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# **Government Operations Subcommittee**

**Wednesday, March 23, 2011  
8:00 AM  
306 HOB**

# **Meeting Packet**

**Dean Cannon  
Speaker**

**Jimmy Patronis  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Government Operations Subcommittee

**Start Date and Time:** Wednesday, March 23, 2011 08:00 am  
**End Date and Time:** Wednesday, March 23, 2011 11:00 am  
**Location:** 306 HOB  
**Duration:** 3.00 hrs

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

HB 107 Local Government Accountability by Smith  
HB 227 Voting Methods and Procedure by Brandes  
CS/HB 307 District School Board Membership by K-20 Innovation Subcommittee, Logan  
HB 331 Firesafety by Weinstein  
HB 409 Pub. Rec./Criminal Intelligence Information or Criminal Investigative Information by Perry  
HB 485 Pub. Rec./Dental Workforce Surveys by Patronis  
HB 579 Pub. Rec./Regional Autism Centers by Coley  
HB 597 Pub. Rec./Agency Emergency Notification Information by Taylor  
HB 667 Pub. Rec./Investigative and Audit Reports of an Inspector General by Clemens  
HB 677 Pub. Rec./Office of Financial Regulation by Pilon  
HB 913 Public Records/Records Held by Public Airports by Horner  
HB 4041 Department of Children and Family Services Employees by Diaz

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

PCB GVOPS 11-11 -- OGSR Audits or Investigations  
PCB GVOPS 11-14 -- OGSR Concealed Weapons or Firearms  
PCB GVOPS 11-15 -- State Financial Matters

**NOTICE FINALIZED on 03/21/2011 16:28 by Godwin.Chandra**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 107 Local Government Accountability  
SPONSOR(S): Smith  
TIED BILLS: IDEN./SIM. BILLS: SB 224

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	15 Y, 0 N	Duncan	Hoagland
2) Government Operations Subcommittee		Thompson	Williamson
3) Appropriations Committee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill requires that budgets and budget amendments of each county, county constitutional officer, municipality, special district, water management district, and school district be posted on the governmental entity's website. If the local governmental entity does not have an official website, the local government must transmit the required budget information to the county or counties in which it is located or to the relevant governing authority for posting.

The bill also requires that budgets be prepared in a similar level of detail required by the annual financial reports.

Within nine months of the end of the fiscal year, counties, municipalities, and special districts must file their annual financial reports with the Department of Financial Services and their annual financial audit reports with the Auditor General.

The bill also amends the reporting process used by the Legislative Auditing Committee and the Department of Community Affairs to compel special districts to provide certain information.

The mandates provision appears to apply because the bill requires counties or municipalities to spend funds or take an action requiring the expenditure of funds. However, the amount of the expenditure is insignificant because most local governments have websites and, therefore, an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of each house.

The bill removes superfluous language and corrects cross references.

The bill may have an indeterminate fiscal impact on local and state government. See "Fiscal Analysis."

The bill is effective October 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### **Background**

The Florida Constitution specifically provides four types of local governmental entities: counties, municipalities, school districts, and special districts. Counties are subdivisions of the state that operate to provide a variety of core services through constitutional officers (county commissioners, sheriffs, tax collectors, property appraisers, supervisors of elections, and clerks of the court) pursuant to authority granted in the constitution, consistent with general law.<sup>1</sup> A municipality is a local governmental entity located within a county that is created to perform additional functions and services for the particular benefit of the population within the municipality.<sup>2</sup>

Local governmental entities have the authority to raise revenues and spend funds, subject to certain restrictions on the ability to tax, borrow, and spend as provided in both the Florida Constitution and Florida Statutes.<sup>3</sup> These provisions are designed to promote accountability and transparency in the budgetary process. Current law specifies how local governments and local government officials may develop and maintain their budget each fiscal year. The fiscal year for counties and municipalities begins on October 1 of each year and ends on September 30 of the following year.<sup>4</sup>

Local governments are subject to financial reporting guidelines that are reviewed by the Legislature and by state agencies such as the Department of Financial Services (DFS) and the Department of Management Services.<sup>5</sup> Local governmental entities that have taxing authority are required to provide notice of their adopted tentative budget in a newspaper of general circulation in the respective county.<sup>6</sup>

Currently, local governmental entities are not required to publish budget information on a local government website. With the exception of Calhoun, Lafayette, and Union Counties, each county within the state of Florida has an official website. Those that do not have official websites do have websites for the county clerk that may be used to publish county information.

##### **Municipal Budget**

A municipality is required to annually adopt a budget by ordinance or resolution unless the municipality has a charter that specifies another method for adoption. The funds available from taxation and other sources must equal the total appropriations for expenditures and reserves.<sup>7</sup> Officers of a municipal government may not expend funds except according to the budgeted appropriations. A municipality may amend its budget up to 60 days following the end of the fiscal year under certain conditions.<sup>8</sup>

##### **County Budget**

Current law establishes a budget system that controls the finances of the boards of county commissioners of Florida counties.<sup>9</sup> Each county is required to prepare, approve, adopt, and execute an annual budget each fiscal year for such funds as may be required by law or by sound financial practices and generally accepted accounting principles, which controls the levy of taxes and the

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<sup>1</sup> FLA. CONST. art. VIII, s. 1.

<sup>2</sup> See FLA. CONST. art. VIII, s. 2.; *see also* s. 166.021, F.S.

<sup>3</sup> FLA. CONST. art. VII

<sup>4</sup> Sections 129.04 and 166.241(1), F.S.

<sup>5</sup> Part III, Chapter 218, F.S.; s. 112.63, F.S.

<sup>6</sup> Section 200.065(2)(d) and (3), F.S.

<sup>7</sup> Section 166.241(2), F.S.

<sup>8</sup> Section 166.241(3), F.S.

<sup>9</sup> See Chapter 129, F.S.

expenditure of money for all county purposes during the ensuing fiscal year.<sup>10</sup> The budget is prepared by the board of county commissioners and must be balanced so that the total of the estimated receipts, including balances brought forward, equals the total of the appropriations and reserves.<sup>11</sup> The receipts portion of the budget must include 95 percent of all receipts reasonably anticipated from all sources, including taxes to be levied, and must include all balances estimated to be brought forward at the beginning of the fiscal year.<sup>12</sup>

County budget requirements relating to reserves for contingencies and cash balances must be carried over for future costs so that any surplus carried over can be placed in any other county fund and budgeted as a receipt to the other fund.<sup>13</sup> However, a fund for debt services cannot be transferred to another fund, and a capital outlay reserve fund may not be transferred until the funded projects have been finished and paid for. Additional county budget provisions include:

- Requirements that county officers submit budgets in sufficient detail and containing sufficient information;<sup>14</sup> and
- Requirements for the preparation, adoption, and amendment of such budgets.<sup>15</sup>

Each board of county commissioners is authorized to designate a county budget officer to carry out the duties prescribed by statute as to county budgets. If the board fails to designate a different officer, the clerk of the circuit court or the county comptroller, if applicable, will be the budget officer.<sup>16</sup> County fee officers also are subject to reporting requirements.<sup>17</sup> County fee officers are defined in Florida Statutes as “those county officials who are assigned specialized functions within county government and whose budgets are established independently of the local governing body, even though said budgets may be reported to the local governing body or may be composed of funds either generally or specially available to a local governing authority involved.”<sup>18</sup> For example, each sheriff, clerk of the circuit court, property appraiser, and tax collector has budget reporting requirements of their own in addition to the budget reporting requirements of the county.<sup>19</sup>

It is unlawful for the board of county commissioners to expend more than the amount budgeted for a fund absent a budget amendment. Any indebtedness contracted in excess of the amount budgeted is void and no suit for its collection may be maintained. Commissioners approving contracts for such amounts, and their surety company, may be liable for these debts.<sup>20</sup>

### **Sheriff Budget**

A sheriff is required to certify to the board of county commissioners a proposed budget of expenditures for the ensuing fiscal year of the county.<sup>21</sup> The proposed budget must show the estimated amounts of all proposed expenditures for operating and equipping the sheriff’s office and jail, excluding the cost of construction, repair, or capital improvement of county buildings during the fiscal year.<sup>22</sup> The sheriff is required to itemize expenditures in accordance with the uniform chart of accounts prescribed by DFS, as: personal services, operating expenses, capital outlay, debt service, and non-operating disbursements and contingency reserves.

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<sup>10</sup> Section 129.01(1), F.S.

<sup>11</sup> Section 129.01(2), F.S.

<sup>12</sup> Section 129.01(2)(b), F.S.

<sup>13</sup> Sections 129.01 and 129.02(6), F.S.

<sup>14</sup> Section 129.021, F.S.

<sup>15</sup> See ss. 129.03 and 129.06, F.S.

<sup>16</sup> Section 129.025(1), F.S.

<sup>17</sup> See s. 218.35, F.S.

<sup>18</sup> Section 218.31(8), F.S.

<sup>19</sup> Sections 30.49 (sheriffs’ budgets), 218.35(2) (clerks of the court budgets), and 195.087 (property appraisers and tax collectors budgets), F.S.

<sup>20</sup> Section 129.07, F.S.; See also, *Edwards v. City of Ocala*, 58 Fla. 217, 50 So. 421 (1909) and *White v. Crandon*, 116 Fla. 162, 156 So. 303 (1934) (discussing county commissioner liability for misappropriation of funds).

<sup>21</sup> Section 30.49(1), F.S.

<sup>22</sup> Section 30.49(2)(a), F.S.

The Supreme Court of Florida has stated "the internal operation of the sheriff's office and the allocation of appropriated monies within the six items of the budget is a function which belongs uniquely to the sheriff as the chief law enforcement officer of the county."<sup>23</sup> Therefore, although a county can increase or reduce by lump sums the items, a county cannot dictate how the money allocated to an individual item should be used.<sup>24</sup>

### **Supervisor of Elections Budget**

A supervisor of elections is required to certify to the board of county commissioners a proposed budget of expenditures for the ensuing fiscal year, commencing on October 1 and ending on the following September 30.<sup>25</sup> The supervisor of elections must itemize expenditures such as: personnel compensation, operating expenses, capital outlay, contingencies, and transfers.<sup>26</sup> The proposed budget must be submitted to the board of county commissioners or county budget commission to be included in the general county budget.<sup>27</sup>

### **Property Appraiser and Tax Collector Budget**

Annually, each property appraiser must submit to the Department of Revenue (DOR) a budget for the operation of the property appraiser's office for the ensuing fiscal year beginning October 1. The report, due annually on or before June 1, must be submitted in the manner and form required by DOR. A copy of the budget must be provided to the board of county commissioners at the same time. On or before August 15, DOR must make its final budget amendments or changes to the budget and notify the property appraiser and the board of county commissioners.<sup>28</sup>

Annually, each tax collector must submit to DOR, on or before August 1, a budget for the operation of the tax collector's office for the ensuing fiscal year in the manner and form prescribed by DOR. A copy of the budget must be provided to the board of county commissioners at the same time. DOR examines the budget and, if it is found adequate, must approve the budget and certify it back to the tax collector.<sup>29</sup>

### **Clerk of the Circuit Court Budget**

The clerk of the circuit court, functioning as the clerk of the circuit and county courts and as clerk of the board of county commissioners, is required to prepare the budget in two parts:

- The budget for funds necessary to perform court-related functions, which details the methodologies used to apportion costs between court-related and non court-related functions performed by the clerk; and
- The budget relating to the requirements of the clerk as the clerk of the board of county commissioners, county auditor, and custodian or treasurer of all county funds and other county-related duties.<sup>30</sup>

### **Special Districts**

The Uniform Special District Accountability Act of 1989<sup>31</sup> sets forth the general provisions for the definition, creation, and operation of all special districts. Special districts are local units of special purpose government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.<sup>32</sup> Special districts have the same governing powers and restrictions as counties and municipalities. Special districts are held accountable to the public, and are subject to public sunshine laws and financial reporting requirements.<sup>33</sup>

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<sup>23</sup> *Weitzenfeld v. Dierks*, 312 So.2d 194 (Fla. 1975); Fla. Atty. Gen. Op. 93-92 (December 17, 1993).

<sup>24</sup> *Id.*

<sup>25</sup> Section 129.201(1), F.S.

<sup>26</sup> Section 129.201(2)(a), F.S.

<sup>27</sup> Section 129.201(7), F.S.

<sup>28</sup> Section 195.087(1)(a), F.S.

<sup>29</sup> Section 195.087(2), F.S.

<sup>30</sup> Section 218.35(2), F.S.

<sup>31</sup> Chapter 89-169, L.O.F.; codified as Chapter 189, F.S.

<sup>32</sup> Section 189.403(1), F.S.

<sup>33</sup> See ss. 189.417 and 189.418, F.S.

There are two types of special districts in Florida: dependent special districts and independent special districts. With some exceptions, dependent special districts are districts created by individual counties and municipalities that meet at least one of the following criteria:

- The membership of its governing body is identical to that of the governing body of a single county or single municipality.
- All members of its governing body are appointed by the governing body of a single county or single municipality.
- During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or single municipality.
- The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or single municipality.<sup>34</sup>

An "independent special district" is a special district that is not a dependent special district as defined in state law. A district that includes more than one county is an independent special district unless the district lies wholly within the boundaries of a single municipality.<sup>35</sup>

As of March 16, 2011, there were approximately 1,629 special districts in Florida, including 618 dependent districts and 1,008 independent districts. Examples of special districts in Florida include, but are not limited to, water management districts, community development districts, housing authority districts, fire control and rescue districts, mosquito control districts, and transportation districts.<sup>36</sup>

Special districts do not include:

- A school district;
- A community college district;
- A Seminole and Miccosukee Tribe special improvement district;
- A municipal service taxing or benefit unit; or
- A board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

#### Special District Budget

The budget process for special districts is similar to the municipal budget requirements.<sup>37</sup> The governing body of each special district must adopt a budget by resolution each fiscal year. The total amount available from taxation and other sources, including amounts carried over from prior fiscal years, must equal the total of appropriations for expenditures and reserves. The adopted budget must regulate expenditures of the special district.<sup>38</sup>

The proposed budget of a dependent special district must be presented in accordance with generally accepted accounting principles, contained within the general budget of the local governing authority, and be clearly stated as the budget of the dependent district. However, with the concurrence of the local governing authority, a dependent district may be budgeted separately.<sup>39</sup>

The governing body of each special district at any time within a fiscal year or within up to 60 days following the end of the fiscal year may amend a budget for that year. The budget amendment must be adopted by resolution.<sup>40</sup> A local government may, in its discretion, review the budget or tax levy of any special district located solely within its boundaries.<sup>41</sup>

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<sup>34</sup> Section 189.403(2), F.S.

<sup>35</sup> Section 189.403(3), F.S.

<sup>36</sup> See *supra* note 33.

<sup>37</sup> See s. 189.418, F.S.

<sup>38</sup> Section 189.418(3), F.S.

<sup>39</sup> Section 189.418(4), F.S.

<sup>40</sup> Section 189.418(5), F.S.

<sup>41</sup> Section 189.418(6), F.S.



### Special District Information Program

As provided by law, the Special District Information Program (SDIP) is administered by the Department of Community Affairs (DCA).<sup>42</sup> DCA has clearinghouse, technical assistance, and monitoring responsibilities with no oversight authority and limited enforcement authority.<sup>43</sup> Specifically, the SDIP is responsible for the:

- Collection and maintenance of special noncompliance status reports from the Department of Management Services (DMS), the Department of Financial Services (DFS), the Division of Bond Finance of the State Board of Administration, and the Auditor General.
- Maintenance of a master list of independent and dependent special districts available on DCA's website.
- Publishing and updating of a "Florida Special District Handbook."
- Facilitation of coordination and communication among state agencies regarding special district information.
- Assistance to local general-purpose governments and certain state agencies in collecting delinquent reports or information, helping special districts comply with reporting requirements, declaring special districts inactive when appropriate, and, when directed by the Legislative Auditing Committee, initiating enforcement proceedings.<sup>44</sup>

The Uniform Special District Accountability Act provides basic reporting requirements that each special district must follow. When a new special district is created, the special district must file with DCA its creation document, creation document amendments, a written statement referencing the basis for its independent or dependent status, map, and map amendments.<sup>45</sup> Other reporting requirements include:<sup>46</sup>

- Annual Fee (fee schedule);<sup>47</sup>
- Regular public meeting schedule;<sup>48</sup>
- Annual budget;<sup>49</sup>
- Annual Financial Audit Report;<sup>50</sup>
- Annual Financial Report;<sup>51</sup>
- Retirement System Reports;<sup>52</sup>
- Bond Financing Reports;<sup>53</sup> and
- Public Facilities Reports.<sup>54</sup>

Upon notification that a special district has failed to file a financial report, DCA is directed to assist the special district to comply with its financial reporting requirements by sending the special district a certified letter with a copy sent to the chair of the local general-purpose government. The letter describes the required report, including statutory submission deadlines, contact information for technical assistance, a 60-day extension of time for filing the required report, and an explanation of the penalties<sup>55</sup> for noncompliance. DCA is authorized to grant an additional 30-day extension, if requested

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<sup>42</sup> See s. 189.412, F.S.

<sup>43</sup> Florida Department of Community Affairs, Division of Housing and Community Development, Special District Information Program, Florida Special District Handbook Online, *The Special District Information Program, Purposes and Responsibilities*, <http://www.floridaspecialdistricts.org/Handbook/1-3SDIP.cfm> (last visited February 28, 2011).

<sup>44</sup> Section 189.412 (1)-(3), (5) and (8), F.S.

<sup>45</sup> Section 189.418(1) and (2), F.S.

<sup>46</sup> Florida Department of Community Affairs, Division of Housing and Community Development, Special District Information Program, *Special Districts Basic Presentation*, at 25 (Jan. 2011), available at <http://www.floridaspecialdistricts.org/files/SpecialDistrictPresentation.pdf>.

<sup>47</sup> Rule 9B-50.003, F.A.C.

<sup>48</sup> Section 189.417, F.S.

<sup>49</sup> Section 189.418, F.S.

<sup>50</sup> Section 218.39, F.S.

<sup>51</sup> Section 218.32, F.S.

<sup>52</sup> Section 112.63, F.S.

<sup>53</sup> Section 218.38, F.S.

<sup>54</sup> Section 189.415, F.S.

