to the termination of parental rights, are closed to the public except to those demonstrating a proper interest. See ss. 39.0132(3) and 39.814(3), F.S.

²⁵ Section 2 of Chapter 2005-104, L.O.F.

The bill extends the repeal date from October 2, 2010, to October 2, 2015. In addition, it provides a public necessity statement.

B. SECTION DIRECTORY:

Section 1 amends s. 390.01116, F.S., to reenact and expand the public record exemption for information used to identify a minor petitioning a circuit court for a judicial waiver of the notice requirements under the Parental Notice of Abortion Act.

Section 2 provides a public necessity statement.

Section 3 repeals s. 2 of chapter 2005-104, L.O.F., which provides for repeal of the exemption.

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:

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:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 390.01116, F.S., which
 4 provides an exemption from public records requirements for
 5 information that could identify a minor which is contained
 6 in a record relating to a minor's petition to waive notice
 7 requirements when terminating a pregnancy; expanding the
 8 exemption to include such information held by the Office
 9 of Criminal Conflict and Civil Regional Counsel or the
 10 Justice Administrative Commission; making editorial
 11 changes; providing for future legislative review and
 12 repeal of the exemption under the Open Government Sunset
 13 Review Act; providing a statement of public necessity;
 14 repealing s. 2, ch. 2005-104, Laws of Florida, which
 15 provides for repeal of the exemption; providing an
 16 effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Section 390.01116, Florida Statutes, is amended
 21 to read:

22 390.01116 Public record exemptions; minors seeking waiver
 23 of notice requirements ~~petition; confidentiality.~~

24 (1) Any information that can be used to identify ~~When a~~
 25 minor petitioning ~~petitions~~ a circuit court for a judicial
 26 waiver, as provided in s. 390.01114, of the notice requirements
 27 under the Parental Notice of Abortion Act ~~pertaining to a minor~~

BILL

ORIGINAL

YEAR

28 ~~seeking to terminate her pregnancy, any information in a record~~
 29 ~~held by the circuit court or an appellate court which could be~~
 30 ~~used to identify the minor is:~~

31 (a) Confidential and exempt from s. 119.07(1) and s.
 32 24(a), Art. I of the State Constitution if held by a circuit
 33 court or an appellate court.

34 (b) Confidential and exempt from s. 119.07(1) and s.
 35 24(a), Art. I of the State Constitution if held by the Office of
 36 Criminal Conflict and Civil Regional Counsel or the Justice
 37 Administrative Commission.

38 (2) Paragraph (1)(b) is subject to the Open Government
 39 Sunset Review Act in accordance with section 119.15, Florida
 40 Statutes, and shall stand repealed on October 2, 2015, unless
 41 reviewed and saved from repeal through reenactment by the
 42 Legislature.

43 Section 2. The Legislature finds that it is a public
 44 necessity to make confidential and exempt from public records
 45 requirements any information that can be used to identify a
 46 minor petitioning a circuit court for a judicial waiver from the
 47 statutory requirement that a parent or legal guardian be
 48 notified when that minor seeks to terminate her pregnancy when
 49 such information is held by the Office of Criminal Conflict and
 50 Civil Regional Counsel or the Justice Administrative Commission.
 51 The information contained in these records is of a sensitive,
 52 personal nature regarding a minor petitioner, release of which
 53 could harm the reputation of the minor, as well as jeopardize
 54 her safety. Disclosure of this information could jeopardize the

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ORIGINAL

YEAR

55 safety of the minor in instances when child abuse or child
 56 sexual abuse against her is present by exposing her to further
 57 acts of abuse from an abuser who, without the public record
 58 exemption, could learn of the minor's pregnancy, her plans to
 59 terminate the pregnancy, and her petition to the court. The
 60 Legislature further finds that it is a public necessity to keep
 61 this identifying information in records held by the Office of
 62 Criminal Conflict and Civil Regional Counsel or the Justice
 63 Administrative Commission confidential and exempt in order to
 64 protect the privacy of the minor. The State Constitution
 65 contains an express right of privacy in Section 23 of Article I.
 66 Further, the United States Supreme Court has repeatedly required
 67 parental-notification laws to contain judicial-bypass procedures
 68 and to preserve confidentiality at every level of court
 69 proceedings in order to protect the privacy rights of the minor.
 70 Without the public record exemption provided in this act, the
 71 disclosure of personal identifying information would violate the
 72 right of privacy of the minor. Further, without the confidential
 73 and exempt status for this information, the constitutionality of
 74 the state's program providing for notification of a minor's
 75 termination of pregnancy, and the judicial-bypass procedure in
 76 particular, would be in question. Thus, the public record
 77 exemption provided in this act is necessary for the effective
 78 administration of the state's program, which administration
 79 would be impaired without the exemption.

80 Section 3. Section 2 of chapter 2005-104, Laws of Florida,
 81 is repealed.

BILL

ORIGINAL

YEAR

82

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-13 **OGSR Board of Funeral, Cemetery, & Consumer Services**
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1660

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson <i>Raw</i>	Williamson <i>Raw</i>
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

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

Current law creates the Board of Funeral, Cemetery, and Consumer Services (board) within the Department of Financial Services (department). The board consists of 10 members appointed for terms of four years. The board enforces the provisions of chapter 497, F.S., relating to funeral, cemetery, and consumer services.

Current law provides multiple exemptions for the board and the department. Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.

The bill reenacts the public record and public meeting exemptions for the board relating to examination development meetings and probable cause panel meetings. It requires a recording to be made of any closed portion of a meeting, and for the recording to be maintained by the board. The bill expands the current exemptions to protect recordings of closed meetings. As such, the bill extends the repeal date from October 2, 2010, to October 2, 2015. It also provides a public necessity statement.

The bill reenacts the temporary public record exemption for records related to examinations, inspections, and investigations conducted by the department. Finally, it reenacts the public record exemption for trade secrets held by the board or the department.

The bill could create a minimal fiscal impact on the board as it could incur costs associated with recording closed portions of meetings. It does not appear to have a fiscal impact on local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ 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.

