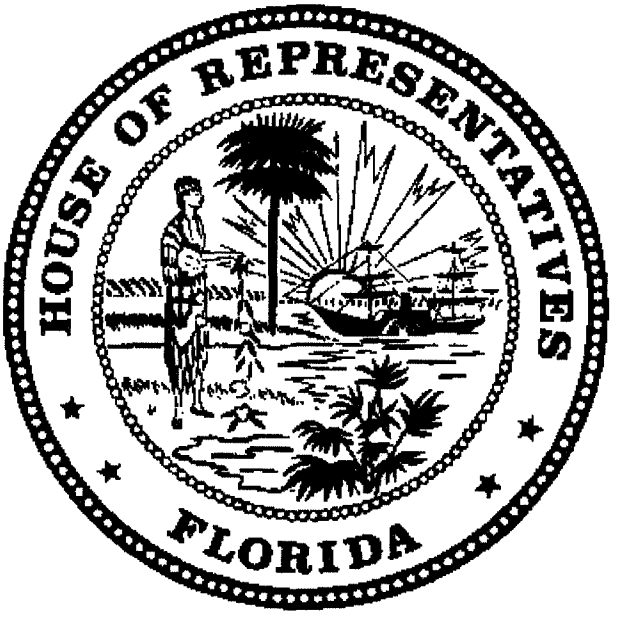

State Affairs Committee

Thursday, March 17, 2011
8:00 AM
Morris Hall (17 HOB)

Dean Cannon
Speaker

Seth McKeel
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time: Thursday, March 17, 2011 08:00 am

End Date and Time: Thursday, March 17, 2011 10:30 am

Location: Morris Hall (17 HOB)
Duration: 2.50 hrs

Consideration of the following bill(s):

HB 13 Onsite Sewage Treatment and Disposal Systems by Coley, Drake, Ford
HB 4147 Recreation and Parks by Porter
HB 4149 Regulation of Electronic Communications by Porter
HB 7029 Office of State-Federal Relations by Federal Affairs Subcommittee, Plakon
HB 7031 Open Government Sunset Review Act by Government Operations Subcommittee, Ahern
HB 7033 Certification of Minority Business Enterprises by Government Operations Subcommittee, Logan
HB 7035 Governor's Private Secretary by Government Operations Subcommittee, Logan
HB 7075 OGSR/DJJ Employees and Family Members by Government Operations Subcommittee, Ahern
HB 7077 OGSR/Biometric Identification Information by Government Operations Subcommittee, Logan
HB 7079 OGSR/Florida Center for Brain Tumor Research by Government Operations Subcommittee, Bileca
HB 7081 OGSR/Statewide Public Guardianship Office by Government Operations Subcommittee, Bileca
HB 7083 OGSR/Interference with Custody by Government Operations Subcommittee, Young

Workshop on the following:

School Food and Nutrition Programs

NOTICE FINALIZED on 03/15/2011 16:14 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 13 Onsite Sewage Treatment and Disposal Systems
SPONSOR(S): Coley and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 82, SB 130, SB 168

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 1 N	Deslatte	Blalock
2) Health Care Appropriations Subcommittee	12 Y, 3 N	Clark	Pridgeon
3) State Affairs Committee		Deslatte	Hamby

SUMMARY ANALYSIS

During the 2010 regular legislative session, the Legislature passed HB 550, which, in part, created an onsite sewage treatment and disposal system evaluation program (program) to be administered by the Department of Health (DOH) beginning January 1, 2011. During the 2010 November special session, the Legislature extended the beginning date for implementing the program from January 1, 2011 to July 1, 2011.

Under current law, all onsite sewage systems must undergo an inspection by the DOH once every five years, starting July 1, 2011. The evaluation must include a tank and drainfield evaluation, a written assessment of the condition of the system, and, if necessary, a disclosure statement. A septic system owner must pay the cost of the evaluation as well as a 5-year evaluation report fee of not less than $15, or more than $30, which is collected by the person conducting the septic system evaluation and remitted to the DOH. A pump-out of a septic system is not required if documentation of a pump-out or a permitted new installation, repair, or modification of the system within the previous 5 years is provided, and the documentation states the capacity of the tank and indicates that the condition of the tank is not a sanitary or public health nuisance as defined by DOH rule. Each evaluation or pump-out must be performed by a registered septic tank contractor or master septic tank contractor, a licensed professional engineer with wastewater treatment system experience, or an environmental health professional certified in the area of onsite sewage treatment and disposal system evaluation. Owners of septic systems are responsible for paying the cost of any required pump-out, repair, or replacement, and cannot request partial evaluation or the omission of portions of the evaluation. Beginning January 1, 2012, the DOH must administer a grant program to assist owners of onsite systems. A grant may be awarded to an owner only for the purpose of inspecting, pumping, repairing, or replacing a system serving a single family residence occupied by an owner with a family income of less than or equal to 133 percent of the federal poverty level at the time of application. A portion of the report fee (at least $1 and not more than $5) must be used to fund a grant program.

The bill amends current law to remove language that directs the DOH to create and administer the statewide septic tank evaluation program and eliminates procedures and criteria for the evaluation program. The bill also repeals current law to terminate the grant program for repair of onsite sewage treatment disposal systems identified pursuant to the evaluation program, and eliminates provisions authorizing the DOH to collect an evaluation report fee. Finally, the bill eliminates provisions relating to disposition of fee proceeds and a revenue-neutral fee schedule.

This bill will eliminate the DOH's workload associated with implementation of the program, thereby resulting in no fiscal impact to the state. Additionally, there will be no fiscal impact on local governments. The bill will eliminate the anticipated positive economic impact on private businesses performing inspections and repairs expected to result from implementation of the program, and will eliminate the costs to septic tank owners that would be required to incur program compliance costs. According to the DOH analysis[1], projected revenue for Fiscal Year 2011-2012 would have been $3.12 million to implement the program beginning July 1, 2011; however these revenues would have offset the cost to administer program.

[1] On file with staff.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Department of Health (DOH) oversees an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is oversight of sewage treatment and disposal systems, i.e., septic tanks.[2] The DOH estimates there are 2.6 million septic tanks in use statewide.

The Bureau of Onsite Sewage Programs develops statewide rules and provides training and standardization for County Health Department employees responsible for issuing permits for the installation and repair of onsite septic systems within the state. The bureau also licenses septic system contractors, approves continuing education courses and courses provided for septic tank contractors, funds a hands-on training center, and mediates onsite sewage treatment and disposal system contracting complaints. In addition, the bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic system designs.[3]

In 2008, the DOH submitted a report on the range of costs to implement a mandatory statewide 5-year septic tank inspection program.[4] Of the 2.6 million septic tanks statewide, the report stated that over half of the systems are over 30 years old and were installed under standards less stringent than current standards. The report further stated that less than one percent of these active systems has operating permits and receives annual inspections by the DOH and routine maintenance from private maintenance entities. Repairs of onsite systems were not regulated until 1987, so many of the older systems have been unlawfully modified.

According to the report, although there was no statewide septic tank inspection program, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic tank inspections at a cost of $83.93 to $215 per inspection. In 2008, approximately 0.5 percent of septic tanks were inspected and pumped out. The report concluded that "a mandatory statewide 5-year septic tank inspection program to be phased in over 10 years, based on the DOH's existing procedure for voluntary inspection, would be a significant upgrade to Florida's onsite system management practices. The mandatory inspections would initially be phased in through inspection and inclusion of onsite systems that are already inspected by the DOH (i.e., county ordained mandatory inspection programs, systems applying for modifications or repairs and for systems subject to real estate transactions). A mandatory septic inspection program would result in greater environmental and public health protection by increasing system owner awareness, prolonging system life and delaying or eliminating costly system repairs."

During the 2010 legislative session, the Legislature passed HB 550, which, in part, created an onsite sewage treatment and disposal system evaluation program (program) to be administered by the DOH beginning January 1, 2011. The purpose of the program is to assess the fundamental operational condition of septic systems and identify failures within the systems. Section 381.0065(5), F.S., directs the DOH to adopt rules implementing the program standards, procedures, and requirements, including a schedule for a 5-year evaluation cycle, requirements for the pump-out of a system or repair of a

[2] Section 381.006, F.S. (2009).
[3] Description of the Bureau of Onsite Sewage from the DOH website. Available at: http://www.doh.state.fl.us/environment/ostds/OSTDSdescription.html.
[4] The report was submitted in compliance with HB 5001, General Appropriations Act, for Fiscal Year 2008-2009. The report was submitted to the Speaker of the House of Representatives, the President of the Senate, and the Executive Office of the Governor. The report can be found at: http://www.myfloridaeh.com/ostds/pdfiles/forms/MSIP.pdf

failing system, enforcement procedures for failure of a system owner to obtain an evaluation of the system, and failure of a contractor to timely submit evaluation results to the DOH and the system owner. The DOH must ensure statewide implementation of the program by January 1, 2016.

The program requires the owner of a septic system, excluding a system that is required to obtain an operating permit,[5] to have the system evaluated at least once every 5 years to assess the fundamental operational condition of the system, and identify any system failures. The evaluation must include a tank and drainfield evaluation, a written assessment of the condition of the system, and, if necessary, a disclosure statement. A septic system owner must pay the cost of the evaluation as well as a 5-year evaluation report fee of not less than $15, or more than $30, which is collected by the person conducting the septic system evaluation and remitted to the DOH. The actual cost of an evaluation, as well as the cost of any necessary remedial actions, is one of the issues currently under review by the DOH.

Owners of septic systems are responsible for paying the cost of any required pump-out, repair, or replacement, and cannot request partial evaluation or the omission of portions of the evaluation. Each evaluation or pump-out must be performed by a registered septic tank contractor or master septic tank contractor, a licensed professional engineer with wastewater treatment system experience, or an environmental health professional certified in the area of onsite sewage treatment and disposal system evaluation. Prior to any evaluation deadline, the DOH must provide a minimum 60 days notice to owners that their systems must be evaluated by that deadline.

Systems being evaluated that were installed prior to January 1, 1983, must meet a minimum 6-inch separation from the bottom of the drainfield to the wettest season water table elevation. All drainfield repairs, replacements, or modifications to systems installed prior to January 1, 1983, must meet a minimum 12-inch separation from the bottom of the drainfield to the wettest season water table elevation. Systems being evaluated that were installed after January 1, 1983, must meet a minimum 12-inch separation from bottom of drainfield to the wettest season water table elevation, and all drainfield repairs, replacements, or modifications to these systems must meet a minimum 24-inch separation from bottom of drainfield to the wettest season water table elevation.

A pump-out of a septic system is not required if documentation of a pump-out or a permitted new installation, repair, or modification of the system within the previous 5 years is provided, and the documentation states the capacity of the tank and indicates that the condition of the tank is not a sanitary or public health nuisance as defined by DOH rule.

Beginning on January 1, 2012, the DOH will administer a grant program to assist low-income owners of septic systems to defray some of the cost of complying with the requirements of the evaluation program. A grant can be awarded to an owner for the purpose of inspecting, pumping, repairing, or replacing a system serving a single-family residence occupied by an owner with a family income of less than or equal to 133% of the federal poverty level.[6] At least $1, but no more than $5, of the evaluation report fee described above must be used to fund the grant program.

The DOH has begun the rulemaking process to implement the evaluation program, but has encountered delays. Concerns have been expressed by the DOH, its Technical Review and Advisory Panel, and the public regarding the unknown costs associated with implementation of the program, including costs to property owners required to pay for the inspection and any remedial activities, as well as implementation costs to the state.

During the 2010 November special session, SB 2A was passed to change the implementation date of the statewide septic tank evaluation program from January 1, 2011 to July 1, 2011.

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[5] Systems that require an operating permit are typically large scale complex commercial systems and anaerobic systems. Typical residential septic systems require a permit for installation, but not an annual operating permit.

[6] Depending on the size of a family, 133% of the federal poverty level equals a yearly income of between $14,404 and $49,223. https://www.cms.gov/MedicaidEligibility/07_IncomeandResourceGuidelines.asp.

Effect of Proposed Changes

The bill eliminates provisions directing the DOH to create and administer a statewide septic tank evaluation program and eliminates procedures and criteria for the evaluation program. The bill also repeals s. 381.00656, F.S., to terminate the grant program for repair of onsite sewage treatment disposal systems identified pursuant to the evaluation program. In addition, the bill eliminates provisions authorizing the DOH to collect an evaluation report fee. Finally, the bill eliminates provisions relating to disposition of fee proceeds and a revenue-neutral fee schedule.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.0065, F.S., revising legislative intent; eliminating provisions directing the Department of Health to create and administer a statewide septic tank evaluation program; eliminating procedures and criteria for the evaluation program.

Section 2. Repeals s. 381.00656, F.S., terminating the grant program for repair of onsite sewage treatment disposal systems identified pursuant to the evaluation program, to conform.

Section 3. Amends s. 381.0066, F.S., eliminating provisions authorizing the department to collect an evaluation report fee; eliminating provisions relating to disposition of fee proceeds and a revenue-neutral fee schedule.

Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   According to the DOH analysis, the projected revenues would have been $3.12 million for Fiscal Year 2011-2012, based on a July 1, 2011 implementation date. These projected revenues would have offset the costs to the DOH to administer the evaluation program, including providing assistance to low income families for septic systems needing repair. However, this bill eliminates the requirement to implement the statewide septic tank evaluation and grant programs, and therefore results in no fiscal impact to the DOH.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The septic system evaluation program, once implemented, will likely increase revenues of persons or businesses in the private sector who are authorized to perform the required evaluations and any pump-out, repairs, replacements, or modifications identified during the evaluation of a septic system. The bill will eliminate this increase in revenues. Conversely, property owners who use a septic system will bear the costs of an evaluation and any necessary remedial activities. The bill will eliminate those costs to septic tank owners.

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:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to onsite sewage treatment and disposal systems; amending s. 381.0065, F.S.; revising legislative intent; eliminating provisions directing the Department of Health to create and administer a statewide septic tank evaluation program; eliminating procedures and criteria for the evaluation program; repealing s. 381.00656, F.S., to terminate the grant program for repair of onsite sewage treatment disposal systems identified pursuant to the evaluation program, to conform; amending s. 381.0066, F.S.; eliminating provisions authorizing the department to collect an evaluation report fee; eliminating provisions relating to disposition of fee proceeds and a revenue-neutral fee schedule; providing an effective date.

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

Section 1. Subsections (1), (5), (6), and (7) of section 381.0065, Florida Statutes, are amended to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(1) LEGISLATIVE INTENT.—

(a) It is the intent of the Legislature that proper management of onsite sewage treatment and disposal systems is paramount to the health, safety, and welfare of the public. ~~It is further the intent of the Legislature that the department shall administer an evaluation program to ensure the operational condition of the system and identify any failure with the~~

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

~~system.~~

(b) It is the intent of the Legislature that where a publicly owned or investor-owned sewerage system is not available, the department shall issue permits for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems under conditions as described in this section and rules adopted under this section. It is further the intent of the Legislature that the installation and use of onsite sewage treatment and disposal systems not adversely affect the public health or significantly degrade the groundwater or surface water.

~~(5) EVALUATION AND ASSESSMENT.~~

~~(a) Beginning January 1, 2011, the department shall administer an onsite sewage treatment and disposal system evaluation program for the purpose of assessing the fundamental operational condition of systems and identifying any failures within the systems. The department shall adopt rules implementing the program standards, procedures, and requirements, including, but not limited to, a schedule for a 5-year evaluation cycle, requirements for the pump-out of a system or repair of a failing system, enforcement procedures for failure of a system owner to obtain an evaluation of the system, and failure of a contractor to timely submit evaluation results to the department and the system owner. The department shall ensure statewide implementation of the evaluation and assessment program by January 1, 2016.~~

~~(b) Owners of an onsite sewage treatment and disposal system, excluding a system that is required to obtain an~~

~~operating permit, shall have the system evaluated at least once every 5 years to assess the fundamental operational condition of the system, and identify any failure within the system.~~

~~(c) All evaluation procedures must be documented and nothing in this subsection limits the amount of detail an evaluator may provide at his or her professional discretion. The evaluation must include a tank and drainfield evaluation, a written assessment of the condition of the system, and, if necessary, a disclosure statement pursuant to the department's procedure.~~

~~(d)1. Systems being evaluated that were installed prior to January 1, 1983, shall meet a minimum 6-inch separation from the bottom of the drainfield to the wettest season water table elevation as defined by department rule. All drainfield repairs, replacements or modifications to systems installed prior to January 1, 1983, shall meet a minimum 12-inch separation from the bottom of the drainfield to the wettest season water table elevation as defined by department rule.~~

~~2. Systems being evaluated that were installed on or after January 1, 1983, shall meet a minimum 12-inch separation from the bottom of the drainfield to the wettest season water table elevation as defined by department rule. All drainfield repairs, replacements or modification to systems developed on or after January 1, 1983, shall meet a minimum 24-inch separation from the bottom of the drainfield to the wettest season water table elevation.~~

~~(e) If documentation of a tank pump-out or a permitted new installation, repair, or modification of the system within the~~

~~previous 5 years is provided, and states the capacity of the tank and indicates that the condition of the tank is not a sanitary or public health nuisance pursuant to department rule, a pump-out of the system is not required.~~

~~(f) Owners are responsible for paying the cost of any required pump-out, repair, or replacement pursuant to department rule, and may not request partial evaluation or the omission of portions of the evaluation.~~

~~(g) Each evaluation or pump-out required under this subsection must be performed by a septic tank contractor or master septic tank contractor registered under part III of chapter 489, a professional engineer with wastewater treatment system experience licensed pursuant to chapter 471, or an environmental health professional certified under chapter 381 in the area of onsite sewage treatment and disposal system evaluation.~~

~~(h) The evaluation report fee collected pursuant to s. 381.0066(2)(b) shall be remitted to the department by the evaluator at the time the report is submitted.~~

~~(i) Prior to any evaluation deadline, the department must provide a minimum of 60 days' notice to owners that their systems must be evaluated by that deadline. The department may include a copy of any homeowner educational materials developed pursuant to this section which provides information on the proper maintenance of onsite sewage treatment and disposal systems.~~

(5) ~~(6)~~ ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.—

(a) Department personnel who have reason to believe

noncompliance exists, may at any reasonable time, enter the premises permitted under ss. 381.0065-381.0066, or the business premises of any septic tank contractor or master septic tank contractor registered under part III of chapter 489, or any premises that the department has reason to believe is being operated or maintained not in compliance, to determine compliance with the provisions of this section, part I of chapter 386, or part III of chapter 489 or rules or standards adopted under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489. As used in this paragraph, the term "premises" does not include a residence or private building. To gain entry to a residence or private building, the department must obtain permission from the owner or occupant or secure an inspection warrant from a court of competent jurisdiction.

(b)1. The department may issue citations that may contain an order of correction or an order to pay a fine, or both, for violations of ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 or the rules adopted by the department, when a violation of these sections or rules is enforceable by an administrative or civil remedy, or when a violation of these sections or rules is a misdemeanor of the second degree. A citation issued under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 constitutes a notice of proposed agency action.

2. A citation must be in writing and must describe the particular nature of the violation, including specific reference to the provisions of law or rule allegedly violated.

3. The fines imposed by a citation issued by the

department may not exceed $500 for each violation. Each day the violation exists constitutes a separate violation for which a citation may be issued.

4. The department shall inform the recipient, by written notice pursuant to ss. 120.569 and 120.57, of the right to an administrative hearing to contest the citation within 21 days after the date the citation is received. The citation must contain a conspicuous statement that if the recipient fails to pay the fine within the time allowed, or fails to appear to contest the citation after having requested a hearing, the recipient has waived the recipient's right to contest the citation and must pay an amount up to the maximum fine.

5. The department may reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, the department must consider the gravity of the violation, the person's attempts at correcting the violation, and the person's history of previous violations including violations for which enforcement actions were taken under ss. 381.0065-381.0067, part I of chapter 386, part III of chapter 489, or other provisions of law or rule.

6. Any person who willfully refuses to sign and accept a citation issued by the department commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

7. The department, pursuant to ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489, shall deposit any fines it collects in the county health department trust fund for use in providing services specified in those sections.

8. This section provides an alternative means of enforcing ss. 381.0065-381.0067, part I of chapter 386, and part III of chapter 489. This section does not prohibit the department from enforcing ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489, or its rules, by any other means. However, the department must elect to use only a single method of enforcement for each violation.

(6) ~~(7)~~ LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective January 1, 2016, the land application of septage from onsite sewage treatment and disposal systems is prohibited. By February 1, 2011, the department, in consultation with the Department of Environmental Protection, shall provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems. The report shall include, but is not limited to, a schedule for the reduction in land application, appropriate treatment levels, alternative methods for treatment and disposal, enhanced application site permitting requirements including any requirements for nutrient management plans, and the range of costs to local governments, affected businesses, and individuals for alternative treatment and disposal methods. The report shall also include any recommendations for legislation or rule authority needed to reduce land application of septage.

Section 2. Section 381.00656, Florida Statutes, is repealed:

~~381.00656 Grant program for repair of onsite sewage treatment disposal systems.—Effective January 1, 2012, the department shall administer a grant program to assist owners of onsite sewage treatment and disposal systems identified pursuant to s. 381.0065 or the rules adopted thereunder. A grant under the program may be awarded to an owner only for the purpose of inspecting, pumping, repairing, or replacing a system serving a single-family residence occupied by an owner with a family income of less than or equal to 133 percent of the federal poverty level at the time of application. The department may prioritize applications for an award of grant funds based upon the severity of a system's failure, its relative environmental impact, the income of the family, or any combination thereof. The department shall adopt rules establishing the grant application and award process, including an application form. The department shall seek to make grants in each fiscal year equal to the total amount of grant funds available, with any excess funds used for grant awards in subsequent fiscal years.~~

Section 3. Subsection (2) of section 381.0066, Florida Statutes, is amended to read:

381.0066 Onsite sewage treatment and disposal systems; fees.—

(2) The minimum fees in the following fee schedule apply until changed by rule by the department within the following limits:

(a) Application review, permit issuance, or system inspection, including repair of a subsurface, mound, filled, or other alternative system or permitting of an abandoned system: a

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fee of not less than $25, or more than $125.

~~(b) A 5-year evaluation report submitted pursuant to s. 381.0065(5): a fee not less than $15, or more than $30. At least $1 and no more than $5 collected pursuant to this paragraph shall be used to fund a grant program established under s. 381.00656.~~

(b) ~~(c)~~ Site evaluation, site reevaluation, evaluation of a system previously in use, or a per annum septage disposal site evaluation: a fee of not less than $40, or more than $115.

(c) ~~(d)~~ Biennial Operating permit for aerobic treatment units or performance-based treatment systems: a fee of not more than $100.

(d) ~~(e)~~ Annual operating permit for systems located in areas zoned for industrial manufacturing or equivalent uses or where the system is expected to receive wastewater which is not domestic in nature: a fee of not less than $150, or more than $300.

(e) ~~(f)~~ Innovative technology: a fee not to exceed $25,000.

(f) ~~(g)~~ Septage disposal service, septage stabilization facility, portable or temporary toilet service, tank manufacturer inspection: a fee of not less than $25, or more than $200, per year.

(g) ~~(h)~~ Application for variance: a fee of not less than $150, or more than $300.

(h) ~~(i)~~ Annual operating permit for waterless, incinerating, or organic waste composting toilets: a fee of not less than $50, or more than $150.

(i) ~~(j)~~ Aerobic treatment unit or performance-based

treatment system maintenance entity permit: a fee of not less than $25, or more than $150, per year.

(j) ~~(k)~~ Reinspection fee per visit for site inspection after system construction approval or for noncompliant system installation per site visit: a fee of not less than $25, or more than $100.

(k) ~~(l)~~ Research: An additional $5 fee shall be added to each new system construction permit issued to be used to fund onsite sewage treatment and disposal system research, demonstration, and training projects. Five dollars from any repair permit fee collected under this section shall be used for funding the hands-on training centers described in s. 381.0065(3)(j).

(l) ~~(m)~~ Annual operating permit, including annual inspection and any required sampling and laboratory analysis of effluent, for an engineer-designed performance-based system: a fee of not less than $150, or more than $300.

~~On or before January 1, 2011, the Surgeon General, after consultation with the Revenue Estimating Conference, shall determine a revenue neutral fee schedule for services provided pursuant to s. 381.0065(5) within the parameters set in paragraph (b). Such determination is not subject to the provisions of chapter 120.~~ The funds collected pursuant to this subsection must be deposited in a trust fund administered by the department, to be used for the purposes stated in this section and ss. 381.0065 and 381.00655.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4147 Recreation and Parks
SPONSOR(S): Porter
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	15 Y, 0 N	Cunningham	Blalock
2) State Affairs Committee		RCCunningham	Hamby

SUMMARY ANALYSIS

In 1925, the Legislature enacted a law that authorized cities and counties to set aside lands and/or buildings for use as playgrounds and recreation centers and appropriate funds to conduct, equip, and maintain these facilities. It also authorized cities and counties to establish a system of supervised recreation, which may include the creation of a playground and recreation board for such purpose. Cities and counties may finance recreational lands and/or buildings through the issuance of bonds and the levy of an annual ad valorem tax of up to 1 mill specifically designated as the "playground and recreation tax." Since 1968, cities and counties under their home rule authority have been able to levy such taxes, subject to referendum, within their respective millage cap.

The law also prescribed the duties and functions of the Division of Recreation and Parks within the Department of Environmental Protection (DEP). While the bill deletes these provisions, DEP maintains that it will still be able to conduct its outreach or training regarding the grant process, if requested by local governments, through the Florida Recreation Development Assistance Program.