<sup>55</sup> Section 189.421, F.S.

in writing, by the special district.<sup>56</sup> The Legislative Auditing Committee is required to notify DCA of those districts that have failed to file the required reports and DCA must then file a petition for writ of certiorari in circuit court.<sup>57</sup>

DCA is authorized to declare a special district inactive and take steps to dissolve a district if the district fails to file any one of the following with the appropriate state agency:

- Retirement-related reports – DMS.
- Annual Financial Report – DFS.
- Annual Financial Audit Report – Auditor General and DFS.
- Bond-related reports – State Board of Administration, Division of Bond Finance.<sup>58</sup>

### **Local Government Annual Financial Reports**

Local governments are required to submit to DFS an Annual Financial Report covering their operations for the preceding fiscal year.<sup>59</sup> To assure the use of proper accounting and fiscal management, each local government must follow uniform accounting practices and procedures according to DFS rules. All Annual Financial Reports must be electronically produced and submitted through the DFS Bureau of Local Government's web-based Local Government Electronic Reporting System.<sup>60</sup>

Submission of the annual report depends on whether the local governmental entity is required to have an annual audit. If no audit is required, the deadline is April 30 of each year.<sup>61</sup> If an audit is required, the deadline is within 45 days after completion of the audit report, but no later than 12 months after the end of the entity's fiscal year.<sup>62</sup> If the DFS does not receive a completed annual financial report from a local government entity, the DFS must notify the Legislative Auditing Committee, which must schedule a hearing.<sup>63</sup>

If the Legislative Auditing Committee (committee) determines that an entity should be subject to further state action, the committee must:

- In the case of a local governmental entity or a district school board, direct DOR and DFS to withhold any funds not pledged for bond debt service satisfaction until the local governmental entity or the district school board is in compliance. The committee must specify the date that action will begin and both departments must receive notification 30 days before the date the withheld funds would normally be distributed.
- In the case of a special district, the committee must notify DCA and the department must offer assistance to the special district. If the district still fails to comply, DCA must petition the circuit court in Leon County for a writ of certiorari and the court must award attorney costs and court fees to the prevailing party.
- In the case of a charter school or charter technical career center, the committee must notify the appropriate sponsoring entity that may terminate the charter.<sup>64</sup>

### **Local Government Annual Financial Audit Reports**

If, by the first day in any fiscal year, a local governmental entity, district school board, charter school, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, each of the following entities must have an annual financial audit of its accounts and records completed within 12 months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its public funds:

- Each county, district school board, charter school, or charter technical center.
- Each municipality with revenues or total expenditures and expenses more than \$250,000.

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<sup>56</sup> Section 189.421(1), F.S.

<sup>57</sup> Section 189.421(3), F.S.

<sup>58</sup> Section 189.419(3), F.S.

<sup>59</sup> Section 218.32(1), F.S.

<sup>60</sup> Rule 69I-51.003, F.A.C.

<sup>61</sup> Section 218.32(1)(e), F.S.

<sup>62</sup> Section 218.32(1)(d), F.S.

<sup>63</sup> Section 218.32(1)(f), F.S.; *see also* s. 11.40(5), F.S.

<sup>64</sup> Section 11.40(5)(a)–(c), F.S.

- Each special district with revenues or total expenditures and expenses more than \$100,000.
- Each municipality with revenues or total expenditures and expenses between \$100,000 and \$250,000 that has not been audited within the two preceding fiscal years.
- Each special district with revenues or total expenditures and expenses between \$50,000 and \$100,000 that has not been audited within the two preceding fiscal years.<sup>65</sup>

### **Actuarial Reports**

The "Florida Protection of Public Employee Retirement Benefits Act" (act) establishes minimum standards for operating and funding public employee retirement systems and plans.<sup>66</sup> The act is applicable to all units of state, county, special district and municipal governments which participate in, operate, or administer a retirement system or plan for public employees funded in whole or in part by public funds.<sup>67</sup>

The act further prohibits a unit of local government from agreeing to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body, and prior to the last public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system, consistent with the actuarial review, and has furnished a copy of such statement to the Division of Retirement (division) within DMS.<sup>68</sup>

If a local government does not submit complete and adequate data necessary for the division to perform its statutorily required functions, the division may request additional information. Upon completion of its review, the division may notify the local government about concerns it has regarding the actuarial soundness of a plan. If, after a reasonable period of time, a satisfactory adjustment has not been made, DMS may notify the division and DFS of the noncompliance and those agencies may withhold funds not pledged for satisfaction of bonds until adjustment is made. The affected local government may petition for a hearing.<sup>69</sup> If a special district fails to make the adjustment, DMS also notifies DCA, which may seek a writ of certiorari with the circuit court for noncompliance.<sup>70</sup>

### **Effect of Proposed Changes**

#### **Municipal Budget**

The bill requires municipalities to provide, at a minimum, an adopted budget that shows, for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit at a level of detail that is at least at the level of detail in the state-required annual financial report. The bill requires the tentative budget to be published on the municipality's official website at least 2 days before the budget hearing. The final adopted budget must be posted on the municipality's official website within 30 days after adoption. If the municipality does not have an official website, the municipality must transmit the tentative budget and final budget to the county manager or administrator for posting on the county's website within a reasonable amount of time as determined by the county. Certain budget amendments must be posted within 5 days after adoption or, if the county manager does not operate an official website, must be transmitted to the county manager or administrator for posting within a reasonable time as determined by the county. As of February 1, 2011, 63 municipalities did not have websites.<sup>71</sup>

#### **County Budget**

The bill requires counties to provide, at a minimum, a budget that shows, for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit at a level of detail that is at least at the level of detail in the state-required annual financial report. A county's tentative budget must be posted on the county's official website at least 2 days before the public hearing to consider the budget. The final budget must be posted on the website within 30 days after

<sup>65</sup> Section 218.39, F.S.

<sup>66</sup> Part VII, Chapter 112, F.S.

<sup>67</sup> Section 112.62, F.S.

<sup>68</sup> Section 112.63(3), F.S.

<sup>69</sup> Section 112.63(4), F.S.

<sup>70</sup> Section 112.63(4)(b), F.S.

<sup>71</sup> Florida League of Cities, Email from staff regarding HB 107 (February 1, 2011).

adoption. The bill clarifies county budget amendment provisions and requires budget amendments authorized by resolution or ordinance to be posted on the county's official website within 5 days after adoption. The bill clarifies that it is unlawful for the boards of county commissioners to exceed budgeted appropriations except as provided in s. 129.06, F.S.

The bill also requires budgets of dependent special districts (included within the county's budget) to show budgeted revenues and expenditures by organizational unit at a level of detail that is at least at a level of detail required for the state-required annual financial report. The amount available from taxation and other sources, including balances brought forward from prior fiscal years, must equal the total appropriations for expenditures and reserves. The bill revises provisions specifying how a county fee officer is to prepare and submit a budget.

### **Sheriff Budget**

The budget requirements of sheriffs are amended to require each sheriff to annually prepare and submit a proposed budget to the board of county commissioners. The requirements also clarify that personnel services, grants and aid, and other uses must be itemized by the sheriff's office. The sheriff must include expenditures at the sub-object code level in accordance with the uniform accounting system prescribed by DFS.<sup>72</sup> The board of county commissioners or the county budget commission may not amend, modify, increase, or reduce any expenditure at the sub-object code level.

### **Supervisor of Elections Budget**

The bill stipulates that each supervisor of elections is required to prepare and annually submit, rather than certify, to the board of county commissioners a proposed budget. The bill requires each supervisor of elections to itemize expenditures in accordance with the uniform accounting system prescribed by DFS into the following categories: personnel services, operating expenses, capital outlay, debt service, grants and aids, and other uses. The supervisor of elections must furnish expenditures to the board at the sub-object code level in accordance to the account system prescribed by DFS. The board of county commissioners or the county budget commission may not amend, modify, increase, or reduce any expenditure at the sub-object code level.

### **Property Appraisers and Tax Collectors Budget**

The bill requires property appraisers and tax collectors to post their final approved budget on their official website within 30 days after adoption. Each county's official website must have a link to the website of the property appraiser or tax collector where the final budget is posted. If the property appraiser or tax collector does not have an official website, the final approved budget must be posted on the county's official website.

### **Clerk of the Circuit Court Budget**

The bill provides that the budget relating to the requirements of the clerk of the circuit court as the clerk of the board of county commissioners, county auditor, and custodian or treasurer of all county funds must be annually prepared and submitted to the board of county commissioners. The bill requires that expenditures be itemized in accordance with the uniform accounting system prescribed by DFS using the following categories: personnel services, operating expenses, capital outlay, debt service, grants and aids, and other uses.

The bill requires the clerk of the circuit court to provide the board of county commissioners with all relevant and pertinent information as the board deems necessary, including expenditures at the subobject code level in accordance with the uniform accounting system prescribed by DFS.

The bill also requires the clerk of the circuit court's final approved budget to be posted on the county's official website within 30 days after adoption. The final approved budget of the clerk of the circuit court may be included in the county's budget.

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<sup>72</sup> The Department of Financial Services website provides information regarding object and sub-object classifications at <http://www.myfloridacfo.com/aadir/localgov/DocsManuals/2011UASManualCounty122910.pdf>, last visited Feb. 16, 2011. The 11th and 12th digits of the expenditure account designate the object classification. The object code level is made up of sub-object codes that may be used at the budgetary level.

## **Special Districts**

The bill authorizes DCA to declare a special district inactive pursuant to the process prescribed by law<sup>73</sup> for failure to disclose financial reports, or for not having a registered office and agent on file with DCA for one or more years. The Special District Information Program must collect and maintain a special district noncompliance status report prepared by the Legislative Auditing Committee.

The bill requires special districts to provide, at a minimum, a budget that shows, for each fund, as required by law and sound financial practices, revenues and expenditures by organizational unit at a level of detail that is at the level of detail in the state-required annual financial report.

Dependent special districts are required to provide any budget information requested by the local governing authority. In addition, a local general-purpose government or governing authority may request, from any special district located solely within its boundaries, financial information necessary to comply with its reporting requirements for filing state-required annual financial reports and annual financial audit reports. The special district must cooperate with these requests and provide the financial information at the time and place designated by the local general-purpose government or governing authority.

The tentative budget must be posted on the special district's website at least 2 days before the budget hearing. The final adopted budget must be posted on the special district's official website within 30 days after adoption. If the special district does not operate a website, the special district must transmit the tentative budget or final budget to the local general-purpose government in which the special district is located or the local governing authority. The manager or administrator must post the tentative or final budget on the website of the local general-purpose government or the local governing authority. The bill exempts water management districts from the posting requirements.

The bill authorizes a governing body of a special district, by a motion recorded in the minutes, to amend its budget by decreasing or increasing appropriations for expenditures within a fund, if the total appropriations of the fund do not change; or by establishing procedures by which the designated budget officer may authorize certain budget amendments, if the total appropriations of the fund do not change. The bill requires a budget amendment that is required for other purposes than specified above to be adopted by resolution.

Amendments to an adopted special district budget must be posted on the official website or transmitted to the local general-purpose government or local governing authority within 5 days after adoption. If the special district does not operate a website, the special district must transmit the adopted amendment to the local general-purpose government in which the special district is located or to the local governing authority. The manager or administrator must post the adopted amendment on the website of the local general-purpose government or the local governing authority.

The bill clarifies what occurs when an independent special district fails to file reports or information required under chapter 189, F.S. If the governing body of a local general-purpose government determines that failure to file required reports or information is unjustified, the local general-purpose government may notify DCA which then may proceed according to the procedures established by law.<sup>74</sup>

If a dependent special district fails to file reports or information with the local governing authority, the local governing authority is required to take whatever steps it deems necessary to enforce the special district's accountability, including withholding funds; removing governing board members at will; vetoing the special district's budget; conducting the oversight review process;<sup>75</sup> or amending, merging, or dissolving the special district. If a special district fails to file the state-required notice of bond issues<sup>76</sup> to the appropriate agencies, the bill requires DCA, upon such notification, to send a certified technical

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<sup>73</sup> Section 189.4044, F.S.

<sup>74</sup> See the Special Districts discussion in the Present Situation section of this bill analysis. See also s. 189.421, F.S.

<sup>75</sup> Section 189.428, F.S.

<sup>76</sup> Section 218.38, F.S.

assistance letter to the special district that summarizes the requirements and encourages the special district to take steps to prevent the noncompliance from reoccurring. If a special district fails to meet the actuarial reporting requirements under the Florida Protection of Public Employee Retirement Benefits Act,<sup>77</sup> or fails to file the state-required annual financial report or annual financial audit report, to the appropriate state agency, such agency must notify DCA, which will then precede according to the failure procedures established by law.<sup>78</sup>

The bill revises the procedures for when a special district fails to disclose financial reports. When a special district fails to file a report or information required under Chapter 189, F.S., or is unable to comply with the 60-day reporting deadline granted by DCA, it must provide a written notice to DCA stating:

- The reason it is unable to comply with the deadline;
- The steps it is taking to prevent the noncompliance from recurring; and
- The estimated date the special district will file the report with the appropriate agency.

The written response (notice) does not constitute an extension by DCA; however, DCA must forward the written response as follows:

- If the written response refers to the state-required annual financial report or annual financial audit report, then DCA must forward the written response to the Legislative Auditing Committee, which will determine whether state action is needed and notify DCA as to whether they should proceed according to the procedures<sup>79</sup> established by law.
- If the written response refers to a special district report or information that was not filed,<sup>80</sup> as required by law, then DCA must forward the response to the local general-purpose government for its consideration in determining what actions to take.
- If the written response refers to the reports or information required for meeting the actuarial reporting requirements under Florida Protection of Public Employee Retirement Benefits Act, then DCA must forward the response to DMS for its consideration in determining whether the special district should be subject to further action.

The bill deletes the additional 30-day extension and further amends the law to specify that the failure of a special district to comply with actuarial reporting requirements, as well as specified financial reporting requirements, is deemed final action of the special district. The remedy for noncompliance is writ of certiorari. If the Legislative Auditing Committee or DMS notifies DCA that specific special districts have failed to file required reports, DCA must, notwithstanding chapter 120, F.S., initiate a writ of certiorari in the circuit court within 60 days after receiving such notice. Current law gives DCA 30 days. The writ of certiorari must be issued unless a respondent establishes that the notification of the Legislative Auditing Committee or DMS was issued as a result of material error. The venue for all actions pursuant to this section is to be in Leon County. Attorney's fees are to be awarded to the prevailing party unless affirmatively waived by all parties and proceedings are otherwise governed by the Rules of Appellate Procedure.

### **Water Management Districts and School Districts**

The bill requires a water management district to post its tentative budget on its official website at least 2 days before budget hearings. The final adopted budget must be posted on the website within 30 days after adoption.

The bill also requires a district school board to post a summary of its tentative budgets on the district's official website within 2 days before a budget hearing. The bill requires the district school board's final adopted budgets to be posted on the district's official website within 30 days after adoption, and any budget amendments to be posted on their official website within 5 days after adoption.

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<sup>77</sup> Section 112.63, F.S.

<sup>78</sup> Section 189.421(1), F.S.

<sup>79</sup> Section 189.421, F.S.

<sup>80</sup> Section 189.419(1), F.S.

## **Local Government Annual Financial Audit Reports and Annual Financial Reports**

The bill requires local governmental entities to file their audits with DFS within 9 months, rather than 12 months, after the end of the fiscal year. Local governments not required to file audits must file annual financial reports no later than 9 months after the end of the fiscal year, rather than April 30 of each year. The bill also requires DFS to file its report on local governmental entities that are not in compliance with the annual financial report requirements, with DCA's Special District Information Program. Each local governmental entity's website must provide a link to the DFS website to view the entity's annual financial report submitted to the department. If the local governmental entity does not have an official website, then the county government's website must provide the required link for the local governmental entity.

The bill requires certain counties, municipalities, special districts, district school boards, charter schools, and charter technical career centers, to file their annual financial audit report within 9 months, rather than 12 months, after the end of the fiscal year. The bill specifies that the entity's revenues or total expenditures and expenses are as reported on the fund financial statements.

The bill requires auditors to prepare auditing reports in accordance with the rules of the Auditor General. These reports must be filed with the Auditor General within 45 days after the delivery of the report to the audited entity but no later than 9 months after the end of the fiscal year. The bill also requires the Auditor General to notify the Legislative Auditing Committee (committee) of any audit report that indicates an audited entity has failed to take full corrective action in response to a recommendation that was included in the two preceding financial audit reports.

The committee is given the authority to direct a local governmental entity to provide a written statement explaining why full corrective action has not been taken or describing corrective action to be taken and when. If the committee determines that the written statement is not sufficient, it may require the chair of the governing board of the entity or the chair's designee to appear before the committee.

The bill further authorizes the committee to take corrective actions<sup>81</sup> against an audited entity that has failed to take full corrective action and for which there is no justifiable reason for the entity's inaction, or if the entity has failed to comply with the committee's requests.

The bill clarifies that a deficit in the fund financial statements of entities required to report under governmental financial reporting standards or on not-for-profit financial statements constitutes a financial distress indicator that subjects the entity to review and oversight for financial emergency. The bill replaces the term "fixed or capital assets" with "property, plant, and essential equipment" as types of property that, if necessary, will not be considered resources available to cover the deficit.

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

Section 1: Amends s. 11.40, F.S., to clarify that DCA can declare a special district inactive for failure to disclose financial reports.

Section 2: Amends s. 30.49, F.S., to clarify account categories and the level of detail required for each account.

Section 3: Amends s. 112.63, F.S., to authorize DMS to notify DCA that a special district has failed to provide requested information or make appropriate adjustments.

Section 4: Amends s. 129.01, F.S., to require a county budget to be prepared at a level of detail that is consistent with the annual financial reports required by s. 218.32(1), F.S.

Section 5: Amends s. 129.02, F.S., to require budgets of special districts included within the county budget to be prepared at a level of detail that is consistent with the annual financial reports required by s. 218.32(1), F.S.

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<sup>81</sup> Section 11.40(5), F.S.

Section 6: Amends s. 129.021, F.S., to correct a cross-reference.

Section 7: Amends s. 129.03, F.S., to require a county tentative, adopted tentative, and final adopted budget to be posted on the county's official website.

Section 8: Amends s. 129.06, F.S., to clarify the budget amendment authority of counties.

Section 9: Amends s. 129.07, F.S., to clarify that a board of county commissioners may not exceed budgeted appropriations, except as provided in s. 129.06, F.S.

Section 10: Amends s. 129.201, F.S., to require the supervisor of elections to itemize expenditures according to uniform chart of accounts.

Section 11: Amends s. 166.241, F.S., to require municipalities to provide, at a minimum, a level of detail consistent with the annual financial report required by s. 218.32, F.S., and to publish the tentative, adopted, and final adopted budgets, including amendments, on the municipality's website.

Section 12: Amends s. 189.4044, F.S., to allow DCA to declare any special district inactive if the district has not had a registered office and agent on file with the department for one or more years.

Section 13: Amends s. 189.412, F.S., to require the DCA Special District Information Program to collect and maintain a special district noncompliance state report prepared by the Legislative Auditing Committee.

Section 14: Amends s. 189.418, F.S., to require special districts to prepare budgets at a level of detail that is consistent with the annual financial reports required by s. 218.32(1), F.S., and to publish the tentative, adopted, and final adopted budgets, including amendments, on the special district's website or on the county's website in which the special district is located.

Section 15: Amends s. 189.419, F.S., to provide procedures to follow when a special district fails to provide certain information.

Section 16: Amends s. 189.421, F.S., to provide procedures to follow when a special district fails to provide financial reports.

Section 17: Amends s. 195.087, F.S., to require each tax collector and property appraiser to post his or her budget on the county's official website.