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:

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

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.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

Board of Funeral, Cemetery, and Consumer Services

Current law creates the Board of Funeral, Cemetery, and Consumer Services (board) within the Department of Financial Services (department).⁴ The board consists of 10 members appointed for

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Chapter 2004-31, L.O.F., codified at s. 497.101, F.S.

terms of four years.⁵ The Governor may suspend and the Senate may remove any member for malfeasance or misfeasance, neglect of duty, incompetence, substantial inability to perform official duties, commission of a crime, or other substantial cause as determined by the Governor or Senate.⁶ The board enforces the provisions of chapter 497, F.S., relating to funeral, cemetery, and consumer services.

Exemptions under Review

In 2005, the Legislature created multiple exemptions for the board and the department.⁷ Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.⁸

Examination Development Meetings

Background

Current law provides a public meeting exemption for those portions of meetings of the board at which licensure examination questions or answers under chapter 497, F.S., are discussed.⁹ The Public Records Act¹⁰ already provides a public record exemption for examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment.¹¹

Current law does not require a recording of the closed portions of meetings. As such, one could argue the public has no assurance that the board actually discusses licensure examination questions and answers during those closed sessions.

Effect of Bill

The bill reenacts the public meeting exemption. In addition, the closed meeting must be recorded and maintained by the board. No portion of the closed meeting may be off the record.

The bill also creates a public record exemption for those recordings of closed meetings. As such, the bill extends the repeal date for this exemption from October 2, 2010, to October 2, 2015. In addition, it provides a public necessity statement.

Probable Cause Panel Meetings

Background

Current law provides a public meeting exemption for meetings of the probable cause panel of the board.¹² Like examination development meetings, current law does not require a recording of the closed portions of probable cause panel meetings. Current law does provide a temporary public record exemption for records of exempt probable cause panel meetings. Those records are exempt¹³ from public records requirements until 10 days after a determination regarding probable cause is made.¹⁴

⁵ Section 497.101(1) and (3), F.S.

⁶ Section 497.101(4), F.S.

⁷ Chapter 2005-162, L.O.F., codified as s. 497.172, F.S.

⁸ Section 497.172(5), F.S.

⁹ Section 497.172(1), F.S.

¹⁰ Chapter 119, F.S., is referred to as the Public Records Act.

¹¹ Section 119.071(1)(a), F.S.

¹² Section 497.172(2)(a), F.S.

¹³ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹⁴ Section 497.172(2)(b), F.S.

Effect of Bill

The bill reenacts the public meeting exemption. A closed meeting of the probable cause panel of the board must be recorded and no portion of the meeting may be off the record. The recording must be maintained by the board. Because the recording is a record of the closed meeting, it too would be protected from public disclosure until 10 days after a determination regarding probable cause is made.

Examinations, Inspections, and Investigations

Background

Current law provides a public record exemption for information held by the department pursuant to:

- A financial examination under chapter 497, F.S., until the examination is completed or ceases to be active.
- An inspection conducted under chapter 497, F.S., until the inspection is completed or ceases to be active.
- An investigation of a violation of chapter 497, F.S., until the investigation is completed or ceases to be active¹⁵ or until 10 days after a determination regarding probable cause is made.¹⁶

However, such information remains confidential and exempt after the examination, inspection, or investigation is completed or ceases to be active if:

- The department submits the information to any law enforcement agency or other administrative agency for further examination or investigation. The information remains confidential and exempt until that agency's examination or investigation is completed or ceases to be active.
- Disclosure of the information would jeopardize the integrity of another active investigation or examination, reveal the identity of a confidential source, or reveal investigative or examination techniques or procedures.¹⁷

Effect of Bill

The bill reenacts the public record exemptions for the department.

Trade Secrets

Background

Current law provides a public record exemption for trade secrets as defined by the Uniform Trade Secrets Act¹⁸ held by the department or board.

Effect of Bill

The bill reenacts the public record exemption.

B. SECTION DIRECTORY:

Section 1 amends s. 497.172, F.S., to reenact and expand exemptions for the Board of Funeral, Cemetery, and Consumer Services and the Department of Financial Services.

Section 2 provides a public necessity statement.

¹⁵ For purposes of the exemption, an examination, inspection, or investigation is considered active so long as it is proceeding with reasonable dispatch and the department has a reasonable good faith belief that the examination, inspection, or investigation may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of an application for license or other approval required under chapter 497, F.S. (s. 497.172(3)(f), F.S.)

¹⁶ Section 497.172(3)(a), (b), and (c), F.S.

¹⁷ Section 497.172(3)(e), F.S.

¹⁸ Section 688.002(4), F.S., defines "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services could incur costs associated with recording closed portions of meetings; however, those costs should be minimal.

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:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 497.172, F.S., which
 4 provides exemptions from public meetings and public
 5 records requirements for the Board of Funeral, Cemetery,
 6 and Consumer Services within the Department of Financial
 7 Services and for the Department of Financial Services;
 8 requiring a recording of closed meetings wherein licensure
 9 examination questions or answers are discussed; creating a
 10 public record exemption for recordings of the closed
 11 meetings; providing for future legislative review and
 12 repeal of the exemption; requiring a recording of closed
 13 meetings of a probable cause panel of the board; removing
 14 the scheduled repeal of the exemptions; providing a
 15 statement of public necessity; providing an effective
 16 date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Section 497.172, Florida Statutes, is amended
 21 to read:

22 497.172 Public records exemptions; public meetings
 23 exemptions.—

24 (1) EXAMINATION DEVELOPMENT MEETINGS.—

25 (a) Those portions of meetings of the board at which
 26 licensure examination questions or answers under this chapter
 27 are discussed are exempt from s. 286.011 and s. 24(b), Art. I of
 28 the State Constitution. The closed meeting must be recorded and

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29 | no portion of the closed meeting may be off the record. The
 30 | recording shall be maintained by the board.

31 | (b) The recording of a closed portion of a meeting is
 32 | exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 33 | Constitution.

34 | (c) This subsection is subject to the Open Government
 35 | Sunset Review Act in accordance with s. 119.15, and shall stand
 36 | repealed on October 2, 2015, unless reviewed and saved from
 37 | repeal through reenactment by the Legislature.

38 | (2) PROBABLE CAUSE PANEL.—

39 | (a) Meetings of the probable cause panel of the board,
 40 | pursuant to s. 497.153, are exempt from s. 286.011 and s. 24(b),
 41 | Art. I of the State Constitution. The entire closed meeting must
 42 | be recorded and no portion of the closed meeting may be off the
 43 | record. The recording shall be maintained by the board.

