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# **Governmental Affairs Policy Committee**

**Thursday, March 25, 2010  
9:00 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:** Thursday, March 25, 2010 09:00 am  
**End Date and Time:** Thursday, March 25, 2010 10:30 am  
**Location:** 306 HOB  
**Duration:** 1.50 hrs

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

PCS for HB 219 -- Immigration

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

HB 65 Firefighter Death Benefits by Soto  
HB 405 Public Meetings by Kiar  
HB 417 Collective Bargaining by Hays  
HB 523 Florida Civil Rights Hall of Fame by Williams, A.  
HB 625 Voter Information Cards by Gibson  
HB 869 Political Advertisements by Eisnaugle, Rouson  
HB 1075 Recertification of Minority Business Enterprises by Braynon  
HB 1179 Electronic Documents Recorded in the Official Records by Grimsley  
HB 1193 Retirement by Plakon  
HB 1401 Export of Goods, Commodities, & Things of Value to Foreign Countries by Rivera  
HB 1433 Pub. Rec./Petitions to Determine Incapacity by Schwartz  
HB 1435 Pub. Rec./Reports of Examining Committee Members by Schwartz  
HB 1511 Effective Public Notices by Governmental Entities by Workman  
HB 1565 Rulemaking by Dorworth  
HB 1603 Florida State Employees' Charitable Campaign by Cruz

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

PCB GAP 10-19 -- OGSR Voluntary Prekindergarten  
PCB GAP 10-20 -- OGSR H. Lee Moffitt Cancer Center and Research Institute  
PCB GAP 10-29 -- Professional Sports Franchises

**NOTICE FINALIZED on 03/23/2010 16:23 by Ellinor.Martha**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 65 Firefighter Death Benefits

SPONSOR(S): Soto and others

TIED BILLS: IDEN./SIM. BILLS: SB 202

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

SUMMARY ANALYSIS

This bill revises firefighter death benefits and expands the activities that qualify firefighters to receive death benefits to include training sessions. An additional death benefit is authorized when a firefighter is injured in the performance of his or her duties and dies as the result of such injury. Both benefit payments are adjusted to the Consumer Price Index.

The fiscal impact to local governments is not known due to the infrequency of deaths associated with training activities.

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:

##### **Current Situation**

Current law provides for a \$50,000 death benefit payment when a firefighter is accidentally killed in the line of duty, or when the firefighter receives an accidental injury in the line of duty and the injury results in the death of the firefighter.<sup>1</sup> The benefit is adjusted each year to the Consumer Price Index for all urban consumers published by the U.S. Department of Labor. The adjustment is made by the Division of State Fire Marshal. By July 1 of each year, it must adjust the benefit using the most recent month for which data are available at the time of the adjustment. The current benefit amount is \$59,879.<sup>2</sup>

In addition to the accidental death benefit payment current law provides for an additional \$50,000 payment if a firefighter is accidentally killed in the line of duty while responding to an emergency involving the protection of life and property.<sup>3</sup> This benefit is adjusted for inflation. The current adjusted amount is \$59,879.<sup>4</sup>

If a firefighter is unlawfully and intentionally killed, or dies as a result of a fire caused by an act of arson, an additional benefit of \$150,000, adjusted for inflation, must be paid. The current adjusted benefit is \$166,779.<sup>5</sup>

Any political subdivision of the state that employs a full-time firefighter must pay the entire health insurance premium for the firefighter's surviving spouse until the spouse remarries.<sup>6</sup> The same requirement applies to each dependent child until the child reaches the age of majority or, until the end of the calendar year in which the child reaches the age of 25 if the child continues to be dependent for support or if the child is a full-time or part-time student and is dependent for support. The health insurance premiums must be paid when:

- The firefighter is killed in the line of duty;
- The firefighter's death is due to an act of violence inflicted by another person while the firefighter is in the performance of his or her duty;

<sup>1</sup> Section 112.191(2)(a), F.S.

<sup>2</sup> [http://dms.myflorida.com/business\\_operations/state\\_purchasing/vendor\\_information/state\\_contracts\\_agreements\\_and\\_price\\_lists/insurance\\_coverage\\_program/accidental\\_death\\_and\\_dismemberment](http://dms.myflorida.com/business_operations/state_purchasing/vendor_information/state_contracts_agreements_and_price_lists/insurance_coverage_program/accidental_death_and_dismemberment).

<sup>3</sup> Section 112.191(2)(b), F.S.

<sup>4</sup> [http://dms.myflorida.com/business\\_operations/state\\_purchasing/vendor\\_information/state\\_contracts\\_agreements\\_and\\_price\\_lists/insurance\\_coverage\\_program/accidental\\_death\\_and\\_dismemberment](http://dms.myflorida.com/business_operations/state_purchasing/vendor_information/state_contracts_agreements_and_price_lists/insurance_coverage_program/accidental_death_and_dismemberment).

<sup>5</sup> *Id.*

<sup>6</sup> Section 112.191(2)(f), F.S.

- The firefighter's death is a result of a fire caused by an act of arson; or
- The firefighter's death is a result of an assault against the firefighter in riot conditions.

**Effect of Proposed Changes**

The bill expands the purposes for which an accidental death benefit of \$50,000, adjusted for inflation, is payable by providing for payment of the benefit when a firefighter's death occurs due to participation in a training exercise. The bill further expands the purposes for which an additional death benefit of \$150,000, adjusted for inflation, is payable by providing that the benefit is payable when a firefighter is injured in the line of duty, and dies as a result of such injuries.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 112.191, F.S., to revise firefighter death benefits.

**Section 2:** 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:

The Division of State Group Insurance at the Department of Management Services makes Accidental Death and Dismemberment Coverage available to covered personnel including all state law enforcement officers and firefighters. The division reported in an analysis to a bill with similar provisions last year<sup>7</sup> that the bill should have no impact on the contract to provide coverage for state employees.<sup>8</sup>

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

1. Revenues:

None.

2. Expenditures:

The fiscal impact to local governments is not known at this time due to the infrequency of deaths associated with training activities.<sup>9</sup>

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

Additional death benefits are payable to the beneficiaries of firefighters who are killed in the line of duty. These benefits include accidental death and dismemberment payments as well as the payment of specified health insurance premiums.

**D. FISCAL COMMENTS:**

None.

<sup>7</sup> HB 259 (2009)

<sup>8</sup> Email from staff of the Department of Management Services to staff of the Senate Committee on Community Affairs (Mar. 5, 2009) (on file with the Governmental Affairs Policy Committee).

<sup>9</sup> Department of Financial Services HB 259 (2009) Substantive Bill Analysis (Mar. 12, 2009) at 1 (on file with the Governmental Affairs Policy Committee).

### 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:

None.

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

##### Drafting Issues

The term "training exercise" on line 20 of the bill is not defined. To provide clarity to the scope of training the term "firefighter training programs" as defined in s. 633.35, F.S., should be considered.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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1                   A bill to be entitled  
 2           An act relating to firefighter death benefits; amending s.  
 3           112.191, F.S.; revising provisions providing death  
 4           benefits for firefighters; expanding activities entitling  
 5           firefighters to death benefits to include participation in  
 6           training exercises; providing an effective date.

7  
 8   Be It Enacted by the Legislature of the State of Florida:

9  
 10           Section 1. Paragraphs (b) and (c) of subsection (2) of  
 11           section 112.191, Florida Statutes, are amended to read:

12           112.191 Firefighters; death benefits.--

13           (2)

14           (b) The sum of \$50,000, as adjusted pursuant to paragraph  
 15           (i), shall be paid as provided in this section if a firefighter  
 16           is accidentally killed as specified in paragraph (a) and the  
 17           accidental death occurs as a result of the firefighter's  
 18           response to what is reasonably believed to be an emergency  
 19           involving the protection of life or property or the  
 20           firefighter's participation in a training exercise. This sum  
 21           shall be in addition to any sum provided for in paragraph (a).  
 22           Notwithstanding any other provision of law, in no case shall the  
 23           amount payable under this subsection be less than the actual  
 24           amount stated therein.

25           (c) If a firefighter, while engaged in the performance of  
 26           his or her firefighter duties, is unlawfully and intentionally  
 27           killed, is injured and dies as a result of such injury, dies as  
 28           a result of a fire which has been determined to have been caused



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29 | by an act of arson, or subsequently dies as a result of injuries  
30 | sustained therefrom, the sum of \$150,000, as adjusted pursuant  
31 | to paragraph (i), shall be paid as provided in this section.

32 | Notwithstanding any other provision of law, in no case shall the  
33 | amount payable under this subsection be less than the actual  
34 | amount stated therein.

35 |       Section 2. This act shall take effect July 1, 2010.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 65 (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	_____	

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1 Council/Committee hearing bill: Governmental Affairs Policy  
2 Committee

3 Representative(s) Soto offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove line 27 and insert:

7 killed, is injured by an unlawful and intentional act of another  
8 person and dies as a result of such injury, dies as

9  
10  
11 -----  
12 **T I T L E A M E N D M E N T**

13 Remove line 6 and insert:

14 training exercises and injury by an unlawful and intentional act  
15 which results in death; providing an effective date.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 65 (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	_____	

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1 Council/Committee hearing bill: Governmental Affairs Policy  
2 Committee  
3 Representative(s) Soto offered the following:  
4

5 **Amendment (with title amendment)**

6 Remove line 35 and insert:

7 Section 2. This shall take effect upon becoming a law, and  
8 applies to firefighter deaths occurring on or after November 1,  
9 2007.

10  
11 -----  
12 **T I T L E A M E N D M E N T**

13 Remove line 6 and insert:

14 training exercises; providing for application; providing an  
15 effective date.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 417 Collective Bargaining

SPONSOR(S): Hays and others

TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Governmental Affairs Policy Committee, Haug, Williamson.

SUMMARY ANALYSIS

Employees have the right to collectively bargain under Article I, section 6 of the Florida Constitution. Statewide regulations for collective bargaining amongst public employees are addressed in the Florida Statutes.

Collective bargaining consists of a series of negotiations between a public employer's chief executive officer and the selected bargaining agent for an employee organization regarding the terms and conditions of employment.