Section 18: Amends s. 218.32, F.S., to require each local governmental entity's website to provide a link to the DFS website to view the entity's annual financial report.

Section 19: Amends s. 218.35, F.S., to specify how county fee officers and clerks of court must prepare a budget.

Section 20: Amends s. 218.39, F.S., to require certain local governmental entities to have annual financial audits completed within 9 months after the end of the fiscal year.

Section 21: Amends s. 218.503, F.S., to clarify how to determine a fund balance deficit.

Section 22: Amends s. 373.536, F.S., to require water management districts to post their tentative and final adopted budgets on their website.

Section 23: Amends s. 1011.03, F.S., to require district school boards to post a summary of their tentative and adopted budgets, including amendments, on their website. If the school district does not operate a website the information shall be posted on the county's website.



Section 24: Amends s. 1011.051, F.S., to correct accounting terminology.

Section 25: Amends s. 1011.64, F.S., to correct accounting terminology.

Section 26: 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:

DCA may experience increased expenditures resulting from the enhanced enforcement provisions. The resulting fiscal impact is indeterminate.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill requires local governmental entities to post annual budget and financial reporting information on the local government website. This requirement may have an indeterminate fiscal impact on affected local governments.

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

The bill will increase transparency in the budget process of local governments.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Section 18(a), Article VII of the State Constitution, prohibits any general law that would require cities and counties to spend funds or take action requiring the expenditure of funds. Section 18(d), Article VII of the State Constitution, provides an exemption if the law is determined to have an insignificant fiscal impact. An insignificant fiscal impact means an amount not greater than the average statewide population for the applicable fiscal year times 10 cents (FY 2011-2012 \$1.9 million).<sup>82</sup>

The mandates provision appears to apply because the bill requires counties or municipalities to spend funds or take an action requiring the expenditure of funds. However, the amount of the expenditure is insignificant because most local governments have websites and, therefore, an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of each house.

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<sup>82</sup> Florida Economic Estimating Conference, Short-Run Tables, on file with the Senate Committee on Community Affairs.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not authorize any new grants of rulemaking authority, nor are any additional grants necessary. However, DOR has indicated that, due to changes proposed by the bill, a new rule may be required.<sup>83</sup>

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

As written, the bill would only allow a special district to amend its budget if funding did not change. This would prohibit a special district from decreasing its budget if it felt the need to do so. On lines 787 and 791, the word "changed" needs to be replaced with "increased."

On lines 909, 911, 912, 917, and 922, the term "written response" needs to be changed to "written notice" to conform to the requirement for a special district to provide such notice to DCA as required on line 903 of the bill.

The bill provides requirements for the Auditor General and the Legislative Auditing Committee based on an audited entity's failure to take corrective action in response to two preceding audit reports. Under current law, certain municipalities may not be required to provide for an annual audit if they meet certain budget criteria and have not been subject to a financial audit for the two preceding fiscal years.<sup>84</sup> Thus, a discrepancy in time periods for corrective action may result. Lines 1185 - 1189 of the bill may need amending to provide the same time period within which entities would be afforded to take full corrective action in response to audit recommendations.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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<sup>83</sup> Department of Revenue HB 107 Analysis (Jan. 25, 2011), at 2; on file with the House Government Operations Subcommittee.

<sup>84</sup> Section 218.39(1)(g) and (h), F.S.

1                                   A bill to be entitled  
2           An act relating to local government accountability;  
3           amending s. 11.40, F.S., relating to the Legislative  
4           Auditing Committee; clarifying when the Department of  
5           Community Affairs may institute procedures for declaring  
6           that a special district is inactive; amending s. 30.49,  
7           F.S.; specifying the level of detail required for each  
8           fund in the sheriff's proposed budget; revising the  
9           categories for expenditures; amending s. 112.63, F.S.,  
10          relating to the review of the actuarial reports and  
11          statements of retirement plans of governmental entities by  
12          the Department of Management Services; providing that the  
13          failure of a special district to make appropriate  
14          adjustments or provide additional information authorizes  
15          the department to seek a writ of certiorari; amending s.  
16          129.01, F.S.; revising provisions relating to the  
17          preparation of county budgets; specifying the level of  
18          detail required for each fund in the budget; amending s.  
19          129.02, F.S.; revising provisions relating to the  
20          preparation of special district budgets; specifying the  
21          level of detail required for each fund in the budget;  
22          amending s. 129.021, F.S.; conforming cross-references;  
23          amending s. 129.03, F.S.; deleting a time restriction on  
24          preparing and presenting a tentative county budget;  
25          requiring tentative county budgets to be posted on the  
26          county's website; amending s. 129.06, F.S.; revising  
27          provisions relating to the execution and amendment of  
28          county budgets; requiring revised budgets to be posted on

29 | the county's website; amending s. 129.07, F.S.; revising  
 30 | provisions relating to the prohibition against exceeding  
 31 | the county budget; amending s. 129.201, F.S.; conforming  
 32 | and revising provisions relating to the budget of the  
 33 | supervisor of elections; specifying the level of detail  
 34 | required for each fund in the proposed budget; revising  
 35 | expenditure categories; amending s. 166.241, F.S.;  
 36 | revising provisions relating to the preparation or  
 37 | amendment of municipal budgets; specifying the level of  
 38 | detail for each fund in the budget; requiring such budgets  
 39 | and amendments to such budgets to be posted on the website  
 40 | of the municipality or related county; amending s.  
 41 | 189.4044, F.S.; adding failure to file a registered office  
 42 | or agent with the department for 1 or more years as a  
 43 | criteria for declaring a special district inactive;  
 44 | amending s. 189.412, F.S.; adding the Legislative Auditing  
 45 | Committee to the list of entities that obtain special  
 46 | district noncompliance status reports; amending s.  
 47 | 189.418, F.S.; revising provisions relating to the  
 48 | preparation or amendment of special district budgets;  
 49 | specifying the level of detail for each fund in the  
 50 | budget; requiring such budgets to be posted on the website  
 51 | of the special district or related local general-purpose  
 52 | government or governing authority; specifying how the  
 53 | budget may be amended under certain circumstances;  
 54 | requiring special districts to comply with certain  
 55 | reporting requirements; authorizing a local governing  
 56 | authority to request certain financial information from

57 | special districts located solely within the boundaries of  
 58 | the authority; requiring special districts to cooperate  
 59 | with such requests; amending s. 189.419, F.S.; revising  
 60 | procedures relating to a special district's failure to  
 61 | file certain reports or information; amending s. 189.421,  
 62 | F.S.; revising procedures relating to the failure of a  
 63 | special district to disclose financial reports;  
 64 | authorizing the Department of Community Affairs to seek a  
 65 | writ of certiorari; amending s. 195.087, F.S.; requiring  
 66 | the final approved budget of the property appraiser and  
 67 | tax collector to be posted on their respective website or,  
 68 | if not available, the county's website; amending s.  
 69 | 218.32, F.S.; revising the schedule for submitting a local  
 70 | governmental entity's audit and annual financial reports  
 71 | to the Department of Financial Services; requiring the  
 72 | department to notify the Special District Information  
 73 | Program if it does not receive a financial report from a  
 74 | local governmental entity; requiring a local governmental  
 75 | entity to provide a link to the entity's financial report  
 76 | on the department's website; amending s. 218.35, F.S.;  
 77 | requiring the budget for certain county-related duties to  
 78 | be itemized in accordance with the uniform accounting  
 79 | system of the Department of Financial Services; specifying  
 80 | the level of detail for each fund in the clerk of the  
 81 | court's budget; requiring the court clerk's approved  
 82 | budget to be posted on the county's website; amending s.  
 83 | 218.39, F.S.; revising the timeframe for completing a  
 84 | local governmental entity's annual financial audit;

85 requiring that an auditor prepare an audit report;  
 86 requiring that such report be filed with the Auditor  
 87 General within a specified time; requiring that the  
 88 Auditor General notify the Legislative Auditing Committee  
 89 of any audit report indicating that an audited entity has  
 90 failed to take corrective action; requiring that the chair  
 91 of a local governmental entity appear before the committee  
 92 under certain circumstances; amending s. 218.503, F.S.;  
 93 revising provisions relating to oversight by the Governor  
 94 when an entity's financial statements show it cannot cover  
 95 a deficit of funds; amending s. 373.536, F.S.; requiring  
 96 that water management district budgets be posted on the  
 97 district website; amending s. 1011.03, F.S.; requiring the  
 98 summary of the tentative budget, the tentative budget, and  
 99 the budget of a district school board to be posted on the  
 100 district's official website; amending s. 1011.051, F.S.;  
 101 revising provisions relating to the guidelines for  
 102 district school boards to maintain an ending fund balance  
 103 for the general fund; amending s. 1011.64, F.S.; updating  
 104 obsolete accounting terminology for school districts;  
 105 providing an effective date.

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

109 Section 1. Paragraph (b) of subsection (5) of section  
 110 11.40, Florida Statutes, is amended to read:

111 11.40 Legislative Auditing Committee.—

112 (5) Following notification by the Auditor General, the

113 Department of Financial Services, or the Division of Bond  
 114 Finance of the State Board of Administration of the failure of a  
 115 local governmental entity, district school board, charter  
 116 school, or charter technical career center to comply with the  
 117 applicable provisions within s. 11.45(5)-(7), s. 218.32(1), or  
 118 s. 218.38, the Legislative Auditing Committee may schedule a  
 119 hearing. If a hearing is scheduled, the committee shall  
 120 determine if the entity should be subject to further state  
 121 action. If the committee determines that the entity should be  
 122 subject to further state action, the committee shall:

123 (b) In the case of a special district, notify the  
 124 Department of Community Affairs that the special district has  
 125 failed to comply with the law. Upon receipt of notification, the  
 126 Department of Community Affairs shall proceed pursuant to s.  
 127 189.4044 or ~~the provisions specified in~~ s. 189.421.

128 Section 2. Subsections (1) through (4) of section 30.49,  
 129 Florida Statutes, are amended to read:

130 30.49 Budgets.—

131 (1) Pursuant to s. 129.03(2), each sheriff shall annually  
 132 prepare and submit ~~certify~~ to the board of county commissioners  
 133 a proposed budget ~~of expenditures~~ for the carrying out ~~of~~ the  
 134 powers, duties, and operations of the office for the next  
 135 ~~ensuing~~ fiscal year ~~of the county~~. The fiscal year of the  
 136 sheriff commences ~~shall henceforth commence~~ on October 1 and  
 137 ends ~~end on~~ September 30 of each year.

138 (2) (a) ~~The sheriff shall submit with the proposed budget~~  
 139 ~~his or her sworn certificate, stating that the proposed~~  
 140 ~~expenditures are reasonable and necessary for the proper and~~

141 ~~efficient operation of the office for the ensuing year.~~ The  
 142 proposed budget must ~~shall~~ show the estimated amounts of all  
 143 proposed expenditures for operating and equipping the sheriff's  
 144 office and jail, excluding the cost of construction, repair, or  
 145 capital improvement of county buildings during the ~~such~~ fiscal  
 146 year. The expenditures must ~~shall~~ be categorized at the  
 147 appropriate fund level in accordance with the following  
 148 functional categories:

- 149 1. General law enforcement.
- 150 2. Corrections and detention alternative facilities.
- 151 3. Court services, excluding service of process.

152 (b) The sheriff shall submit a sworn certificate along  
 153 with the proposed budget stating that the proposed expenditures  
 154 are reasonable and necessary for the proper and efficient  
 155 operation of the office for the next fiscal year.

156 (c) Within the appropriate fund and functional category,  
 157 expenditures must ~~shall~~ be itemized in accordance with the  
 158 uniform accounting system ~~chart of accounts~~ prescribed by the  
 159 Department of Financial Services, as follows:

- 160 1. Personnel ~~Personal~~ services.
- 161 2. Operating expenses.
- 162 3. Capital outlay.
- 163 4. Debt service.
- 164 5. Grants and aids ~~Nonoperating disbursements and~~  
 165 ~~contingency reserves.~~
- 166 6. Other uses.

167 (d) ~~(e)~~ The sheriff shall submit to the board of county  
 168 commissioners for consideration and inclusion in the county



169 budget, as deemed appropriate by the county, requests for  
 170 construction, repair, or capital improvement of county buildings  
 171 operated or occupied by the sheriff.

172 (3) The sheriff shall furnish to the board of county  
 173 commissioners or the budget commission, if there is a budget  
 174 commission in the county, all relevant and pertinent information  
 175 concerning expenditures made in previous fiscal years and ~~to the~~  
 176 proposed expenditures which the ~~such~~ board or commission deems  
 177 necessary, including expenditures at the subobject code level in  
 178 accordance with the uniform accounting system prescribed by the  
 179 Department of Financial Services. The board or commission may  
 180 not amend, modify, increase, or reduce any expenditure at the  
 181 subobject code level. ~~except that~~ The board or commission may  
 182 not require confidential information concerning details of  
 183 investigations which. ~~Confidential information concerning~~  
 184 ~~details of investigations~~ is exempt from ~~the provisions of~~ s.  
 185 119.07(1).

186 (4) The board of county commissioners or the budget  
 187 commission, as appropriate ~~the case may be,~~ may require the  
 188 sheriff to correct mathematical, mechanical, factual, and  
 189 clerical errors and errors as to form in the proposed budget. At  
 190 the hearings held pursuant to s. 200.065, the board or  
 191 commission, ~~as the case may be,~~ may amend, modify, increase, or  
 192 reduce any or all items of expenditure in the proposed budget,  
 193 as certified by the sheriff pursuant to paragraphs (2) (a)-(c),  
 194 and shall approve such budget, as amended, modified, increased,  
 195 or reduced. The board or commission ~~It~~ must give written notice  
 196 of its action to the sheriff and specify in such notice the

197 specific items amended, modified, increased, or reduced. The  
 198 budget must ~~shall~~ include the salaries and expenses of the  
 199 sheriff's office, cost of operation of the county jail,  
 200 purchase, maintenance and operation of equipment, including  
 201 patrol cars, radio systems, transporting prisoners, court  
 202 duties, and all other salaries, expenses, equipment, and  
 203 investigation expenditures of the entire sheriff's office for  
 204 the previous year.

205 (a) The sheriff, within 30 days after receiving written  
 206 notice of such action by the board or commission, ~~either~~ in  
 207 person or in his or her office, may file an appeal by petition  
 208 to the Administration Commission. ~~Such appeal shall be by~~  
 209 ~~petition to the Administration commission.~~ The petition must  
 210 ~~shall~~ set forth the budget proposed by the sheriff, in the form  
 211 and manner prescribed by the Executive Office of the Governor  
 212 and approved by the Administration Commission, and the budget as  
 213 approved by the board of county commissioners or the budget  
 214 commission, ~~as the case may be,~~ and shall contain the reasons or  
 215 grounds for the appeal. Such petition shall be filed with the  
 216 Executive Office of the Governor, and a copy ~~of the petition~~  
 217 ~~shall be~~ served upon the board or commission from the decision  
 218 of which appeal is taken by delivering the same to the chair or  
 219 president thereof or to the clerk of the circuit court.

220 (b) The board ~~of county commissioners~~ or the budget  
 221 commission, ~~as the case may be,~~ shall have 5 days following from  
 222 delivery of a copy of ~~any~~ such petition to file a reply with the  
 223 Executive Office of the Governor ~~a reply thereto,~~ and ~~it~~ shall  
 224 deliver a copy of such reply to the sheriff.

225 Section 3. Subsection (4) of section 112.63, Florida  
 226 Statutes, is amended to read:

227 112.63 Actuarial reports and statements of actuarial  
 228 impact; review.—

229 (4) Upon receipt, pursuant to subsection (2), of an  
 230 actuarial report, or ~~upon receipt~~, pursuant to subsection (3),  
 231 of a statement of actuarial impact, the Department of Management  
 232 Services shall acknowledge such receipt, but shall only review  
 233 and comment on each retirement system's or plan's actuarial  
 234 valuations at least on a triennial basis.

235 (a) If the department finds that the actuarial valuation  
 236 is not complete, accurate, or based on reasonable assumptions or  
 237 otherwise materially fails to satisfy the requirements of this  
 238 part; ~~if the department~~ requires additional material  
 239 information necessary to complete its review of the actuarial  
 240 valuation of a system or plan or material information necessary  
 241 to satisfy the duties of the department pursuant to s.

242 112.665(1); ~~if the department~~ does not receive the actuarial  
 243 report or statement of actuarial impact, the department shall  
 244 notify the administrator of the affected retirement system or  
 245 plan and the affected governmental entity and request  
 246 appropriate adjustment, the additional material information, or  
 247 the required report or statement. The notification must inform  
 248 the administrator ~~of the affected retirement system or plan~~ and  
 249 the affected governmental entity of the consequences for failing  
 250 ~~failure~~ to comply with the requirements of this subsection.

251 (b) If, after a reasonable period of time, a satisfactory  
 252 adjustment is not made or the report, statement, or additional

253 material information is not provided, the department may notify  
 254 the Department of Revenue and the Department of Financial  
 255 Services of the such noncompliance, and in which case the  
 256 Department of Revenue and the Department of Financial Services  
 257 shall withhold any funds not pledged for satisfaction of bond  
 258 debt service which are payable to the affected governmental  
 259 entity until the adjustment is made or the report, statement, or  
 260 additional material information is provided to the department.  
 261 The Department of Management Services shall specify the date  
 262 such action is to begin and notify, ~~and notification by the~~  
 263 ~~department must be received by~~ the Department of Revenue, the  
 264 Department of Financial Services, and the affected governmental  
 265 entity 30 days before the specified date ~~the action begins~~.

266 (c) ~~(a)~~ Within 21 days after receipt of the notice, the  
 267 affected governmental entity may petition the Department of  
 268 Management Services for a hearing under ss. 120.569 and 120.57  
 269 ~~with the Department of Management Services~~. The Department of  
 270 Revenue and the Department of Financial Services may not be  
 271 parties to the any such hearing, but may request to intervene if  
 272 requested by the Department of Management Services or if the  
 273 Department of Revenue or the Department of Financial Services  
 274 determines its interests may be adversely affected by the  
 275 hearing.

276 1. If the administrative law judge recommends in favor of  
 277 the department, the department shall perform an actuarial  
 278 review, prepare the statement of actuarial impact, or collect  
 279 the requested material information. The cost to the department  
 280 of performing the such actuarial review, preparing the

281 | statement, or collecting the requested material information  
 282 | shall be charged to the affected governmental entity whose ~~of~~  
 283 | ~~which the~~ employees are covered by the retirement system or  
 284 | plan. If payment ~~of such costs~~ is not received by the department  
 285 | within 60 days after ~~receipt by~~ the affected governmental entity  
 286 | receives ~~of~~ the request for payment, the department shall  
 287 | certify to the Department of Revenue and the Department of  
 288 | Financial Services the amount due, and the Department of Revenue  
 289 | and the Department of Financial Services shall pay such amount  
 290 | to the Department of Management Services from ~~any~~ funds not  
 291 | pledged for satisfaction of bond debt service which are payable  
 292 | to the affected governmental entity ~~of which the employees are~~  
 293 | ~~covered by the retirement system or plan.~~

294 |       2. If the administrative law judge recommends in favor of  
 295 | the affected governmental entity and the department performs an  
 296 | actuarial review, prepares the statement of actuarial impact, or  
 297 | collects the requested material information, the cost to the  
 298 | department ~~of performing the actuarial review, preparing the~~  
 299 | ~~statement, or collecting the requested material information~~  
 300 | shall be paid by the Department of Management Services.