44 | (b) Records of exempt meetings of the probable cause panel
 45 | of the board are exempt from s. 119.07(1) and s. 24(a), Art. I
 46 | of the State Constitution, until 10 days after a determination
 47 | regarding probable cause is made pursuant to s. 497.153.

48 | (3) EXAMINATIONS, INSPECTIONS, AND INVESTIGATIONS.—

49 | (a) Except as otherwise provided in this subsection,
 50 | information held by the department pursuant to a financial
 51 | examination conducted under this chapter is confidential and
 52 | exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 53 | Constitution, until the examination is completed or ceases to be
 54 | active.

55 | (b) Except as otherwise provided in this subsection,
 56 | information held by the department pursuant to an inspection

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57 | conducted under this chapter is confidential and exempt from s.
 58 | 119.07(1) and s. 24(a), Art. I of the State Constitution, until
 59 | the inspection is completed or ceases to be active.

60 | (c) Except as otherwise provided in this subsection,
 61 | information held by the department pursuant to an investigation
 62 | of a violation of this chapter is confidential and exempt from
 63 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 64 | until the investigation is completed or ceases to be active or
 65 | until 10 days after a determination regarding probable cause is
 66 | made pursuant to s. 497.153.

67 | (d) Information made confidential and exempt pursuant to
 68 | this subsection may be disclosed by the department as follows:

69 | 1. To the probable cause panel of the board, for the
 70 | purpose of probable cause proceedings pursuant to s. 497.153.

71 | 2. To any law enforcement agency or other government
 72 | agency in the performance of its official duties and
 73 | responsibilities.

74 | 3. If the department uncovers information of immediate and
 75 | serious concern to the public health, safety, or welfare, it may
 76 | disseminate such information as it deems necessary for the
 77 | public health, safety, or welfare.

78 | (e) Information made confidential and exempt pursuant to
 79 | this subsection shall remain confidential and exempt from s.
 80 | 119.07(1) and s. 24(a), Art. I of the State Constitution after
 81 | the examination, inspection, or investigation is completed or
 82 | ceases to be active if:

83 | 1. The department submits the information to any law
 84 | enforcement agency or other administrative agency for further

BILL

ORIGINAL

YEAR

85 examination or investigation. The information shall remain
 86 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 87 of the State Constitution until that agency's examination or
 88 investigation is completed or ceases to be active.

89 2. Disclosure of the information would:

90 a. Jeopardize the integrity of another active
 91 investigation or examination;

92 b. Reveal the identity of a confidential source; or

93 c. Reveal investigative or examination techniques or
 94 procedures.

95 (f) For purposes of this subsection, an examination,
 96 inspection, or investigation shall be considered active so long
 97 as the examination, inspection, or investigation is proceeding
 98 with reasonable dispatch and the department has a reasonable
 99 good faith belief that the examination, inspection, or
 100 investigation may lead to the filing of an administrative,
 101 civil, or criminal proceeding or to the denial or conditional
 102 grant of an application for license or other approval required
 103 under this chapter.

104 (4) TRADE SECRETS.—Trade secrets, as defined in s.
 105 688.002, held by the department or board, are confidential and
 106 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 107 Constitution.

108 ~~(5) REVIEW AND REPEAL.—This section is subject to the Open~~
 109 ~~Government Sunset Review Act in accordance with s. 119.15, and~~
 110 ~~shall stand repealed on October 2, 2010, unless reviewed and~~
 111 ~~saved from repeal through reenactment by the Legislature.~~

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112 Section 2. The Legislature finds that it is a public
 113 necessity to make exempt from public records requirements the
 114 recording generated during those portions of meetings of the
 115 Funeral, Cemetery, and Consumer Services Board at which
 116 licensure examination questions or answers are discussed.
 117 Release of such recordings would compromise those discussions of
 118 the Board, which took place during a closed meeting, and negates
 119 the public meeting exemption. Further, current law already
 120 provides a public record exemption for licensure examination
 121 questions and answers. As such, release of the recording
 122 generated during those closed portions of meetings compromises
 123 the current protections already afforded such questions and
 124 answers. Thus, the effective and efficient administration of the
 125 licensure exam process would be compromised without this
 126 exemption.

127 Section 3. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-14

OGSR Florida Commission on Hurricane Loss Projection

Methodology

SPONSOR(S): Governmental Affairs Policy Committee

TIED BILLS:

IDEN./SIM. BILLS: SB 1664

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson <i>RAW</i>	Williamson <i>RAW</i>
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

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

In 1995, the Legislature created the Florida Commission on Hurricane Loss Projection Methodology (commission) to serve as an independent body within the State Board of Administration. The commission's role is to adopt findings relating to the accuracy or reliability of the methods, standards, principles, models, and other means used to project hurricane losses. The commission must consider any actuarial methods, principles, standards, models, or output ranges that have the potential for improving the accuracy of or reliability of the hurricane loss projections used in residential property insurance rate filings.

Current law provides a public record exemption for a trade secret used in designing and constructing a hurricane loss model that is provided by a private company to the commission, Office of Insurance Regulation, or an appointed consumer advocate. In addition, current law provides a public meeting exemption for that portion of a meeting of the commission or a rate proceeding on an insurer's rate filing at which confidential and exempt trade secrets are discussed.

The bill reenacts the public record and public meeting exemptions for the commission. It requires a recording to be made of any closed portion of a meeting. The bill expands the current exemptions to protect recordings of closed meetings. As such, the bill extends the repeal date from October 2, 2010, to October 2, 2015. It also provides a public necessity statement as required by the State Constitution.

The bill could create a minimal fiscal impact on the commission as it could incur costs associated with recording closed portions of meetings. It does not appear to have a fiscal impact on local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ 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.