Current law provides a definition for "legislative body" that contains two different classes: specifically named entities, and unnamed entities.

This bill amends the definition of "legislative body" to specify that the following constitutional officers are deemed a "legislative body" for purposes of collective bargaining:

- The sheriff;
The tax collector;
The property appraiser;
The supervisor of elections; and
The clerk of the circuit court.

The bill allows the constitutional officer to provide the final resolution on collective bargaining impasse amongst his or her respective employees instead of the county commission.

Because this bill allows certain constitutional officers to resolve collective bargaining impasses amongst their employees instead of the county commission, such officer, who does not appropriate funds, could commit a county to the expenditure of funds for issues such officer has resolved as part of a collective bargaining impasse.

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**

##### Collective Bargaining

Employees have the right to collectively bargain under Article I, section 6 of the Florida Constitution.<sup>1</sup> Statewide regulations for collective bargaining amongst public employees are addressed in part II of chapter 447, F.S.<sup>2</sup> Section 447.309, F.S., requires any matter addressing a public employee's "wages, hours, and terms and conditions of employment" to be collectively bargained in good faith by the chief executive officer and the bargaining agent.

Collective bargaining pursuant to chapter 447, F.S., consists of a series of negotiations between a public employer's chief executive officer<sup>3</sup> and the selected bargaining agent<sup>4</sup> for an employee organization regarding the terms and conditions of employment.<sup>5</sup> The purpose of collective bargaining is to encourage "cooperative relationships between the government and its employees," and provide public employees with a means to participate in the establishment of their employment conditions.<sup>6</sup>

Any collective bargaining agreement that is reached must be placed in writing and signed by both the chief executive officer and the bargaining agent. The agreement is effective for a period of not more than three years, at which point the contract must be renegotiated.<sup>7</sup>

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<sup>1</sup> FLA. CONST. art. I, § 6 (1968) (amendment to the "Right to Work" section: "[t]he right of employees, by and through a labor organization, to bargain collectively [which] shall not be denied or abridged").

<sup>2</sup> See s. 447.201, F.S., The Public Employees Relations Act provided statutory implementation of the 1968 amendment to s. 6, Art. I of the State Constitution.

<sup>3</sup> Section 447.203(9), F.S., defines "chief executive officer" as the Governor for the state and for all other public employees, the person selected or appointed that is "responsible to the legislative body of the public employer for the administration of the governmental affairs of the public employer".

<sup>4</sup> The term "bargaining agent" is defined in s. 447.203(12), F.S., as the employee organization certified by the Public Employees Relations Commission (PERC) to represent the employees in the bargaining unit, as provided in s. 447.307, F.S, or its representative. Section 447.203(8) F.S., defines "bargaining unit" as a unit determined by either the Public Employer Relations Commission, through local regulations promulgated pursuant to s. 447.603, F.S., or by the public employer and the public employee organization; that is approved by the commission to be appropriate for the purposes of collective bargaining.

<sup>5</sup> Section 447.203(14), F.S.

<sup>6</sup> Section 447.201, F.S., See also, Public Employees Relations Commission, *A Practical Handbook on Florida's Public Employment Collective Bargaining Law*, at 6 (2d ed. 2004).

<sup>7</sup> Section 447.309(5), F.S. ("Any collective bargaining agreement shall not provide for a term of existence of more than 3 years ...").

If the parties cannot reach a collective bargaining agreement after a reasonable period of negotiation, either party can declare a written impasse to The Public Employees Relations Commission (Commission).<sup>8</sup>

#### Impasse Resolution Process

The procedural guidelines to resolve a collective bargaining impasse between the parties are outlined in s. 447.403, F.S. Once an impasse has been declared, the parties may appoint a mediator to resolve the dispute. If mediation does not resolve the impasse or if the parties choose not to appoint a mediator, the Commission will appoint and submit the unresolved disputes to a Special Magistrate selected by both parties, or by the Commission if the parties cannot agree.<sup>9</sup>

The appointed Special Magistrate conducts a series of hearings and renders a recommended decision within 15 days after the final hearing.<sup>10</sup> Upon receiving the special magistrate's recommended decision, the parties have 20 days to accept or reject each recommended item or it is considered to be approved by both parties. If either party rejects all or part of the recommendations, the employer's chief executive officer is required to direct the dispute to the appropriate "legislative body" for a final disposition.<sup>11</sup>

The "legislative body" holds a public hearing where each party is given an opportunity to present their argument before the legislative body issues a final resolution pursuant to "the public interest [and] the interest of the public employees involved."<sup>12</sup>

#### Legislative Body

Section 447.203(10), F.S., defines "legislative body" as:

... the State Legislature, the board of county commissioners, the district school board, the governing body of a municipality, or the governing body of an instrumentality or unit of government having authority to appropriate funds and establish policy governing the terms and conditions of employment and, which as the case may be, is the appropriate legislative body for the bargaining unit. For purposes of s. 447.403, the Board of Governors of the State University System, or the board's designee, shall be deemed to be the legislative body with respect to all employees of each constituent state university. For purposes of s. 447.403 the board of trustees of a community college shall be deemed to be the legislative body with respect to all employees of a community college.<sup>13</sup>

This statutory definition contains two different classes: specifically named entities, and unnamed entities. For an unnamed entity to be classified as a "legislative body," it must meet all three of the following elements outlined in s. 447.203(10), F.S.:

- It must have authority to appropriate funds;
- It must have authority to establish policy governing the entity's terms and conditions of employment; and
- It must be the appropriate legislative body for the bargaining unit.<sup>14</sup>

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<sup>8</sup> The Public Employees Relations Commission (PERC) is an independent agency that was created pursuant to s. 447.205, F.S., to assist in resolving disputes between public employers and their employees.

<sup>9</sup> This section does not apply if the public employer is the Governor; in that case, the parties may proceed directly to the Legislature for resolution. See s. 447.403(2)(b), F.S.

<sup>10</sup> Under s. 447.403(2)(a), F.S., both parties can waive the appointment of a special magistrate and proceed directly to the legislative body upon written agreement between the parties.

<sup>11</sup> See s. 447.403(3) and (4), F.S. (If a party rejects the recommendation, then the party must file a written notice of rejection with the Commission and to the other party that includes a statement of the cause for each rejection.)

<sup>12</sup> Section 447.403(4)(c)-(e), F.S.

<sup>13</sup> Section 447.203(10), F.S.

<sup>14</sup> *Fla. State Lodge, Fraternal Order of Police, Inc. (FOP) v. Sheriff of Pasco County*, Case No. CA-2008-026 at \*3-4 (Fla. PERC May 22, 2009) (The Commission determined that the statutory use of the word "and" in s. 447.203, F.S., denotes a three prong conjunctive assessment. Prior to this decision, the Commission only considered the first and second prong).

Of these three elements, courts have considered the power to appropriate funds to be an essential requirement for “legislative body” status.<sup>15</sup> The Commission has determined that an entity’s ability to *disperse or transfer* funds already appropriated by the county or municipality does not suffice as having actual appropriation authority.<sup>16</sup>

### Constitutional Officers

Constitutional officers are elected governmental officials whose duties and responsibilities are established by the State Constitution rather than the Legislature.<sup>17</sup> With the exception of certain charter counties,<sup>18</sup> article VII, section 1 of the Florida Constitution directs each county to elect the following constitutional officers: a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court.<sup>19</sup>

Constitutional officers were given the right to collectively bargain with their employees in 2003.<sup>20</sup> Under current law, the “legislative body” responsible for resolving impasses between a constitutional officer and their employees is generally the county commission or municipality - not the constitutional officer.<sup>21</sup>

### **Effect of Proposed Change**

This bill amends the definition of “legislative body” under s. 447.203(10), F.S., to specify that the following constitutional officers are deemed a “legislative body” for purposes of collective bargaining:

- The sheriff;
- The tax collector;
- The property appraiser;
- The supervisor of elections; and
- The clerk of the circuit court.

The bill allows the constitutional officer to provide the final resolution on collective bargaining impasse amongst his or her respective employees instead of the county commission. In essence, it allows the constitutional officer to rule on his or her own impasse for which he or she was a party. If the constitutional officer agrees to impasse resolutions relating to monetary issues then such officer could bind the county to the expenditure of funds for those issues without knowing whether funds are available.

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<sup>15</sup> *Fla. Sch. for the Deaf and the Blind, v. Teachers United, FTP-NEA*, 483 So.2d 58, 60 (Fla. 1st DCA 1986) (citing *United Faculty of Fla., FEA/United, AFT, AFL-CIO v. Bd. of Regents*, 365 So.2d 1073, 1075 (Fla. 1st DCA 1979)).

<sup>16</sup> *Id.* (The Board’s ability to transfer monies between categories of appropriations does not constitute appropriation authority.) See also *Florida State Lodge, Fraternal Order of Police, Inc (FOP)*, Case No. CA-2008-026 at \*4 (Sheriff of Pasco County did not have actual appropriations authority since he only had the power to disperse funds that were already appropriated by the Pasco County Commission).

<sup>17</sup> BLACK’S LAW DICTIONARY 312 (6th ed. 1990).

<sup>18</sup> *Demings v. Orange County Citizens Review Bd.*, 15 So.3d 604,606 (Fla. 5th DCA 2009) (“In charter counties, the electorate has an option of either maintaining these independent constitutional offices or abolishing them [all together] and transferring their responsibilities to the board of the charter county or to local offices created by the charter.”).

<sup>19</sup> FLA. CONST. art. III, § 1(g).

<sup>20</sup> *Coastal Fla. Police Benevolent Assoc., Inc v. Williams*, 838 So.2d 543 (Fla. 2003) (overturning long term precedent that constitutional officers were excluded from collective bargaining rights on the premises that their employees were not considered “public employees” under ch. 447, F.S.). See *Murphy v. Mack*, 358 So.2d 882 (Fla.1978) (deputy sheriffs are not public employees). See also *Fla. Public Employees Council 79, AFSCME v. Martin County Prop. Appraiser*, 521 So.2d 243 (Fla. 1st DCA 1988) (individuals employed by property appraisers are not public employees). See also *Fed’n of Pub. Employees, Dist. No 1, Pacific Coast Dist., M.E.B.A., AFL-CIO v. Pub. Employees Relations Comm’n* (Fla. 4th DCA 1985) (deputy clerks of circuit court are not public employees).