The bill repeals this law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Part 1, of chapter 418, F.S. was created in 1925, and authorizes cities and counties to set aside lands and/or buildings for use as playgrounds and recreation centers and appropriate funds to conduct, equip, and maintain these facilities. It also authorizes cities and counties to establish a system of supervised recreation, which may include the creation of a playground and recreation board for such purpose. Cities and counties are authorized to finance recreational lands and/or buildings through the issuance of bonds and the levy of an annual ad valorem tax of up to 1 mill specifically designated as the "playground and recreation tax." Since 1968, cities and counties under their home rule authority have been able to levy such taxes, subject to referendum, within their respective millage cap.[1]

Section 418.12, F.S., of Part 1, describes the duties and functions of the Division of Recreation and Parks within the Department of Environmental Protection.

Effect of Proposed Changes

The bill repeals Part 1 of chapter 418, F.S., ss. 418.01-418.12, F.S. Part 1 was enacted in 1925, and for the most part has not been amended since its inception. The most recent amendment to Part 1 of ch. 418, F.S., occurred in 1994 to s. 418.12, F.S., when the Department of Natural Resources was changed to the Department of Environmental Protection. While the bill deletes this section, the Department of Environmental Protection maintains that it will still be able to conduct its outreach or training regarding the grant process, if requested by local governments, through the Florida Recreation Development Assistance Program. Local governments can accomplish the provisions of Part 1 under their general authority.

B. SECTION DIRECTORY:

Section 1: Repeals sections 418.01, 418.02, 418.03, 418.04, 418.05, 418.06, 418.07, 418.08, 418.09, 418.10, 418.11, and 418.12, F.S.

Section 2: Provides an effective date of July 1, 2011.

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:

[1] See s. 201.01(1)(c), F.S., for counties and s. 200.01(2)(c), F.S., for municipalities.

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of a state tax shared with counties or municipalities. The tax levy authorized by s. 418.08, F.S., is subject to referendum and is therefore already included within the millages authorized for counties under s. 201.01(1)(c), F.S., and municipalities under s. 200.01(2)(c), F.S.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to recreation and parks; repealing s. 418.01, F.S., relating to scope of chapter and a definition; repealing s. 418.02, F.S., relating to recreation centers, use and acquisition of land, and equipment and maintenance; repealing s. 418.03, F.S., relating to supervision; repealing s. 418.04, F.S., relating to playground and recreation board; repealing s. 418.05, F.S., relating to cooperation with other units and boards; repealing s. 418.06, F.S., relating to gifts, grants, devises, and bequests; repealing s. 418.07, F.S., relating to issuance of bonds; repealing s. 418.08, F.S., relating to petition for referendum; repealing s. 418.09, F.S., relating to resolution or ordinance providing for recreation system; repealing s. 418.10, F.S., relating to tax levy; repealing s. 418.11, F.S., relating to payment of expenses and custody of funds; repealing s. 418.12, F.S., relating to duties and functions of Division of Recreation and Parks; providing an effective date.

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

Section 1. Sections 418.01, 418.02, 418.03, 418.04, 418.05, 418.06, 418.07, 418.08, 418.09, 418.10, 418.11, and 418.12, Florida Statutes, are repealed.

Section 2. This act shall take effect July 1, 2011.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4149 Regulation of Electronic Communications
SPONSOR(S): Porter
TIED BILLS: None **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	14 Y, 0 N	Helpling	Collins
2) State Affairs Committee		Helpling CH	Hamby JJO

SUMMARY ANALYSIS

This bill repeals the entirety of chapter 363, F.S., which establishes penalties and liability provisions related to the transmission of messages by telegraph. As telegraph service appears no longer to be provided in Florida, the provisions of chapter 363, F.S., appear to be outdated and no longer applicable.

The bill also repeals s. 364.059, F.S., which provides procedures available to substantially interested parties in the event a local exchange telecommunications company elects, pursuant to s. 364.051(6), F.S., to have its basic local telecommunications services treated the same as its nonbasic services. Section 364.051(6), F.S., was repealed in 2007, so the election provided under that section is no longer available to local exchange telecommunications companies. Thus, the provisions of s. 364.059, F.S., are no longer effective.

The bill has no fiscal impact on state or local governments.

The effective date of the bill is July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Repeal of Chapter 363, F.S.

Chapter 363, F.S., establishes penalties and liability provisions related to the transmission of messages by telegraph. Sections 363.02 through 363.05, F.S., establish penalties and liability provisions for a telegraph company that negligently fails to promptly transmit and deliver messages or refuses to receive for transmission any legible messages provided to the company for transmission. Further, section 363.06, F.S., provides that persons engaged in the business of sending telegrams are liable for damages for mental anguish and physical suffering resulting from negligent failure to promptly and correctly transmit or deliver a telegram. Section 363.08, F.S., establishes liability for persons engaged in the business of sending telegrams in cipher for negligent failure to promptly transmit and deliver a telegram in cipher. Section 363.10, F.S., provides that contractual provisions intended to limit the liability imposed in this chapter are illegal and void. The provisions of this chapter do not apply to interstate transmissions of telegraph messages.[1]

The current provisions of ch. 363, F.S., have remained substantively unchanged in the law since at least 1913.[2] Sections 363.02, 363.03, and 363.05, F.S., were adopted in 1907 and have remained in law since then without amendment. Section 363.04, F.S., was adopted in 1907 and was changed once, in 1945, with a one word technical amendment. Sections 363.06-.10, F.S., were adopted in 1913 and have remained in law since then without amendment. No court opinions related to these provisions have been published since 1945.

Samuel Morse, inventor of the Morse code, sent the first telegram from Washington to Baltimore on May 26, 1844, to his partner Alfred Vail to usher in the telegram era that displaced the Pony Express. It read "WHAT HATH GOD WROUGHT?"[3] We now have a more modern answer to that question, as transmitting and receiving messages by telegraph has been replaced by the speed and widespread availability of e-mail, faxes, inexpensive long-distance telephone service, instant messaging,[4] Twitter, and Facebook. Western Union Telegraph Company, perhaps the most well-known telegraph service provider, sent its last telegram on January 27, 2006.[5] As a result, it appears that the provisions of chapter 363, F.S., are outdated and no longer applicable.[6]

The bill repeals the provisions of Chapter 363, F.S.

Repeal of Section 364.059, F.S.

Section 364.059, F.S., provides procedures available to substantially interested parties in the event a local exchange telecommunications company elects, pursuant to s. 364.051(6), F.S., to have its basic local telecommunications services treated the same as its nonbasic services.

In 2007, subsections (6), (7), and (8) of s. 364.051, F.S., were repealed by s. 10, ch. 2007-29, L.O.F. Thus, the election available in s. 364.051(6), F.S., is no longer available to local exchange

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[1] Price v. Western Union Tel. Co., 23 So.2d 491 (Fla. 1945) ("sending of a telegraph message from one state into another is a transaction in interstate commerce").

[2] Former s. 363.01, F.S., adopted in 1885, established a per-word rate cap for telegraph messages. This provision was repealed in 2000.

[3] http://www.wired.com/science/discoveries/news/2006/02/70147

[4] http://en.wikipedia.org/wiki/Telegraphy; http://www.npr.org/templates/story/story.php?storyId=5186113

[5] http://www.npr.org/templates/story/story.php?storyId=5186113; http://www.wired.com/science/discoveries/news/2006/02/70147

[6] Staff is unable to identify any company registered in Florida that provides telegram service.

telecommunications companies, making the procedures in s. 364.059, F.S., without effect and obsolete.

The bill repeals s. 364.059, F.S.

B. SECTION DIRECTORY:

Section 1. Repeals ss. 363.02, 363.03, 363.04, 363.05, 363.06, 363.07, 363.08, 363.09, and 363.10, F.S., relating to liability and damages for failure to transmit or deliver telegraph messages.

Section 2. Repeals s. 364.059, F.S., relating to procedures for petitions to stay implementation of price changes due to a local exchange telecommunications company electing to have its basic local exchange telecommunications services treated the same as its nonbasic services.

Section 3. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None provided.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to regulation of electronic communications; repealing ch. 363, F.S., relating to regulation of telegraph companies; removing provisions requiring transmission and delivery of messages; removing provisions relating to liability and recovery of damages; repealing s. 364.059, F.S., relating to telecommunications services; removing procedures for a petition to the Public Service Commission to stay implementation of price changes due to a local exchange telecommunications company electing to have its basic local telecommunications services treated the same as its nonbasic services; providing an effective date.

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

Section 1. Sections 363.02, 363.03, 363.04, 363.05, 363.06, 363.07, 363.08, 363.09, and 363.10, Florida Statutes, are repealed.

Section 2. Section 364.059, Florida Statutes, is repealed.

Section 3. This act shall take effect July 1, 2011.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7029 PCB FAS 11-01 Office of State-Federal Relations
SPONSOR(S): Federal Affairs Subcommittee, Plakon and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Federal Affairs Subcommittee	12 Y, 0 N	Cyphers	Cyphers
1) State Affairs Committee		Cyphers	Hamby

SUMMARY ANALYSIS

The Florida Office of State-Federal Relations (Office) was created in 1977.[1] Its purpose, as articulated in its founding legislation,[2] was to create strong and cooperative alliances between the State of Florida and Florida's Congressional delegation, as well as federal agencies. The duties of the Office include acting as liaison between state and federal officials, providing grant assistance and advice to state agencies, assisting in the evaluation and management of Florida's intergovernmental relations efforts, and facilitating the activities of Florida officials traveling to Washington, D.C., on official business.

In 1979, the statute creating the Office was amended to ensure the active involvement of the Legislature.[3] The newer provisions clarified that the Office is to represent the legislative and executive branches of government, and that the duties of the office will be created in consultation with the Speaker of the House of Representatives and the President of the Senate. It also added that the director of the Office is to be appointed by the governor.

Additional provisions to the law were also passed in 1995[4] to require the Executive Office of the Governor to consult with the Office with the goal of attaining an equitable share of federal revenue for the State of Florida. Those provisions include the evaluation of federal funding, development of a federal aid formula database, establishment of formula modeling capability, and development of a communications network that links Florida's legislative and executive branches with the state's congressional delegation.

Although the duties relating to the Office are several and appear in more than one section of Florida Statutes, and even though there is clear language providing access and oversight by the Legislature, there is no formal mechanism for that oversight. This bill requires the Office of State-Federal Relations to prepare and submit an annual report detailing its budget, personnel and activities. The report is due to the governor, Speaker to the House of Representatives, and the President of the Senate by January 1 of each year.

While there is no direct expenditure relating to the required report, it will likely require a moderate investment in staff time and effort to complete.

[1] Chapter 77-419, Laws of Florida
[2] SB 43-B, 1977
[3] Chapter 79-190, Laws of Florida
[4] Chapter 95-303, Laws of Florida

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Office of State-Federal Relations was created by the Florida Legislature during Special Session B in 1977. The physical office is located in Washington, D.C., near the Senate Office Buildings in a facility known as the Hall of States.[5] Twenty-seven states, including Florida, have state offices in the Hall of States. Those states are: California, New York, Pennsylvania, Illinois, Ohio, Michigan, North Carolina, Massachusetts, New Jersey, Arizona, Georgia, Washington, Wisconsin, Maryland, Virginia, Kentucky, South Carolina, Oregon, Connecticut, New Mexico, Arkansas, Iowa, Kansas, Alaska, Nevada, and Delaware.[6] Texas[7] and Indiana also have offices in Washington, D.C., but they are located elsewhere.

Section 14.23, F.S., as originally created in Chapter 77-419, Laws of Florida, addressed the intent of the Office, the fundamentals of its creation, and provided some enumerated duties.

The opening clause of the legislative intent regarding the Office, as originally crafted in 1977, is similar to the modern iteration of the language found in s. 14.23(1), F.S. "It is the intent of this legislation to establish mechanisms, through which the legislative and executive branches of state government can work together in a cooperative alliance, to strengthen the state's relationship with our Congressional Delegation and with federal agencies, and improve our position over federal legislative impact on the state."

In 1995, additional language regarding the creation of a communications network between state and federal officials and the maximization of federal funds was included at the end of the opening intent clause found in s. 14.23, F.S., and in s. 216.151, F.S., as part of House Bill 1683. The ultimate purpose of the additional language is explained at the end of s. 216.151(6)(d), F.S., where it states, "The express intent of the endeavors enumerated in this subsection shall be to secure a more equitable share of available federal revenues."

The closing clause of the legislative intent section, "Therefore, the mechanisms and resources created herein, for the furtherance of the state's intergovernmental efforts, shal include the Congressional Delegation and be available to meet its needs", has remained the same since its inclusion in the original legislation from 1977.[8]

Section 6 of Chapter 77-419 and Chapter 79-190, Laws of Florida make up the basis for the creation of the Office, as well as enumerating some of the specific responsibilities of the Office. The original law[9] creating the Office placed its administrative home in the Executive Office of the Governor (EOG) and its physical home in Washington, D.C. The language also noted that the duties of the Office would be prescribed by the governor. The duties of the Office are found in the original legislation and remain the same in the current statute (s. 14.23(2)(b), F.S.) They are:

- Act as liaison between state and federal officials and agencies.
- Provide grant assistance to state agencies.
- Help develop and implement strategies for our state's intergovernmental efforts.
- Facilitate the activities of Florida officials traveling to Washington, D.C. on official business.