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:

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

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.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

Florida Commission on Hurricane Loss Projection Methodology

In 1995, the Legislature created the Florida Commission on Hurricane Loss Projection Methodology (commission) to serve as an independent body within the State Board of Administration.⁴ The commission's role is to adopt findings relating to the accuracy or reliability of the methods, standards, principles, models, and other means used to project hurricane losses. The commission must consider any actuarial methods, principles, standards, models, or output ranges that have the potential for improving the accuracy of or reliability of the hurricane loss projections used in residential property insurance rate filings.⁵

A number of vendors produce highly complex computer models that purport to reflect an average annual expected loss from hurricanes and other perils. Models of this nature are driven by an array of internal assumptions, within a variety of scientific disciplines.⁶ Although some basic assumptions may be common to more than one model, many of the detailed internal assumptions have been developed only after considerable research by each vendor. Such information is closely guarded and treated as a trade secret. If all internal information of a model were published, that model could be replicated, and the vendor producing the model would lose the entirety of its value.

Exemptions under Review

Initially, s. 627.0628, F.S., did not contain an exemption from public records or public meetings requirements. Accordingly, the commission undertook a process to evaluate the participating computer models that contained proprietary information without the ability to exempt either records or meetings from full public disclosure. The commission first established detailed standards that a model was required to meet in order to obtain approval. For the portion of the model that was nonproprietary, the commission members questioned the vendor in open meetings; for the portion that was proprietary, the commission hired a "professional team" of experts who went on-site to determine whether the model met the applicable standards, and reported its findings to the commission in an open hearing.⁷

At the time, a number of officials voiced concern that a portion of the computer model's internal programming was not subject to the direct scrutiny of the members of the commission, and the process was criticized by some as being a "black box" that the public was unable to view.⁸

In 2005, the Legislature created a public record exemption for a trade secret used in designing and constructing a hurricane loss model that is provided by a private company to the commission, Office of Insurance Regulation, or appointed consumer advocate.⁹ The exemption applied to a trade secret as defined in chapter 812, F.S., which relates to theft, robbery, and related crimes.¹⁰ Typically public record exemptions reference the definition of trade secret provided in the Uniform Trade Secrets Act.¹¹

⁴ Section 627.0628(2), F.S.

⁵ Section 627.0628(3)(a), F.S.

⁶ Examples of scientific disciplines used include meteorology, structural engineering, actuarial science, statistics, computer science.

⁷ Senate Bill Analysis and Fiscal Impact Statement for SPB 7042 by the Committee on Banking and Insurance, January 26, 2010, at 4.

⁸ *Id.*

⁹ Section 3 of chapter 2005-264, L.O.F., codified at s. 627.0628(3)(f)1., F.S.

¹⁰ Section 812.081(1)(c), F.S., defines "trade secret" to mean the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

¹¹ Section 688.002(4), F.S., defines "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that:

In 2005, the Legislature also created a public meeting exemption for that portion of a meeting of the commission or of a rate proceeding on an insurer's rate filing, at which a confidential and exempt¹² trade secret is discussed.¹³ Current law does not require a recording of the closed portions of meetings. As such, one could argue the public has no assurance that the commission actually discusses trade secrets during those closed sessions.

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.¹⁴

Effect of Bill

The bill reenacts the public record and public meeting exemptions for the Florida Commission on Hurricane Loss Projection Methodology.

The bill provides that the public record exemption applies to a "trade secret" as defined in the Uniform Trade Secrets Act. This makes the public record exemption for trade secrets consistent with other similar exemptions.

Further, the bill requires that any portion of a closed meeting be recorded. No portion of the closed meeting may be off the record. The bill also creates a public record exemption for those recordings of closed meetings. As such, the bill extends the repeal date from October 2, 2010, to October 2, 2015. In addition, it provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 627.0628, F.S., to reenact and expand the exemptions for the Florida Commission on Hurricane Loss Projection Methodology.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Florida Commission on Hurricane Loss Projection Methodology could incur costs associated with recording closed portions of meetings; however, those costs should be minimal.

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

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

¹³ Section 3 of chapter 2005-264, L.O.F., codified at s. 627.0628(3)(f)2., F.S.

¹⁴ Section 627.0628(3)(f)3., F.S.

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:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 627.0628, F.S., which
 4 provides a public record exemption for trade secrets and a
 5 public meeting exemption for those portions of meetings or
 6 rate proceedings wherein confidential and exempt trade
 7 secrets are discussed; providing that the public record
 8 exemption applies to trade secrets as defined in the
 9 Uniform Trade Secrets Act; requiring a recording of closed
 10 meetings wherein trade secrets are discussed; creating a
 11 public record exemption for recordings of the closed
 12 meetings; providing for future legislative review and
 13 repeal of 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 (f) of subsection (3) of section
 19 627.0628, Florida Statutes, is amended to read:

20 627.0628 Florida Commission on Hurricane Loss Projection
 21 Methodology; public records exemption; public meetings
 22 exemption.—

23 (3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

24 (f)1. A trade secret, as defined in s. 688.002 ~~812.081~~,
 25 that is used in designing and constructing a hurricane loss
 26 model and that is provided pursuant to this section, by a
 27 private company, to the commission, office, or consumer advocate
 28 appointed pursuant to s. 627.0613, is confidential and exempt

BILL

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YEAR

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

31 | 2.a. That portion of a meeting of the commission or of a
 32 | rate proceeding on an insurer's rate filing at which a trade
 33 | secret made confidential and exempt by this paragraph is
 34 | discussed is exempt from s. 286.011 and s. 24(b), Art. I of the
 35 | State Constitution. The closed meeting must be recorded and no
 36 | portion of the closed meeting may be off the record.

37 | b. The recording of a closed portion of a meeting is
 38 | exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 39 | Constitution.

40 | c. 3. This subparagraph ~~paragraph~~ is subject to the Open
 41 | Government Sunset Review Act in accordance with s. 119.15, and
 42 | shall stand repealed on October 2, 2015 ~~2010~~, unless reviewed
 43 | and saved from repeal through reenactment by the Legislature.

44 | Section 2. The Legislature finds that it is a public
 45 | necessity to make exempt from public records requirements the
 46 | recording generated during those portions of meetings of the
 47 | Florida Commission on Hurricane Loss projection Methodology or
 48 | of a rate proceeding on an insurer's rate filing at which
 49 | confidential and exempt trade secrets are discussed. Release of
 50 | such recordings would compromise those discussions which took
 51 | place during a closed meeting, and negates the public meeting
 52 | exemption. Further, current law already provides a public record
 53 | exemption for trade secrets. As such, release of the recording
 54 | generated during those closed portions of meetings compromises
 55 | the current protections already afforded trade secrets.