<sup>21</sup> See *Florida State Lodge, Fraternal Order of Police, Inc (FOP)*, No. CA-2008-026 at \*2 (The Commission (PERC) determined that the Pasco County Commission was the appropriate “legislative body” to resolving an impasse between the Sheriff and the FOP because the Sheriff did not satisfy the definition of a “legislative body” under s. 447.203(10), F.S.).



**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 447.203(10), F.S., specifying that for resolution of a collective bargaining impasse specified constitutional officers are deemed the "legislative body" with respect to their employees.

**Section 2:** 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.

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

1. Revenues:

None.

2. Expenditures:

This bill allows certain constitutional officers to resolve collective bargaining impasses amongst their employees instead of the county commission. As such, the constitutional officer, who does not appropriate funds, could commit a county to expend funds for issues such officer has resolved as part of a collective bargaining impasse.

**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:**

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 collective bargaining; amending s.  
 3           447.203, F.S.; specifying that for resolution of a  
 4           collective bargaining impasse certain constitutional  
 5           officers are each deemed the "legislative body" with  
 6           respect to their employees; providing an effective date.

7  
 8   Be It Enacted by the Legislature of the State of Florida:

9  
 10           Section 1. Subsection (10) of section 447.203, Florida  
 11           Statutes, is amended to read:

12           447.203 Definitions.—As used in this part:

13           (10) "Legislative body" means the State Legislature, the  
 14           board of county commissioners, the district school board, the  
 15           governing body of a municipality, or the governing body of an  
 16           instrumentality or unit of government having authority to  
 17           appropriate funds and establish policy governing the terms and  
 18           conditions of employment and which, as the case may be, is the  
 19           appropriate legislative body for the bargaining unit. For  
 20           purposes of s. 447.403, the Board of Governors of the State  
 21           University System, or the board's designee, shall be deemed to  
 22           be the legislative body with respect to all employees of each  
 23           constituent state university. For purposes of s. 447.403, the  
 24           board of trustees of a community college shall be deemed to be  
 25           the legislative body with respect to all employees of the  
 26           community college. For purposes of s. 447.403, the sheriff, tax  
 27           collector, property appraiser, supervisor of elections, and

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28 | clerk of the circuit court shall each be deemed to be the  
29 | legislative body for their respective employees.

30 |       Section 2. This act shall take effect July 1, 2010.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 417 (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(s) Hays offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (10) of section 447.203, Florida  
8 Statutes, is amended to read:

9 447.203 Definitions.—As used in this part:

10 (10) "Legislative body" means the State Legislature, the  
11 board of county commissioners, the district school board, the  
12 governing body of a municipality, or the governing body of an  
13 instrumentality or unit of government having authority to  
14 appropriate funds and establish policy governing the terms and  
15 conditions of employment and which, as the case may be, is the  
16 appropriate legislative body for the bargaining unit.

17 (a) For purposes of s. 447.403, the Board of Governors of  
18 the State University System, or the board's designee, is ~~shall~~

Amendment No.

19 be deemed to be the legislative body with respect to all  
20 employees of each constituent state university.

21 (b) For purposes of s. 447.403 the board of trustees of a  
22 community college is shall be deemed to be the legislative body  
23 with respect to all employees of the community college.

24 (c) For purposes of s. 447.403, and as sovereign  
25 constitutional officers under s. 1(d), Art. VIII of the State  
26 Constitution, the sheriff, tax collector, property appraiser,  
27 supervisor of elections, and clerk of the circuit court are each  
28 deemed to be the legislative body for their respective  
29 employees. However, if provided by a county charter that was  
30 approved by a vote of the electors of the county and that  
31 expressly abolished the office of the sheriff, tax collector,  
32 property appraiser, supervisor of elections, or clerk of the  
33 court and expressly transferred all duties prescribed by general  
34 law to an elected or appointed charter officer, that officer is  
35 subject to such charter if the charter is not inconsistent with  
36 general law or with a special law approved by a vote of the  
37 electors under s. 1(g), Art. VIII of the State Constitution.

38 (d) Notwithstanding paragraph (c), if the sheriff has  
39 contracted with another governmental body to function as the  
40 employer for firefighters as defined in s. 633.30, emergency  
41 medical technicians as defined in s. 401.23, or paramedics as  
42 defined in s. 401.23, the contracting governmental body is the  
43 legislative body for those employees.

44 Section 2. This act shall take effect July 1, 2010.  
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Amendment No.

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**T I T L E   A M E N D M E N T**

Remove the entire title and insert:

An act relating to collective bargaining for certain public employees; amending s. 447.203, F.S.; specifying that for purposes of resolving an impasse the sheriff, the tax collector, the property appraiser, the supervisor of elections, and the clerk of the circuit court are each deemed the "legislative body" for their respective employees; providing that in a county that has expressly abolished the office of any constitutional officer, such duties are transferred to the officer as provided for under the county charter if the charter is not inconsistent with general law or a special law approved by a vote of the electors; providing that another governmental body contracting specified functions to a sheriff is the legislative body; providing an effective date.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 523 Florida Civil Rights Hall of Fame  
**SPONSOR(S):** A. Williams and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1354

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

**SUMMARY ANALYSIS**

The Legislature has established Halls of Fame in Florida. Some examples of Halls of Fame previously created include the Florida Women’s Hall of Fame, Florida Artists Hall of Fame, Florida Educator Hall of Fame, and Florida Sports Hall of Fame.

The bill creates the Florida Civil Rights Hall of Fame. The Florida Civil Rights Hall of Fame (Hall of Fame) will be located in the Capitol Building in a public area designated by the Department of Management Services (DMS). DMS must consult with the Florida Commission on Human Relations (Commission) regarding the design and theme of the public area.

The Commission annually must accept nominations for persons to be recommended as members of the Hall of Fame and must recommend 10 persons from which the Governor will select up to three members. Each person selected will have a designation placed in the Hall of Fame. The bill provides criteria for the Commission to follow when recommending members to the Hall of Fame.

According to DMS, it will incur indeterminate expenses related to the design, alteration and ongoing maintenance of the identified space in the Capitol Building for the Florida Civil Rights Hall of Fame.

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

##### Florida Civil Rights Act of 1992<sup>1</sup>

Current law provides the "Florida Civil Rights Act of 1992" (Act). The general purposes of the Act are to ... secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.<sup>2</sup>

The policy of Florida embodied in this Act is patterned after the federal Civil Rights Act of 1964.<sup>3</sup>

##### Florida Commission on Human Relations

The Florida Commission on Human Relations (Commission) is a 12 member commission<sup>4</sup> assigned to the Department of Management Services.<sup>5</sup> Members are appointed by the Governor and confirmed by the Senate<sup>6</sup> and must broadly represent various racial, religious, ethnic, social, economic, political and professional groups within the state.<sup>7</sup>

The Commission is required to

... promote and encourage fair treatment and equal opportunity for all persons regardless of race, color, religion, sex, national origin, age, handicap, or marital status and mutual understanding and respect among all members of all economic, social, racial, religious, and ethnic groups.<sup>8</sup>

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<sup>1</sup> See Sections 760.01 – 760.11 and 590.092, F.S.

<sup>2</sup> Section 760.01(2), F.S.

<sup>3</sup> Pub. L. 88-353, 78 Stat. 241 (1964).

<sup>4</sup> Section 760.03(1), F.S.

<sup>5</sup> Section 760.04, F.S.

<sup>6</sup> Section 760.03(1), F.S.

<sup>7</sup> Section 760.03(2), F.S.

<sup>8</sup> Section 760.05, F.S.

The Commission is responsible for investigating complaints of discrimination in the areas of employment, housing, public accommodations and memberships in certain private clubs, as well as state employee whistle-blower retaliation.<sup>9</sup> It has investigated and closed more than 74,000 cases and has negotiated close to \$13 million in settlement amounts for more than 1,500 people through its mediation services.<sup>10</sup>

#### Halls of Fame in Florida

The Legislature has established Halls of Fame in Florida. Examples of Halls of Fame previously created include the Florida Women's Hall of Fame,<sup>11</sup> Florida Artists Hall of Fame,<sup>12</sup> Florida Educator Hall of Fame,<sup>13</sup> and Florida Sports Hall of Fame.<sup>14</sup>

#### **Effect of Proposed Changes**

The bill creates the Florida Civil Rights Hall of Fame. The Florida Civil Rights Hall of Fame (Hall of Fame) will be located in the Capitol Building in a public area designated by the Department of Management Services (DMS). DMS must consult with the Commission regarding the design and theme of the public area.

The Commission annually must accept nominations for persons to be recommended as members of the Hall of Fame and must recommend 10 persons from which the Governor will select up to three members. Each person selected will have a designation placed in the Hall of Fame that provides information regarding the member's particular discipline or contribution, including vital information relating to that member.

The Commission must recommend persons who:

- Are 18 years of age or older;
- Were born in Florida or adopted Florida as their home state and base of operation; and
- Have made a significant contribution and provided exemplary leadership toward Florida's progress and achievements in civil rights.

The Commission may set specific time periods for acceptance of nominations and selection of members to coincide with appropriate activities of the Hall of Fame.

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

**Section 1:** Creates s. 760.065, F.S., providing for the establishment of the Florida Civil Rights Hall of Fame.

**Section 2:** Providing an effective date of July 1, 2010.

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

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

##### **1. Revenues:**

None.

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<sup>9</sup> Florida Commission on Human Relations, Media Information,

<http://fchr.state.fl.us/fchr/content/download/2624/7431/file/FCHR%20Media%20Information.doc> (last visited March 23, 2010).

<sup>10</sup> Florida Commission on Human Relations, *History of the Commission*, [http://fchr.state.fl.us/about\\_us/history](http://fchr.state.fl.us/about_us/history) (last visited March 23, 2010).

<sup>11</sup> Section 265.001, F.S.