301 |       ~~(d)(b)~~ In the case of an affected special district, the  
 302 | Department of Management Services shall also notify the  
 303 | Department of Community Affairs. Upon receipt of notification,  
 304 | the Department of Community Affairs shall proceed pursuant to  
 305 | ~~the provisions of s. 189.421 with regard to the special~~  
 306 | ~~district.~~

307 |       1. Failure of a special district to provide a required  
 308 | report or statement, to make appropriate adjustments, or to

309 provide additional material information after the procedures  
 310 specified in s. 189.421(1) are exhausted shall be deemed final  
 311 action by the special district.

312 2. The Department of Management Services may notify the  
 313 Department of Community Affairs of those special districts that  
 314 failed to come into compliance. Upon receipt of notification,  
 315 the Department of Community Affairs shall proceed pursuant to s.  
 316 189.421(4).

317 Section 4. Section 129.01, Florida Statutes, is amended to  
 318 read:

319 129.01 Budget system established. ~~There is hereby~~  
 320 ~~established~~ A budget system for the control of the finances of  
 321 the boards of county commissioners of the several counties of  
 322 the state ~~is established,~~ as follows:

323 (1) A budget ~~There~~ shall be prepared, approved, adopted,  
 324 and executed, as prescribed in this chapter, ~~for the fiscal year~~  
 325 ~~ending September 30, 1952,~~ and for each fiscal year. At a  
 326 minimum, the budget must show for each fund, as thereafter, an  
 327 annual budget for such funds as may be required by law and or by  
 328 sound financial practices, budgeted revenues and expenditures by  
 329 organizational unit which are at least at the level of detail  
 330 required for the annual financial report under s. 218.32(1) and  
 331 ~~generally accepted accounting principles. The budget shall~~  
 332 ~~control the levy of taxes and the expenditure of money for all~~  
 333 ~~county purposes during the ensuing fiscal year.~~

334 (2) The ~~Each~~ budget must ~~shall~~ conform to the following  
 335 general directions and requirements:

336 (a) The budget must ~~shall~~ be prepared, summarized, and

337 approved by the board of county commissioners of each county.  
 338 (b) The budget must ~~shall~~ be balanced, so that, ~~that is,~~  
 339 the total of the estimated receipts available from taxation and  
 340 other sources, including balances brought forward from prior  
 341 fiscal years, equals ~~shall equal~~ the total of the appropriations  
 342 for expenditures and reserves. ~~It shall conform to the uniform~~  
 343 ~~classification of accounts prescribed by the appropriate state~~  
 344 ~~agency.~~ The budgeted receipts must ~~division of the budget shall~~  
 345 include 95 percent of all receipts reasonably ~~to be~~ anticipated  
 346 from all sources, including taxes to be levied, provided the  
 347 percent anticipated from ad valorem levies is ~~shall be~~ as  
 348 specified in s. 200.065(2)(a), and is 100 percent of the amount  
 349 of the balances ~~of both cash and liquid securities~~ estimated to  
 350 be brought forward at the beginning of the fiscal year. The  
 351 appropriations must ~~appropriation division of the budget shall~~  
 352 include itemized appropriations for all expenditures authorized  
 353 by law, contemplated to be made, or incurred for the benefit of  
 354 the county during the ~~said~~ year and the provision for ~~the~~  
 355 reserves authorized by this chapter. Both the receipts and  
 356 appropriations must ~~appropriation divisions shall~~ reflect the  
 357 approximate division of expenditures between countywide  
 358 expenditures and noncountywide expenditures and the division of  
 359 county revenues derived from or on behalf of the county as a  
 360 whole and county revenues derived from or on behalf of a  
 361 municipal service taxing unit, special district included within  
 362 the county budget, unincorporated area, service area, or program  
 363 area, or otherwise not received for or on behalf of the county  
 364 as a whole.

365 (c) Provision may be made for the following reserves:

366 1. A reserve for contingencies may be provided which does  
 367 ~~in a sum~~ not to exceed 10 percent of the total appropriations ~~of~~  
 368 ~~the budget.~~

369 2. A reserve for cash balance to be carried over may be  
 370 provided for the purpose of paying expenses from October 1 of  
 371 the next ~~ensuing~~ fiscal year until ~~the time when~~ the revenues  
 372 for that year are expected to be available. This reserve may ~~be~~  
 373 not be more than 20 percent of the total appropriations.  
 374 ~~However, receipts and balances of the budget; provided that for~~  
 375 ~~the bond interest and sinking fund budget, this reserve may not~~  
 376 ~~exceed be not more than~~ the total maturities of debt, ~~(both~~  
 377 ~~principal and interest),~~ which ~~that~~ will occur during the next  
 378 ~~ensuing~~ fiscal year, plus the sinking fund requirements,  
 379 computed on a straight-line basis, for any outstanding  
 380 obligations to be paid from the fund.

381 (d) An appropriation for "outstanding indebtedness" shall  
 382 be made to provide for the payment of vouchers that ~~which~~ have  
 383 been incurred in and charged against the budget for the current  
 384 year or a prior year, but that ~~which~~ are expected to be unpaid  
 385 at the beginning of the next fiscal ~~ensuing~~ year ~~for which the~~  
 386 ~~budget is being prepared.~~ The appropriation for the payment of  
 387 such vouchers shall be to ~~made in~~ the same fund in which ~~for~~  
 388 ~~which~~ the expenses were originally incurred.

389 (e) Any surplus arising from an excess of the estimated  
 390 cash balance over the estimated amount of unpaid obligations to  
 391 be carried over in a fund at the end of the current fiscal year  
 392 may be transferred to any of the other funds of the county, and



393 | the amount so transferred shall be budgeted as a receipt to such  
 394 | other funds. However, a; ~~provided, that no such~~ surplus:

395 |       1. In a fund raised for debt service may not ~~shall~~ be  
 396 | transferred to another fund until, ~~except to a fund raised for~~  
 397 | ~~the same purposes in the same territory, unless the debt for~~  
 398 | which the fund was established of such territory has been  
 399 | extinguished., ~~in which case it may be transferred to any other~~  
 400 | ~~fund raised for that territory; provided, further, that no such~~  
 401 | ~~surplus~~

402 |       2. In a capital outlay reserve fund may not be transferred  
 403 | to another fund until ~~such time as~~ the projects for which the  
 404 | ~~such~~ capital outlay reserve fund was raised have been completed  
 405 | and all obligations paid.

406 |       Section 5. Subsection (6) of section 129.02, Florida  
 407 | Statutes, is amended to read:

408 |       129.02 Requisites of budgets.—Each budget shall conform to  
 409 | the following specific directions and requirements:

410 |       (6) For each special district included within the county  
 411 | budget, the ~~operating fund~~ budget must show budgeted revenues  
 412 | and expenditures by organizational unit which are at least at  
 413 | the level of detail required for the annual financial report  
 414 | under s. 218.32(1). The amount available from taxation and other  
 415 | sources, including balances brought forward from prior fiscal  
 416 | years, must equal the total appropriations for expenditures and  
 417 | reserves. The budget must include ~~shall contain an estimate of~~  
 418 | ~~receipts by source and balances as provided herein, and an~~  
 419 | ~~itemized estimate of expenditures necessary that will need to be~~  
 420 | ~~incurred~~ to carry on all functions and activities of the special

421 | district as ~~now or hereafter~~ provided by law, including ~~and of~~  
 422 | the indebtedness of the special district and the provision for  
 423 | required reserves; ~~also of the reserves for contingencies and~~  
 424 | ~~the balances, as hereinbefore provided, which should be carried~~  
 425 | ~~forward at the end of the year.~~

426 | Section 6. Section 129.021, Florida Statutes, is amended  
 427 | to read:

428 | 129.021 County officer budget information.—Notwithstanding  
 429 | other provisions of law, the budgets of all county officers, as  
 430 | submitted to the board of county commissioners, must ~~shall~~ be in  
 431 | sufficient detail and contain such information as the board of  
 432 | county commissioners may require in furtherance of their powers  
 433 | and responsibilities provided in ss. 125.01(1)(q), and (r), and  
 434 | (v), and (6) and 129.01(2)(b).

435 | Section 7. Subsection (3) of section 129.03, Florida  
 436 | Statutes, is amended to read:

437 | 129.03 Preparation and adoption of budget.—

438 | (3) ~~No later than 15 days after certification of value by~~  
 439 | ~~the property appraiser pursuant to s. 200.065(1),~~ The county  
 440 | budget officer, after tentatively ascertaining the proposed  
 441 | fiscal policies of the board for the next ensuing fiscal year,  
 442 | shall prepare and present to the board a tentative budget for  
 443 | the next ensuing fiscal year for each of the funds provided in  
 444 | this chapter, including all estimated receipts, taxes to be  
 445 | levied, and balances expected to be brought forward and all  
 446 | estimated expenditures, reserves, and balances to be carried  
 447 | over at the end of the year.

448 | (a) The board of county commissioners shall receive and

449 examine the tentative budget for each fund and, subject to the  
 450 notice and hearing requirements of s. 200.065, shall require  
 451 such changes to be made as it deems ~~shall deem~~ necessary,<sup>†</sup>  
 452 provided the budget remains ~~shall remain~~ in balance. The county  
 453 budget officer's estimates of receipts other than taxes, and of  
 454 balances to be brought forward, may ~~shall~~ not be revised except  
 455 by a resolution of the board, duly passed and spread on the  
 456 minutes of the board. However, the board may allocate to any of  
 457 the funds of the county any anticipated receipts, other than  
 458 taxes levied for a particular fund, except receipts designated  
 459 or received to be expended for a particular purpose.

460 (b) Upon receipt of the tentative budgets and completion  
 461 of any revisions ~~made by the board~~, the board shall prepare a  
 462 statement summarizing all of the adopted tentative budgets. The  
 463 ~~This~~ summary statement must ~~shall~~ show, for each budget and the  
 464 total of all budgets, the proposed tax millages, ~~the~~ balances,  
 465 ~~the~~ reserves, and the total of each major classification of  
 466 receipts and expenditures, classified according to the uniform  
 467 classification of accounts adopted ~~prescribed~~ by the appropriate  
 468 state agency. The board shall cause this summary statement to be  
 469 advertised one time in a newspaper of general circulation  
 470 published in the county, or by posting at the courthouse door if  
 471 there is no such newspaper, and the advertisement must ~~shall~~  
 472 appear adjacent to the advertisement required pursuant to s.  
 473 200.065.

474 (c) The board shall hold public hearings to adopt  
 475 tentative and final budgets pursuant to s. 200.065. The hearings  
 476 shall be primarily for the purpose of hearing requests and

477 complaints from the public regarding the budgets and the  
 478 proposed tax levies and for explaining the budget and any  
 479 proposed or adopted amendments ~~thereto, if any.~~ The tentative  
 480 budget must be posted on the county's official website at least  
 481 2 days before the public hearing to consider such budget. The  
 482 final budget must be posted on the website within 30 days after  
 483 adoption. The tentative budgets, adopted tentative budgets, and  
 484 final budgets shall be filed in the office of the county auditor  
 485 as a public record. Sufficient reference in words and figures to  
 486 identify the particular transactions shall be made in the  
 487 minutes of the board to record its actions with reference to the  
 488 budgets.

489 Section 8. Subsection (1) and paragraphs (a) and (f) of  
 490 subsection (2) of section 129.06, Florida Statutes, are amended  
 491 to read:

492 129.06 Execution and amendment of budget.—

493 (1) Upon the final adoption of the budgets as provided in  
 494 this chapter, the budgets so adopted must ~~shall~~ regulate ~~the~~  
 495 expenditures of the county and each special district included  
 496 within the county budget, and the itemized estimates of  
 497 expenditures must ~~shall~~ have the effect of fixed appropriations  
 498 and may ~~shall~~ not be amended, altered, or exceeded except as  
 499 provided in this chapter.

500 (a) The modified-accrual basis or accrual basis of  
 501 accounting must be followed for all funds in accordance with  
 502 generally accepted accounting principles.

503 (b) The cost of the investments provided in this chapter,  
 504 or the receipts from their sale or redemption, may ~~must~~ not be

505 | treated as expense or income, and ~~but~~ the investments on hand at  
 506 | the beginning or end of each fiscal year must be carried as  
 507 | separate items at cost in the fund balances; however, the  
 508 | amounts of profit or loss received on their sale must be treated  
 509 | as income or expense, as applicable ~~the case may be~~.

510 |         (2) The board at any time within a fiscal year may amend a  
 511 | budget for that year, and may within the first 60 days of a  
 512 | fiscal year amend the budget for the prior fiscal year, as  
 513 | follows:

514 |         (a) Appropriations for expenditures within ~~in~~ any fund may  
 515 | be decreased or ~~and other appropriations in the same fund~~  
 516 | ~~correspondingly~~ increased by motion recorded in the minutes if,  
 517 | ~~provided that~~ the total ~~of the~~ appropriations of the fund does  
 518 | not change ~~may not be changed~~. The board of county  
 519 | commissioners, ~~however,~~ may establish procedures by which the  
 520 | designated budget officer may authorize ~~certain~~  
 521 | ~~intradepartmental~~ budget amendments if, ~~provided that~~ the total  
 522 | appropriations ~~appropriation~~ of the fund does not change  
 523 | ~~department may not be changed~~.

524 |         (f) Unless otherwise prohibited by law, if an amendment to  
 525 | a budget is required for a purpose not specifically authorized  
 526 | in paragraphs (a)-(e), ~~unless otherwise prohibited by law,~~ the  
 527 | amendment may be authorized by resolution or ordinance of the  
 528 | board of county commissioners adopted following a public  
 529 | hearing.

530 |         1. The public hearing must be advertised at least 2 days,  
 531 | but not more than 5 days, before the date of the hearing. The  
 532 | advertisement must appear in a newspaper of paid general

533 circulation and must identify the name of the taxing authority,  
 534 the date, place, and time of the hearing, and the purpose of the  
 535 hearing. The advertisement must also identify each budgetary  
 536 fund to be amended, the source of the funds, the use of the  
 537 funds, and the total amount of each fund's appropriations  
 538 ~~budget.~~

539 2. If the board amends the budget pursuant to this  
 540 paragraph, the adopted amendment must be posted on the county's  
 541 official website within 5 days after adoption.

542 Section 9. Section 129.07, Florida Statutes, is amended to  
 543 read:

544 129.07 Unlawful to exceed the budget; ~~certain contracts~~  
 545 ~~void; commissioners contracting excess indebtedness personally~~  
 546 ~~liable. It is unlawful for~~ The board of county commissioners may  
 547 not ~~to~~ expend or enter into a contract requiring expenditures  
 548 ~~for the expenditure~~ in any fiscal year for more than the amount  
 549 of appropriations budgeted in each fund's budget, except as  
 550 provided herein, and ~~in no case shall~~ the total appropriations  
 551 of any budget may not be exceeded, except as provided in s.  
 552 129.06, ~~and~~ Any indebtedness contracted for any purpose against  
 553 either of the funds enumerated in this chapter or for any  
 554 purpose, ~~the expenditure for~~ which is chargeable to either of  
 555 the said funds, is ~~shall be~~ null and void, and no suit may ~~or~~  
 556 ~~suits shall~~ be prosecuted in any court in this state for the  
 557 collection of such indebtedness. ~~same, and~~ The members of the  
 558 board of county commissioners voting ~~for~~ and contracting for  
 559 such indebtedness are ~~amounts and the bonds of such members of~~  
 560 ~~said boards also shall be~~ liable for any the excess indebtedness

561 ~~se~~ contracted for.

562 Section 10. Section 129.201, Florida Statutes, is amended  
563 to read:

564 129.201 Budget of supervisor of elections; manner and time  
565 of preparation and presentation.—

566 (1) Pursuant to ss. 129.01 and s. 129.03(2), each  
567 supervisor of elections shall annually prepare and submit  
568 ~~certify~~ to the board of county commissioners, or county budget  
569 commission if there is one in the county, a proposed budget for  
570 carrying out the powers, duties, and operations of income and  
571 ~~expenditures to fulfill the duties, responsibilities, and~~  
572 ~~operation~~ of the office of the supervisor of elections for the  
573 next ensuing fiscal year ~~of the county~~. The fiscal year of the  
574 supervisor of elections commences ~~shall commence~~ on October 1 of  
575 each year and ends ~~shall end~~ on September 30 of the following  
576 year.

577 (2)~~(a)~~ Expenditures must be itemized in accordance with  
578 the uniform accounting system prescribed by the Department of  
579 Financial Services ~~Each expenditure item in the budget for the~~  
580 ~~supervisor of elections shall be itemized generally as follows:~~

581 ~~(a)1. Personnel services. Compensation for the supervisor~~  
582 ~~of elections and all other personnel of the office.~~

583 ~~(b)2. Operating expenses.~~

584 ~~(c)3. Capital outlay.~~

585 ~~(d) Debt service.~~

586 ~~(e)4. Grants and aids. Contingencies and transfers.~~

587 ~~(f) Other uses.~~

588 ~~(b) To the extent appropriate, the budget shall be further~~

589 ~~itemized in conformance with the Uniform Accounting System for~~  
 590 ~~Local Units of Government in Florida adopted by rule of the~~  
 591 ~~Chief Financial Officer.~~

592 (3) The supervisor of elections shall furnish to the board  
 593 of county commissioners or the county budget commission all  
 594 relevant and pertinent information that the ~~which such~~ board or  
 595 commission deems shall deem necessary, including expenditures at  
 596 the subobject code level in accordance with the uniform  
 597 accounting system prescribed by the Department of Financial  
 598 Services. The board or commission may not amend, modify,  
 599 increase, or reduce any expenditure at the subobject code level.

600 (4) The board or commission, as appropriate ~~the case may~~  
 601 ~~be~~, may require the supervisor of elections to correct  
 602 mathematical, mechanical, factual, and clerical errors and  
 603 errors of form in the proposed budget. At the hearings held  
 604 pursuant to s. 200.065, the board or commission may amend,  
 605 modify, increase, or reduce any or all items of expenditure in  
 606 the proposed budget as submitted under subsections (1) and (2);  
 607 and, as amended, modified, increased, or reduced, such budget  
 608 shall be approved by the board or commission, which must provide  
 609 ~~giving~~ written notice of its action to specific items amended,  
 610 modified, increased, or reduced.