56 | Section 3. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-15 OGSR Hurricane Loss and Exposure Data
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1664

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson <i>haw</i>	Williamson <i>haw</i>
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

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

Current law provides a public record exemption for reports of hurricane loss data and associated exposure data that are specific to a particular insurance company, as reported by an insurer or a licensed rating organization to the Office of Insurance Regulation or a center at a state university (currently Florida International University). Hurricane loss data and associated exposure data means the type, age, wind mitigation features, and location of each property insured; the amount and type of coverage written on each of those properties; the amount, date, and type of damage paid for by the insurer on each property; and the amount of any reserves held by an insurer for future payments or expenses on damages associated with the date or dates of occurrence of hurricanes.

The bill removes the repeal date, thereby reenacting the public record exemption. Beginning October 1, 2011, and each subsequent October 1, the bill requires the Florida International University center that develops, maintains, and updates the public model for hurricane loss projections to publish a report summarizing loss data and associated exposure data. The report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives. It will serve as a tool for the public and policymakers in understanding the types of structures, mitigation features, insurance coverage, and hurricane-related damages in each of Florida's 67 counties.

Florida International University could incur costs associated with the annual reporting requirements; however, those costs should be minimal.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ 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.

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:

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

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.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

Florida Public Hurricane Loss Projection Model

The Florida Legislature authorized and funded the development of the public hurricane loss projection model pursuant to the 2000 General Appropriations Act.⁴ The model was required to be designed in

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Section 6 (2226) of chapter 2000-166, L.O.F.

accordance with the standards set by the Florida Commission on Hurricane Loss Projection Methodology (commission).⁵ The Department of Insurance⁶ initially was appropriated \$2.5 million to contract with the State University System. International Hurricane Research Center at Florida International University (FIU) entered into the contract.⁷ Subsequent appropriations of approximately \$600,000 per year have been made to further the development of the public model at a total cost of \$7.5 million over the nine year period. The public model was certified by the commission as acceptable in 2007 and has been certified each year thereafter.⁸

The primary purposes in developing the public model were to assess hurricane risks, to project annual expected insured losses for personal residential properties, and to allow the Office of Insurance Regulation (OIR) to use it as a baseline for comparison to the private hurricane loss projection models utilized by insurers when the OIR reviews insurer rate filings.⁹ The public model can provide a check on the assumptions, analyses, and results generated by the private models. The public model, as opposed to private models, is transparent in that its assumptions, methodologies, designs, and theories are open to the public. It must be updated periodically as new meteorological and insurance claims data become available and as new scientific methodologies are available, otherwise the model will become obsolete.

In general, all hurricane loss projection models consist of a very complex set of computer programs that estimate loss costs and probable maximum loss levels from hurricane events for residential properties. These programs simulate and predict how, where, and when hurricanes form; the wind speeds, intensities, and sizes; how the hurricanes are affected by the terrain; how much structural damage can result; how much it will cost to rebuild such structures; and how much of the loss will be paid by insurers. Such models can then generate, for a given policy or portfolio of residential policies, the annual average losses and the probable maximum losses.

Exemption under Review

In 2005, the Legislature required insurance companies to provide reports of "hurricane loss data and associated exposure data" to OIR or to a center at a state university (FIU) for developing, maintaining, and updating the public model for hurricane loss projections.¹⁰ Such data is critical for the development, accuracy, and validation of the model.

That same year, the Legislature created a public record exemption for reports of hurricane loss data and associated exposure data¹¹ that are specific to a particular insurance company, as reported by an insurer or a licensed rating organization to OIR or a center at a state university (FIU). Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2010, unless reenacted by the Legislature.¹²

⁵ Section 627.0628, F.S.

⁶ Now referred to as the Office of Insurance Regulation.

⁷ FIU has utilized experts in various fields from other universities and multiple organizations in the research and development of the public model.

⁸ The commission found the public hurricane loss model in compliance with its standards on August 17, 2007.

⁹ Insurers are required to use a model (for the purposes of a rate filing) found to be accurate or reliable by the commission. Property insurers may use the public model for the purpose of calculating rate indications in a rate filing and for analytical purposes, but must pay for the use of such model. Citizens Property Insurance Corporation must use the public model which serves as a minimum benchmark for determining the windstorm portion of its rates.

¹⁰ Chapter 2005-111, L.O.F., codified at s. 627.06281, F.S.

¹¹ Section 627.06292(2), F.S., defines "loss data and associated exposure data" to mean the type, age, wind mitigation features, and location of each property insured; the amount and type of coverage written on each of those properties; the amount, date, and type of damage paid for by the insurer on each property; and the amount of any reserves held by an insurer for future payments or expenses on damages associated with the date or dates of occurrence of hurricanes.

¹² Section 627.06292(3), F.S.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemption. Beginning October 1, 2011, and each subsequent October 1, the bill requires the FIU center that develops, maintains, and updates the public model for hurricane loss projections to publish a report summarizing loss data and associated exposure data. The report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives. It will serve as a tool for the public and policymakers in understanding the types of structures, mitigation features, insurance coverage, and hurricane-related damages in each of Florida's 67 counties.

The report must include a summary of the data supplied by residential property insurers and licensed rating and advisory organizations, including:

- The total amount of insurance written by county.
- The number of property insurance policies by county.
- The number of property insurance policies by county and by construction type.
- The number of property insurance policies by county and by decade of construction.
- The number of property insurance policies by county and by deductible amount.
- The number of property insurance policies by county and by wind mitigation features when the information is supplied by the residential property insurer or licensed rating and advisory organization.
- The total amount of hurricane losses by county and by decade of construction.
- The total amount of hurricane losses by county and by deductible amount.
- The total amount of hurricane losses by county and by wind mitigation features when the information is supplied by the residential property insurer or licensed rating and advisory organization.

The report cannot contain any information that identifies a specific insurer or policyholder.

B. SECTION DIRECTORY:

Section 1 amends s. 627.06292, F.S., to reenact the public record exemption for reports of hurricane loss data and associated exposure data.

Section 2 provides an effective date of October 1, 2010.