<sup>12</sup> Section 265.2865, F.S.

<sup>13</sup> Chapter 98-281, s. 13, Laws of Florida; s. 231.63, F.S. (1998 Supp.).

<sup>14</sup> Section 15.051, F.S.

2. Expenditures:

DMS will incur indeterminate expenses related to the design, alteration and ongoing maintenance of the identified space in the Capitol Building for the Florida Civil Rights Hall of Fame.<sup>15</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Management Services provided the following fiscal comment:

SB 1354 requires that DMS set aside "an appropriate public area of the Capitol Building for the Florida Civil Rights Hall of Fame and to consult with the commission regarding the design and theme of the area." The legislation does not identify a funding source for space alterations, design or related display features that may be necessary. Additionally, the legislation does not define "appropriate public area," which may lead to challenges in selecting the final location and amount of space allocated. It is also unclear if an appropriate area would require square footage that is currently subject to rent payments, based on current statute and bond resolution requirements.<sup>16</sup>

### 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill appears to contain a drafting error. On line 36 the word "to" should be added between the words "pursuant" and "this."

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<sup>15</sup> Department of Management Services HB 523 Analysis, March 22, 2010 at 2 (on file with the Governmental Affairs Policy Committee).

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

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

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A bill to be entitled  
 An act relating to the Florida Civil Rights Hall of Fame;  
 creating s. 760.065, F.S.; providing legislative intent;  
 providing for the establishment and location of the hall  
 of fame; providing for the selection of hall-of-fame  
 members by the Governor upon recommendations by the  
 Florida Commission on Human Relations; providing criteria  
 for such recommendations; authorizing the commission to  
 set time periods for the nomination and selection of hall-  
 of-fame members; providing an effective date.

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

Section 1. Section 760.065, Florida Statutes, is created  
 to read:

760.065 Florida Civil Rights Hall of Fame.-

(1) It is the intent of the Legislature to recognize and  
 honor those persons, living or dead, who have made significant  
 contributions to this state as leaders in the struggle for  
 equality and justice for all persons.

(2) (a) There is hereby established the Florida Civil  
 Rights Hall of Fame. The Department of Management Services shall  
 set aside an appropriate public area of the Capitol Building for  
 the Florida Civil Rights Hall of Fame and shall consult with the  
 commission regarding the design and theme of such area.

(b) Each person who is selected as a member shall have a  
 designation placed in the Florida Civil Rights Hall of Fame,  
 which designation shall provide information regarding the

29 member's particular discipline or contribution and any vital  
 30 information relating to the member.

31 (3) (a) The commission shall annually accept nominations  
 32 for persons to be recommended as members of the Florida Civil  
 33 Rights Hall of Fame. The commission shall recommend 10 persons  
 34 from which the Governor shall select up to three hall-of-fame  
 35 members.

36 (b) In making recommendations pursuant this subsection,  
 37 the commission shall recommend persons who are 18 years of age  
 38 or older, who were born in Florida or adopted Florida as their  
 39 home state and base of operation, and who have made a  
 40 significant contribution and provided exemplary leadership  
 41 toward Florida's progress and achievements in civil rights.

42 (4) The commission may set specific time periods for  
 43 acceptance of nominations and the selection of members to  
 44 coincide with the appropriate activities of the Florida Civil  
 45 Rights Hall of Fame.

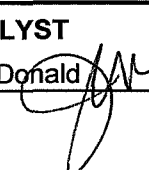

46 Section 2. This act shall take effect July 1, 2010.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 869 Political Advertisements  
**SPONSOR(S):** Eisnaugle and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1672

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee		McDonald 	Williamson 
2)	Economic Development & Community Affairs Policy Council			
3)				
4)				
5)				

**SUMMARY ANALYSIS**

Under Florida law, each political advertisement on behalf of a candidate is required to include a political disclaimer indicating that the advertisement is a political advertisement and stating who paid for the advertisement, along with the party affiliation and office sought by the candidate. Exceptions for disclaimers are provided for advertisements worn by a person, such as a tee shirt or cap, and novelty items having a retail value of \$10 or less which support, but do not oppose, a candidate or issue.

The bill provides a shorter disclaimer for candidate political advertisements that are paid for by the candidate, similar to that which is used by candidates for Federal office.

The bill also provides for additional exceptions to the disclaimer requirements for messages or political advertising via Internet websites, text messages, or other technologies if it is:

- Placed as a paid link on an Internet website, is no more than 200 characters in length, and directs the user to a website that complies with disclaimer requirements.
- Placed as a graphic or picture link on an Internet website that directs the user to another website in compliance with disclaimer requirements; however, the link must contain the required disclaimer which makes up at least 5 percent of the total link and cannot be illegible or concealed.
- Placed at no cost on an Internet website where there is no cost to post content for public users.
- Placed or distributed on an unpaid profile or account available free to the public or on a social networking website, provided the source of the message or advertisement is clear from the content or format of the message or advertisement.
- Distributed as a text message or Short Message Service, provided the message is no more than 200 characters in length or requires the recipient to sign up or opt in to receive the message.
- Connected with or included in any software application or accompanying function, if the user signs up, opts in, downloads, or accesses the application from a website that is in compliance with the disclaimer requirements.
- Sent by a third party user from or through a campaign or committee website that is in compliance with the disclaimer requirements.
- Contained in or distributed through any other technology-related item, service, or device for which compliance with the disclaimer requirement is not reasonably practical.

The bill does not have a fiscal impact on state or local government revenues or expenditures.

The bill takes 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**

##### Florida Law - Required Disclaimers

Under Florida law, each political advertisement on behalf of a candidate is required to include a political disclaimer indicating that the advertisement is a political advertisement and stating who paid for the advertisement, along with the party affiliation and office sought by the candidate. Exceptions for disclaimers are provided for advertisements worn by a person, such as a tee shirt or cap, and novelty items having a retail value of \$10 or less which support, but do not oppose, a candidate or issue.<sup>1</sup>

In 2004, changes were made to the definition of "communications media" for campaign finance purposes to include the Internet, thereby clarifying that many political advertisements and electioneering communications on the Internet must carry a sponsorship disclaimer.<sup>2</sup>

Florida law does not distinguish between the Internet, short message systems, or similar systems or any other type of system or format that could be used for political advertisement.

##### Other States - Disclaimers & the Internet

In a recent review of state statutes, rules, ethics and election commission opinions, and legislation, staff of the National Conference of State Legislatures (NCSL) found that<sup>3</sup>:

- Most states basically ignore the existence of Facebook, Twitter, etc., when it comes to political communications. In a nutshell, social media is just beginning to come onto the radar with regards to state campaign finance. The broader category of electronic political communications, which seems more directed at websites and e-mails, is only minimally addressed.
- Fourteen states parallel the federal law, that is, they do not specifically address Internet campaigning, although it may be addressed through administrative rule. In addition, the state law includes general language similar to the federal definition of "communications" that could

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<sup>1</sup> See s. 106.143, F.S.

<sup>2</sup> See s. 106.011(13), F.S., and s. 2, ch. 2004-252, L.O.F.

<sup>3</sup> Information provided by Jennie Drage Bowser, Senior Fellow, Legislative Management Program, NCSL, March 15, 2010.

reasonably be applied to Internet communications which then triggers certain registration, disclosure, and required disclosure/attribution requirements.<sup>4</sup>

- Sixteen states specifically provide for Internet communications in their campaign finance laws. The state law includes reference to electronic media such as Web sites or e-mail in the definition of "political communication," "political advertisement," "campaign material," etc. The inclusion triggers attribution requirements and, in some cases, registration and disclosure requirements that are subject to dollar amount thresholds.<sup>5</sup>
- Three states provide for a specific exemption from registration, disclosure, and attribution requirements for Internet communications.<sup>6</sup>

The Government Accountability Board of the State of Wisconsin is in the process of reviewing and making recommendations regarding its state elections laws as those laws relate to Internet attributions of political communications. The Board is reviewing social networking sites as well as other aspects of the Internet to determine how the laws might be changed.<sup>7</sup>

In addition to Wisconsin and California, NCSL staff reports that Texas also is reviewing its campaign laws relating to Internet regulation.

#### Federal Election Commission Rules

In 2006, the Federal Election Commission (FEC) adopted rules establishing that paid advertisements on the Internet were included in the definition of "public communication" and, therefore, subject to regulation including the requirement to include attributions in those communications. This revised definition of "public communication" includes paid political advertisements placed on another's website, but does not encompass any other form of Internet communication.<sup>8</sup>

The FEC rules identify several exceptions to the disclaimer requirement. In situations where a disclaimer notice cannot be conveniently printed, the notice is not required. This affects items such as pens, bumper stickers, campaign pins, campaign buttons, and similar small items. A disclaimer is not required for communications using skywriting, clothing, water towers, or other forms of advertising where it would be impracticable to display the disclaimer notice.<sup>9</sup> Additionally, in its Advisory Opinion 2002-09, the Commission concluded that the wireless telephone screens used for "SMS technology places similar limits on the length of a political advertisement as those that exist with bumper stickers." Short Message Service (SMS) uses were then excluded from the disclaimer requirement.<sup>10</sup>

#### **Effect of Proposed Changes**

The bill provides a shorter disclaimer for candidate political advertisements that are paid for by the candidate, similar to that which is used by candidates for Federal office.

The bill also provides for additional exceptions to the disclaimer requirements for messages or political advertising via Internet websites, text messages, or other technologies if it is:

- Placed as a paid link on an Internet website, is no more than 200 characters in length, and directs the user to a website that complies with disclaimer requirements.

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<sup>4</sup> States in this category include Arizona, Idaho, Minnesota, Missouri, Nevada, New Jersey, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, West Virginia, Wisconsin, and Wyoming.

<sup>5</sup> Any electronic media: Alabama, Kansas, Maryland, Nebraska, New Mexico; Internet and e-mail: Connecticut and Ohio; Internet or Internet website: Alaska, Florida, Illinois, Iowa, Maine, Montana, New Hampshire, Texas; Mass e-mails: Vermont.