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[5] http://www.sso.org/
[6] Information on file provided by Florida Office of Economic and Demographic Research
[7] http://www.osfr.state.tx.us/
[8] Senate Bill 43-B, 1977
[9] Chapter 77-419, Laws of Florida

In addition to the duties created for the Office in s.14.23, F.S., s. 216.151(6), F.S., lists four general duties of the EOG in relation to the Office of State-Federal Relations. Those duties were added in 1995 through passage of HB 1683, and they are:

- Evaluate current levels of federal funding to determine how Florida can get a more equitable portion.
- Develop a federal aid database in order to catalog existing federal formulas and to identify funding inequities.
- Establish a federal formula modeling capability (if resources are available) that will allow Florida to evaluate federal legislation that involves financial assistance to state or local governments.
- Develop and Implement a communications network that links the EOG, the Florida Legislature, and Florida's Congressional Delegation to each other.

Even though the intent and duties regarding the Office have changed over the years, the most significant changes to the staff and governance of the Office would come soon after the Office's original creation.

In 1979, as part of House Bill 1604, the provisions of the Office's creation were changed to provide much greater oversight and involvement by the Florida Legislature. Section 14.23(2)(a), F.S., notes that the Office is to represent the executive and legislative branches of state government, and the Legislature is to have direct access to the staff of the Office. Also, as it relates to the duties of the Office, s. 14.23(2)(b), F.S., now requires the governor to consult with the Speaker of the House of Representatives and the President of the Senate when determining those duties.

House Bill 1604 also changed s. 14.23(2)(c), F.S., to create the position of Director in the Office of State-Federal Relations. The statute provides for the Director to be appointed by and serve at the pleasure of the governor.

Under the administration which served during Fiscal year 2010-2011, and when fully staffed, the Office of State-Federal Relations had six Full Time Equivalent (FTE) positions. Though some of these positions were not filled for parts of 2010, for portions of that year, the Office was fully staffed.

Included among these positions were a director and one other policy advisor funded directly through the EOG budget. Those positions are included in the overall EOG funds budgeted for the Office. The total EOG allotments for the Office in FY 2010-11 are $394,320 for Salary and Benefits and $170,697 in leased office space and other minor expenses[10].

To complete the complement of six FTE's, there are four FTE's funded by individual state agencies. The following is a list of those agencies and the amount provided for personnel and/or lease contributions in FY 2010-11:[11]

Agency	Salary	Benefits	Lease Contribution	Total
Agency for Workforce Innovation (AWI)	$45,000	$14,663	$0	$59,663
Agency for Health Care Administration (AHCA)	$70,269	$26,971	$0	$97,240
Department of Environmental Protection (DEP); Water Management Districts; and the Florida Fish and Wildlife Conservation Commission (FWCC)	$55,000	$15,000	$14,299	$84,299
Department of Transportation (DOT)	$45,173	$15,810	$0	$60,983
All Agencies	$215,442	$72,444	$14,299	$302,185

[10] Information provided by EOG
[11] Information in table on following page provided by individual agencies

Budgeted expenditures from all sources for the Office of State-Federal Relations in FY 2010-11 totaled $867,202.

In order to attain budget and personnel information regarding the Office, contact with six different sources is necessary (Office of State-Federal Relations, EOG, AWI, AHCA, DEP, and DOT) because budgeting and personnel decisions are made among as many as ten separate state agencies and the EOG. Further, there are no measures by which the Legislature can determine if the Office and the EOG are complying with the provisions of s. 14.23, F.S. or s. 216.151, F.S.

Effect of Proposed Changes

This bill requires the Florida Office of State-Federal Relations to create and submit an annual report to the Governor, the Speaker of the House of Representatives, and the President of the Senate each year by January 1. The report is to include details of the Office's budget, personnel and activities.

This report may provide the EOG and the Office with the means of complying more closely with their responsibilities as found in s. 14.23, F.S. and 216.151, F.S. It may also assist the executive and legislative branches of state government in their desire to work more closely with their federal counterparts in Florida's Congressional Delegation as well as federal agencies to ensure equitable treatment of Florida in funding and policy decisions.

B. SECTION DIRECTORY:

Section 1. Amends s. 14.23, F.S., requiring a report to the EOG and Legislature regarding the budget, personnel, and activities of the Office of State-Federal Relations.

Section 2. Provides and effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   While there is no direct expenditure relating to the required report, it will likely require a moderate investment in staff time and effort to complete.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Office of State-Federal Relations; amending s. 14.23, F.S.; requiring the office to submit an annual report to the Governor, President of the Senate, and Speaker of the House of Representatives; providing an effective date.

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

Section 1. Section 14.23, Florida Statutes, is amended to read:

14.23 State-Federal relations.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to establish mechanisms through which the legislative and executive branches of state government can work together in a cooperative alliance, to strengthen the state's relationship with our Congressional Delegation and with federal executive branch agencies, to improve our position in relation to federal legislative initiatives which have a fiscal impact or substantive policy impact on the state, and to establish and maintain a viable network and communications structure to facilitate the transmittal of essential information between state and federal officials, and to take all necessary steps to maximize the receipt of various federal funds by the State of Florida. Florida's Congressional Delegation is, in this regard, the most important linkage in representing Florida's interests in the nation's capital. Therefore, the mechanisms and resources created herein, for the furtherance of the state's

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

intergovernmental efforts, shall include the Congressional Delegation and be available to meet its needs.

(2) CREATION OF THE OFFICE OF STATE-FEDERAL RELATIONS.—

(a) There is created, within the Executive Office of the Governor, the Office of State-Federal Relations for the State of Florida, hereinafter referred to as the "office," to be located in Washington, D.C. The office shall represent both the legislative and executive branches of state government. The Legislature shall have direct access to the staff of the office.

(b) The duties of the office shall be determined by the Governor, in consultation with the President of the Senate and the Speaker of the House of Representatives, and shall include, but not be limited to, the following:

1. To provide legislative and administrative liaison between state and federal officials and agencies and with Congress.

2. To provide grants assistance and advice to state agencies.

3. To assist in the development and implementation of strategies for the evaluation and management of the state's federal legislative program and intergovernmental efforts.

4. To facilitate the activities of Florida officials traveling to Washington, D.C., in the performance of their official duties.

(c) The head of the office shall be the director, who shall be appointed by and serve at the pleasure of the Governor.

(3) COOPERATION.—For the purpose of centralizing the state-federal relations efforts of the state, state agencies and

their representatives shall cooperate and coordinate their state-federal efforts and activities with the office. State agencies which have representatives headquartered in Washington, D.C., are encouraged to station their representatives in the office.

(4) ANNUAL REPORT.—By January 1 of each year, the office shall submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the office's budget, personnel, and activities.

(5) ~~(4)~~ (a) NOMINATIONS TO FEDERAL REGIONAL FISHERIES MANAGEMENT COUNCILS.—The Governor is prohibited from nominating for appointment to any one of the federal fisheries management councils established under 16 U.S.C. ss. 1801 et seq., as amended, the name of any person who is, or who has been at any time during the 24 months preceding such nomination, a lobbyist for any entity of any kind whatsoever whose interests are or could be affected by actions or decisions of such fisheries management councils.

(b) For purposes of this section, the term "lobbyist" means any natural person who is required to register pursuant to s. 11.045 or the equivalent federal statute and who, for compensation, seeks, or sought during the preceding 24 months, to influence the governmental decisionmaking of a reporting individual or procurement employee, as those terms are defined under s. 112.3148, or his or her agency, to encourage the passage, defeat, or modification of any proposal or recommendation by such reporting individual or procurement employee or his or her agency.

Section 2. This act shall take effect July 1, 2011.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7031 PCB GVOPS 11-01 Open Government Sunset Review Act
SPONSOR(S): Government Operations Subcommittee, Ahern and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	13 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson	Hamby

SUMMARY ANALYSIS

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

The Act originally was created in 1984; however, it was repealed in 1995 and replaced with the Open Government Sunset Review Act of 1995. When the original Open Government Sunset Review Act was repealed in 1995 cross-references to the repealed section remained in law and those cross-references were not changed to reflect the new Act.

This bill corrects those outdated cross-references.

This bill does not have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

History of the Act

The Act originally was created in 1984 and codified at s. 119.14, F.S.[2] At that time it set forth a legislative review process every 10 years after the creation of an exemption.[3] In 1995, the original Open Government Sunset Review Act was repealed[4] and replaced with the Open Government Sunset Review Act of 1995.[5] The 1995 Act abolished the 10 year legislative review process and replaced it with a onetime review process the fifth year after creation or substantial amendment of an exemption.[6] In 2005, the 1995 Act was amended to change the name back to the Open Government Sunset Review Act. In addition, redundant language was removed from the 1995 Act.[7]

Effect of Bill

When the original Open Government Sunset Review Act was repealed in 1995 cross-references to the repealed section remained in law and those cross-references were not changed to reflect the new Act. This bill corrects those outdated cross-references.

B. SECTION DIRECTORY:

Section 1 amends s. 27.151, F.S., to correct a cross-reference.

Section 2 amends s. 378.406, F.S., to correct a cross-reference.

Section 3 amends s. 400.0077, F.S., to correct a cross-reference.

Section 4 amends s. 403.111, F.S., to correct a cross-reference.

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[1] Section 119.15, F.S.
[2] Section 8 of chapter 84-298, L.O.F.
[3] Section 119.14(3)(a), F.S.
[4] Section 1 of chapter 95-217, L.O.F.
[5] Section 2 of chapter 95-217, L.O.F.
[6] Section 119.15(3)(a), F.S.
[7] Section 37 of chapter 2005-251, L.O.F.

Section 5 amends s. 655.0321, F.S., to correct a cross-reference.

Section 6 provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the Open Government Sunset Review Act; amending ss. 27.151, 378.406, 400.0077, 403.111, and 655.0321, F.S.; correcting cross-references to a repealed section of Florida Statutes; providing an effective date.

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

Section 1. Section 27.151, Florida Statutes, is amended to read:

27.151 Confidentiality of specified executive orders; criteria.—

(1) If the Governor provides in an executive order issued pursuant to s. 27.14 or s. 27.15 that the order or a portion thereof is confidential, the order or portion so designated, the application of the Governor to the Supreme Court and all proceedings thereon, and the order of the Supreme Court shall be confidential and exempt from the provisions of s. 119.07(1).

(2) The Governor shall base his or her decision to make an executive order confidential on the criteria set forth in s. 119.15(6)(b) ~~119.14~~.

(3) To maintain the confidentiality of the executive order, the state attorney, upon entering the circuit of assignment, shall immediately have the executive order sealed by the court prior to filing it with the clerk of the circuit court. The Governor may make public any executive order issued pursuant to s. 27.14 or s. 27.15 by a subsequent executive order, and at the expiration of a confidential executive order

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or any extensions thereof, the executive order and all associated orders and reports shall be open to the public pursuant to chapter 119 unless the information contained in the executive order is confidential pursuant to the provisions of chapter 39, chapter 415, chapter 984, or chapter 985.

Section 2. Paragraph (a) of subsection (1) of section 378.406, Florida Statutes, is amended to read:

378.406 Confidentiality of records; availability of information.—

(1)(a) Any information relating to prospecting, rock grades, or secret processes or methods of operation which may be required, ascertained, or discovered by inspection or investigation shall be exempt from the provisions of s. 119.07(1), shall not be disclosed in public hearings, and shall be kept confidential by any member, officer, or employee of the department, if the applicant requests the department to keep such information confidential and informs the department of the basis for such confidentiality. Should the secretary determine that such information requested to be kept confidential shall not be kept confidential, the secretary shall provide the operator with not less than 30 days' notice of his or her intent to release the information. When making his or her determination, the secretary shall consider the public purposes specified in s. <u>119.15(6)(b)</u> ~~119.14(4)(b)~~.

Section 3. Paragraph (c) of subsection (1) of section 400.0077, Florida Statutes, is amended to read:

400.0077 Confidentiality.—

(1) The following are confidential and exempt from the

provisions of s. 119.07(1):

(c) Any other information about a complaint, including any problem identified by an ombudsman council as a result of an investigation, unless an ombudsman council determines that the information does not meet any of the criteria specified in s. 119.15(6)(b) ~~119.14(4)(b)~~; or unless the information is to collect data for submission to those entities specified in s. 712(c) of the federal Older Americans Act for the purpose of identifying and resolving significant problems.