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:

FIU could incur costs associated with the annual reporting requirements; however, those costs should be minimal.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 627.06292, F.S., relating
 4 to an exemption from public records requirements for
 5 reports of hurricane loss data and associated exposure
 6 data that are specific to a particular insurance company;
 7 requiring the Florida International University center to
 8 annually publish a report summarizing loss data and
 9 associated exposure data collected from residential
 10 property insurers and licensed rating and advisory
 11 organizations; requiring the center to file the report
 12 with the Governor and Legislature; saving the exemption
 13 from repeal under the Open Government Sunset Review Act;
 14 deleting provisions that provide for the repeal of the
 15 exemption; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 627.06292, Florida Statutes, is amended
 20 to read:

21 627.06292 Reports of hurricane loss data and associated
 22 exposure data; public records exemption.—

23 (1) Reports of hurricane loss data and associated exposure
 24 data that are specific to a particular insurance company, as
 25 reported by an insurer or a licensed rating organization to the
 26 office or to a center at a state university pursuant to s.
 27 627.06281, are exempt from s. 119.07(1) and s. 24(a), Art. I of
 28 the State Constitution.

BILL

ORIGINAL

YEAR

29 (2) For the purposes of this section, "loss data and
 30 associated exposure data" means the type, age, wind mitigation
 31 features, and location of each property insured; the amount and
 32 type of coverage written on each of those properties; the
 33 amount, date, and type of damage paid for by the insurer on each
 34 property; and the amount of any reserves held by an insurer for
 35 future payments or expenses on damages associated with the date
 36 or dates of occurrence of hurricanes.

37 (3) On October 1, 2011, and each subsequent October 1, the
 38 Florida International University center that develops,
 39 maintains, and updates the public model for hurricane loss
 40 projections shall publish a report summarizing loss data and
 41 associated exposure data collected from residential property
 42 insurers and licensed rating and advisory organizations. The
 43 Florida International University center shall annually submit
 44 the report on or before October 1 to the Governor, the President
 45 of the Senate, and the Speaker of the House of Representatives.

46 (a) Such report must include a summary of the data supplied
 47 by residential property insurers and licensed rating and
 48 advisory organizations from September 1 of the prior year to
 49 August 31 of the current year, including:

- 50 1. The total amount of insurance written by county.
- 51 2. The number of property insurance policies by county.
- 52 3. The number of property insurance policies by county and
 53 by construction type.
- 54 4. The number of property insurance policies by county and
 55 by decade of construction.
- 56 5. The number of property insurance policies by county and

BILL

ORIGINAL

YEAR

57 | by deductible amount.

58 | 6. The number of property insurance policies by county and
 59 | by wind mitigation features when the information is supplied by
 60 | the residential property insurer or licensed rating and advisory
 61 | organization.

62 | 7. The total amount of hurricane losses by county and by
 63 | decade of construction.

64 | 8. The total amount of hurricane losses by county and by
 65 | deductible amount.

66 | 9. The total amount of hurricane losses by county and by
 67 | wind mitigation features when the information is supplied by the
 68 | residential property insurer or licensed rating and advisory
 69 | organization.

70 | (b) Separate compilations shall be presented of the data
 71 | obtained in order to use the public model for calculating rate
 72 | indications and to update, validate, or calibrate the public
 73 | model. Additional detail and a description of the operation and
 74 | maintenance of the public model may be included in the report.

75 | (c) The report may not contain any information that
 76 | identifies a specific insurer or policyholder.

77 | ~~(3) This section is subject to the Open Government Sunset~~
 78 | ~~Review Act in accordance with s. 119.15, and shall stand~~
 79 | ~~repealed on October 2, 2010, unless reviewed and saved from~~
 80 | ~~repeal through reenactment by the Legislature.~~

81 | Section 2. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-17
Domestic Violence

OGSR Address Confidentiality Program for Victims of

SPONSOR(S): Governmental Affairs Policy Committee

TIED BILLS:

IDEN./SIM. BILLS: SB 882

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamsor <i>Law</i>	Williamsor <i>Law</i>
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

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

The Address Confidentiality Program for Victims of Domestic Violence (ACP or program) was established in 1998 and is administered by the Office of the Attorney General. Any victim of domestic violence who relocates to an address unknown to her abuser is eligible to participate in the program. Current law provides a public record exemption for the addresses, telephone numbers, and social security numbers of ACP participants held by the Office of the Attorney General, the supervisor of elections, or the Department of State.

The bill reenacts the public record exemptions, which will repeal on October 2, 2010, if this bill does not become law.

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

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ 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.

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:

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

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.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

Address Confidentiality Program for Victims of Domestic Violence

The Address Confidentiality Program for Victims of Domestic Violence (ACP or program) was established in 1998 and is administered by the Office of the Attorney General.⁴ The purpose of the program is to:

- Enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence;
- Encourage interagency cooperation with the Attorney General in providing address confidentiality for victims of domestic violence; and
- Allow state and local agencies to accept a program participant's use of an address designated by the Attorney General as a substitute mailing address.⁵

Any victim of domestic violence who relocates to an address unknown to his or her abuser is eligible to participate in the program. Each participant is assigned a substitute address that includes a street address, an ACP identification code, a post office box number, a Florida city, and a zip code. The address has no relation to the participant's actual location. The Division of Victim Services and Criminal Justice Programs serves as legal agent for receipt of mail and service of process, and forwards first-class mail to the participant's actual location.

Current law provides provisions for ACP participants who desire to vote. The law allows a program participant to vote by absentee ballot, but only after providing his or her physical address. The physical address of the participant is necessary in order to determine the specific ballot to be mailed to the participant. The law further prohibits the supervisor of elections from disclosing the participant's name, address, or telephone number in any list of registered voters available to the public.⁶ Thus, the participant can vote in the elections for which she is otherwise qualified, while information that might be used to locate him or her remains protected.

Public Record Exemptions under Review

When the program was created in 1998, the Legislature also enacted a public record exemption for the addresses, telephone numbers, and social security numbers of ACP participants.⁷ The Legislature authorized the release of the information under the following circumstances:

- To a law enforcement agency, for purposes of executing an arrest warrant;
- Pursuant to court order; or
- Upon cancellation of a participant's certification in the program.