<sup>6</sup> California, Hawaii, and Washington. The State of California is reviewing its current Internet laws to determine what, if any, revisions need to be made because of new technology. The report will be completed this summer with action being taken on the report during the next legislative session of their Legislature.

<sup>7</sup> Internet Attributions of Political Communications and Use of Computers, State of Wisconsin Government Accountability Board, prepared by Shane W. Falk, Staff Counsel, October 5, 2009.

<sup>8</sup> 11 CFR s. 100.26. The FEC clarified that the placement of an advertisement for a fee on another person's website includes all potential forms of advertising, such as banner advertisements, streaming video, pop-up advertisements, and directed search results.

<sup>9</sup> 11 CFR s. 110.11(f).

<sup>10</sup> Advisory Opinion 2002-09, Federal Election Commission, p. 4.

- Placed as a graphic or picture link on an Internet website that directs the user to another website in compliance with disclaimer requirements; however, the link must contain the required disclaimer which makes up at least 5 percent of the total link and cannot be illegible or concealed.
- Placed at no cost on an Internet website where there is no cost to post content for public users.
- Placed or distributed on an unpaid profile or account available free to the public or on a social networking website, provided the source of the message or advertisement is clear from the content or format of the message or advertisement.
- Distributed as a text message or SMS, provided the message is no more than 200 characters in length or requires the recipient to sign up or opt in to receive the message.
- Connected with or included in any software application or accompanying function, if the user signs up, opts in, downloads, or accesses the application from a website that is in compliance with the disclaimer requirements.
- Sent by a third party user from or through a campaign or committee website that is in compliance with the disclaimer requirements.
- Contained in or distributed through any other technology-related item, service, or device for which compliance with the disclaimer requirement is not reasonably practical.

**B. SECTION DIRECTORY:**

**Section 1** provides a short title.

**Section 2** amends s. 106.143, F.S., providing a shorter disclaimer for candidate political advertisements; providing exceptions for disclaimer requirements on certain messages or political advertisements.

**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.

**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 is exempt from the mandate requirements because it is amending the election laws.

##### 2. Other:

Under section 5 of the Voting Rights Act, new legislation that implements a voting change including but not limited to a change in the manner of voting, change in candidacy requirements and qualifications, change in the composition of the electorate that may vote for a candidate, or change affecting the creation or abolition of an elective office, is subject to preclearance by the U.S. Department of Justice. The preclearance review is to determine if the change has a discriminatory purpose or effect that denies or abridges the right to vote on account of race, color or membership in a language minority group in a covered jurisdiction. Florida has five covered jurisdictions subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe. If the Attorney General objects to the voting change, the legislation is unenforceable.

#### B. RULE-MAKING AUTHORITY:

None.

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

The Department of State noted that the new paragraph (d) in s. 106.143(1), F.S., creates two internal inconsistencies with other subsections of s. 106.143, F.S.:

- The language conflicts with subsection (2) which requires that the political party designation always be included in a partisan political advertisement.
- The new language would apparently have no effect on subsection (4) of s. 106.143, F.S. The second sentence of that subsection states "Such political advertisement must expressly state that the content of the advertisement was approved by the candidate and must state who paid for the advertisement." Therefore, for example, a political advertisement on behalf of a candidate by his or her supporters or party would always have to state the candidate approved the advertisement and that the supporters or party paid for it.<sup>11</sup>

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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<sup>11</sup> Analysis of HB 869, Department of State, p. 2. (on file with the Governmental Affairs Policy Committee)

1                                    A bill to be entitled  
 2                    An act relating to political advertisements; providing a  
 3                    short title; amending s. 106.143, F.S.; providing an  
 4                    alternative statement that may be used to identify a  
 5                    candidate as the sponsor of a political advertisement  
 6                    under certain circumstances; providing circumstances under  
 7                    which certain campaign messages and political  
 8                    advertisements are not required to state or display  
 9                    specific information regarding the identity of the  
 10                   candidate, his or her party affiliation, and the office  
 11                   sought in the message or advertisement; providing an  
 12                   effective date.

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

15  
 16                    Section 1. This act may be cited as the "Technology in  
 17 Elections Act."

18                    Section 2. Subsection (1) of section 106.143, Florida  
 19 Statutes, is amended to read:

20                    106.143 Political advertisements circulated prior to  
 21 election; requirements.—

22                    (1) (a) Any political advertisement that is paid for by a  
 23 candidate and that is published, displayed, or circulated prior  
 24 to, or on the day of, any election must prominently state:

25                    1. "Political advertisement paid for and approved by  
 26 ...(name of candidate)..., ...(party affiliation)..., for  
 27 ...(office sought)...."; or

28                    2. "Paid by ...(name of candidate)..., ...(party

29 affiliation)..., for ...(office sought)...."

30 (b) Any other political advertisement published,  
 31 displayed, or circulated prior to, or on the day of, any  
 32 election must prominently:

33 1. Be marked "paid political advertisement" or with the  
 34 abbreviation "pd. pol. adv."

35 2. State the name and address of the persons sponsoring  
 36 the advertisement.

37 3.a.(I) State whether the advertisement and the cost of  
 38 production is paid for or provided in kind by or at the expense  
 39 of the entity publishing, displaying, broadcasting, or  
 40 circulating the political advertisement; or

41 (II) State who provided or paid for the advertisement and  
 42 cost of production, if different from the source of sponsorship.

43 b. This subparagraph does not apply if the source of the  
 44 sponsorship is patently clear from the content or format of the  
 45 political advertisement.

46 (c) Any political advertisement made pursuant to s.  
 47 106.021(3)(d) must be marked "paid political advertisement" or  
 48 with the abbreviation "pd. pol. adv." and must prominently  
 49 state, "Paid for and sponsored by ...(name of person paying for  
 50 political advertisement).... Approved by ...(names of persons,  
 51 party affiliation, and offices sought in the political  
 52 advertisement)...."

53 (d) This subsection does not apply to any campaign message  
 54 or political advertisement messages used by a candidate and the  
 55 candidate's supporters or by a political committee if the  
 56 message or advertisement is ~~those messages are:~~

- 57        1. Designed to be worn by a person.
- 58        2. Placed as a paid link on an Internet website, provided  
 59 the message or advertisement is no more than 200 characters in  
 60 length and the link directs the user to another Internet website  
 61 that complies with paragraph (a), paragraph (b), or paragraph  
 62 (c).
- 63        3. Placed as a graphic or picture link on an Internet  
 64 website that directs the user to another Internet website that  
 65 complies with the requirements of this section; however, the  
 66 link must contain the language required in paragraph (a),  
 67 paragraph (b), or paragraph (c), which shall make up at least 5  
 68 percent of the total graphic or picture and may not otherwise be  
 69 illegible or concealed.
- 70        4. Placed at no cost on an Internet website for which  
 71 there is no cost to post content for public users.
- 72        5. Placed or distributed on an unpaid profile or account  
 73 which is available to the public without charge or on a social  
 74 networking Internet website, as long as the source of the  
 75 message or advertisement is patently clear from the content or  
 76 format of the message or advertisement.
- 77        6. Distributed as a text message or other message via  
 78 Short Message Service, provided the message is no more than 200  
 79 characters in length or requires the recipient to sign up or opt  
 80 in to receive it.
- 81        7. Connected with or included in any software application  
 82 or accompanying function, provided that the user signs up, opts  
 83 in, downloads, or otherwise accesses the application from or



84 through a website that complies with paragraph (a), paragraph  
 85 (b), or paragraph (c).

86 8. Sent by a third-party user from or through a campaign  
 87 or committee's website, provided the website complies with  
 88 paragraph (a), paragraph (b), or paragraph (c).

89 9. Contained in or distributed through any other  
 90 technology-related item, service, or device for which compliance  
 91 with paragraph (a), paragraph (b), or paragraph (c) is not  
 92 reasonably practical due to the size or nature of such item,  
 93 service, or device as available, or the means of displaying the  
 94 message or advertisement makes compliance with paragraph (a),  
 95 paragraph (b), or paragraph (c) impracticable.

96 Section 3. This act shall take effect July 1, 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 Eisnaugle offered the following:

4  
5 **Amendment (with directory amendment)**

6 Remove lines 53-95 and insert:

7 ~~This subsection does not apply to campaign messages used by a~~  
8 ~~candidate and the candidate's supporters if those messages are~~  
9 ~~designed to be worn by a person.~~

10 (8) This section does not apply to any campaign message or  
11 political advertisement used by a candidate and the candidate's  
12 supporters or by a political committee if the message or  
13 advertisement is:

14 (a) Designed to be worn by a person.

15 (b) Placed as a paid link on an Internet website, provided  
16 the message or advertisement is no more than 200 characters in  
17 length and the link directs the user to another Internet website  
18 that complies with subsection (1).

## Amendment No. 1

19 (c) Placed as a graphic or picture link on an Internet  
20 website that directs the user to another Internet website that  
21 complies with the requirements of this section; however, the  
22 link must contain the language required in subsection (1), which  
23 shall make up at least 5 percent of the total graphic or picture  
24 and may not otherwise be illegible or concealed.

25 (d) Placed at no cost on an Internet website for which  
26 there is no cost to post content for public users.

27 (e) Placed or distributed on an unpaid profile or account  
28 which is available to the public without charge or on a social  
29 networking Internet website, as long as the source of the  
30 message or advertisement is patently clear from the content or  
31 format of the message or advertisement.

32 (f) Distributed as a text message or other message via  
33 Short Message Service, provided the message is no more than 200  
34 characters in length or requires the recipient to sign up or opt  
35 in to receive it.

36 (g) Connected with or included in any software application  
37 or accompanying function, provided that the user signs up, opts  
38 in, downloads, or otherwise accesses the application from or  
39 through a website that complies with subsection (1).

40 (h) Sent by a third-party user from or through a campaign  
41 or committee's website, provided the website complies with  
42 subsection (1).

43 (i) Contained in or distributed through any other  
44 technology-related item, service, or device for which compliance  
45 with subsection (1) is not reasonably practical due to the size  
46 or nature of such item, service, or device as available, or the

Amendment No. 1

47 means of displaying the message or advertisement makes  
48 compliance with subsection (1).