611 (5) The board or commission shall include in the county  
 612 budget the items of proposed expenditures ~~as~~ set forth in the  
 613 budget which are required by this section to be submitted, after  
 614 the budget has been reviewed and approved. The board or  
 615 commission shall include the supervisor of elections' reserve  
 616 for contingencies ~~provided herein~~ in the general county budget's



617 reserve for contingencies account ~~in the general county budget.~~

618 (6) The supervisor of elections' reserve for contingencies  
 619 ~~is in the budget of a supervisor of elections shall be~~ governed  
 620 by the same provisions governing the amount and use of the  
 621 reserve for contingencies appropriated in the county budget.

622 (7) The proposed budget shall be submitted to the board of  
 623 county commissioners or county budget commission pursuant to s.  
 624 129.03(2), ~~and the budget shall be~~ included by the board or  
 625 commission in the general county budget.

626 (8) The items placed in the budget of the board are  
 627 ~~pursuant to this act shall be~~ subject to the same provisions of  
 628 law as the county annual budget; however, an ~~no~~ amendment ~~may be~~  
 629 ~~made~~ to the appropriations of the office of the supervisor of  
 630 elections may not be made without due notice of the change to  
 631 the supervisor of elections.

632 (9) The budget of the supervisor of elections may be  
 633 increased by the board of county commissioners to cover ~~such~~  
 634 expenses for emergencies and unanticipated expenses as are  
 635 recommended and justified by the supervisor of elections.

636 Section 11. Section 166.241, Florida Statutes, is amended  
 637 to read:

638 166.241 Fiscal years, ~~appropriations,~~ budgets, and budget  
 639 amendments.—

640 (1) Each municipality shall establish ~~make provision for~~  
 641 ~~establishing~~ a fiscal year beginning October 1 of each year and  
 642 ending September 30 of the following year.

643 (2) The governing body of each municipality shall adopt a  
 644 budget each fiscal year. The budget must be adopted by ordinance

645 or resolution unless otherwise specified in the respective  
 646 municipality's charter. The amount available from taxation and  
 647 other sources, including balances brought forward amounts  
 648 ~~carried over~~ from prior fiscal years, must equal the total  
 649 appropriations for expenditures and reserves. At a minimum, the  
 650 adopted budget must show for each fund, as required by law and  
 651 sound financial practices, budgeted revenues and expenditures by  
 652 organizational unit which are at least at the level of detail  
 653 required for the annual financial report under s. 218.32(1). The  
 654 adopted budget must regulate expenditures of the municipality,  
 655 and an it is unlawful for any officer of a municipal government  
 656 may not ~~to~~ expend or contract for expenditures in any fiscal  
 657 year except pursuant to the adopted budget ~~in pursuance of~~  
 658 ~~budgeted appropriations.~~

659 (3) The tentative budget must be posted on the  
 660 municipality's official website at least 2 days before the  
 661 budget hearing, held pursuant to s. 200.065 or other law, to  
 662 consider such budget. The final adopted budget must be posted on  
 663 the municipality's official website within 30 days after  
 664 adoption. If the municipality does not operate an official  
 665 website, the municipality must, within a reasonable period of  
 666 time as established by the county or counties in which the  
 667 municipality is located, transmit the tentative budget and final  
 668 budget to the manager or administrator of such county or  
 669 counties who shall post the budgets on the county's website.

670 (4)-(3) The governing body of each municipality at any time  
 671 within a fiscal year or within ~~up to~~ 60 days following the end  
 672 of the fiscal year may amend a budget for that year as follows:

673 (a) Appropriations for expenditures within a fund may be  
 674 decreased or increased by motion recorded in the minutes if  
 675 ~~provided that~~ the total ~~of the~~ appropriations of the fund is not  
 676 changed.

677 (b) The governing body may establish procedures by which  
 678 the designated budget officer may authorize ~~certain~~ budget  
 679 amendments if within a department, ~~provided that~~ the total ~~of~~  
 680 ~~the~~ appropriations of the fund department is not changed.

681 (c) If a budget amendment is required for a purpose not  
 682 specifically authorized in paragraph (a) or paragraph (b), the  
 683 budget amendment must be adopted in the same manner as the  
 684 original budget unless otherwise specified in the municipality's  
 685 charter ~~of the respective municipality~~.

686 (5) If the governing body of a municipality amends the  
 687 budget pursuant to paragraph (4)(c), the adopted amendment must  
 688 be posted on the official website of the municipality within 5  
 689 days after adoption. If the municipality does not operate an  
 690 official website, the municipality must, within a reasonable  
 691 period of time as established by the county or counties in which  
 692 the municipality is located, transmit the adopted amendment to  
 693 the manager or administrator of such county or counties who  
 694 shall post the adopted amendment on the county's website.

695 Section 12. Paragraph (a) of subsection (1) of section  
 696 189.4044, Florida Statutes, is amended to read:

697 189.4044 Special procedures for inactive districts.—

698 (1) The department shall declare inactive any special  
 699 district in this state by documenting that:

700 (a) The special district meets one of the following

701 criteria:

702 1. The registered agent of the district, the chair of the  
 703 governing body of the district, or the governing body of the  
 704 appropriate local general-purpose government notifies the  
 705 department in writing that the district has taken no action for  
 706 2 or more years;

707 2. Following an inquiry from the department, the  
 708 registered agent of the district, the chair of the governing  
 709 body of the district, or the governing body of the appropriate  
 710 local general-purpose government notifies the department in  
 711 writing that the district has not had a governing board or a  
 712 sufficient number of governing board members to constitute a  
 713 quorum for 2 or more years or the registered agent of the  
 714 district, the chair of the governing body of the district, or  
 715 the governing body of the appropriate local general-purpose  
 716 government fails to respond to the department's inquiry within  
 717 21 days; ~~or~~

718 3. The department determines, pursuant to s. 189.421, that  
 719 the district has failed to file any of the reports listed in s.  
 720 189.419; or-

721 4. The district has not had a registered office and agent  
 722 on file with the department for 1 or more years.

723 Section 13. Subsection (1) of section 189.412, Florida  
 724 Statutes, is amended to read:

725 189.412 Special District Information Program; duties and  
 726 responsibilities.—The Special District Information Program of  
 727 the Department of Community Affairs is created and has the  
 728 following special duties:

729 (1) The collection and maintenance of special district  
 730 noncompliance status reports from the Department of Management  
 731 Services, the Department of Financial Services, the Division of  
 732 Bond Finance of the State Board of Administration, ~~and~~ the  
 733 Auditor General, and the Legislative Auditing Committee, for the  
 734 reporting required in ss. 112.63, 218.32, 218.38, and 218.39.  
 735 The noncompliance reports must list those special districts that  
 736 did not comply with the statutory reporting requirements.

737 Section 14. Subsections (3) through (7) of section  
 738 189.418, Florida Statutes, are amended to read:

739 189.418 Reports; budgets; audits.—

740 (3) The governing body of each special district shall  
 741 adopt a budget by resolution each fiscal year. The total amount  
 742 available from taxation and other sources, including balances  
 743 brought forward ~~amounts carried over~~ from prior fiscal years,  
 744 must equal the total of appropriations for expenditures and  
 745 reserves. At a minimum, the adopted budget must show for each  
 746 fund, as required by law and sound financial practices, budgeted  
 747 revenues and expenditures by organizational unit which are at  
 748 least at the level of detail required for the annual financial  
 749 report under s. 218.32(1). The adopted budget must regulate  
 750 expenditures of the special district, and ~~an it is unlawful for~~  
 751 ~~any~~ officer of a special district may not ~~to~~ expend or contract  
 752 for expenditures in any fiscal year except pursuant to the  
 753 adopted budget ~~in pursuance of budgeted appropriations.~~

754 (4) The tentative budget must be posted on the special  
 755 district's official website at least 2 days before the budget  
 756 hearing, held pursuant to s. 200.065 or other law, to consider

757 such budget. The final adopted budget must be posted on the  
 758 special district's official website within 30 days after  
 759 adoption. If the special district does not operate an official  
 760 website, the special district must, within a reasonable period  
 761 of time as established by the local general-purpose government  
 762 or governments in which the special district is located or the  
 763 local governing authority to which the district is dependent,  
 764 transmit the tentative budget or final budget to the manager or  
 765 administrator of the local general-purpose government or the  
 766 local governing authority. The manager or administrator shall  
 767 post the tentative budget or final budget on the website of the  
 768 local general-purpose government or governing authority. This  
 769 subsection and subsection (3) do not apply to water management  
 770 districts as defined in s. 373.019.

771 (5)-(4) The proposed budget of a dependent special district  
 772 must shall be presented in accordance with generally accepted  
 773 accounting principles, contained within the general budget of  
 774 the local governing authority to which it is dependent, and be  
 775 clearly stated as the budget of the dependent district. However,  
 776 with the concurrence of the local governing authority, a  
 777 dependent district may be budgeted separately. The dependent  
 778 district must provide any budget information requested by the  
 779 local governing authority at the time and place designated by  
 780 the local governing authority.

781 (6)-(5) The governing body of each special district at any  
 782 time within a fiscal year or within ~~up to~~ 60 days following the  
 783 end of the fiscal year may amend a budget for that year as  
 784 follows:-

785 (a) Appropriations for expenditures within a fund may be  
 786 decreased or increased by motion recorded in the minutes if the  
 787 total appropriations of the fund do not change.

788 (b) The governing body may establish procedures by which  
 789 the designated budget officer may authorize certain budget  
 790 amendments if the total appropriations of the fund is not  
 791 changed.

792 (c) If a budget amendment is required for a purpose not  
 793 specifically authorized in paragraph (a) or paragraph (b), the  
 794 budget amendment must be adopted by resolution.

795 (7) If the governing body of a special district amends the  
 796 budget pursuant to paragraph (6)(c), the adopted amendment must  
 797 be posted on the official website of the special district within  
 798 5 days after adoption. If the special district does not operate  
 799 an official website, the special district must, within a  
 800 reasonable period of time as established by the local general-  
 801 purpose government or governments in which the special district  
 802 is located or the local governing authority to which the  
 803 district is dependent, transmit the adopted amendment to the  
 804 manager or administrator of the local general-purpose government  
 805 or governing authority. The manager or administrator shall post  
 806 the adopted amendment on the website of the local general-  
 807 purpose government or governing authority.

808 (8)-(6) A local general-purpose government governing  
 809 authority may, in its discretion, review the budget or tax levy  
 810 of any special district located solely within its boundaries.

811 (9) All special districts must comply with the financial  
 812 reporting requirements of ss. 218.32 and 218.39. A local

813 general-purpose government or governing authority may request,  
 814 from any special district located solely within its boundaries,  
 815 financial information in order to comply with its reporting  
 816 requirements under ss. 218.32 and 218.39. The special district  
 817 must cooperate with such request and provide the financial  
 818 information at the time and place designated by the local  
 819 general-purpose government or governing authority.

820 (10)(7) All reports or information required to be filed  
 821 with a local general-purpose government or governing authority  
 822 under ss. 189.415, 189.416, and 189.417 and subsection (8) must  
 823 ~~this section shall:~~

824 (a) If ~~When~~ the local general-purpose government or  
 825 governing authority is a county, be filed with the clerk of the  
 826 board of county commissioners.

827 (b) If ~~When~~ the district is a multicounty district, be  
 828 filed with the clerk of the county commission in each county.

829 (c) If ~~When~~ the local general-purpose government or  
 830 governing authority is a municipality, be filed at the place  
 831 designated by the municipal governing body.

832 Section 15. Section 189.419, Florida Statutes, is amended  
 833 to read:

834 189.419 Effect of failure to file certain reports or  
 835 information.—

836 (1) If an independent ~~a~~ special district fails to file the  
 837 reports or information required under s. 189.415, s. 189.416, ~~or~~  
 838 s. 189.417, or s. 189.418(9) with the local general-purpose  
 839 government or governments in which it is located ~~governing~~  
 840 ~~authority~~, the person authorized to receive and read the reports



841 or information or the local general-purpose government shall  
 842 notify the district's registered agent ~~and the appropriate local~~  
 843 ~~governing authority or authorities~~. If requested by the  
 844 district, the local general-purpose government governing  
 845 ~~authority~~ shall grant an extension of ~~time of~~ up to 30 days for  
 846 filing the required reports or information.

847 ~~(2)~~ If the governing body of at any time the local  
 848 general-purpose government or governments governing authority or  
 849 ~~authorities or the board of county commissioners~~ determines that  
 850 there has been an unjustified failure to file these ~~the~~ reports  
 851 or information ~~described in subsection (1)~~, it may notify the  
 852 department, and the department may proceed pursuant to s.  
 853 189.421(1).

854 (2) If a dependent special district fails to file the  
 855 reports or information required under s. 189.416, s. 189.417, or  
 856 s. 189.418(9) with the local governing authority to which it is  
 857 dependent, the local governing authority shall take whatever  
 858 steps it deems necessary to enforce the special district's  
 859 accountability. Such steps may include, as authorized,  
 860 withholding funds, removing governing board members at will,  
 861 vetoing the special district's budget, conducting the oversight  
 862 review process set forth in s. 189.428, or amending, merging, or  
 863 dissolving the special district in accordance with the  
 864 provisions contained in the ordinance that created the dependent  
 865 special district.

866 (3) If a special district fails to file the reports or  
 867 information required under ~~s. 112.63, s. 218.32, s. 218.38, or~~  
 868 ~~s. 218.39~~ with the appropriate state agency, the agency shall

869 notify the department, and the department shall send a certified  
 870 technical assistance letter to the special district which  
 871 summarizes the requirements and encourages the special district  
 872 to take steps to prevent the noncompliance from reoccurring  
 873 ~~proceed pursuant to s. 189.421.~~

874 (4) If a special district fails to file the reports or  
 875 information required under s. 112.63 with the appropriate state  
 876 agency, the agency shall notify the department and the  
 877 department shall proceed pursuant to s. 189.421(1).

878 (5) If a special district fails to file the reports or  
 879 information required under s. 218.32 or s. 218.39 with the  
 880 appropriate state agency or office, the state agency or office  
 881 shall, and the Legislative Auditing Committee may, notify the  
 882 department and the department shall proceed pursuant to s.  
 883 189.421.

884 Section 16. Section 189.421, Florida Statutes, is amended  
 885 to read:

886 189.421 Failure of district to disclose financial  
 887 reports.—

888 (1)(a) If ~~when~~ notified pursuant to s. 189.419(1), (4), or  
 889 (5) ~~189.419~~, the department shall attempt to assist a special  
 890 district in complying ~~to comply~~ with its financial reporting  
 891 requirements by sending a certified letter to the special  
 892 district, and, if the special district is dependent, sending a  
 893 copy of ~~that the~~ letter to the chair of the ~~governing body of~~  
 894 ~~the local governing authority. The letter must include general-~~  
 895 ~~purpose government, which includes the following:~~ a description  
 896 of the required report, including statutory submission

897 | deadlines, a contact telephone number for technical assistance  
 898 | to help the special district comply, a 60-day deadline extension  
 899 | ~~of time~~ for filing the required report with the appropriate  
 900 | entity, the address where the report must be filed, and an  
 901 | explanation of the penalties for noncompliance.

902 |       (b) A special district that is unable to meet the 60-day  
 903 | reporting deadline must provide written notice to the department  
 904 | before the expiration of the deadline stating the reason the  
 905 | special district is unable to comply with the deadline, the  
 906 | steps the special district is taking to prevent the  
 907 | noncompliance from reoccurring, and the estimated date that the  
 908 | special district will file the report with the appropriate  
 909 | agency. The district's written response does not constitute an  
 910 | extension by the department; however, the department shall  
 911 | forward the written response to:

912 |       1. If the written response refers to the reports required  
 913 | under s. 218.32 or s. 218.39, the Legislative Auditing Committee  
 914 | for its consideration in determining whether the special  
 915 | district should be subject to further state action in accordance  
 916 | with s. 11.40(5)(b).

917 |       2. If the written response refers to the reports or  
 918 | information requirements listed in s. 189.419(1), the local  
 919 | general-purpose government or governments for its consideration  
 920 | in determining whether the oversight review process set forth in  
 921 | s. 189.428 should be undertaken.

922 |       3. If the written response refers to the reports or  
 923 | information required under s. 112.63, the Department of  
 924 | Management Services for its consideration in determining whether

925 the special district should be subject to further state action  
 926 in accordance with s. 112.63(4)(d)2. ~~The department may grant an~~  
 927 ~~additional 30-day extension of time if requested to do so in~~  
 928 ~~writing by the special district. The department shall notify the~~  
 929 ~~appropriate entity of the new extension of time. In the case of~~  
 930 ~~a special district that did not timely file the reports or~~  
 931 ~~information required by s. 218.38, the department shall send a~~  
 932 ~~certified technical assistance letter to the special district~~  
 933 ~~which summarizes the requirements and encourages the special~~  
 934 ~~district to take steps to prevent the noncompliance from~~  
 935 ~~reoccurring.~~

936 (2) Failure of a special district to comply with the  
 937 actuarial and financial reporting requirements under s. 112.63,  
 938 s. 218.32, or s. 218.39 after the procedures of subsection (1)  
 939 are exhausted shall be deemed final action of the special  
 940 district. The actuarial and financial reporting requirements are  
 941 declared to be essential requirements of law. Remedy for  
 942 noncompliance shall be by writ of certiorari as set forth in  
 943 subsection (4) ~~(3)~~.

944 (3) Pursuant to s. 11.40(5)(b), the Legislative Auditing  
 945 Committee shall notify the department of those districts that  
 946 fail ~~failed~~ to file the required reports ~~report~~. If the  
 947 procedures described in subsection (1) have not yet been  
 948 initiated, the department shall initiate such procedures upon  
 949 receiving the notice from the Legislative Auditing Committee.  
 950 Otherwise, within 60 ~~30~~ days after receiving such ~~this~~ notice,  
 951 or within 60 ~~30~~ days after the expiration of the 60-day deadline  
 952 extension date provided in subsection (1), whichever occurs

953 later, the department, ~~shall proceed as follows:~~ notwithstanding  
 954 the provisions of chapter 120, ~~the department~~ shall file a  
 955 petition for writ of certiorari with the circuit court. Venue  
 956 for all actions pursuant to this subsection is ~~shall be~~ in Leon  
 957 County. The court shall award the prevailing party attorney's  
 958 fees and costs ~~in all cases filed pursuant to this section~~  
 959 unless affirmatively waived by all parties. A writ of certiorari  
 960 shall be issued unless a respondent establishes that the  
 961 notification of the Legislative Auditing Committee was issued as  
 962 a result of material error. Proceedings under this subsection  
 963 are ~~shall~~ otherwise ~~be~~ governed by the Rules of Appellate  
 964 Procedure.

965 (4) Pursuant to s. 112.63(4)(d)2., the Department of  
 966 Management Services may notify the department of those special  
 967 districts that have failed to file the required adjustments,  
 968 additional information, or report or statement after the  
 969 procedures of subsection (1) have been exhausted. Within 60 days  
 970 after receiving such notice or within 60 days after the 60-day  
 971 deadline provided in subsection (1), whichever occurs later, the  
 972 department, notwithstanding chapter 120, shall file a petition  
 973 for writ of certiorari with the circuit court. Venue for all  
 974 actions pursuant to this subsection is in Leon County. The court  
 975 shall award the prevailing party attorney's fees and costs  
 976 unless affirmatively waived by all parties. A writ of certiorari  
 977 shall be issued unless a respondent establishes that the  
 978 notification of the Department of Management Services was issued  
 979 as a result of material error. Proceedings under this subsection  
 980 are otherwise governed by the Rules of Appellate Procedure.