In 2003, the public record exemption for the program was reviewed, pursuant to the Open Government Sunset Review Act, and the public record exemption for the addresses, telephone numbers, and social security numbers of ACP participants was reenacted with modification.⁸ Because the bill properly created the exemption for such information held by the supervisor of elections, the exemption was again made subject to the Open Government Sunset Review Act and was scheduled to repeal on October 2, 2008, unless reviewed and reenacted by the Legislature.⁹

In July 2003, the Florida Attorney General issued an opinion in response to the following question:
Is a witness's name and address on the back of an absentee ballot confidential and exempt from disclosure when the voter is a participant in the [ACP]?¹⁰

⁴ Chapter 98-404, L.O.F., codified as ss. 741.401 – 741.409, F.S.

⁵ Section 741.401, F.S.

⁶ Section 741.406, F.S.

⁷ Chapter 98-405, L.O.F., codified as s. 741.465, F.S.

⁸ The separate statutory provision prohibiting the Office of the Attorney General from disclosing such information was repealed and replaced with the specification that the reenacted public record exemption applied to the information held by the Office of the Attorney General. The separate statutory provision prohibiting the supervisor of elections from disclosing the information also was repealed and replaced with a new subsection that explicitly provided that the information was exempt if contained in voter registration records held by the supervisor of elections. (Chapter 2003-185, L.O.F.)

⁹ Section 4 of chapter 2003-185, L.O.F.

¹⁰ Florida Attorney General Advisory Legal Opinion, Number AGO 2003-35, July 31, 2003.

The Attorney General noted that, pursuant to s. 741.465(2), F.S., the names, addresses, and telephone numbers of ACP participants contained in voter registration records and held by the supervisor of elections are exempt from public disclosure. The Attorney General refused, however, to infer that the exemption extended to the signatures and addresses of witnesses on an absentee ballot. The Attorney General acknowledged the possibility that the release of a witness's name or address could lead to the location of a program participant, but insisted that the issue was one for legislative determination.¹¹

In 2005 the Legislature amended the exemptions currently under review, to clarify that the names, addresses, and telephone numbers of ACP participants contained not only in voter registration records, but in *all* voting records, held by either the supervisor of elections or by the Department of State, are exempt¹² from public records requirements.¹³ The legislation provided that the public record exemption, as amended, would be subject to review under the Open Government Sunset Review Act and would stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemptions for the Address Confidentiality Program for Victims of Domestic Violence.

B. SECTION DIRECTORY:

Section 1 repeals s. 3 of chapter 2005-279, L.O.F., to reenact the public record exemptions for the Address Confidentiality Program for Victims of Domestic Violence.

Section 2 provides an effective date of October 1, 2010.

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.

¹¹ *Id.*

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

¹³ Chapter 2005-279, L.O.F.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; repealing s. 3, ch. 2005-279, Laws of
4 Florida, relating to an exemption from public records
5 requirements for information in the Address
6 Confidentiality Program for Victims of Domestic Violence
7 under s. 741.465, F.S.; saving the exemption from repeal
8 under the Open Government Sunset Review Act; providing an
9 effective date.

10

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

12

13 Section 1. Section 3 of chapter 2005-279, Laws of Florida,
14 is repealed.

15 Section 2. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-23 Voter Interface Device Requirements
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Governmental Affairs Policy Committee, McDonald, Williamson. Rows 2-5 are empty.

SUMMARY ANALYSIS

Current Florida law allows persons with disabilities to vote on a voter interface device that meets the voting system accessibility requirements for individuals with disabilities under section 301 of the federal Help America Vote Act (HAVA) of 2002 and that meets the standards for accessible voting contained in s. 101.56062, F.S. The law also requires that, in 2012, persons with disabilities vote on a voter interface device that not only meets these requirements but also uses a paper ballot. At this time there is only one optical scan (paper) system certified in the state as meeting the requirement for the 2012 deadline.

Sixty-three counties use touch screens, the majority of which are with audio ballots, to comply with HAVA requirements. Only four counties, Duval, Hillsborough, Pinellas, and Sarasota, have a system for disabled voters that meets the 2012 requirements.

The bill extends the 2012 paper ballot requirement for the voter interface device to 2016.

The bill takes effect upon becoming a law.

According to the Florida State Association of Supervisors of Elections, the cost of replacing touch screens in order to implement the change for the 2012 election is more than \$45 million that will have to borne by the counties.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Help America Vote Act of 2002 requires that a state's voting system be accessible for individuals with disabilities, including accessibility for the blind and visually impaired, in a way that provides the same opportunity for access and participation as is provided for other voters. In order to accomplish this, each polling place must be equipped with at least one direct recording electronic voting system (DRE) or other system equipped for individuals with disabilities.¹

In 2007, the Florida Legislature changed the voting systems requirements for all voters, except disabled voters, to cast a marksense ballot on an optical scan system. Each county was still required to have one voter interface device in each polling place that met the accessibility requirement for individuals with disabilities, which could be a DRE. By 2012, however, the changes in the law required that disabled voters be provided a means to cast an independent, marksense ballot; i.e., a paper-based ballot system.²

Sixty-three counties meet the HAVA requirements for disabled voters through the use of touch screens with audio ballots. Only four counties, Duval, Hillsborough, Pinellas, and Sarasota, meet the 2012 requirement through their purchase of AutoMark which, at this time, is the only state certified optical scan (paper) system that meets the requirements of the law for 2012.³

Effect of Proposed Changes

The bill extends the 2012 paper ballot requirement for disabled voters to 2016.

B. SECTION DIRECTORY:

Section 1. Amends s. 101.56075, F.S., to delay from 2012 to 2016 the implementation of the requirement that persons with disabilities must vote on a voter interface device that uses a paper ballot.

¹ Sec. 301 of P.L. 107-252.

² Ch. 2007-30, L.O.F., required many changes to the elections laws, including these. Section 101.56075, F.S., was created in section 6 of the chapter law.