49 (9)~~(8)~~ Any person who willfully violates any provision of  
50 this section is subject to the civil penalties prescribed in s.  
51 106.265.

52

53 -----

54

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

55

Remove line 19 and insert:

56

Statutes, is amended, subsection (8) is renumbered as subsection

57

(9), and a new subsection (8) is added to the section to read:

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 869 (2010)

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 Eisnaugle offered the following:

4  
5 **Amendment**  
6 Remove line 96 and insert:  
7 Section 3. This act shall take effect upon becoming a law.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1193

Retirement

**SPONSOR(S):** Plakon

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1932

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

**SUMMARY ANALYSIS**

The Special Risk Class of the Florida Retirement System consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency and forensic medical care who meet statutory criteria for membership as set forth in current law. As of June 30, 2009, with 75,640 active members in the Special Risk Class and 75 members in the Special Risk Administrative Support Class, special risk employees made up 11.3 percent of the active FRS membership.

A Special Risk Class member who is totally and permanently disabled in the line of duty qualifies for a 65 percent minimum option 1 benefit payment compared to a Regular Class member similarly disabled who qualifies for a 42 percent minimum option 1 benefit payment.

The bill revises the definition of "special risk member" to include certain FRS members who suffer from a qualifying injury and are no longer employed in a Special Risk Class eligible position. Any member employed in a law enforcement, firefighting or criminal detention position who suffers a disability in the line of duty through a qualifying injury could continue membership in the FRS Special Risk Class, if such member continues to work for the same employer for whom they were working when they sustained the qualifying injury. In addition, the bill defines the term "qualifying injury." Members benefiting from this proposed change are not eligible for Special Risk Administrative Support Class membership.

The actuary results show a \$30,000 unfunded liability to the Special Risk Class but this liability does not require an increase to the Special Risk Class contribution rate.

This bill is effective upon becoming a law.

## 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**

The Special Risk Class of the Florida Retirement System (FRS) consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency and forensic medical care who meet statutory criteria for membership as set forth in s. 121.0515, F.S. As of June 30, 2009, with 75,640 active members in the Special Risk Class and 75 members in the Special Risk Administrative Support Class, special risk employees made up 11.3 percent of the active FRS membership.<sup>1</sup>

Though it existed in several forms before the establishment of the FRS in December 1970, the Special Risk Class under the FRS was created as the Legislature recognized that persons employed in certain categories of law enforcement, firefighting, criminal detention, and emergency medical care positions must, as an essential function of their positions, perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity. The Legislature further found that as persons in such positions age, they may not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public and their coworkers.

In response, the Legislature established a special class to permit these employees to retire at an earlier age and with less service without suffering economic deprivation compared to Regular Class members with normal retirement after 30 years of service or age 62 and vested. The comparison of equivalent benefits was determined when 25 years at a 2 percent Special Risk Class accrual value resulted in 50 percent of the average final compensation compared to 48 percent of average final compensation for a Regular Class member with 30 years of service at a 1.60 percent per year accrual value.

Special Risk Class membership benefits have improved over the years and now differ from Regular Class membership in the following ways:

- A Special Risk Class member earns retirement credit at the rate of 3 percent of average final compensation (AFC) for each year of service, as opposed to the 1.60 percent to 1.68 percent credit per year of service earned by a Regular Class member.
- A Special Risk Class member qualifies for normal retirement at an earlier age (age 55 v. age 62) or with fewer years of service (25 years v. 30 years) than a Regular Class member.

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<sup>1</sup> *The Florida Retirement System Annual Report, July 1, 2008 – June 30, 2009* at 43. ([https://www.rol.frs.state.fl.us/forms/2008-09\\_Annual\\_Report.pdf](https://www.rol.frs.state.fl.us/forms/2008-09_Annual_Report.pdf))



- A Special Risk Class member who is totally and permanently disabled in the line of duty qualifies for a 65 percent minimum option 1 benefit payment compared to a Regular Class member similarly disabled who qualifies for a 42 percent minimum option 1 benefit payment.

The benefit improvements enjoyed by members of the Special Risk Class are funded by higher employer contributions. For the 2009-10 plan year under the FRS, the retirement portion of the employer contribution rate for the Special Risk Class is 19.76 percent, which is significantly higher than the 8.69 percent retirement contribution rate for the Regular Class.<sup>2</sup> Thus when a membership group moves from the Regular Class to the Special Risk Class, the monthly employer contributions required for that group increases by over 2.25 times for affected employees.

### **Effect of Proposed Change**

The bill changes the nature of disability benefits under the Florida Retirement System. It names the act the "Adam Pierce Act" and provides a statement of important state interest.

The bill allows a member of the Special Risk Class employed in the a law enforcement, firefighting, or criminal detention position who suffers a disability in line of duty to maintain his or her status in the Special Risk Class provided the disability is a qualifying injury that prevents the member from being eligible to perform the duties of his or her former Special Risk Class position but who has recovered and is able to work in a new position for the same employer. This change shifts the burden of funding lost future retirement benefits from the workers compensation coverage of the individual employer to all employers in the FRS. There will be an additional cost for employers with Special Risk Class members.

The bill defines "qualifying injury" to mean an injury sustained in the line of duty, as certified by the Special Risk Class member's employing agency, that does not result in total and permanent disability.<sup>3</sup> An injury is not a qualifying injury unless it is a physical injury to the member's physical body resulting in a physical loss, or loss of use, of at least two of the following: right arm, left arm, right leg, or left leg. An injured Special Risk Class member who continues participation in the class after suffering a qualified injury loses Special Risk Class membership when the member stops working for the employer at the time the injury occurred.

To be eligible for continued Special Risk Class membership:

- The member must have already qualified for and be actively participating in Special Risk Class at the time of the qualifying injury and must not be receiving disability retirement benefits; and
- Two licensed medical physicians, one of whom is a primary treating physician of the member, must certify the existence of the physical injury and medical condition that constitutes a qualifying injury and that the member has reached maximum medical improvement after August 1, 2008.

In addition to certification of loss of at least two of the previously mentioned limbs, the certifications from the licensed medical physicians must include, at a minimum, that:

- The physical loss or loss of use is total and permanent, except in the event that the loss of use is due to a physical injury to the member's brain, in which event the loss of use is permanent with at least 75-percent loss of motor function with respect to each arm or leg affected.
- This physical loss or loss of use renders the member physically unable to perform the essential job functions of his or her Special Risk Class position.

<sup>2</sup> Chapter No. 2009-76, Laws of Florida. Regardless of whether an individual member elects to participate in the FRS Pension Plan or the FRS Investment Plan, the employer pays the same contribution rate for each class or subclass of membership by blending the rates for both plans as required under the uniformed contribution rate system of the FRS as provided in Part III of Chapter 121, F.S. Under the FRS Investment Plan, the amount contributed to an individual member account increases from 9.25 percent to 21.33 percent when the member moves from the Regular Class to the Special Risk Class.

<sup>3</sup> Section 121.091(4)(b), F.S., provides that a member is "considered totally and permanently disabled if, in the opinion of the administrator, he or she is prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee."

- Notwithstanding this physical loss or loss of use, the member is able to perform the essential job functions required by the member's new position.
- Use of artificial limbs is either not possible or does not alter the member's ability to perform the essential job functions of the member's position.
- The physical loss or loss of use is a direct result of a physical injury and not of any mental, psychological, or emotional injury.

**B. SECTION DIRECTORY:**

**Section 1:** Providing a short title.

**Section 2:** Providing a statement of important state interest.

**Section 3:** Amends s. 121.021(15), F.S., adding a new paragraph (f) to the definition of "special risk member."

**Section 4:** Amends s. 121.0515, F.S., providing eligibility requirements for membership in the Special Risk Class.

**Section 5:** Provides that the bill is effective upon becoming a law.

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

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

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

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

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

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

None.

**D. FISCAL COMMENTS:**

The actuary results show a \$30,000 unfunded liability to the special risk class but this liability does not require an increase to the Special Risk Class contribution rate. There is no impact on the contribution rates, and the possible shift of salaries from the Regular Class to Special Risk is expected to be so minimal, the blended rates are not impacted.<sup>4</sup>

**III. COMMENTS**

<sup>4</sup> Letter from Robert S. Dezube, FSA, Milliman, Inc., to Sarabeth Snuggs, State Retirement Director, Division of Retirement, February 19, 2010 (on file with the Governmental Affairs Policy Committee).

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill is expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds; however, an exemption applies because the bill creates an insignificant fiscal impact.

2. Other:

Art. X, s. 14 of the Florida Constitution provides:

A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

According to the actuarial study,<sup>5</sup> the bill complies with this requirement.

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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<sup>5</sup> *Id.*

1                   A bill to be entitled  
 2           An act relating to retirement; providing a short title;  
 3           providing legislative findings; providing a statement of  
 4           important state interest; amending s. 121.021, F.S.;  
 5           revising the definition of "special risk member" to  
 6           include certain members suffering a qualifying injury;  
 7           amending s. 121.0515, F.S.; providing eligibility  
 8           requirements for membership in the Special Risk Class for  
 9           certain members suffering a qualifying injury; providing  
 10          medical certification requirements; providing a  
 11          definition; prohibiting the grant or creation of  
 12          additional rights; providing retroactive effect; providing  
 13          an effective date.

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

16  
 17          Section 1. This act may be cited as the "Adam Pierce Act."

18          Section 2. The Legislature finds that persons employed in  
 19 law enforcement, firefighting, and criminal detention positions  
 20 perform state and municipal functions; that it is their duty to  
 21 protect life and property at their own risk and peril; that it  
 22 is their duty to instruct school personnel, public officials,  
 23 and private citizens about safety; and that their activities are  
 24 vital to public safety. Therefore, the Legislature finds that it  
 25 is a proper and legitimate state purpose to provide a uniform  
 26 retirement system for the benefit of persons employed in law  
 27 enforcement, firefighting, and criminal detention positions and  
 28 finds, in implementing the provisions of s. 14, Art. X of the

29 State Constitution relating to pension trust fund systems and  
 30 plans, that such retirement systems or plans be managed,  
 31 administered, operated, and funded in such manner as to maximize  
 32 the protection of pension trust funds. Pursuant to s. 18, Art.  
 33 VII of the State Constitution, the Legislature determines and  
 34 declares that the provisions of this act fulfill an important  
 35 state interest.