Section 4. Subsection (1) of section 403.111, Florida Statutes, is amended to read:

403.111 Confidential records.—

(1) Any information, other than effluent data and those records described in 42 U.S.C. s. 7661a(b)(8), relating to secret processes or secret methods of manufacture or production, or relating to costs of production, profits, or other financial information which is otherwise not public record, which may be required, ascertained, or discovered by inspection or investigation shall be exempt from the provisions of s. 119.07(1), shall not be disclosed in public hearings, and shall be kept confidential by any member, officer, or employee of the department, upon a showing satisfactory to the department that the information should be kept confidential. The person from whom the information is obtained must request that the department keep such information confidential and must inform the department of the basis for the claim of confidentiality. The department shall, subject to notice and opportunity for hearing, determine whether the information requested to be kept

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confidential should or should not be kept confidential. The department shall determine whether the information submitted should be kept confidential pursuant to the public purpose test as stated in s. 119.15(6)(b)3. ~~119.14(4)(b)3.~~

Section 5. Section 655.0321, Florida Statutes, is amended to read:

655.0321 Restricted access to certain hearings, proceedings, and related documents.—The office shall consider the public purposes specified in s. 119.15(6)(b) ~~119.14(4)(b)~~ in determining whether the hearings and proceedings conducted pursuant to s. 655.033 for the issuance of cease and desist orders and s. 655.037 for the issuance of suspension or removal orders shall be closed and exempt from the provisions of s. 286.011, and whether related documents shall be confidential and exempt from the provisions of s. 119.07(1).

Section 6. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7033 PCB GVOPS 11-09 Certification of Minority Business Enterprises
SPONSOR(S): Government Operations Subcommittee, Logan and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	14 Y, 0 N	McDonald	Williamson
1) State Affairs Committee		McDonald	Hamby

SUMMARY ANALYSIS

The bill deletes provisions that provide for the establishment and responsibilities of the Minority Business Certification Task Force (Task Force). The Task Force is a statutorily created advisory group attached to the Office of Supplier of Diversity within the Department of Management Services (DMS). The Task Force has fulfilled its statutory responsibility to propose uniform minority business certification criteria. DMS placed the criteria in the Florida Administrative Code over 14 years ago. According to the Office of Supplier Diversity, the Task Force has not met in recent years, because use of reciprocal agreements (agreements to accept a business's certified minority enterprise status issued by other entities) ended in 2003.

Abolishing the Task Force was recommended by the Office of Program Policy Analysis & Government Accountability as part of its sunset review of DMS.

The statutory authority of the Florida Advisory Council on Small and Minority Business Development permits this group to assist the Office of Supplier Diversity regarding reciprocal agreements. The Council has already provided input and guidance on these issues to the Office of Supplier Diversity.

There is no fiscal impact associated with the abolishment of the non-operational Minority Business Certification Task Force.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Under the Florida Government Accountability Act,[1] most state agencies are subject to a "sunset" review process to determine whether the agency should be retained, modified, or abolished. During the 2010 Regular Session, the Department of Management Services was among the departments that the Legislature reviewed.[2] Part of that review included an examination of agency advisory committees.[3]

Two statutorily created advisory entities, the Florida Small and Minority Business Advisory Council and the Minority Business Certification Task Force, are assigned to the Office of Supplier Diversity within the Department of Management Services (DMS) to assist in specified responsibilities.[4]

The Minority Business Certification Task Force (Task Force) was created in s. 287.0943, F.S., to propose uniform criteria and procedures by which participating entities and organizations can qualify businesses to participate in procurement or contracting programs as certified minority business enterprises.[5,6] The primary purpose of the Task Force is to propose a final list of the criteria and procedures for consideration by the Secretary of DMS. The Task Force is authorized to seek technical assistance from qualified providers of technical, business, and managerial expertise to ensure the reliability of the certification criteria developed.

The 19-member Task Force appointed by the Secretary of DMS is intended to be regionally balanced and comprised of officials representing governmental entities who administer programs to assist minority businesses procure or develop government-sponsored programs. Six organizations (Florida League of Cities, Florida Association of Counties, Florida School Boards Association, Association of Special Districts, Florida Association of Minority Business Enterprise Officials, and Florida Association of Government Purchasing Officials) are authorized to appoint up to two members to the Task Force. The Office of Supplier Diversity within DMS appoints seven members, consisting of three representatives of minority business enterprises, two office representatives, and two at-large members. The chairperson of the Legislative Committee on Intergovernmental Relations or designee is to serve as an ex officio member.[7]

The Task Force has fulfilled its statutory responsibility to propose uniform minority business certification criteria. DMS placed the criteria in the Florida Administrative Code over 14 years ago.[8] According to the Office of Supplier Diversity, the Task Force has not met in recent years primarily because the use

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[1] Sections 11.901 - 11.920, F.S.
[2] *See* s. 11.905, F.S.
[3] *See* s. 11.906, F.S.
[4] The Office of Supplier Diversity's function is to improve business and economic opportunities for Florida's minority, women, and service-disabled veteran business enterprises. To accomplish this goal the office's primary functions include certification of business enterprises, advocacy and outreach, and matchmaking activities. *See* the DMS website for information on the responsibilities of the office.
[5] *See* chapter 94-322, L.O.F.
[6] Pursuant to s. 20.03(8), F.S., a task force created by specific statutory enactment is, by definition, "limited to no more than 3 years, appointed to study a specific problem and recommend a solution or policy alternative with respect to the problem, and terminates upon the completion of its assignment."
[7] The Florida Legislative Committee on Intergovernmental Relations (LCIR) was not funded in the FY 2010-11 General Appropriations Act, and the Committee ceased operations on June 30, 2010.
[8] Office of Program Policy Analysis & Government Accountability Sunset Review Report, at 4, *Department of Management Services Advisory Committees Assessment*, Report No. 08-S11 (December 2008).

of reciprocal agreements (agreements to accept a business's certified minority enterprise status issued by other entities) ended in 2003.[9]

Abolishing the Task Force was recommended by the Office of Program Policy Analysis & Government Accountability as part of its sunset review of DMS.

Effect of Proposed Changes

The bill abolishes the Minority Business Certification Task Force. Abolishment will have no effect since the statutory responsibility of the Task Force has been fulfilled, the Task Force has not been functional for several years, and the statutory authority of the Florida Advisory Council on Small and Minority Business Development permits the council to provide guidance and assistance to the Office of Supplier Diversity relating to the efforts of that office related to reciprocal agreements.[10]

B. SECTION DIRECTORY:

Section 1. Amends s. 287.0943, F.S., deleting provisions which established and referenced the Minority Business Certification Task Force.

Section 2. Provides an effective date of July 1, 2011.

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.

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[9] Information first provided on January 26, 2010, by Mr. Torey Alston, Executive Director, Office of Supplier Diversity, DMS. Mr. Alston is no longer with DMS. The information was confirmed by Mr. Thad Fortune, Certification Administrator, Office of Supplier Diversity on March 2, 2011.

[10] According to the Office of Supplier Diversity, the office has begun reaching out to local governments for reciprocal agreements, now referred to as certification agreements. The office has already received some guidance from the Florida Advisory Council on Small and Minority Business Development relating to reciprocal agreements. Information first provided on January 26, 2010, by Mr. Torey Alston, Executive Director, Office of Supplier Diversity, DMS. Mr. Alston is no longer with DMS. The information, in part, was confirmed by Mr. Thad Fortune, Certification Administrator, Office of Supplier Diversity on March 2, 2011. Mr. Fortune did state the renewal of use of the Task Force had been discussed; however, it had not been pursued by DMS.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the certification of minority business enterprises; amending s. 287.0943, F.S.; deleting provisions establishing the Minority Business Certification Task Force, requiring that criteria for the certification of minority business enterprises be approved by the task force, and authorizing the task force to amend the statewide and interlocal agreement for the certification of minority business enterprises; conforming provisions; providing an effective date.

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

Section 1. Subsection (2) and paragraph (e) of subsection (3) of section 287.0943, Florida Statutes, are amended to read:

287.0943 Certification of minority business enterprises.—

(2) ~~(a) The office is hereby directed to convene a "Minority Business Certification Task Force." The task force shall meet as often as necessary, but no less frequently than annually.~~

~~(b) The task force shall be regionally balanced and comprised of officials representing the department, counties, municipalities, school boards, special districts, and other political subdivisions of the state who administer programs to assist minority businesses in procurement or development in government-sponsored programs. The following organizations may appoint two members each of the task force who fit the description above:~~

~~1. The Florida League of Cities, Inc.~~

~~2. The Florida Association of Counties.~~

~~3. The Florida School Boards Association, Inc.~~

~~4. The Association of Special Districts.~~

~~5. The Florida Association of Minority Business Enterprise Officials.~~

~~6. The Florida Association of Government Purchasing Officials.~~

~~In addition, the Office of Supplier Diversity shall appoint seven members consisting of three representatives of minority business enterprises, one of whom should be a woman business owner, two officials of the office, and two at-large members to ensure balance. The chairperson of the Legislative Committee on Intergovernmental Relations or a designee shall be a member of the task force, ex officio. A quorum shall consist of one-third of the current members, and the task force may take action by majority vote. Any vacancy may only be filled by the organization or agency originally authorized to appoint the position.~~

~~(c) The purpose of the task force will be to propose uniform criteria and procedures by which participating entities and organizations can qualify businesses to participate in procurement or contracting programs as certified minority business enterprises in accordance with the certification criteria established by law.~~

~~(d) A final list of the criteria and procedures proposed by the task force shall be considered by the secretary. The task~~

~~force may seek technical assistance from qualified providers of technical, business, and managerial expertise to ensure the reliability of the certification criteria developed.~~

(a) ~~(c)~~ In assessing the status of ownership and control, certification criteria shall, at a minimum:

1. Link ownership by a minority person~~,~~ as defined in s. 288.703(3), or as dictated by the legal obligations of a certifying organization, to day-to-day control and financial risk by the qualifying minority owner, and to demonstrated expertise or licensure of a minority owner in any trade or profession that the minority business enterprise will offer to the state when certified. Businesses must comply with all state licensing requirements before ~~prior to~~ becoming certified as a minority business enterprise.

2. If present ownership was obtained by transfer, require the minority person on whom eligibility is based to have owned at least 51 percent of the applicant firm for a minimum of 2 years, when any previous majority ownership interest in the firm was by a nonminority who is or was a relative, former employer, or current employer of the minority person on whom eligibility is based. This requirement does ~~shall~~ not apply to minority persons who are otherwise eligible who take a 51-percent-or-greater interest in a firm that requires professional licensure to operate and who will be the qualifying licenseholder for the firm when certified. A transfer made within a related immediate family group from a nonminority person to a minority person in order to establish ownership by a minority person is ~~shall be~~ deemed to be ~~have been~~ made solely for purposes of satisfying

certification criteria and renders ~~shall render~~ such ownership invalid for purposes of qualifying for such certification if the combined total net asset value of all members of such family group exceeds $1 million. For purposes of this subparagraph, the term "related immediate family group" means one or more children under 16 years of age and a parent of such children or the spouse of such parent residing in the same house or living unit.

3. Require that prospective certified minority business enterprises be currently performing or seeking to perform a useful business function. For purposes of this subparagraph, the term ~~A~~ "useful business function" means ~~is defined as~~ a business function that ~~which~~ results in the provision of materials, supplies, equipment, or services to customers. Acting as a conduit to transfer funds to a nonminority business does not constitute a useful business function unless it is done so in a normal industry practice. As used in this section, the term "acting as a conduit" means, in part, not acting as a regular dealer by making sales of material, goods, or supplies from items bought, kept in stock, and regularly sold to the public in the usual course of business. Brokers, manufacturer's representatives, sales representatives, and nonstocking distributors are considered as conduits that do not perform a useful business function, unless normal industry practice dictates.

(b) ~~(f)~~ When a business receives payments or awards exceeding $100,000 in any one fiscal year, a review of its certification status or an audit must ~~will~~ be conducted within 2 years. In addition, the Office of Supplier Diversity may, as it

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deems appropriate, require that random reviews or audits ~~will~~ be conducted ~~as deemed appropriate by the Office of Supplier Diversity~~.

(c) ~~(g)~~ The certification criteria ~~approved by the task force and~~ adopted by the Department of Management Services shall be included in a statewide and interlocal agreement as defined in s. 287.09431 and, in accordance with s. 163.01, shall be executed according to the terms included therein.

(d) ~~(h)~~ The certification procedures should allow an applicant seeking certification to designate on the application form the information the applicant considers to be proprietary, confidential business information. As used in this paragraph, "proprietary, confidential business information" includes, but is not limited to, any information that would be exempt from public inspection pursuant to the provisions of chapter 119; trade secrets; internal auditing controls and reports; contract costs; or other information the disclosure of which would injure the affected party in the marketplace or otherwise violate s. 286.041. The executor in receipt of the application shall issue written and final notice of any information for which noninspection is requested but not provided for by law.

(e) ~~(i)~~ A business that is certified under ~~the provisions of~~ the statewide and interlocal agreement is ~~shall be~~ deemed a certified minority enterprise in all jurisdictions or organizations where the agreement is in effect, and that business is deemed available to do business as such within any such jurisdiction or with any such organization statewide. All state agencies must accept minority business enterprises

certified in accordance with the statewide and interlocal agreement of s. 287.09431, and that business is ~~shall~~ also ~~be~~ deemed a "certified minority business enterprise" as defined in s. 288.703. However, any governmental jurisdiction or organization that administers a minority business purchasing program may reserve the right to establish further certification procedures necessary to comply with federal law.