³ Information provided by the Florida State Association of Supervisors of Elections in the "2010 FSASE Voting Equipment Survey Cost of Replacing Touch Screens" and other documentation presented to the Governmental Affairs Policy Committee at its February 17, 2010 meeting.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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:

According to a survey of all Supervisors of Elections by the Florida State Association of Supervisors of Elections on February 11, 2010, the approximate current fiscal impact is estimated to be \$45,014,556 for counties to purchase the equipment needed to be compliant with the 2012 statutory requirement. The per county cost estimates range from a low of \$50,000 to almost \$7 million.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill is exempt from the mandate requirements because it is amending the elections laws.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In information provided to the Governmental Affairs Policy Committee at its meeting on February 17, 2010, was a list of boards of county commissioners that have voted in support of delaying the implementation date to 2016. Sixty-five of the 67 boards of county commissioners voted in support of the delay in implementation. This number includes Pinellas and Sarasota Counties which are currently in compliance with the 2012 requirement.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled
2 An act relating to voter interface device requirements;
3 amending s. 101.56075, F.S.; extending the timeframe
4 requiring that persons with disabilities vote on voter
5 interface devices meeting specified requirements;
6 providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Subsection (3) of section 101.56075, Florida
11 Statutes, is amended to read:

12 101.56075 Voting methods.—

13 (3) By 2016 ~~2012~~, persons with disabilities shall vote on
14 a voter interface device that meets the voter accessibility
15 requirements for individuals with disabilities under s. 301 of
16 the federal Help America Vote Act of 2002 and s. 101.56062 which
17 are consistent with subsection (1) of this section.

18 Section 2. This act shall take effect July 1, 2010.



Governmental Affairs Policy Committee

**Wednesday, March 10, 2010
8:00 AM – 10:30 AM
306 HOB**

Addendum A

**Larry Cretul
Speaker**

**Robert C. "Rob" Schenck
Chair**

Amendment No.

COUNCIL/COMMITTEE 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 Council/Committee hearing PCB: Governmental Affairs Policy
2 Committee

3 Representative(s) Braynon offered the following:
4

5 **Amendment (with title amendment)**

6 Remove line 51 and insert:

7 b. To a person requesting emergency services or reporting
8 an emergency with respect to the specific emergency involving
9 such person.

10 c. By court order upon a showing of good cause. The
11

12
13 -----
14 **T I T L E A M E N D M E N T**

15 Remove line 12 and insert:

16 public safety agency; authorizing release to a person who is the
17 subject of such recording; authorizing release by court order

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 551 (2010)

Amendment No.

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Governmental Affairs Policy
2 Committee

3 Representative Eisnaugle offered the following:

4

5 **Amendment (with title amendment)**

6 Remove line 24 and insert:

7 municipality defined in s. 165.031, or by any county or
8 municipality that has

9 Remove line 31 and insert:

10 Commission on Ethics and Public Trust, or a county or
11 municipality that has

12 Remove line 40 and insert:

13 Trust, or a county or municipality that has established such
14 local investigatory

15 Remove line 55 and insert:

16 of a county or municipality that has established a local
17 investigatory process

18 Remove line 69 and insert:

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 551 (2010)

Amendment No.

19 secure environment in which a county or municipality may conduct

20 its

21

22

23

24

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

25

Remove line 6 and insert:

26

proceedings conducted by a county or municipality that has

27

established a

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1307 (2010)

Amendment No. 1

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Governmental Affairs Policy
2 Committee

3 Representative(s) Schenck offered the following:

4
5 **Amendment**

6 Remove lines 294-302 and insert:

7 including establishing the roles ~~role~~ and responsibilities of
8 affected state, local government, and education-related
9 employers, the state board, the department, and third-party
10 contractors ~~in administering the Public Employee optional~~
11 ~~retirement program~~. The department shall adopt rules necessary
12 to administer ~~implement~~ the optional program in coordination
13 with the defined benefit ~~retirement~~ program and the disability
14 benefits available under the optional program.

15 (g) The state board shall receive

Amendment No. 2

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Governmental Affairs Policy
2 Committee

3 Representative(s) Schenck offered the following:

4
5 **Amendment (with title amendment)**

6 Remove lines 618-634 and insert:

7 Section 9. Paragraphs (b) and (c) of subsection (1),
8 paragraph (a) of subsection (2), and subsection (5) of section
9 215.47, Florida Statutes, are amended, and paragraph (o) is
10 added to subsection (1) of that section, to read:

11 215.47 Investments; authorized securities; loan of
12 securities.--Subject to the limitations and conditions of the
13 State Constitution or of the trust agreement relating to a trust
14 fund, moneys available for investments under ss. 215.44-215.53
15 may be invested as follows:

16 (1) Without limitation in:

17 (b) State Bonds, notes, or obligations of any state,
18 organized territory of the United States, or the District of
19 Columbia which pledge ~~pledging~~ the full faith and credit of the

Amendment No. 2

20 state, territory, or district; and revenue bonds, notes, or
21 obligations of any state, organized territory of the United
22 States, or the District of Columbia additionally secured by the
23 full faith and credit of the state, territory, or district.

24 (c) Bonds, notes, or obligations of the several counties
25 or districts in any the state, organized territory of the United
26 States, or the District of Columbia containing a pledge of the
27 full faith and credit of the county or district involved.

28 (o) Bonds, notes, or obligations described in 26 U.S.C. s.
29 149(g)(3)(B), if investment in such bonds, notes, or obligations
30 is necessary in order to comply with covenants in documents or
31 proceedings relating to bonds issued pursuant to s. 215.555(6).
32 Investments made pursuant to this paragraph may be purchased
33 only from the proceeds of bonds issued pursuant to s. 215.555(6)
34 and must be authorized under documents or proceedings relating
35 to such bonds.

36 (2) With no more than 25 percent of any fund in:

37 (a) Bonds, notes, or obligations of any state or organized
38 territory of the United States or the District of Columbia; of
39 any municipality or political subdivision, or any agency,
40 district, or authority thereof; or of any agency or authority of
41 this state, if the obligations are rated investment grade by at
42 least one nationally recognized statistical rating organization.

43
44
45
46
47

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

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1307 (2010)

Amendment No. 2

48 Remove line 35 and insert:
49 alternative minimum tax; expanding the types of investments that
50 the state board is authorized to make; increasing the fund
51 amount that

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1307 (2010)

Amendment No. 3

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Governmental Affairs Policy
2 Committee
3 Representative(s) Schenck offered the following:

4
5 **Amendment**

6 Remove lines 647-652 and insert:
7 necessary to carry out the provisions of ss. 215.44-215.53. The
8 rules shall provide for full transparency and accountability in
9 fulfillment of its fiduciary duties in the areas of