36 Section 3. Paragraph (f) is added to subsection (15) of  
 37 section 121.021, Florida Statutes, to read:

38 121.021 Definitions.—The following words and phrases as  
 39 used in this chapter have the respective meanings set forth  
 40 unless a different meaning is plainly required by the context:

41 (15)

42 (f) Effective August 1, 2008, "special risk member"  
 43 includes any member who meets the special criteria for continued  
 44 membership set forth in s. 121.0515(2) (k).

45 Section 4. Paragraphs (g) through (j) of subsection (2) of  
 46 section 121.0515, Florida Statutes, are amended, paragraph (k)  
 47 is added to that subsection, and paragraph (d) is added to  
 48 subsection (7) of that section, to read:

49 121.0515 Special risk membership.—

50 (2) CRITERIA.—A member, to be designated as a special risk  
 51 member, must meet the following criteria:

52 (g) The member must be employed as a youth custody officer  
 53 and be certified, or required to be certified, in compliance  
 54 with s. 943.1395. In addition, the member's primary duties and  
 55 responsibilities must be the supervised custody, surveillance,

56 control, investigation, apprehension, arrest, and counseling of  
 57 assigned juveniles within the community; ~~or~~

58 (h) Effective October 1, 2005, through June 30, 2008, the  
 59 member must be employed by a law enforcement agency or medical  
 60 examiner's office in a forensic discipline recognized by the  
 61 International Association for Identification and must qualify  
 62 for active membership in the International Association for  
 63 Identification. The member's primary duties and responsibilities  
 64 must include the collection, examination, preservation,  
 65 documentation, preparation, or analysis of physical evidence or  
 66 testimony, or both, or the member must be the direct supervisor,  
 67 quality management supervisor, or command officer of one or more  
 68 individuals with such responsibility. Administrative support  
 69 personnel, including, but not limited to, those whose primary  
 70 responsibilities are clerical or in accounting, purchasing,  
 71 legal, and personnel, shall not be included;-

72 (i) Effective July 1, 2008, the member must be employed by  
 73 the Department of Law Enforcement in the crime laboratory or by  
 74 the Division of State Fire Marshal in the forensic laboratory in  
 75 one of the following classes:

- 76 1. Forensic technologist (class code 8459);
- 77 2. Crime laboratory technician (class code 8461);
- 78 3. Crime laboratory analyst (class code 8463);
- 79 4. Senior crime laboratory analyst (class code 8464);
- 80 5. Crime laboratory analyst supervisor (class code 8466);
- 81 6. Forensic chief (class code 9602); or
- 82 7. Forensic services quality manager (class code 9603);-

83 (j) Effective July 1, 2008, the member must be employed by

84 a local government law enforcement agency or medical examiner's  
 85 office and must spend at least 65 percent of his or her time  
 86 performing duties that involve the collection, examination,  
 87 preservation, documentation, preparation, or analysis of human  
 88 tissues or fluids or physical evidence having potential  
 89 biological, chemical, or radiological hazard or contamination,  
 90 or use chemicals, processes, or materials that may have  
 91 carcinogenic or health-damaging properties in the analysis of  
 92 such evidence, or the member must be the direct supervisor of  
 93 one or more individuals having such responsibility. If a special  
 94 risk member changes to another position within the same agency,  
 95 he or she must submit a complete application as provided in  
 96 paragraph (3) (a); ~~or-~~

97 (k) The member must have already qualified for and be  
 98 actively participating in special risk membership under  
 99 paragraph (a), paragraph (b), or paragraph (c), must have  
 100 suffered a qualifying injury as defined in this paragraph, must  
 101 not be receiving disability retirement benefits as provided in  
 102 s. 121.091(4), and must satisfy the requirements of this  
 103 paragraph.

104 1. The ability to qualify for the class of membership  
 105 defined in s. 121.021(15) (f) shall occur when two licensed  
 106 medical physicians, one of whom is a primary treating physician  
 107 of the member, certify the existence of the physical injury and  
 108 medical condition that constitute a qualifying injury as defined  
 109 in this paragraph and that the member has reached maximum  
 110 medical improvement after August 1, 2008. The certifications  
 111 from the licensed medical physicians must include, at a minimum,

112 that the injury to the special risk member has resulted in a  
 113 physical loss, or loss of use, of at least two of the following:  
 114 left arm, right arm, left leg, or right leg; and:

115 a. That this physical loss or loss of use is total and  
 116 permanent, except in the event that the loss of use is due to a  
 117 physical injury to the member's brain, in which event the loss  
 118 of use is permanent with at least 75-percent loss of motor  
 119 function with respect to each arm or leg affected.

120 b. That this physical loss or loss of use renders the  
 121 member physically unable to perform the essential job functions  
 122 of his or her special risk position.

123 c. That, notwithstanding this physical loss or loss of  
 124 use, the individual is able to perform the essential job  
 125 functions required by the member's new position, as provided in  
 126 subparagraph 3.

127 d. That use of artificial limbs is either not possible or  
 128 does not alter the member's ability to perform the essential job  
 129 functions of the member's position.

130 e. That the physical loss or loss of use is a direct  
 131 result of a physical injury and not a result of any mental,  
 132 psychological, or emotional injury.

133 2. For the purposes of this paragraph, "qualifying injury"  
 134 means an injury sustained in the line of duty, as certified by  
 135 the member's employing agency, by a special risk member that  
 136 does not result in total and permanent disability as defined in  
 137 s. 121.091(4)(b). An injury is a qualifying injury when the  
 138 injury is a physical injury to the member's physical body  
 139 resulting in a physical loss, or loss of use, of at least two of



140 the following: left arm, right arm, left leg, or right leg.  
 141 Notwithstanding anything in this section to the contrary, an  
 142 injury that would otherwise qualify as a qualifying injury shall  
 143 not be considered a qualifying injury if and when the member  
 144 ceases employment with the employer for whom he or she was  
 145 providing special risk services on the date the injury occurred.

146 3. The new position, as described in sub-subparagraph  
 147 1.c., that is required for qualification as a special risk  
 148 member under this paragraph is not required to be a position  
 149 with essential job functions that entitle an individual to  
 150 special risk membership. Whether a new position as described in  
 151 sub-subparagraph 1.c. exists and is available to the special  
 152 risk member is a decision to be made solely by the employer in  
 153 accordance with its hiring practices and applicable law.

154 4. This paragraph does not grant or create additional  
 155 rights for any individual to continued employment or to be hired  
 156 or rehired by his or her employer that are not already provided  
 157 within the Florida Statutes, the State Constitution, the  
 158 Americans with Disabilities Act, if applicable, or any other  
 159 applicable state or federal law.

160 (7) RETENTION OF SPECIAL RISK NORMAL RETIREMENT DATE.—

161 (d) Notwithstanding any provision of this subsection to  
 162 the contrary, this subsection does not apply to any special risk  
 163 member who qualifies for continued membership pursuant to the  
 164 provisions of paragraph (2) (k).

165 Section 5. This act shall take effect upon becoming a law.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1433 Pub. Rec./Petitions to Determine Incapacity  
SPONSOR(S): Schwartz  
TIED BILLS: HB 1431, HB 1435 IDEN./SIM. BILLS: SB 2628

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice & Courts Policy Committee	14 Y, 0 N	Bond	De La Paz
2) Governmental Affairs Policy Committee		Williamson	Williamson
3) Criminal & Civil Justice Policy Council			
4)			
5)			

SUMMARY ANALYSIS

Guardianship is a legal process by which a guardian is appointed by a court with the legal right and duty to care for an incapacitated individual known as a ward. A guardianship is established because of the ward's inability to act on his or her own behalf due to minority or due to physical or mental incapacity. Guardianship is commenced by the filing of a petition for guardianship.

This bill creates a public record exemption for a petition for guardianship held by the clerk of the court. The petition is made confidential and exempt. The bill also provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It provides a statement of public necessity as required by the State Constitution.

**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 records exemption; thus, it requires a two-thirds vote for final 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.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> 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.

##### Guardianship

Guardianship is a legal process by which a guardian is appointed by a court with the legal right and duty to care for an incapacitated individual known as a ward. A guardianship is established because of the ward's inability to act on his or her own behalf due to minority or due to physical or mental incapacity. Guardianship is commenced by the filing of a petition for guardianship. The petition for guardianship must specify the grounds justifying guardianship and, therefore, the petition will typically

<sup>1</sup> Article I, s. 24(c) of the State Constitution.

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

contain sensitive medical, personal and financial information regarding the potential ward. Specifically, the petition must be verified and must contain<sup>3</sup>:

- The name, age, and present address of the petitioner and the petitioner's relationship to the alleged incapacitated person;
- The name, age, county of residence, and present address of the alleged incapacitated person, and specify the primary language spoken by the alleged incapacitated person, if known;
- A statement that the petitioner believes the alleged incapacitated person to be incapacitated, the facts on which such belief is based, and the names and addresses of all persons known to the petitioner who have knowledge of such facts through personal observation;
- The name and address of the alleged incapacitated person's attending or family physician, if known;
- Which rights the alleged incapacitated person is incapable of exercising to the best of the petitioner's knowledge; and, if the petitioner has insufficient experience to make that judgment, the petitioner shall so indicate;
- Whether plenary or limited guardianship is sought for the alleged incapacitated person; and
- The names, relationships, and addresses of the next of kin of the alleged incapacitated person, specifying the dates of birth of any who are minors, to the extent known to the petitioner.

### **Effect of Bill**

The bill creates a public record exemption for a petition to determine incapacity of an individual filed with the clerk of a court. Such information is made confidential and exempt from public records requirements.<sup>4</sup>

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.<sup>5</sup>

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

Section 1 amends s. 744.3201, F.S., to create a public record exemption for petitions to determine the incapacity of an individual.

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.