~~(j) The statewide and interlocal agreement shall be guided by the terms and conditions found therein and may be amended at any meeting of the task force and subsequently adopted by the secretary of the Department of Management Services. The amended agreement must be enacted, initialed, and legally executed by at least two-thirds of the certifying entities party to the existing agreement and adopted by the state as originally executed in order to bind the certifying entity.~~

~~(k) The task force shall meet for the first time no later than 45 days after the effective date of this act.~~

(3)

(e) Any participating program receiving three or more challenges to its certification decisions pursuant to subsection (4) from other organizations that are executors to the statewide and interlocal agreement, is ~~shall be~~ subject to a review by the office, as provided in paragraphs (a) and (b), of the organization's capacity to perform under such agreement and in accordance with the certification core criteria ~~established by the task force~~. The office shall submit a report to the secretary of the Department of Management Services regarding the results of the review.

Section 2. This act shall take effect July 1, 2011.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7035 PCB GVOPS 11-08 Governor's Private Secretary
SPONSOR(S): Government Operations Subcommittee, Logan and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	14 Y, 0 N	McDonald	Williamson
1) State Affairs Committee		McDonald	Hamby

SUMMARY ANALYSIS

The bill repeals statutory language enacted in 1845 that authorizes the Governor to appoint and commission a fit and proper person to hold office during the pleasure of the Governor and to serve as the Governor's private secretary and as clerk of the executive department. The language was amended in 1995 to refer to the secretary as "she or he" as part of the omnibus statutory revision of all laws to avoid gender bias.

Administrative services, personnel staff of the Executive Office of the Governor, and state personnel system staff of the Department of Management Services were not aware of the provisions of s. 14.03, F.S., relating to the private secretary of the Governor, nor of when the provision might have been used.

Staff of the Executive Office of the Governor are under the state personnel system with state-approved titles. Employees of the Executive Office of the Governor are exempt from the career service system and serve at the pleasure of the Governor.

The bill removes this archaic provision of law that is not used in the state personnel system governing the Executive Office of the Governor. The repeal also removes references to positions and departments that are not recognized or known by those names today.

The bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Enacted in 1845, s. 14.03, F.S., allows the Governor to appoint and commission a person to hold the office of private secretary for the Governor. This person is to serve at the pleasure of the Governor in that capacity and as "clerk for the executive department." The person is to work daily at the capitol during office hours and is to perform other duties as directed by the Governor. In order to qualify for the position, the person "must be fit and proper to hold office."

In 1995, the law was amended, as part of a larger bill, to remove gender bias references in the Florida Statutes.[1]

Present Situation

The staff of the Executive Office of the Governor are under the state personnel system with state-approved titles. The Executive Office of the Governor is under what is known as Pay Plans 07, 08, 09, and 15.[2] Employees of the Office of the Governor are exempt from the career service system and serve at the pleasure of the Governor. According to the Executive Office of the Governor, currently one staff person who is in a senior management position provides services as private secretary to the Governor. The use of two staff had been the practice for the past three Governors, one staff in a select exempt service position and the other in a senior management service position.[3]

Administrative services, personnel staff of the Executive Office of the Governor, and state personnel system staff of the Department of Management Services were not aware of the provisions of s. 14.03, F.S., relating to the private secretary of the Governor, nor of when the provision might have been used.[4]

Effect of Proposed Changes

The bill removes this archaic provision of law. It is not used in the state personnel system governing the Executive Office of the Governor. The repeal also removes references to positions and departments that are not recognized or known in those terms today.[5]

B. SECTION DIRECTORY:

Section 1. Repeals s. 14.03, F.S., relating to the Governor's appointment and commission of a person to be his or her private secretary and to serve as clerk for the executive department.

Section 2. Provides an effective date of July 1, 2011.

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[1] *See* s. 35, Chapter 95-147, L.O.F.

[2] Information received from Mr. Phil Spooner, Workforce Design and Compensation Manager, Human Resources Management System, Department of Management Services, Division of State Group Insurance, on March 2, 2011. Pay plan 15 is a hybrid SMS pay plan with only two persons in that plan.

[3] Information received from Ms. Stephanie Cunha, Personnel Officer for the Executive Office of the Governor, on March 2, 2011, and confirmed by Ms. Diane Moulten, Director of Executive Staff, Executive Officer of the Governor.

[4] Information received from Mr. Phil Spooner and Ms. Stephanie Cunha on February 8, 2010, when the provision of law was first discussed with them. In further discussion with Mr. Spooner on March 2, 2011, he stated he was not aware of the last time the provision in law had been used; but, that in the 31 years he had been involved in the state personnel system the provision has never been used.

[5] The statute refers to the private secretary serving as "clerk for the executive department."

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority of counties and municipalities to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the Governor's private secretary; repealing s. 14.03, F.S., relating to the Governor's authority to appoint and commission a private secretary; providing an effective date.

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

Section 1. Section 14.03, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2011.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7075 PCB GVOPS 11-02 OGSR/DJJ Employees and Family Members
SPONSOR(S): Government Operations Subcommittee, Ahern and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 600

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	13 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson	Hamby

SUMMARY ANALYSIS

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

Current law provides a public record exemption for certain personnel of the Department of Juvenile Justice (DJJ or department). The following information is exempt from public records requirements:

- Home addresses, telephone numbers, and photographs of certain DJJ personnel;
- Names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The exemption applies to current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, senior juvenile detention officers, juvenile detention officer supervisors, juvenile detention officers, house parents I and II, house parent supervisors, group treatment leaders, group treatment leader supervisors, rehabilitation therapists, and social services counselors.

The bill reenacts the public record exemption, which will repeal on October 2, 2011, if this bill does not become law. It revises the exemption to reflect the accurate job titles of the position classifications. The change in job titles does not include additional personnel. It merely reflects those employees who currently are covered by the public record exemption, but whose job titles have changed.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Public Record Exemptions for Identification and Location Information

Current law provides several public record exemptions for identification and location information of certain public employees and their spouses and children.[4] Examples of protected information include home addresses, telephone numbers, and photographs of law enforcement personnel, firefighters, investigators for the Department of Children and Family Services, state attorneys, and code enforcement officers. Similar information concerning the spouses and children of such employees also is protected.

Public Record Exemption under Review

In 2006, the Legislature added certain personnel of the Department of Juvenile Justice (DJJ or department) to the public record exemption.[5] The following information is exempt[6] from public records requirements:

- Home addresses, telephone numbers, and photographs of certain DJJ personnel;

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[1] Section 119.15, F.S.

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

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

[4] *See* s. 119.071(4)(d), F.S.

[5] Chapter 2006-180, L.O.F.; codified as s. 119.071(4)(d)1.i., F.S.

[6] 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).

- Names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The exemption applies to current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, senior juvenile detention officers, juvenile detention officer supervisors, juvenile detention officers, house parents I and II, house parent supervisors, group treatment leaders, group treatment leader supervisors, rehabilitation therapists, and social services counselors.

DJJ personnel also may protect such identification and location information held by any other agency if he or she provides written notification to that custodial agency that he or she is a public employee who receives protection under s. 119.071(4)(d)1.i., F.S.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2011, unless reenacted by the Legislature.

According to DJJ, several of the job titles provided in the public record exemption have been revised to more accurately reflect the duties and responsibilities of those staff. As such, the department has requested that the exemption be modified to reflect the correct job titles.[7]

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemption for identification and location information of certain DJJ personnel and their spouses and children. It revises the exemption to reflect the accurate job titles of the position classifications. The change in job titles does not include additional personnel. It merely reflects those employees who currently are covered by the public record exemption, but whose job titles have changed.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071(4)(d)1.i., F.S., to reenact the public record exemption for identification and location information of certain DJJ personnel and their spouses and children.

Section 2 provides an effective date of October 1, 2011.

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.

[7] Open Government Sunset Review of s. 119.071(4)(d)1.i., F.S., relating to identification and location information of certain DJJ personnel , questionnaire by House staff, September 3, 2010, at question 3.b. (on file with the Government Operations Subcommittee).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides an exemption from public records requirements for identification and location information of certain current and former employees of the Department of Juvenile Justice and their family members; revising the job classifications specified in the exemption to reflect those classifications used by the department; removing the scheduled repeal of the exemption; providing an effective date.

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

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

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

(4) AGENCY PERSONNEL INFORMATION.—

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

whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).

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

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

d. The home addresses, telephone numbers, social security numbers, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or

assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being

accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

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

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

h. The home addresses, telephone numbers, places of employment, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, and places of employment of the spouses and

children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

i. The home addresses, telephone numbers, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, ~~senior~~ juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators ~~juvenile detention officers, house parents I and II, house parent supervisors, group treatment leaders, group treatment leader supervisors~~, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt

from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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

Section 2. This act shall take effect October 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7077 PCB GVOPS 11-03 OGSR/Biometric Identification Information
SPONSOR(S): Government Operations Subcommittee, Logan and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	13 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson	Hamby

SUMMARY ANALYSIS

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

Current law provides a public record exemption for biometric identification information held by an agency before, on, or after July 1, 2006. Biometric identification information means any record of friction ridge detail, fingerprints, palm prints, and footprints.

The bill reenacts the public record exemption for biometric identification information, which will repeal on October 2, 2011, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Public Record Exemption under Review

In 2006, the Legislature created a general public record exemption for biometric identification information held by an agency[4] before, on, or after July 1, 2006.[5] The information is made exempt[6] from public records requirements and the exemption applies retroactively. Biometric identification information means any record of friction ridge detail, fingerprints,[7] palm prints, and footprints.

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[1] Section 119.15, F.S.

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

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

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

[5] Chapter 2006-181, L.O.F.; codified as s. 119.071(5)(g), F.S.

[6] 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).

[7] Current law provides public record exemptions for fingerprints under limited circumstances: fingerprints collected under chapter 447, F.S., relating to labor organizations are confidential and exempt (s. 447.045, F.S.); fingerprints collected for identifying a child in the event that the child becomes missing, are exempt (s. 937.028(1), F.S.); and fingerprints of a child charged with or who committed certain offenses are confidential and exempt (s. 985.212(1), F.S.). The exemptions are not duplicative of the public record exemption under review because these exemptions also protect records associated with the fingerprinting process.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2011, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemption for biometric identification information and saving it from repeal.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071(5)(g), F.S., to reenact the public record exemption for biometric identification information held by an agency.

Section 2 provides an effective date of October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides an exemption from public records requirements for biometric identification information held by an agency; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (g) of subsection (5) of section 119.071, Florida Statutes, is amended to read:

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

(5) OTHER PERSONAL INFORMATION.—

(g)~~1.~~ Biometric identification information held by an agency before, on, or after the effective date of this exemption is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. As used in this paragraph, the term "biometric identification information" means:

1.~~a.~~ Any record of friction ridge detail;

2.~~b.~~ Fingerprints;

3.~~c.~~ Palm prints; and

4.~~d.~~ Footprints.

~~2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

Section 2. This act shall take effect October 1, 2011.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7079 PCB GVOPS 11-04 OGSR/Florida Center for Brain Tumor Research
SPONSOR(S): Government Operations Subcommittee, Bileca and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 420

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	13 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson	Hamby

SUMMARY ANALYSIS

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

The Florida Center for Brain Tumor Research (center) is established within the Evelyn F. and William L. McKnight Brain Institute of the University of Florida. The goal of the center is to find cures for brain tumors and its purpose is to foster collaboration with brain cancer research organizations and other institutions, provide a central repository for brain tumor biopsies from individuals throughout the state, improve and monitor brain tumor biomedical research programs within the state, facilitate funding opportunities, and foster improved technology transfer of brain tumor research findings into clinical trials and widespread public use.

Current law provides a public record exemption for the center. Medical records and information received from an individual from another state or nation or the Federal Government that is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law, are confidential and exempt from public records requirements.

The bill reenacts the public record exemption, which will repeal on October 2, 2011, if this bill does not become law. It expands the public record exemption by providing that personal identifying information of a donor to the central repository for brain tumor biopsies or the brain tumor registry is confidential and exempt. This change is considered an expansion of the current exemption because it includes personal identifying information of a donor in *all* records, not just medical records. The bill also provides for retroactive application of the public record exemption.

The bill authorizes the release of confidential and exempt information to a person engaged in bona fide research provided certain requirements are met.

The bill extends the repeal date from October 2, 2011, to October 2, 2016. It also provides a public necessity statement as required by the State Constitution.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Florida Center for Brain Tumor Research

The Florida Center for Brain Tumor Research (center) is established within the Evelyn F. and William L. McKnight Brain Institute of the University of Florida.[4] The goal of the center is to find cures for brain tumors[5] and its purpose is to:

- Foster collaboration with brain cancer research organizations and other institutions;
- Provide a central repository for brain tumor biopsies from individuals throughout the state;
- Improve and monitor brain tumor biomedical research programs within the state;
- Facilitate funding opportunities; and
- Foster improved technology transfer of brain tumor research findings into clinical trials and widespread public use.[6]

The center is funded through private, state, and federal sources.[7] According to the center, 10 percent of its funding is provided from private sources and 90 percent is provided from state sources.[8]

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[1] Section 119.15, F.S.