981 Section 17. Subsection (6) is added to section 195.087,  
 982 Florida Statutes, to read:

983 195.087 Property appraisers and tax collectors to submit  
 984 budgets to Department of Revenue.—

985 (6) Each property appraiser and tax collector must post  
 986 their final approved budget on their official website within 30  
 987 days after adoption. Each county's official website must have a  
 988 link to the websites of the property appraiser or tax collector  
 989 where the final approved budget is posted. If the property  
 990 appraiser or tax collector does not have an official website,  
 991 the final approved budget must be posted on the county's  
 992 official website.

993 Section 18. Paragraphs (d), (e), and (f) of subsection (1)  
 994 of section 218.32, Florida Statutes, are amended, and paragraph  
 995 (g) is added to that subsection, to read:

996 218.32 Annual financial reports; local governmental  
 997 entities.—

998 (1)

999 (d) Each local governmental entity that is required to  
 1000 provide for an audit under ~~in accordance with~~ s. 218.39(1) must  
 1001 submit ~~the annual financial report with the audit report,~~ a copy  
 1002 of the audit report and annual financial report ~~must be~~  
 1003 ~~submitted~~ to the department within 45 days after the completion  
 1004 of the audit report but no later than 9 ~~12~~ months after the end  
 1005 of the fiscal year.

1006 (e) Each local governmental entity that is not required to  
 1007 provide for an audit under ~~report in accordance with~~ s. 218.39  
 1008 must submit the annual financial report to the department no

1009 later than 9 months after the end of the fiscal ~~April 30 of each~~  
 1010 year. The department shall consult with the Auditor General in  
 1011 the development of the format of annual financial reports  
 1012 submitted pursuant to this paragraph. The format must ~~shall~~  
 1013 include balance sheet information used ~~to be utilized~~ by the  
 1014 Auditor General pursuant to s. 11.45(7)(f). The department must  
 1015 forward the financial information contained within the ~~these~~  
 1016 ~~entities'~~ annual financial reports to the Auditor General in  
 1017 electronic form. This paragraph does not apply to housing  
 1018 authorities created under chapter 421.

1019 (f) If the department does not receive a completed annual  
 1020 financial report from a local governmental entity within the  
 1021 required period, it shall notify the Legislative Auditing  
 1022 Committee and the Special District Information Program of the  
 1023 Department of Community Affairs of the ~~local governmental~~  
 1024 entity's failure to comply with the reporting requirements. The  
 1025 committee shall proceed in accordance with s. 11.40(5).

1026 (g) Each local governmental entity's website must provide  
 1027 a link to the department's website to view the entity's annual  
 1028 financial report submitted to the department pursuant to this  
 1029 section. If the local governmental entity does not have an  
 1030 official website, the county government's website must provide  
 1031 the required link for the local governmental entity.

1032 Section 19. Section 218.35, Florida Statutes, is amended  
 1033 to read:

1034 218.35 County fee officers; financial matters.-

1035 (1) Each county fee officer shall establish an annual  
 1036 budget for carrying out the powers, duties, and operations of

1037 his or her office for the next county fiscal year ~~which shall~~  
 1038 ~~clearly reflect the revenues available to said office and the~~  
 1039 ~~functions for which money is to be expended.~~ The budget must  
 1040 ~~shall~~ be balanced so that, ~~that is,~~ the total of estimated  
 1041 receipts, including balances brought forward, equals ~~shall equal~~  
 1042 the total of estimated expenditures and reserves. The budgeting  
 1043 of segregated funds must ~~shall~~ be made in a ~~such~~ manner that  
 1044 retains the relation between program and revenue source, as  
 1045 provided by law ~~is retained.~~

1046 (2) The clerk of the circuit court, functioning in his or  
 1047 her capacity as clerk of the circuit and county courts and as  
 1048 clerk of the board of county commissioners, shall prepare his or  
 1049 her budget in two parts:

1050 (a) The budget for funds necessary to perform court-  
 1051 related functions as provided ~~for~~ in s. 28.36, ~~which shall~~  
 1052 ~~detail the methodologies used to apportion costs between court-~~  
 1053 ~~related and non-court-related functions performed by the clerk.~~

1054 (b) The budget relating to the requirements of the clerk  
 1055 as clerk of the board of county commissioners, county auditor,  
 1056 and custodian or treasurer of all county funds and other county-  
 1057 related duties, which shall be annually prepared and submitted  
 1058 to the board of county commissioners pursuant to s. 129.03(2),  
 1059 for each fiscal year. Expenditures must be itemized in  
 1060 accordance with the uniform accounting system prescribed by the  
 1061 Department of Financial Services as follows:

- 1062 1. Personnel services.
- 1063 2. Operating expenses.
- 1064 3. Capital outlay.



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- 4. Debt service.
- 5. Grants and aids.
- 6. Other uses.

(3) The clerk of the circuit court shall furnish to the board of county commissioners or the county budget commission all relevant and pertinent information that the board or commission deems necessary, including expenditures at the subobject code level in accordance with the uniform accounting system prescribed by the Department of Financial Services.

(4) The final approved budget of the clerk of the circuit court must be posted on the county's official website within 30 days after adoption. The final approved budget of the clerk of the circuit court may be included in the county's budget.

(5)~~(3)~~ Each county fee officer shall establish ~~make~~ ~~provision for establishing~~ a fiscal year beginning October 1 and ending September 30 of the following year, and shall report his or her finances annually upon the close of each fiscal year to the county fiscal officer for inclusion in the annual financial report by the county.

(6)~~(4)~~ The proposed budget of a county fee officer shall be filed with the clerk of the county governing authority by September 1 preceding the fiscal year for the budget, except for the budget prepared by the clerk of the circuit court for court-related functions as provided in s. 28.36.

Section 20. Section 218.39, Florida Statutes, is amended to read:

218.39 Annual financial audit reports.—

(1) If, by the first day in any fiscal year, a local

1093 governmental entity, district school board, charter school, or  
 1094 charter technical career center has not been notified that a  
 1095 financial audit for that fiscal year will be performed by the  
 1096 Auditor General, each of the following entities shall have an  
 1097 annual financial audit of its accounts and records completed  
 1098 within 9 ~~12~~ months after the end of its fiscal year by an  
 1099 independent certified public accountant retained by it and paid  
 1100 from its public funds:

1101 (a) Each county.

1102 (b) Any municipality with revenues or the total of  
 1103 expenditures and expenses in excess of \$250,000, as reported on  
 1104 the fund financial statements.

1105 (c) Any special district with revenues or the total of  
 1106 expenditures and expenses in excess of \$100,000, as reported on  
 1107 the fund financial statements.

1108 (d) Each district school board.

1109 (e) Each charter school established under s. 1002.33.

1110 (f) Each charter technical center established under s.  
 1111 1002.34.

1112 (g) Each municipality with revenues or the total of  
 1113 expenditures and expenses between \$100,000 and \$250,000, as  
 1114 reported on the fund financial statements, which ~~that~~ has not  
 1115 been subject to a financial audit pursuant to this subsection  
 1116 for the 2 preceding fiscal years.

1117 (h) Each special district with revenues or the total of  
 1118 expenditures and expenses between \$50,000 and \$100,000, as  
 1119 reported on the fund financial statement, which ~~that~~ has not  
 1120 been subject to a financial audit pursuant to this subsection

1121 | for the 2 preceding fiscal years.

1122 |         (2) The county audit report must ~~shall~~ be a single  
 1123 | document that includes a financial audit of the county as a  
 1124 | whole and, for each county agency other than a board of county  
 1125 | commissioners, an audit of its financial accounts and records,  
 1126 | including reports on compliance and internal control, management  
 1127 | letters, and financial statements as required by rules adopted  
 1128 | by the Auditor General. In addition ~~to such requirements~~, if a  
 1129 | board of county commissioners elects to have a separate audit of  
 1130 | its financial accounts and records in the manner required by  
 1131 | rules adopted by the Auditor General for other county agencies,  
 1132 | the ~~such~~ separate audit must ~~shall~~ be included in the county  
 1133 | audit report.

1134 |         (3) (a) A dependent special district may provide ~~make~~  
 1135 | ~~provision~~ for an annual financial audit by being included in  
 1136 | ~~within~~ the audit of the ~~another~~ local governmental entity upon  
 1137 | which it is dependent. An independent special district may not  
 1138 | make provision for an annual financial audit by being included  
 1139 | in ~~within~~ the audit of another local governmental entity.

1140 |         (b) A special district that is a component unit, as  
 1141 | defined by generally accepted accounting principles, of a local  
 1142 | governmental entity shall provide the local governmental entity,  
 1143 | within a reasonable time period as established by the local  
 1144 | governmental entity, with financial information necessary to  
 1145 | comply with this section. The failure of a component unit to  
 1146 | provide this financial information must be noted in the annual  
 1147 | financial audit report of the local governmental entity.

1148 |         (4) A management letter shall be prepared and included as

1149 a part of each financial audit report.

1150 (5) At the conclusion of the audit, the auditor shall  
 1151 discuss with the chair of the governing body of the ~~each~~ local  
 1152 governmental entity or the chair's designee, ~~or with~~ the elected  
 1153 official of each county agency or ~~with~~ the elected official's  
 1154 designee, ~~or with~~ the chair of the district school board or the  
 1155 chair's designee, ~~or with~~ the chair of the board of the charter  
 1156 school or the chair's designee, or ~~with~~ the chair of the board  
 1157 of the charter technical career center or the chair's designee,  
 1158 as appropriate, all of the auditor's comments that will be  
 1159 included in the audit report. If the officer is not available to  
 1160 discuss the auditor's comments, their discussion is presumed  
 1161 when the comments are delivered in writing to his or her office.  
 1162 The auditor shall notify each member of the governing body of a  
 1163 local governmental entity, district school board, charter  
 1164 school, or charter technical career center for which  
 1165 deteriorating financial conditions exist that may cause a  
 1166 condition described in s. 218.503(1) to occur if actions are not  
 1167 taken to address such conditions.

1168 (6) The officer's written statement of explanation or  
 1169 rebuttal concerning the auditor's findings, including corrective  
 1170 action to be taken, must be filed with the governing body of the  
 1171 local governmental entity, district school board, charter  
 1172 school, or charter technical career center within 30 days after  
 1173 the delivery of the auditor's findings.

1174 (7) All audits conducted pursuant to this section must be  
 1175 conducted in accordance with the rules of the Auditor General  
 1176 adopted pursuant to s. 11.45. Upon completion of the audit, the

1177 auditor shall prepare an audit report in accordance with the  
 1178 rules of the Auditor General. The audit report shall be filed  
 1179 with the Auditor General within 45 days after delivery of the  
 1180 audit report to the governing body of the audited entity, but no  
 1181 later than 9 months after the end of the audited entity's fiscal  
 1182 year. The audit report must include a written statement  
 1183 describing corrective actions to be taken in response to each of  
 1184 the auditor's recommendations included in the audit report.

1185 (8) The Auditor General shall notify the Legislative  
 1186 Auditing Committee of any audit report prepared pursuant to this  
 1187 section which indicates that an audited entity has failed to  
 1188 take full corrective action in response to a recommendation that  
 1189 was included in the two preceding financial audit reports.

1190 (a) The committee may direct the governing body of the  
 1191 audited entity to provide a written statement to the committee  
 1192 explaining why full corrective action has not been taken or, if  
 1193 the governing body intends to take full corrective action,  
 1194 describing the corrective action to be taken and when it will  
 1195 occur.

1196 (b) If the committee determines that the written statement  
 1197 is not sufficient, it may require the chair of the governing  
 1198 body of the local governmental entity or the chair's designee,  
 1199 the elected official of each county agency or the elected  
 1200 official's designee, the chair of the district school board or  
 1201 the chair's designee, the chair of the board of the charter  
 1202 school or the chair's designee, or the chair of the board of the  
 1203 charter technical career center or the chair's designee, as  
 1204 appropriate, to appear before the committee.

1205 (c) If the committee determines that an audited entity has  
 1206 failed to take full corrective action for which there is no  
 1207 justifiable reason for not taking such action, or has failed to  
 1208 comply with committee requests made pursuant to this section,  
 1209 the committee may proceed in accordance with s. 11.40(5).

1210 (9)-(7) The predecessor auditor of a district school board  
 1211 shall provide the Auditor General access to the prior year's  
 1212 working papers in accordance with the Statements on Auditing  
 1213 Standards, including documentation of planning, internal  
 1214 control, audit results, and other matters of continuing  
 1215 accounting and auditing significance, such as the working paper  
 1216 analysis of balance sheet accounts and those relating to  
 1217 contingencies.

1218 ~~(8) All audits conducted in accordance with this section~~  
 1219 ~~must be conducted in accordance with the rules of the Auditor~~  
 1220 ~~General promulgated pursuant to s. 11.45. All audit reports and~~  
 1221 ~~the officer's written statement of explanation or rebuttal must~~  
 1222 ~~be submitted to the Auditor General within 45 days after~~  
 1223 ~~delivery of the audit report to the entity's governing body, but~~  
 1224 ~~no later than 12 months after the end of the fiscal year.~~

1225 (10)-(9) Each charter school and charter technical career  
 1226 center must file a copy of its audit report with the sponsoring  
 1227 entity; the local district school board, if not the sponsoring  
 1228 entity; the Auditor General; and with the Department of  
 1229 Education.

1230 (11)-(10) This section does not apply to housing  
 1231 authorities created under chapter 421.

1232 (12)-(11) Notwithstanding the provisions of any local law,

1233 the provisions of this section shall govern.

1234 Section 21. Paragraph (e) of subsection (1) of section  
 1235 218.503, Florida Statutes, is amended to read:

1236 218.503 Determination of financial emergency.—

1237 (1) Local governmental entities, charter schools, charter  
 1238 technical career centers, and district school boards shall be  
 1239 subject to review and oversight by the Governor, the charter  
 1240 school sponsor, the charter technical career center sponsor, or  
 1241 the Commissioner of Education, as appropriate, when any one of  
 1242 the following conditions occurs:

1243 (e) A ~~An unreserved or total~~ fund balance ~~or retained~~  
 1244 ~~earnings~~ deficit in total or for that portion of a fund balance  
 1245 not classified as restricted, committed, or nonspendable, or a  
 1246 ~~unrestricted or total or unrestricted~~ net assets deficit, as  
 1247 reported on the ~~balance sheet or statement of net assets on the~~  
 1248 ~~general purpose or~~ fund financial statements of entities  
 1249 required to report under governmental financial reporting  
 1250 standards or on the basic financial statements of entities  
 1251 required to report under not-for-profit financial reporting  
 1252 standards, for which sufficient resources of the local  
 1253 governmental entity, charter school, charter technical career  
 1254 center, or district school board, as reported on the ~~balance~~  
 1255 ~~sheet or statement of net assets on the general purpose or~~ fund  
 1256 financial statements, are not available to cover the deficit.  
 1257 Resources available to cover reported deficits include fund  
 1258 balance or net assets that are not otherwise restricted by  
 1259 federal, state, or local laws, bond covenants, contractual  
 1260 agreements, or other legal constraints. Property, plant, and

1261 equipment ~~Fixed or capital assets~~, the disposal of which would  
 1262 impair the ability of a local governmental entity, charter  
 1263 school, charter technical career center, or district school  
 1264 board to carry out its functions, are not considered resources  
 1265 available to cover reported deficits.

1266 Section 22. Paragraph (c) of subsection (5) of section  
 1267 373.536, Florida Statutes, is amended, and paragraph (c) is  
 1268 added to subsection (6) of that section, to read:

1269 373.536 District budget and hearing thereon.—

1270 (5) TENTATIVE BUDGET CONTENTS AND SUBMISSION; REVIEW AND  
 1271 APPROVAL.—

1272 (c) Each water management district shall, by August 1 of  
 1273 each year, submit for review a tentative budget to the Governor,  
 1274 the President of the Senate, the Speaker of the House of  
 1275 Representatives, the chairs of all legislative committees and  
 1276 subcommittees with substantive or fiscal jurisdiction over water  
 1277 management districts, as determined by the President of the  
 1278 Senate or the Speaker of the House of Representatives as  
 1279 applicable, the secretary of the department, and the governing  
 1280 body of each county in which the district has jurisdiction or  
 1281 derives any funds for the operations of the district. The  
 1282 tentative budget must be posted on the water management  
 1283 district's official website at least 2 days before budget  
 1284 hearings held pursuant to s. 200.065 or other law.

1285 (6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN;  
 1286 WATER RESOURCE DEVELOPMENT WORK PROGRAM.—

1287 (c) The final adopted budget must be posted on the water  
 1288 management district's official website within 30 days after



1289 adoption.

1290 Section 23. Subsections (1) and (4) of section 1011.03,  
 1291 Florida Statutes, are amended, and subsection (5) is added to  
 1292 that section, to read:

1293 1011.03 Public hearings; budget to be submitted to  
 1294 Department of Education.—

1295 (1) Each district school board shall ~~must~~ cause a summary  
 1296 of its tentative budget, including the proposed millage levies  
 1297 as provided for by law, to be posted on the district's official  
 1298 website online and advertised once ~~one time~~ in a newspaper of  
 1299 general circulation published in the district or to be posted at  
 1300 the courthouse if there be no such newspaper.

1301 (4) The board shall hold public hearings to adopt  
 1302 tentative and final budgets pursuant to s. 200.065. The hearings  
 1303 shall be primarily for the purpose of hearing requests and  
 1304 complaints from the public regarding the budgets and the  
 1305 proposed tax levies and for explaining the budget and proposed  
 1306 or adopted amendments thereto, if any. The tentative budget must  
 1307 be posted on the district's official website at least 2 days  
 1308 before the budget hearing held pursuant to s. 200.065 or other  
 1309 law. The final adopted budget must be posted on the district's  
 1310 official website within 30 days after adoption. The ~~district~~  
 1311 ~~school~~ board shall ~~then~~ require the superintendent to transmit  
 1312 ~~forthwith~~ two copies of the adopted budget to the Department of  
 1313 Education for approval as prescribed by law and rules of the  
 1314 State Board of Education.

1315 (5) If the governing body of a district amends the budget,  
 1316 the adopted amendment must be posted on the official website of

1317 the district within 5 days after adoption.

1318 Section 24. Section 1011.051, Florida Statutes, is amended  
 1319 to read:

1320 1011.051 Guidelines for general funds.—The district school  
 1321 board shall maintain a ~~an unreserved~~ general fund ending fund  
 1322 balance that is sufficient to address normal contingencies.

1323 (1) If at any time the portion of the ~~unreserved~~ general  
 1324 fund's ending fund balance not classified as restricted,  
 1325 committed, or nonspendable in the district's approved operating  
 1326 budget is projected to fall ~~during the current fiscal year~~ below  
 1327 3 percent of projected general fund revenues during the current  
 1328 fiscal year, the superintendent shall provide written  
 1329 notification to the district school board and the Commissioner  
 1330 of Education.