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<sup>3</sup> Probate Rule 5.550(a).

<sup>4</sup> 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).

<sup>5</sup> Section 24(c), Art. I of the State Constitution.

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 appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

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

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:

This bill makes a petition for incapacity confidential and exempt from public disclosure. A record that is confidential may not be disclosed to anyone not authorized in the law. The bill may be problematic in practice because it does not specify anyone to which the petition can be disclosed. In practice, the petition needs to be disclosed to the presiding judge, the individual that the petition is filed against, any attorney for the individual, and the examining committee. The bill perhaps should either be amended to make the document only exempt, or should be amended to specify all of the authorized parties to which the petition may be disclosed.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

1                                   A bill to be entitled  
 2           An act relating to public records; amending s. 744.3201,  
 3           F.S.; creating an exemption from public records  
 4           requirements for petitions to determine incapacity;  
 5           providing for future legislative review and repeal of the  
 6           exemption; providing a statement of public necessity;  
 7           providing a contingent effective date.

8  
 9   Be It Enacted by the Legislature of the State of Florida:

10  
 11           Section 1. Subsection (6) is added to section 744.3201,  
 12   Florida Statutes, to read:

13           744.3201 Petition to determine incapacity.—

14           (6) The petition to determine incapacity filed with the  
 15   clerk of the court is confidential and exempt from s. 119.07(1)  
 16   and s. 24(a), Art. I of the State Constitution. This subsection  
 17   is subject to the Open Government Sunset Review Act in  
 18   accordance with s. 119.15 and shall stand repealed on October 2,  
 19   2015, unless reviewed and saved from repeal through reenactment  
 20   by the Legislature.

21           Section 2. The Legislature finds that it is a public  
 22   necessity to exempt from public records requirements all  
 23   petitions to determine incapacity, whether initial, amended, or  
 24   supplementary, in order to preserve the privacy of an alleged  
 25   incapacitated person by preserving the privacy of information in  
 26   the petition that would otherwise be available to the public.  
 27   The Legislature finds that the public disclosure of financial or

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28 | medical information in the petition to determine incapacity  
29 | would produce undue harm to the alleged incapacitated person.

30 |       Section 3. This act shall take effect October 1, 2010, if  
31 | HB 1431 or similar legislation is adopted in the same  
32 | legislative session or an extension thereof and becomes law.



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) Schwartz offered the following:  
4

5 **Amendment (with title amendment)**

6 Remove line 16 and insert:

7 and s. 24(a), Art. I of the State Constitution. A petition made  
8 confidential and exempt by this subsection shall be disclosed by  
9 the clerk of the court to a judge of the circuit, the alleged  
10 incapacitated person, the next of kin listed in the petition, an  
11 attorney of record for the alleged incapacitated person, the  
12 public guardian if there is one for the judicial circuit, the  
13 guardian and the attorney for the guardian if a guardian is  
14 appointed, the members of the examining committee, an appellate  
15 court as part of a record on appeal, and to any other person as  
16 directed by order of the court. This subsection  
17  
18  
19

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COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1433 (2010)

Amendment No. 1

20  
21  
22  
23

**T I T L E   A M E N D M E N T**

Between lines 4 and 5, insert:  
listing persons to whom the clerk of the court shall allow  
access to the petition;



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1435 Pub. Rec./Reports of Examining Committee Members
SPONSOR(S): Schwartz
TIED BILLS: HB 1431, HB 1433 IDEN./SIM. BILLS: SB 2624

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Civil Justice & Courts Policy Committee, 14 Y, 0 N, Bond, De La Paz. Row 2: Governmental Affairs Policy Committee, Williamson, Williamson.

SUMMARY ANALYSIS

Guardianship is a legal process by which a guardian is appointed by a court with the legal right and duty to care for an incapacitated individual known as a "ward." A guardianship is established because of the ward's inability to act on his or her own behalf due to minority or due to physical or mental incapacity. Guardianship is commenced by the filing of a petition for guardianship.

A guardianship court is required to appoint 3 medical professionals as an examining committee. Those 3 professionals are each required to examine the alleged incapacitated person and are each required to file a report with the court to be used as evidence when determining whether such individual is to be placed into guardianship. This bill creates a public record exemption for the reports of the examining committee members. These records are held by the clerk of the court. The reports are made confidential and exempt. The bill also provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It provides a statement of public necessity as required by the State Constitution.

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 records exemption; thus, it requires a two-thirds vote for final 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.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> 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.

##### Guardianship

Guardianship is a legal process by which a guardian is appointed by a court with the legal right and duty to care for an incapacitated individual known as a ward. A guardianship is established because of the ward's inability to act on his or her own behalf due to minority or due to physical or mental incapacity. Guardianship is commenced by the filing of a petition for guardianship.

<sup>1</sup> Article I, s. 24(c) of the State Constitution.

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

A guardianship is usually an involuntary proceeding against the ward. The case is started with a petition for guardianship, which must specify the grounds justifying guardianship.<sup>3</sup> Within 5 days after the filing of the petition, the court must appoint an examining committee of 3 persons. The 3 must all be medical professionals, and 1 must be a psychiatrist or physician.<sup>4</sup>

Each member of the examining committee must examine the individual alleged to be incapacitated, and may examine any medical records of the individual alleged to be incapacitated.<sup>5</sup> Each member of the examining committee must conduct a physical examination, a mental health examination, and a functional assessment of the alleged incapacitated person.<sup>6</sup> Each member must file a report with the clerk of the court, which must include at a minimum<sup>7</sup>:

- To the extent possible, a diagnosis, prognosis, and recommended course of treatment.
- An evaluation of the alleged incapacitated person's ability to retain her or his rights, including, without limitation, the rights to marry, vote, contract, manage or dispose of property, have a driver's license, determine her or his residence, consent to medical treatment, and make decisions affecting her or his social environment.
- The results of the comprehensive examination and the committee member's assessment of information provided by the attending or family physician, if any.
- A description of any matters with respect to which the person lacks the capacity to exercise rights, the extent of that incapacity, and the factual basis for the determination that the person lacks that capacity.
- The names of all persons present during the time the committee member conducted his or her examination. If a person other than the person who is the subject of the examination supplies answers posed to the alleged incapacitated person, the report must include the response and the name of the person supplying the answer.
- The signature of the committee member and the date and time the member conducted his or her examination.

The trial court judge reviews the reports of the examining committee members when determining whether or not the alleged incapacitated person should be placed in guardianship.

### **Effect of Bill**

The bill creates a public record exemption for reports of an examining committee filed with the clerk of a court under the guardianship law. Such information is made confidential and exempt from public records requirements.<sup>8</sup>

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.<sup>9</sup>

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<sup>3</sup> Section 744.3201, F.S.

<sup>4</sup> Section 744.331(3), F.S.

<sup>5</sup> Section 744.331(3)(e), F.S.

<sup>6</sup> Section 744.331(3)(f), F.S.

<sup>7</sup> Section 744.331(3)(g), F.S.

<sup>8</sup> 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).

<sup>9</sup> Section 24(c), Art. I of the State Constitution.

**B. SECTION DIRECTORY:**

Section 1 amends s. 744.331, F.S., to create a public record exemption for reports of an examining committee related to a petition to determine the incapacity of an individual.

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:

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 appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

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

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:**

This bill makes reports of the examining committee in a guardianship case confidential and exempt from public disclosure. A record that is confidential may not be disclosed to anyone not authorized in the law. The bill may be problematic in practice because it does not specify anyone to which the reports may be disclosed. In practice, the reports need to be disclosed to the presiding judge, the individual that the petition is filed against, and any attorney for the individual alleged to be incapacitated. The bill perhaps should either be amended to make the document only exempt, or should be amended to specify all of the authorized parties to which the reports may be disclosed.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

None.



1                   A bill to be entitled  
 2           An act relating to public records; amending s. 744.331,  
 3           F.S.; creating an exemption from public records  
 4           requirements for reports of examining committee members in  
 5           proceedings to determine incapacity; providing for future  
 6           legislative review and repeal of the exemption; providing  
 7           a statement of public necessity; providing a contingent  
 8           effective date.

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

11  
 12           Section 1. Paragraph (i) is added to subsection (3) of  
 13 section 744.331, Florida Statutes, to read:

14           744.331 Procedures to determine incapacity.—

15           (3) EXAMINING COMMITTEE.—

16           (i) The report of each committee member filed with the  
 17 clerk of the court is confidential and exempt from s. 119.07(1)  
 18 and s. 24(a), Art. I of the State Constitution. This paragraph  
 19 is subject to the Open Government Sunset Review Act in  
 20 accordance with s. 119.15 and shall stand repealed on October 2,  
 21 2015, unless reviewed and saved from repeal through reenactment  
 22 by the Legislature.

23           Section 2. The Legislature finds that it is a public  
 24 necessity to exempt from public records requirements all reports  
 25 of examining committee members, whether initial, amended, or  
 26 supplementary, in order to preserve the privacy of an alleged  
 27 incapacitated person. The Legislature finds that the public  
 28 disclosure of financial or medical information contained in the

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29 | examining committee reports would produce undue harm to the  
30 | alleged incapacitated person.

31 |       Section 3. This act shall take effect October 1, 2010, if  
32 | HB 1431 or similar legislation is adopted in the same  
33 | legislative session or an extension thereof and becomes law.

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) Schwartz offered the following:

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**Amendment (with title amendment)**

Remove line 18 and insert:

and s. 24(a), Art. I of the State Constitution. A report of a member of the examining committee made confidential and exempt by this paragraph shall be disclosed by the clerk of the court to a judge of the circuit, the alleged incapacitated person, an attorney of record for the alleged incapacitated person, the public guardian if there is one for the judicial circuit, the guardian and the attorney for the guardian if a guardian is appointed, an appellate court as part of a record on appeal, and to any other person as directed by order of the court. This paragraph

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COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1435 (2010)

Amendment No. 1

20

**T I T L E   A M E N D M E N T**

21

Remove line 5 and insert:

22

proceedings to determine incapacity; listing persons to whom the

23

clerk of the court shall allow access to the reports of an

24

examining committee member; providing for future