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

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

[4] Chapter 2006-258, L.O.F.; codified as s. 381.853(4), F.S.

[5] Section 381.853(4)(b), F.S.

[6] Section 381.853(4)(a), F.S.

[7] Section 381.853(4)(g), F.S.; the Legislature initially appropriated $500,000 for the center and in 2009 and 2010, the Legislature appropriated $500,000 (*see* chapters 2009-81 and 2010-152, L.O.F.)

[8] Open Government Sunset Review of s. 381.8531, F.S., relating to the Florida Center for Brain Tumor Research, questionnaire by House staff, September 8, 2010, at question 1. (on file with the Government Operations Subcommittee).

Current law establishes a scientific advisory council (council) within the center.[9] The council must meet at least annually; however, it generally meets twice per year.[10] The Council consists of members from the University of Florida, Scripps Research Institute Florida, University of Miami, Mayo Clinic in Jacksonville, Cleveland Clinic Florida, H. Lee Moffitt Cancer Center and Research Institute, M.D. Anderson Cancer Center Orlando, and a neurosurgeon in private practice.[11]

Public Record Exemption under Review

In 2006, the Legislature created a public record exemption for certain information held by the Florida Center for Brain Tumor Research (center).[12] The following information is confidential and exempt[13] from public records requirements:

- Medical records.[14]
- Any information received from an individual from another state or nation or the Federal Government that is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.[15]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2011, unless reenacted by the Legislature.

According to the center, it extracts the information it uses from medical records of donors to the central repository for brain tumor biopsies and the brain tumor registry, and from other records such as quality of life surveys. Information the center receives from an individual from another state or nation or the Federal Government also is extracted from medical records.[16]

The center has requested that the exemption be revised to:

- Reflect its current practice of extracting donor information from medical records or other records, such as quality of life surveys.
- Allow researchers access to the confidential and exempt information since the purpose of the center is to provide tissue samples and clinical data for researchers who are conducting studies to find improved treatments or possible cures for brain tumors.[17]

Effect of Bill

The bill reenacts and expands the public record exemption for the center. It expands the public record exemption by providing that personal identifying information of a donor to the central repository for brain tumor biopsies or the brain tumor registry[18] is confidential and exempt. This change is considered an expansion of the current exemption because it includes personal identifying information of a donor in

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[9] Section 381.853(5), F.S.

[10] Section 381.853(5), F.S., and Open Government Sunset Review of s. 381.8531, F.S., relating to the Florida Center for Brain Tumor Research, questionnaire by House staff, September 8, 2010, at question 2.b. (on file with the Government Operations Subcommittee).

[11] *Id.* at question 2.a.

[12] Chapter 2006-259, L.O.F.; codified as s. 381.8531, F.S.

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

[14] Section 381.8531(1)(a), F.S.

[15] Section 381.8531(1)(b), F.S.

[16] Open Government Sunset Review of s. 381.8531, F.S., relating to the Florida Center for Brain Tumor Research, questionnaire by House staff, September 8, 2010, at question 3.b. and 4.c. (on file with the Government Operations Subcommittee).

[17] *Id.* at questions 4.c. and 7.a.

[18] The center maintains a collaborative, statewide registry of banked cancerous and non-cancerous brain tumor specimens matched samples of DNA, plasma, serum and cerebrospinal fluid, clinical and demographic information, and quality-of-life assessments obtained from patients.

all records, not just medical records. The bill also provides for retroactive application of the public record exemption.

The bill authorizes the release of confidential and exempt information to a person engaged in bona fide research if that person agrees to:

- Submit to the center a research plan that has been approved by an institutional review board[19] and that specifies the exact nature of the information requested, intended use of the information, and reason that the research could not practicably be conducted without the information;
- Sign a confidentiality agreement with the center;
- Maintain the confidentiality of the personal identifying information or the information that is otherwise confidential or exempt pursuant to the laws of another state or nation or the Federal Government; and
- Destroy the confidential information to the extent permitted by law and after the research has concluded.

Because the bill expands the current public record exemption, it extends the repeal date for the exemption from October 2, 2011, to October 2, 2016. It also provides a public necessity statement as required by the State Constitution.[20]

B. SECTION DIRECTORY:

Section 1 amends s. 381.8531, F.S., to reenact and expand the public record exemption for the Florida Center for Brain Tumor Research.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2011.

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.

[19] An institutional review board is an appropriately constituted group that has been formally designated to review and monitor biomedical research involving human subjects.
[20] Section 24(c), Art. I of the State Constitution.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 381.8531, F.S.; providing that personal identifying information of a donor to the central repository for brain tumor biopsies or the brain tumor registry of the Florida Center for Brain Tumor Research is confidential and exempt from public records requirements; providing for retroactive application of the exemption; providing an exception to the exemption for a person engaged in bona fide research provided certain conditions are met; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 381.8531, Florida Statutes, is amended to read:

381.8531 Florida Center for Brain Tumor Research; public records exemption.—

(1) The following information held by the Florida Center for Brain Tumor Research before, on, or after July 1, 2011, is confidential and exempt from s. 119.07(1) and s. 24, Art. I of the State Constitution:

(a) Personal identifying information of a donor to the central repository for brain tumor biopsies or the brain tumor registry. ~~An individual's medical record.~~

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

(b) Any information received from an individual from another state or nation or the Federal Government that is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

(2) Such information may be disclosed to a person engaged in bona fide research if that person agrees to:

(a) Submit to the Florida Center for Brain Tumor Research a research plan that has been approved by an institutional review board and that specifies the exact nature of the information requested, the intended use of the information, and the reason that the research could not practicably be conducted without the information;

(b) Sign a confidentiality agreement with the Florida Center for Brain Tumor Research;

(c) Maintain the confidentiality of the information received; and

(d) To the extent permitted by law and after the research has concluded, destroy any confidential information obtained.

(3) ~~(2)~~ This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2016 ~~2011~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that personal identifying information pertaining to a donor to the central repository for brain tumor biopsies or the brain tumor registry of the Florida Center for Brain Tumor Research pursuant to s. 381.8531, Florida Statutes, be made confidential and exempt from public records requirements. Brain

tumors are a leading cause of death, and there is a significant need to discover cures and develop treatment modalities for brain tumors, which can be facilitated by a registry and repository of specimens from persons diagnosed with brain tumors. The disclosure of such information could hinder the availability of specimens for research. Matters of personal health are traditionally private and confidential concerns between the patient and the health care provider. The private and confidential nature of personal health matters pervades both the public and private health care sectors. For these reasons, the donor's expectation of and right to privacy in all matters regarding his or her personal health necessitates this exemption.

Section 3. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7081 PCB GVOPS 11-06 OGSR/Statewide Public Guardianship Office
SPONSOR(S): Government Operations Subcommittee, Bileca and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 572

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	13 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson	Hamby

SUMMARY ANALYSIS

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

The Statewide Public Guardianship Office (office) is established within the Department of Elderly Affairs (department) and an executive director serves as head of the office. The executive director has oversight responsibilities for all public guardians.

The office may enter into a written contract with a direct-support organization (DSO) for the sole purpose of supporting the office. The DSO is operated by a board of directors appointed by the secretary of the department.

Current law provides a public record exemption for the identity of a donor or prospective donor of funds or property to the DSO who desires to remain anonymous, and all information identifying that donor or prospective donor.

The bill reenacts the public record exemption, which will repeal on October 2, 2011, if this bill does not become law. It also removes duplicative and superfluous provisions.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Statewide Public Guardianship Office

The Statewide Public Guardianship Office (office) is established within the Department of Elderly Affairs (department).[4] An executive director appointed by the secretary of the department serves as head of the office.[5] The executive director has oversight responsibilities for all public guardians.[6]

The executive director, after consultation with certain persons, may establish local public guardian offices[7] to provide guardianship services when a person does not have adequate income or assets to afford a private guardian and when there is no willing relative or friend to serve.[8] The office registers annually professional guardians[9] and reviews and approves courses for instruction and education for such guardians.[10]

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[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution.
[3] An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.
[4] Section 744.7021, F.S.
[5] Section 744.7021(1), F.S.
[6] Section 744.7021(2), F.S.
[7] Section 744.703(1), F.S.
[8] Open Government Sunset Review of s. 744.7082(6), F.S., relating to the public record exemption for the DSO, joint questionnaire by Senate and House staff, July 14, 2010, at question 1. (on file with the Government Operations Subcommittee).
[9] Section 744.1083(1) and (2), F.S.
[10] Section 744.1085(3), F.S.

Direct-Support Organization

Current law authorizes the office to enter into a written contract[11] with a direct-support organization (DSO)[12] for the sole purpose of supporting the office. The DSO is operated by a board of directors appointed by the secretary of the department.[13] The Foundation for Indigent Guardianship serves as the DSO for the office and was incorporated in December 2005.[14]

Public Record Exemption under Review

Current law provides a public record exemption for the DSO.[15] The following information is confidential and exempt[16] from public records requirements:

- The identity of a donor or prospective donor of funds or property to the DSO who desires to remain anonymous; and
- All information identifying that donor or prospective donor.

The public record exemption for the identity of a donor or prospective donor and the exemption for all information identifying that donor appear duplicative. Protecting the personal identifying information of such donor or prospective donor would accomplish the same goal.

Current law also provides that donor anonymity must be maintained in any publication concerning the DSO. This provision is superfluous as the information cannot be released because it is confidential and exempt from public records requirements.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2011, unless reenacted by the Legislature.[17]

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemption for the DSO. It revises the exemption to provide that personal identifying information of a donor or prospective donor who wishes to remain anonymous is confidential and exempt. This revision merely eliminates any duplication provided in the current exemption. The bill also removes the unnecessary provision that reiterates that anonymity must be maintained.

B. SECTION DIRECTORY:

Section 1 amends s. 744.7082, F.S., to reenact the public record exemption for the DSO for the Statewide Public Guardianship Office.

Section 2 repeals section 2 of chapter 2006-179, L.O.F., which provides for repeal of the public record exemption.

Section 3 provides an effective date of October 1, 2011.

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[11] *See* s. 744.7082(2), F.S.

[12] The DSO is a not-for-profit corporation incorporated under chapter 617, F.S., and approved by the Department of State. It is organized and operated to: conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other real or personal property; and make expenditures to or for the direct or indirect benefit of the office. Section 744.7082(1)(a) and (b), F.S.

[13] Section 744.7082(3), F.S.

[14] Open Government Sunset Review of s. 744.7082(6), F.S., relating to the public record exemption for the DSO, joint questionnaire by Senate and House staff, July 14, 2010, at question 2. (on file with the Government Operations Subcommittee).

[15] Chapter 2006-179; codified as s. 744.7082(6), F.S.

[16] 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).

[17] Section 2, chapter 2006-179, L.O.F.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 744.7082, F.S., which provides an exemption from public records requirements for information that identifies certain donors or prospective donors to the direct-support organization for the Statewide Public Guardianship Office; removing superfluous and duplicative language; repealing s. 2, ch. 2006-179, Laws of Florida, which provides for repeal of the exemption; providing an effective date.

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

Section 1. Subsection (6) of section 744.7082, Florida Statutes, is amended to read:

744.7082 Direct-support organization; definition; use of property; board of directors; audit; dissolution.—

(6) PUBLIC RECORDS.—Personal identifying information ~~The identity~~ of a donor or prospective donor ~~of funds or property~~ to the direct-support organization who desires to remain anonymous~~,~~ ~~and all information identifying the donor or prospective donor,~~ is confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~, and that anonymity must be maintained in any publication concerning the direct-support organization~~.

Section 2. Section 2 of chapter 2006-179, Law of Florida, is repealed.

Section 3. This act shall take effect October 1, 2011.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7083 PCB GVOPS 11-07 OGSR/Interference with Custody
SPONSOR(S): Government Operations Subcommittee, Young and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 570

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	14 Y, 0 N	Williamson	Williamson
1) State Affairs Committee		Williamson	Hamby

SUMMARY ANALYSIS

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

Current law provides a third-degree felony for the offense of interference with custody. The offense does not apply when a person having a legal right to custody of a minor or incompetent person is the victim of domestic violence, reasonably believes he or she is about to become a victim of such violence, or believes the welfare of the minor or incompetent person is in danger. Such person must file a report with the office of the sheriff or state attorney of the county where the minor or incompetent person resided at the time he or she was taken. The report must contain the name of the person taking the minor or incompetent person, the current address and telephone number of that person and of the minor or incompetent person, and the reasons the minor or incompetent person was taken.

Current law provides a public record exemption for the address and telephone number of the person taking the minor or incompetent person, and of the minor or incompetent person, contained in the report made to a sheriff or state attorney.