1331 (2) If at any time the portion of the ~~unreserved~~ general  
 1332 fund's ending fund balance not classified as restricted,  
 1333 committed, or nonspendable in the district's approved operating  
 1334 budget is projected to fall ~~during the current fiscal year~~ below  
 1335 2 percent of projected general fund revenues during the current  
 1336 fiscal year, the superintendent shall provide written  
 1337 notification to the district school board and the Commissioner  
 1338 of Education. Within 14 days after receiving such notification,  
 1339 if the commissioner determines that the district does not have a  
 1340 plan that is reasonably anticipated to avoid a financial  
 1341 emergency as determined pursuant to s. 218.503, the commissioner  
 1342 shall appoint a financial emergency board that shall operate  
 1343 under ~~consistent with~~ the requirements, powers, and duties  
 1344 specified in s. 218.503(3)(g).

1345 Section 25. Paragraph (a) of subsection (3) of section  
 1346 1011.64, Florida Statutes, is amended to read:

1347 1011.64 School district minimum classroom expenditure  
 1348 requirements.—

1349 (3) (a) Annually the Department of Education shall  
 1350 calculate for each school district:

1351 1. Total K-12 operating expenditures, which are defined as  
 1352 the amount of total general fund expenditures for K-12 programs  
 1353 ~~as~~ reported in accordance with the accounts and codes prescribed  
 1354 in the most recent issuance of the Department of Education  
 1355 publication entitled "Financial and Program Cost Accounting and  
 1356 Reporting for Florida Schools" and ~~as~~ included in the most  
 1357 recent annual financial report submitted to the Commissioner of  
 1358 Education, less the student transportation revenue allocation  
 1359 from the state appropriation for that purpose, amounts  
 1360 transferred to other funds, and increases to the amount of the  
 1361 general fund's fund-unreserved ending fund balance not  
 1362 classified as restricted, committed, or nonspendable if ~~when~~ the  
 1363 total ~~unreserved~~ ending fund balance not classified as  
 1364 restricted, committed, or nonspendable is in excess of 5 percent  
 1365 of the total general fund revenues.

1366 2. Expenditures for classroom instruction, which equal  
 1367 ~~shall be~~ the sum of the general fund expenditures for K-12  
 1368 instruction and instructional staff training.

1369 Section 26. This act shall take effect October 1, 2011.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 107 (2011)

Amendment No. 41

COUNCIL/COMMITTEE ACTION

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

---

1 Council/Committee hearing bill: Government Operations

2 Subcommittee

3 Representative Smith offered the following:

4  
5 **Amendment**

6 Remove lines 787-791 and insert:

7 total appropriations of the fund do not increase.

8 (b) The governing body may establish procedures by which  
9 the designated budget officer may authorize certain budget  
10 amendments if the total appropriations of the fund is not  
11 increased.

Amendment No. #2

COUNCIL/COMMITTEE ACTION

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

1 Council/Committee hearing bill: Government Operations  
 2 Subcommittee

3 Representative Smith offered the following:

**Amendment**

6 Remove lines 909-923 and insert:

7 agency. The district's written notice does not constitute an  
 8 extension by the department; however:

9 1. If the written notice refers to the reports required  
 10 under s. 218.32 or s. 218.39, the department shall forward the  
 11 written notice to the Legislative Auditing Committee for its  
 12 consideration in determining whether the special district should  
 13 be subject to further state action in accordance with s.  
 14 11.40(5)(b).

15 2. If the written notice refers to the reports or  
 16 information requirements listed in s. 189.419(1), the department  
 17 shall forward the written notice to the local general-purpose  
 18 government or governments for their consideration in determining

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 107 (2011)

Amendment No.

19 whether the oversight review process set forth in s. 189.428  
20 should be undertaken.

21 3. If the written notice refers to the reports or  
22 information required under s. 112.63, the department shall  
23 forward the written notice to the Department of

Amendment No. #3

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Government Operations  
2 Subcommittee

3 Representative(s) Smith offered the following:

4  
5 **Amendment**

6 Remove lines 1185-1189 and insert:

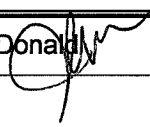
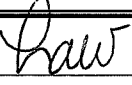
7 (8) The Auditor General shall notify the Legislative  
8 Auditing Committee of any audit report prepared pursuant to this  
9 section which indicates that an audited entity required to have  
10 an annual audit has failed to take full corrective action in  
11 response to a recommendation that was included in the two  
12 preceding audit reports filed. Such notification shall also  
13 include any audited entity required to have audits on other than  
14 an annual basis that failed to take full corrective action in  
15 response to a recommendation that was included in the most  
16 recent preceding audit report filed.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 227 Voting Methods and Procedure  
**SPONSOR(S):** Brandes and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 378

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		McDonald 	Williamson 
2) State Affairs Committee			

SUMMARY ANALYSIS

Currently, the Federal Write-In Absentee Ballot (FWAB) serves as a back-up ballot to the state absentee ballot for use by either a member of the uniformed services on active duty or a member of the Merchant Marine, who by reason of such service, is absent from the place of residence where the member is otherwise qualified to vote, whether the absence is stateside or overseas. The FWAB is also permitted to be used by a spouse or dependent of a member who is absent due to the member's absence, and by a United States citizen residing abroad. By federal law, the FWAB is required to be permitted for use and accepted for all primary, special, runoff, and general elections for federal office. Federal law does not require nor prohibit the use of the FWAB in other elections.

The Florida Election Code does not specifically mention the FWAB because this is a federally mandated form to be used by uniformed services members and their spouses and dependents, and U.S. citizens residing abroad. The requirements for voters in these categories are required to be followed by the states.

The bill allows an absent uniformed services voter or an overseas voter to vote in any federal, state, or local election by using the Official Federal Write-In Absentee Ballot (Standard Form 186A), provided through the Federal Voting Assistance Program, or any other similar ballot provided for such voters to use in any election for a federal office.

The bill has no fiscal impact.

The bill takes effect July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Federal Law - Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)<sup>1</sup>

UOCAVA, passed in 1986 and subsequently amended in 2004 and 2009<sup>2</sup>, pertains to absentee voting for members of the United States uniformed services and merchant marines who are overseas or absent stateside from their place of residence, their family members who are also absent, and U.S. citizens residing outside the U.S.

UOCAVA mandated the creation of the federal absentee write-in ballot (FWAB) to serve as a backup absentee ballot for UOCAVA voters who make timely application for but do not receive an official absentee ballot. The FWAB can be used only to vote for candidates in all primary, special, runoff, and general elections for federal office.<sup>3</sup> The FWAB requires the elector to fill in either the candidate's name or the name of a political party under headings designated for the federal office.

The FWAB contains an extensive affirmation relating to the eligibility of the voter to use the FWAB. By signing the affirmation and voting the FWAB, the voter attests that he or she is a UOCAVA voter, is entitled to vote the FWAB, is eligible to be registered, had previously requested an absentee ballot within the prescribed period and has not yet received that ballot, and is, therefore, eligible to vote the FWAB as a back-up ballot.<sup>4</sup> If all of the conditions for voting have been met, then the FWAB must be canvassed. However, UOCAVA does permit an elector who has submitted a FWAB and later receives a state's official absentee ballot to submit the official absentee ballot.<sup>5</sup> An elector who submits a FWAB and later receives and submits an official absentee ballot must make every reasonable effort to inform the appropriate election official that he or she has submitted more than one ballot.<sup>6</sup>

##### Florida Law

Three types of absentee ballots are available for use by UOCAVA voters: the FWAB, which is neither governed by nor referenced in state law but is governed by Federal law as discussed above; the official Florida absentee ballot;<sup>7</sup> and the state write-in absentee ballot.<sup>8</sup> Florida law also provides that for absentee ballots received from UOCAVA voters, there is "a presumption that the envelope was mailed on the date stated on the outside of the return envelope" whether there is no postmark or the postmark date is past the date of the election.<sup>9</sup>

##### *Official Florida Absentee Ballot*

UOCAVA voters requesting an official Florida absentee ballot, the most commonly used absentee ballot, can use this ballot to vote in any federal, state, or local primary, special, or general election. This includes all races with more than one candidate, judicial retention elections, and state constitutional amendment or local referendum elections. The ballot is like that used by voters at the polls, containing the names of offices, candidates, and political party identification.

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<sup>1</sup> 42 U.S.C. 1973ff et seq.

<sup>2</sup> In 2009, the Military and Overseas Voter Empowerment Act (MOVE) became Title V, Subtitle H of UOCAVA, 42 U.S.C. 1973ff et seq. Those changes brought about revisions to Florida's election laws that were embodied in CS/CS/HB 131 (2010).

<sup>3</sup> 42 U.S.C. 1973ff-2.

<sup>4</sup> 42 U.S.C. 1973ff-2(c).

<sup>5</sup> 42 U.S.C. 1973ff-2(d).

<sup>6</sup> *Id.*

<sup>7</sup> See s. 101.62, F.S.

<sup>8</sup> See s. 101.6951, F.S.

<sup>9</sup> Section 101.6952(2), F.S.

## *State Write-In Ballot*

In response to legal challenges to the validity of overseas military ballots in Florida during the 2000 presidential elections,<sup>10</sup> the Legislature created the state write-in absentee ballot.<sup>11</sup>

A state write-in ballot is only for use in a general election. In order to receive a state write-in ballot, an overseas voter must state that, due to military or other contingencies that preclude normal mail delivery, the voter cannot vote an absentee ballot during the normal absentee voting period. A request cannot be made earlier than 180 days before a general election and will be made available to the voter between 90 and 180 days before the general election. The write-in ballot contains all federal, state, and local offices for which the voter is entitled to vote, including judicial retention elections. The write-in ballot cannot be used for voting on constitutional amendments or local referendums.

The form of the ballot is prescribed in rule.<sup>12</sup> In completing the ballot, the overseas voter may designate his or her choice by writing in the name of the candidate or the name of the political party, in which case the vote will be counted for the person representing that party. Abbreviation, misspelling, or other minor variation in the form of a candidate's name or of the name of a political party are required to be disregarded when determining the validity of the ballot, provided there is a clear indication on the ballot that a definite choice has been made by the voter.<sup>13</sup>

### *Receipt of Absentee Ballot Deadlines*

In order for an absentee ballot to count, it must be received no later than 7 p.m. on election day.<sup>14</sup> Under specified circumstances, that deadline is extended for overseas voters only. A 10-day extension is given for absentee ballots from overseas voters if the ballots are postmarked or dated by election day. The extension only applies to presidential preference primary elections and general elections, and only votes cast for federal offices are counted. The extension and its application are outcomes of a 1982 consent decree between the United States Department of Justice and Florida to resolve a suit brought against the state which alleged that voters were disenfranchised because supervisors of elections were not provided sufficient time to prepare absentee ballots and mail them in order for ballots to be returned in time to be counted.<sup>15</sup> At that time Florida had two primaries and a general election occurring within nine weeks. Overseas voters had 20 days or less to vote and return ballots.

Florida's election laws have substantially changed since 1982, and issues relating to timeliness and access have been addressed by eliminating the second primary;<sup>16</sup> mandating that UOCAVA voters receive the official absentee ballot 45 days before the primary and general elections; providing e-mail delivery of unvoted ballots;<sup>17</sup> requiring the supervisor of elections to notify the voter of receipt of the ballot request, anticipated time the voter should receive the ballot, and confirmation of receipt of the voted ballot; and providing an online absentee ballot tracking system that can be accessed at the state level or at the local supervisor of elections level.<sup>18</sup>

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<sup>10</sup> Many of the challenges of the ballot stemmed from ballots lacking a postmark. Florida law required that ballots mailed by absent qualified electors overseas were considered valid only if the ballot were mailed with an APO, FPO, or foreign postmark. *See Bush v. Hillsborough County Canvassing Bd.*, 123 F.Supp.2d 1305 (N.D. Fla. 2000).

<sup>11</sup> Section 48, chapter 2001-40, L.O.F.

<sup>12</sup> *See* Rule 1S-2.028, F.A.C.

<sup>13</sup> Section 101.6951(2) and (3), F.S.

<sup>14</sup> Section 101.67(2), F.S.

<sup>15</sup> The consent decree requirements are contained in Rule 1S-2.013, F.A.C.

<sup>16</sup> The Legislature suspended the second primary through the 2002 and 2004 general election cycles and eliminated it prior to the 2006 election cycle. *See* chapter 2005-86, L.O.F.

<sup>17</sup> The ballot schedule for mailing of absentee ballots to overseas voters has changed several times. In 2005, the schedule was revised to require supervisors of elections to mail such ballots no later than 35 days before a primary or general election. In 2007, the time was changed to no later than 35 days before a primary election and no later than 45 days before a general election. Finally, in 2010, the time was changed to no later than 45 days before each election. *See* chapters 2005-286, 2007-30, and 2010-167, L.O.F.

<sup>18</sup> In 2010, revisions were made to the Florida Election Code to conform to revisions made by the federal Military and Overseas Voter Empowerment Act (MOVE), Title V, Subtitle H of UOCAVA, 42 U.S.C. 1973ff et seq.

## Use of the FWAB in Florida and Other States

The use of the FWAB in Florida has primarily been in Escambia and Okaloosa Counties. In the 2010 general election, Escambia received 34. In the 2008 election, Okaloosa County received 162 and, in the 2010 election, received 101. Sixty-three of the 101 ballots were not counted because the elector's official absentee ballot arrived either after or before the FWAB.<sup>19</sup>

Since federal law only requires use of the FWAB in elections for federal office, in order for a FWAB to be used in non-federal elections, a state must specifically authorize it. In those states that have authorized its use, electors use what is called a FWAB "addendum" to identify office and candidate name or party affiliation.

The states of Arkansas, Georgia, Mississippi, South Carolina, and Tennessee have authorized the use of the FWAB in certain state and local elections.<sup>20</sup>

According to a PEW Center on the States survey of state election officials, 28 states accept the FWAB for all state and local elections, including those not occurring during a federal election. Thirty-three states accept the FWAB for all state and local elections occurring during a federal election.<sup>21</sup>

### **Effect of Proposed Changes**

The bill allows an absent uniformed services voter or an overseas voter to vote in any federal, state, or local election by using the Official Federal Write-In Absentee Ballot (Standard Form 186A), provided through the Federal Voting Assistance Program, or any other similar ballot provided for such voters to use in any election for a federal office.

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

**Section 1.** Amends s. 101.6952, F.S., permitting an absent uniformed services voter or an overseas voter to vote in any federal, state, or local election by using the Official Federal Write-In Absentee Ballot (Standard Form 186A) that is provided through the Federal Voting Assistance Program, or by using any other similar ballot provided for those voters to use in a federal election.

**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.

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<sup>19</sup> Information received from Ron Labasky, Executive Director, Florida State Association of Supervisors of Elections (March 7, 2010).

<sup>20</sup> Analysis of Senate Bill 378, Senate Ethics and Elections Subcommittee, March 3, 2011, at 2.

<sup>21</sup> *Making the Election System Work for Military and Overseas Voters*, Issue Brief (July 2009), the PEW Center on the States, at 2.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill is exempt from the mandate requirements because it is amending the elections laws.

2. Other:

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill references the "Official Federal Write-In Absentee Ballot" and then provides a specific form number. The reference in law ties the state to a certain form. If the form were to change or a new form developed with a different number, Florida law would be incorrect and tied to a nonexistent form. Deletion of the specific form reference should be considered.

The Department of State, in its analysis of the legislation, stated:

It is presumed that the UOCAVA voter would still need to satisfy the prerequisite to make a timely application for, and have not received, the state absentee ballot, in order to use the FWAB, which is part of the FWAB's affirmation.<sup>22</sup>

This raises the question as to whether the bill needs to have clarification placed in law to put people on notice that this remains the case even though it is required by federal law.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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<sup>22</sup> 2011 Analysis of HB 227, Department of State, January 24, 2011, at 1.

1                                   A bill to be entitled  
 2           An act relating to voting methods and procedure; amending  
 3           s. 101.6952, F.S.; permitting absent uniformed services  
 4           voters or overseas voters to use the Official Federal  
 5           Write-In Absentee Ballot to vote in any federal, state, or  
 6           local election; providing an effective date.

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

9  
 10           Section 1. Section 101.6952, Florida Statutes, is amended  
 11           to read:

12           101.6952 Absentee ballots for absent uniformed services  
 13           and overseas voters.-

14           (1) If an absent uniformed services voter's or an overseas  
 15           voter's request for an absentee ballot includes an e-mail  
 16           address, the supervisor of elections shall:

17           (a) Record the voter's e-mail address in the absentee  
 18           ballot record;

19           (b) Confirm by e-mail that the absentee ballot request was  
 20           received and include in that e-mail the estimated date the  
 21           absentee ballot will be sent to the voter; and

22           (c) Notify the voter by e-mail when the voted absentee  
 23           ballot is received by the supervisor of elections.

24           (2) For absentee ballots received from absent uniformed  
 25           services voters or overseas voters, there is a presumption that  
 26           the envelope was mailed on the date stated on the outside of the  
 27           return envelope, regardless of the absence of a postmark on the  
 28           mailed envelope or the existence of a postmark date that is

29 | later than the date of the election.

30 |       (3) An absent uniformed services voter or an overseas  
 31 | voter may vote in any federal, state, or local election by using  
 32 | the Official Federal Write-In Absentee Ballot (Standard Form  
 33 | 186A), provided through the Federal Voting Assistance Program,  
 34 | or any other similar ballot provided for such voters to use in  
 35 | federal elections.

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

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations  
2 Subcommittee

3 Representative Brandes offered the following:

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

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 101.6952, Florida Statutes, is amended  
8 to read:

9 101.6952 Absentee ballots for absent uniformed services  
10 and overseas voters.—

11 (1) If an absent uniformed services voter's or an overseas  
12 voter's request for an official absentee ballot pursuant to s.  
13 101.62 includes an e-mail address, the supervisor of elections  
14 shall:

15 (a) Record the voter's e-mail address in the absentee  
16 ballot record;

17 (b) Confirm by e-mail that the absentee ballot request was  
18 received and include in that e-mail the estimated date the  
19 absentee ballot will be sent to the voter; and



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20 (c) Notify the voter by e-mail when the voted absentee  
21 ballot is received by the supervisor of elections.

22 (2) (a) An absent uniformed services voter or an overseas  
23 voter who makes timely application for but does not receive an  
24 official absentee ballot may use the federal write-in absentee  
25 ballot to vote in any federal election and any state or local  
26 election involving two or more candidates.

27 (b)1. In an election for federal office, an elector may  
28 designate a candidate by writing the name of a candidate on the  
29 ballot. Except for a primary or special primary election, the  
30 elector may alternatively designate a candidate by writing the  
31 name of a political party on the ballot. A written designation  
32 of the political party shall be counted as a vote for the  
33 candidate of that party if there is such a party candidate in  
34 the race.