The bill reenacts the public record exemption, which will repeal on October 2, 2011, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[2] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[3] then a public necessity statement and a two-thirds vote for passage are not required.

Interference with Custody

In 1974, the Legislature created the offense of interference with custody. At present, there are two variations to the offense. It is a third-degree felony:

- For any person, without legal authority, to knowingly or recklessly take a minor or incompetent person from the custody of his or her parent, a guardian, a public agency in charge of the minor or incompetent person, or any other lawful custodian.[4]
- In the absence of a court order determining custody or visitation rights, for a parent, stepparent, legal guardian, or relative who has custody of the minor or incompetent person to take or conceal the minor or incompetent person with a malicious intent to deprive another person of his or her right to custody.[5]

Current law provides three defenses to the offense of interference with custody.[6] The statute also provides that the offense of interference with custody does not apply when a person having a legal right to custody of a minor or incompetent person is the victim of domestic violence, reasonably believes he or she is about to become a victim of such violence, or believes the welfare of the minor or incompetent person is in danger.[7] In order to avail himself or herself of this exception, such person must:

- Within 10 days of the taking, make a report to the sheriff or state attorney for the county in which the minor or incompetent person resided. The report must include the name of the person

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[1] Section 119.15, F.S.
[2] Section 24(c), Art. I of the State Constitution.
[3] An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.
[4] Section 787.03(1), F.S.
[5] Section 787.03(2), F.S.
[6] *See* s. 787.03(4), F.S.
[7] Section 787.03(6)(a), F.S.

taking the minor or incompetent person, the current address and telephone number of the person and of the minor or incompetent person, and the reasons the minor or incompetent person was taken.[8]

- Within a reasonable time of the taking, commence a custody proceeding consistent with the federal Parental Kidnapping Prevention Act[9] or the Uniform Child Custody Jurisdiction and Enforcement Act.[10,11]
- Inform the sheriff or state attorney of any address or telephone number changes for the person and the minor or incompetent person.[12]

Public Record Exemption under Review

Current law provides that the address and telephone number of the person taking the minor or incompetent person, and of the minor or incompetent person, contained in the report made to a sheriff or state attorney, are confidential and exempt[13] from public records requirements.[14] A sheriff or state attorney may allow an agency[15] to inspect and copy records containing the confidential and exempt information in the furtherance of that agency's duties and responsibilities.[16]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2011, unless reenacted by the Legislature.[17]

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemption and saving it from repeal.

B. SECTION DIRECTORY:

Section 1 amends s. 787.03, F.S., to reenact the public record exemption for certain information related to the offense of interference with custody.

Section 2 provides an effective date of October 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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[8] Section 787.03(6)(b)1., F.S.
[9] 28 U.S.C. s. 1738A.
[10] Sections 61.501 – 61.542, F.S.
[11] Section 787.03(6)(b)2., F.S.
[12] Section 787.03(6)(b)3., F.S.
[13] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985).
[14] Section 787.03(6)(c)1., F.S.
[15] Section 119.011(2), F.S, defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[16] Section 787.03(6)(c)2., F.S.
[17] Section 787.03(6)(c)3., F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 787.03, F.S., which provides a public records exemption for information submitted to a sheriff or state attorney for the purpose of obtaining immunity from prosecution for the offense of interference with custody; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (c) of subsection (6) of section 787.03, Florida Statutes, is amended to read:

787.03 Interference with custody.—

(6)

(c)1. The current address and telephone number of the person and the minor or incompetent person which are contained in the report made to a sheriff or state attorney under paragraph (b) are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. A sheriff or state attorney may allow an agency, as defined in s. 119.011, to inspect and copy records made confidential and exempt under this paragraph in the furtherance of that agency's duties and responsibilities.

~~3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and is repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

Section 2. This act shall take effect October 1, 2011.

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

Workshop - School Food & Nutrition Programs

School and Food Nutrition Programs

The National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Summer Food Service Program (SFSP), the Commodity Food Distribution Program, and the Emergency Food Assistance Program (TEFAP) are all federal programs administered by the U.S. Department of Agriculture (USDA) at the national level. At the state level in Florida, the NSLP, SBP, and SFSP are administered by the Department of Education (DOE), while the Commodity Food Distribution Program and TEFAP are administered by the Department of Agriculture and Consumer Services (DACS).

School Lunch Program (SLP)

The national SLP is a federally assisted meal program that provides nutritionally balanced, low-cost or free lunches to more than 31 million children each school day.[1]

School districts and independent schools that choose to take part in the SLP get cash subsidies and donated commodities from the USDA for each meal they serve. In return, they must serve lunches that meet federal requirements, and they must offer free or reduced-price lunches to eligible children. School lunches must meet the applicable recommendations of the Dietary Guidelines for Americans, which recommend that no more than 30 percent of an individual's calories come from fat, and less than 10 percent from saturated fat. Regulations also require for school lunches to provide one-third of the Recommended Dietary Allowances of protein, Vitamin A, Vitamin C, iron, calcium, and calories. While the SLP must meet federal nutrition requirements, the decision regarding the specific foods to serve and how they are prepared are made by local school food authorities.

Any child at a participating school may purchase a meal through the SLP. Children from families with incomes at or below 130 percent of the poverty level[2] are eligible for free meals. Children from families with incomes between 130 percent and 185 percent of the poverty level are eligible for reduced-price meals.[3] Children from families with incomes over 185 percent of poverty pay a full price, though their meals are still subsidized to some extent. Local school food authorities set their own prices for full-price (paid) meals, but must operate their meal services as non-profit programs.

To participate in the school lunch program in Florida, schools must apply through the DOE and complete the necessary requirements for participation. The requirements include:

- Completion of the application process.
- Attend "Child Nutrition" training.
- Maintain documentation and verification of children's eligibility category and count meals by eligibility category (free, reduced price, and paid meals).
- Maintain meal production records and inventory records that document the amount and types of food served.
- Utilize one of the four menu planning options.
- Maintain records of On-site Accountability Reviews.
- Maintain records of all program income and expenditures.

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[1] Based on information from fiscal year 2009.

[2] For the period July 1, 2010 through June 30, 2011, 130 percent of the poverty level is $28,665 for a family of four; 185 percent is $40,793.

[3] Reduced-price meals may not cost more than 40 cents.

Once approved, the schools receive funding from the DOE for each lunch and breakfast meal served as long as they meet established state and federal regulations.[4] The DOE conducts periodic reviews of the school lunch and breakfast programs to ensure that state and federal regulations are being met. The DOE has rule-making authority for the administration and operation of the school food service programs.

School Breakfast Program (SBP)

Florida law requires the SBP to be offered in all elementary public and charter schools. The SBP must be offered in schools in which 80 percent or more of the students are eligible for free or reduced-price meals. District school boards are encouraged to provide universal-free school breakfast meals to all students in each elementary, middle, and high school. The schools can choose to make the breakfast meals available at alternate areas on the school campus, such as kiosks near bus ramps.

School districts set the prices for the breakfast meals annually. Unless the district school board approves lower rates, the cost of the breakfast meals may not exceed the combined federal reimbursements and state allocations.

District school boards may approve or disapprove a policy, after taking public testimony, making universal-free school breakfast meals available to all students in each elementary, middle, and high school in which 80 percent or more of the students are eligible for free or reduced-price meals. The breakfast meal must be available for students arriving at school on the school bus less than 15 minutes before the first bell rings, in which case the student will be allowed at least 15 minutes to eat the breakfast.

School districts are responsible for disseminating information annually to students regarding the district's school breakfast program. This must be done through school announcements and written notice provided to all parents.

School districts may operate the SBP providing for food preparation at the school site or in central locations with distributions to designated satellite schools or any combination thereof.

The Commissioner of Education must make every reasonable effort to ensure that schools designated as "severe need" schools receive the highest rate of reimbursement for which they are entitled for each breakfast meal served.[5] The DOE is responsible for allocating the monies appropriated by the Legislature each year to the school districts based on each district's total number of free and reduced-price breakfast meals served.

Children's Summer Nutrition Program (SNP)

The SNP, also known as the "Ms. Willie Ann Glenn Act," operates through the NSLP or SBP as a way of feeding children, 18 years and under, from low-income areas during the summer months.

Florida law directs school districts to develop a plan to sponsor a SNP with operational sites within 5 miles of at least one elementary school with 50 percent or more of the students eligible for free or reduced-price school meals and for a duration of 35 consecutive days. Secondary

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[4] The state must adhere to a matching funds requirement in the National School Lunch Act. For 2010-11, the state's matching requirement was $8.9 million, which came from General Revenue.

[5] 42 U.S.C. s. 1773

sites must be within 10 miles of each elementary school with 50 percent of more of the students eligible for free or reduced-price school meals.

A district school board may opt out of sponsoring a SNP. To qualify for the exemption, the district must include the issue on an agenda at a regular or special district school board meeting that is publicly noticed, provide residents an opportunity to participate in the discussion and vote on whether to be exempt from sponsoring a SNP. After deciding to become exempt, the district school board must notify the Commissioner of Education within 10 days. The district must revisit the decision to be exempt each year and notify the Commissioner of Education accordingly.

If a district school board chooses to be exempt from the SNP, the board may encourage not-for-profit entities to sponsor the SNP. Neither the district school board, school district nor the Commissioner of Education may be held responsible for any liability as a result of a not-for-profit entity failing to complete the requirements of the SNP.

The superintendent of schools may cooperate with municipal and county governmental agencies and private, not-for-profit leaders in identifying an entity and location to sponsor the SNP. Current law requires each school district with a SNP to report where the SNP will be located to the DOE by April 15 of each year. By February 15 of each year, the DOE must provide each district school board with a list of local organizations that have filed letters of intent to participate in the SNP in order for a district school board to be able to determine how many sites are needed to serve the children and where to place each site.

Florida Farm Fresh Schools Program (FFSP)

The FFSP was created to address the need of school children for not only nutritious food for healthy physical and intellectual development, but also to combat diseases related to poor nutrition and obesity. The FFSP requires the DOE to develop policies pertaining to school food services that encourage school districts to buy fresh and high-quality foods grown in the state, when feasible. The program encourages farmers in the state to sell their products to school districts and schools. The school districts and schools are encouraged to select foods based on maximum nutritional content and to buy organic food products when feasible. The DOE is directed to provide outreach, guidance and training to the school districts, schools, and various other organizations[6] involved in school food services regarding the benefits of fresh food products grown in the state.

Other

The DOE currently requires each school district to submit an updated copy of its wellness policy and physical education policy when a change or revision is made. The DOE is required to provide website links to information regarding the nutritional content of foods and beverages and to healthful food choices in accordance with the dietary guidelines of the USDA.

Commodity Food Distribution Program

Through the Commodity Food Distribution Program, the USDA purchases foods through direct appropriations from Congress, and under surplus-removal and price-support activities. The foods are distributed to state agencies for use by school food authorities participating in the NSLP. In Florida, DACS is the agency responsible for commodity distribution.

[6] School food service directors, parent and teacher organizations, and students.

The Emergency Food Assistance Program (TEFAP)

TEFAP is a federal program that helps improve the diets of low-income Americans, regardless of age, by providing them with emergency food and nutrition assistance at no cost. Under TEFAP, commodity foods are made available by the USDA to the states. The states provide the food to eligible recipient agencies that distribute it to the needy through local emergency feeding organizations such as food banks, food pantries, soup kitchens or other feeding sights.

In Florida, the recipient agencies are selected by the DACS, every four years, as a result of a competitive procurement process or bid. TEFAP commodities are provided to each of the contracted recipient agencies according to the counties they serve. Each county's share is determined using a formula that bases the allocation on each county's relative share of the state's total number of persons with incomes below the poverty line and the total number of unemployed persons. This formula, which is similar to the one used by the federal government to allocate resources to the states, is adjusted annually.

Waiver Request Requirements

Section 12 of the Richard B. Russell National School Lunch Act (NSLA) [7] requires "state educational agencies" have an agreement with the USDA, which affirms the administrative responsibilities for these programs. It is not allowable for a state to transfer the NSLP to a non-educational state agency, such as the DACS, unless the state officially requests a waiver of the law and applicable program regulations and the USDA approves this waiver request.

A waiver request submitted by a state must include specific details in order to be considered. The requirements for a waiver are set forth in section 12(1) of the NSLA. At a minimum the request must include:

- Identification of the state agency for which the waiver is being sought, including a description of the size and scope of its program.
- A description of the specific statutory or regulatory requirements for which the waiver is being sought.
- A description of the impediments to the efficient operation and administration of the program that caused the waiver to be sought.
- A description of the actions the state has undertaken to remove any state-level barriers, either statutory or regulatory, to achieve the result sought under the waiver (if applicable).
- A description of the state's expectation as to how the waiver will improve services and the expected outcomes if the waiver is granted.
- A description of the process used by the state to provide notice and information to the public regarding the proposed waiver.

In addition, the waiver must provide information and assurance that there will be no increase in the federal cost of the program.

[7] [42 U.S.C. 1760]