35 2. In an election for a state or local office, an elector  
36 may vote in the section of the federal write-in absentee ballot  
37 designated for nonfederal races by writing on the ballot the  
38 title of each office and by writing on the ballot the name of  
39 the candidate for whom the elector is voting. Except for a  
40 primary, special primary, or nonpartisan election, the elector  
41 may alternatively designate a candidate by writing the name of a  
42 political party on the ballot. A written designation of the  
43 political party shall be counted as a vote for the candidate of  
44 that party if there is such a party candidate in the race.

45 (c) In the case of a joint candidacy, such as for the  
46 offices of President/Vice President or Governor/Lieutenant

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47 Governor, a valid vote for one or both qualified candidates on  
48 the same ticket shall constitute a vote for the joint candidacy.

49 (d) For purposes of this subsection and except where the  
50 context clearly indicates otherwise, such as where a candidate  
51 in the election is affiliated with a political party whose name  
52 includes the word "Independent," "Independence," or similar  
53 term, a voter designation of "No Party Affiliation" or  
54 "Independent," or any minor variation, misspelling, or  
55 abbreviation thereof, shall be considered a designation for the  
56 candidate, other than a write-in candidate, who qualified to run  
57 in the race with no party affiliation. If more than one  
58 candidate qualifies to run as a candidate with no party  
59 affiliation, the designation shall not count for any candidate  
60 unless there is a valid, additional designation of the  
61 candidate's name.

62 (e) Any abbreviation, misspelling, or other minor  
63 variation in the form of the name of an office, the name of a  
64 candidate, or the name of a political party must be disregarded  
65 in determining the validity of the ballot.

66 (3) (a) An absent uniformed services voter or an overseas  
67 voter who submits a federal write-in absentee ballot and later  
68 receives an official absentee ballot may submit the official  
69 absentee ballot. An elector who submits a federal write-in  
70 absentee ballot and later receives and submits an official  
71 absentee ballot should make every reasonable effort to inform  
72 the appropriate supervisor of elections that the elector has  
73 submitted more than one ballot.

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74 | (b) A federal write-in absentee ballot may not be  
75 | canvassed until 7 p.m. on the day of the election. Each federal  
76 | write-in absentee ballot received by 7 p.m. on the day of the  
77 | election shall be canvassed pursuant to ss. 101.5614(5) and  
78 | 101.68, unless the elector's official absentee ballot is  
79 | received by 7 p.m. on election day. If the elector's official  
80 | absentee ballot is received by 7 p.m. on election day, the  
81 | federal write-in absentee ballot is invalid and the official  
82 | absentee ballot shall be canvassed. The time shall be regulated  
83 | by the customary time in standard use in the county seat of the  
84 | locality.

85 | (4)-(2) For absentee ballots received from absent uniformed  
86 | services voters or overseas voters, there is a presumption that  
87 | the envelope was mailed on the date stated on the outside of the  
88 | return envelope, regardless of the absence of a postmark on the  
89 | mailed envelope or the existence of a postmark date that is  
90 | later than the date of the election.

91 | Section 2. Subsection (5) of section 101.5614, Florida  
92 | Statutes, is amended to read:

93 | 101.5614 Canvass of returns.—

94 | (5) (a) If any absentee ballot is physically damaged so  
95 | that it cannot properly be counted by the automatic tabulating  
96 | equipment, a true duplicate copy shall be made of the damaged  
97 | ballot in the presence of witnesses and substituted for the  
98 | damaged ballot. Likewise, a duplicate ballot shall be made of an  
99 | absentee ballot containing an overvoted race or a marked  
100 | absentee ballot in which every race is undervoted which shall  
101 | include all valid votes as determined by the canvassing board

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102 based on rules adopted by the division pursuant to s.  
103 102.166(4). All duplicate ballots shall be clearly labeled  
104 "duplicate," bear a serial number which shall be recorded on the  
105 defective ballot, and be counted in lieu of the defective  
106 ballot. After a ballot has been duplicated, the defective ballot  
107 shall be placed in an envelope provided for that purpose, and  
108 the duplicate ballot shall be tallied with the other ballots for  
109 that precinct.

110 (b) A true duplicate copy shall be made of each federal  
111 write-in absentee ballot in the presence of witnesses and  
112 substituted for the federal write-in absentee ballot. The  
113 duplicate ballot must include all valid votes as determined by  
114 the canvassing board based on rules adopted by the division  
115 pursuant to s. 102.166(4). All duplicate ballots shall be  
116 clearly labeled "duplicate," bear a serial number that shall be  
117 recorded on the federal write-in absentee ballot, and be counted  
118 in lieu of the federal write-in absentee ballot. After a ballot  
119 has been duplicated, the federal write-in absentee ballot shall  
120 be placed in an envelope provided for that purpose, and the  
121 duplicate ballot shall be tallied with other ballots for that  
122 precinct.

123 Section 3. Subsection (4) of section 102.166, Florida  
124 Statutes, is amended, and, for the purpose of incorporating the  
125 amendment made by the act to section 101.5614, Florida Statutes,  
126 in a reference thereto, subsection (5) of section 102.166,  
127 Florida Statutes, is reenacted, to read:

128 102.166 Manual recounts of overvotes and undervotes.—

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129 (4) (a) A vote for a candidate or ballot measure shall be  
130 counted if there is a clear indication on the ballot that the  
131 voter has made a definite choice.

132 (b) The Department of State shall adopt specific rules for  
133 the federal write-in absentee ballot and for each certified  
134 voting system prescribing what constitutes a "clear indication  
135 on the ballot that the voter has made a definite choice." The  
136 rules shall be consistent, to the extent practicable, and may  
137 not:

138 1. Exclusively provide that the voter must properly mark  
139 or designate his or her choice on the ballot; or

140 2. Contain a catch-all provision that fails to identify  
141 specific standards, such as "any other mark or indication  
142 clearly indicating that the voter has made a definite choice."

143 (c) The rule for the federal write-in absentee ballot must  
144 address, at a minimum, the following issues:

145 1. The appropriate lines or spaces for designating a  
146 candidate choice and, for state and local races, the office to  
147 be voted, including the proximity of each to the other and the  
148 effect of intervening blank lines.

149 2. The sufficiency of designating a candidate's first or  
150 last name when no other candidate in the race has the same or a  
151 similar name.

152 3. The sufficiency of designating a candidate's first or  
153 last name when an opposing candidate has the same or a similar  
154 name, notwithstanding generational suffixes and titles such as  
155 "Jr.," "Sr.," or "III." The rule should contemplate the  
156 sufficiency of additional first names and first initials, middle

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157 names and middle initials, generational suffixes and titles,  
158 nicknames, and, in general elections, the name or abbreviation  
159 of a political party.

160 4. Candidate designations containing both a qualified  
161 candidate's name and a political party, including where the  
162 party designated is the candidate's party, is not the  
163 candidate's party, has an opposing candidate in the race, or  
164 does not have an opposing candidate in the race.

165 5. Situations where the abbreviation or name of a  
166 candidate is the same as the abbreviation or name of a political  
167 party to which the candidate does not belong, including where  
168 the party designated has another candidate in the race or does  
169 not have a candidate in the race.

170 6. The use of marks, symbols, or language, such as arrows,  
171 quotation marks, or the word "same" or "ditto," to indicate that  
172 the same political party designation applies to all listed  
173 offices.

174 7. Situations where an elector designates the name of a  
175 qualified candidate for an incorrect office.

176 8. Situations where an elector designates an otherwise  
177 correct office name that includes an incorrect district number.

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

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

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184 (b) Each duplicate ballot prepared pursuant to s.  
185 101.5614(5) or s. 102.141(7) shall be compared with the original  
186 ballot to ensure the correctness of the duplicate.

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

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

- 195 1. Security of ballots during the recount process;
- 196 2. Time and place of recounts;
- 197 3. Public observance of recounts;
- 198 4. Objections to ballot determinations;
- 199 5. Record of recount proceedings; and
- 200 6. Procedures relating to candidate and petitioner  
201 representatives.

202 Section 4. Section 104.18, Florida Statutes, is amended to  
203 read:

204 104.18 Casting more than one ballot at any election.—  
205 Except as provided in s. 101.6952, whoever willfully votes more  
206 than one ballot at any election commits ~~is guilty of~~ a felony of  
207 the third degree, punishable as provided in s. 775.082, s.  
208 775.083, or s. 775.084.

209 Section 5. This act shall take effect July 1, 2011.  
210  
211

Amendment No.

212 -----

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

214 Remove the entire title and insert:

215 A bill to be entitled

216 An act relating to the federal write-in absentee  
217 ballot; amending s. 101.6952, F.S.; authorizing absent  
218 uniformed services voters and overseas voters to use  
219 the federal write-in absentee ballot to vote in any  
220 federal and certain state or local elections, under  
221 certain circumstances; prescribing requirements for  
222 designating candidate choices; providing for the  
223 disposition of valid votes involving joint  
224 candidacies; allowing for abbreviations, misspellings,  
225 and other minor variations in the name of an office,  
226 candidate, or political party; authorizing the  
227 submission of multiple ballots under certain  
228 circumstances; detailing circumstances under which  
229 votes in federal, state, and local races on the  
230 federal write-in absentee ballot will be canvassed;  
231 amending s. 101.5614, F.S.; establishing certain  
232 canvassing procedures for federal write-in absentee  
233 ballots; amending s. 102.166, F.S.; directing the  
234 Department of State to adopt rules to determine what  
235 constitutes a valid vote on a federal write-in  
236 absentee ballot; providing restrictions; providing  
237 minimum requirements; reenacting s. 102.166(5), F.S.,  
238 to incorporate the amendment to s. 101.5614, F.S., in  
239 a reference thereto; amending s. 104.18, F.S.;



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240 | conforming provisions to changes made by the act;

241 | providing an effective date.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 307 District School Board Membership  
**SPONSOR(S):** K-20 Innovation Subcommittee; Logan  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 778

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-20 Innovation Subcommittee	9 Y, 4 N, As CS	Fudge	Sherry
2) Government Operations Subcommittee		Thompson <i>JAT</i>	Williamson <i>Law</i>
3) Education Committee			

**SUMMARY ANALYSIS**

The bill requires school districts, in counties with a population that exceeds 2 million people, to consist of nine members. Seven of the members must be elected from single-member residence areas, which must be as nearly equal in population as practicable, according to the most recent decennial census. Two school board members must be elected from the district at large as chair and vice chair. The bill also requires staggering of the terms of the members.

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

The bill is effective upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Law

Article IX, section 4 of the Florida Constitution, provides that a school board shall be composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law. Current law requires that school districts be divided into at least five district school board member residence areas.<sup>1</sup> District school board members are elected in the November general election for terms of four years.<sup>2</sup> However, the "terms shall be staggered, so that alternately, one more or one less than half of the members elected from residence areas and, if applicable, one of the members elected at large from the entire district are elected every 2 years."<sup>3</sup>

For those school districts with seven district school board members, the district may be divided into five residence areas, with two district school board members elected at large; or the district may be divided into seven residence areas. Residence areas must be determined by resolution passed by a majority vote of the school board.<sup>4</sup> However, any changes to residence areas shall only occur in "odd-numbered years and no change that would affect the residence qualifications of any incumbent member shall disqualify such incumbent during the term for which he or she is elected."<sup>5</sup>

The chair of the school board is selected by the members on the third Tuesday after the first Monday in November of each year. The board may also elect a vice chair.<sup>6</sup>

##### Dade County Consent Decree

In 1991, two separate and distinct classes filed a vote dilution case. The first class consisted of all of the Black registered voters in Dade County. The second class consisted of all the Hispanic registered voters in Dade County. Each Plaintiff class alleged that the existing at large electoral system for electing members of the school board resulted in an impermissible dilution of the voting strength of both Black and Hispanic Dade County voters. The Plaintiffs sought:

"(1) a declaration that the use of at-large elections for nominating and electing members of the school board violated the Voting Rights Act; (2) a preliminary injunction enjoining Defendants from conducting or implementing the results of any further at-large elections to the school board; (3) an order directing the school board to implement a method of nominating and electing members of the school board which enables the fair opportunity to elect representatives of their choosing and which does not dilute minority strengths; and (4) an award of attorney's fees."<sup>7</sup>

On April 27, 1994, the school board adopted a redistricting plan that increased the number of school board members from seven to nine, and provided for the election of all members from single member districts beginning in 1996. On November 18, 1994, the United States District Court for the Southern District of Florida approved of the consent decree entered into between the parties.<sup>8</sup>

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<sup>1</sup> Section 1001.34, F.S.

<sup>2</sup> Section 1001.35, F.S.

<sup>3</sup> Section 1001.362(2)(c), F.S.

<sup>4</sup> Section 1001.36(1)(b), F.S.

<sup>5</sup> Section 1001.36(2), F.S.

<sup>6</sup> Section 1001.371, F.S.

<sup>7</sup> *Memorandum Opinion and Order Approving Class Action Settlement and Granting Motion to Adopt Consent Decree*, p. 2, November 18, 1994. *Suarez v. School Bd. of Dade County*, Case No. 91-0457-CIV-NESBITT

<sup>8</sup> *Id.*

## Effect of Proposed Changes

To prevent inconsistencies with current law, the bill notwithstanding specified provisions of law<sup>9</sup> that primarily govern election of school boards with five or seven members. However, to the extent that those provisions also should apply to the election of school board members governed by the bill, those provisions were incorporated into the bill.

The bill provides that school districts in counties with a population that exceeds 2 million people shall consist of nine members. Currently, only Miami-Dade County exceeds 2 million people at a population of approximately 2.4 million people.<sup>10</sup>

Members must be elected in a nonpartisan election as provided in Chapter 105, F.S. The candidate who receives the highest number of votes in the general election is elected to the office for which the candidate has qualified. Seven of the members must be elected from single-member residence areas, which must be as nearly equal in population as practicable, according to the most recent decennial census. Two school board members must be elected from the district at large to serve as chair and vice chair, as determined by vote of the electors. The ballots for the office of chair and vice chair must state: "Chair of the School Board" followed by a list of candidates who have qualified for that office or, when appropriate, "Vice Chair of the School Board" followed by a list of candidates who have qualified for that office.

Currently, the Miami-Dade County school board consists of nine single-member residence areas. Reducing the number of residence areas from nine to seven may affect residence area boundaries. The bill authorizes the district school board to make any changes it deems necessary to the boundaries of any district school board residence area in odd-numbered years. Any change to residence areas that would affect the residence qualifications of any incumbent member must not disqualify that member during the term for which they were elected. Changes to residence area boundaries must be shown by resolution in the minutes of the district school board; recorded in the office of the clerk of the circuit court; published at least once in a newspaper in the district within 30 days after the adoption of the resolution or, if there is no newspaper, published in the district, posted at the county courthouse door for 4 weeks after the adoption of the resolution; with a certified copy of the resolution transmitted to the Department of State.

The bill also provides that the terms of the members must be staggered so that one more or one less than half of members elected from residence areas and one of the members elected at large are elected every 2 years. Initial terms of less than 4 years are authorized if necessary to achieve or maintain the staggered term system.

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

Section 1: creates 1001.3615, F.S., to require that certain school districts consist of nine members, with seven elected by single-member residence areas, and two elected at-large; to require nonpartisan elections; to provide for the election of a chair and vice chair of the school board; to provide for 4-year terms of office and staggered terms; and to authorize changes in district school board residence area boundaries.

Section 2: provides an effective date of upon becoming a law.

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

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

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<sup>9</sup> The bill notwithstanding s. 1001.36, F.S., governing district school board member residence areas, s. 1001.361, F.S., governing election of board by district wide vote, and s. 1001.362, F.S., governing alternate procedures for the election of district school board members to provide for single-member representation.

<sup>10</sup> The counties with the next highest population are: Broward County - 1.7 million, Palm Beach County - 1.3 million, Hillsborough County - 1.2 million, and Orange County - 1 million.

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 counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate. The bill does not reduce the percentage of a state tax sharing with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The ballot language for the election of the Chair of the School Board and the Vice Chair of the School Board is unclear due to use of the phrase "or, when appropriate". For clarity, the ballot style language for each office should be stated separately. The language does not change when those offices are up for election. That process continues to be governed by the provisions outlined in the bill. In addition, subcommittee staff spoke with staff of the Division of Elections of the Department of State concerning the language. Division staff concurred with the need for clarification. As such, lines 33 – 36 of the bill should be amended to provide that clarification.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2011, the K-20 Innovation Subcommittee amended HB 307 and reported it favorably as a committee substitute (CS). The CS identifies the ballot language for the "Chair of the School Board" and "Vice Chair of the School Board", and describes procedures for staggering the terms of members of the

school board, as well as the procedures for changing the boundaries of residence areas. The CS also provides that a change in residence area that affects the residence qualifications of an incumbent member does not disqualify the incumbent member during the term for which he or she is elected.

1                                   A bill to be entitled  
 2           An act relating to district school board membership;  
 3           creating s. 1001.3615, F.S.; requiring that district  
 4           school boards consist of nine members in counties where  
 5           the population exceeds a certain number; providing for  
 6           single-member and at-large districts; requiring  
 7           nonpartisan elections; providing for the election of a  
 8           chair and vice chair of the school board; providing for 4-  
 9           year terms of office and staggered terms of members;  
 10          permitting changes in the boundaries of school board  
 11          member residence areas and providing the procedure for  
 12          publication of those changes; providing an effective date.

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

15  
 16          Section 1.   Section 1001.3615, Florida Statutes, is created  
 17   to read:

18          1001.3615 Election of district school board members in  
 19   counties in which the population exceeds 2 million.-

20          (1) Notwithstanding ss. 1001.36, 1001.361, and 1001.362,  
 21   in a county in which the population exceeds 2 million people,  
 22   the district school board shall consist of nine members. Seven  
 23   of the nine members shall reside one in each of seven residence  
 24   areas, the areas together covering the entire district and as  
 25   nearly equal in population as practicable, according to the most  
 26   recent decennial census, and each shall be elected only by the  
 27   qualified electors who reside in the same residence area as the  
 28   member. Two of the nine members shall be elected from the county



29 at large. Members shall be elected in a nonpartisan election as  
 30 provided in chapter 105.

31 (2) Notwithstanding s. 1001.371, the school board members  
 32 elected at large shall serve as the chair and vice chair of the  
 33 school board. The ballots for the office of chair and vice chair  
 34 shall state: "Chair of the School Board" followed by a list of  
 35 candidates who have qualified for that office or, when  
 36 appropriate, "Vice Chair of the School Board" followed by a list  
 37 of candidates who have qualified for that office. The candidate  
 38 who receives the highest number of votes in the general election  
 39 shall be elected to the office for which the candidate has  
 40 qualified.

41 (3) All members shall be elected for 4-year terms, but the  
 42 terms shall be staggered so that, alternately, one more or one  
 43 less than half of the members elected from residence areas and,  
 44 if applicable, one of the members elected at large from the  
 45 entire district are elected every 2 years. Any member may be  
 46 elected to an initial term of less than 4 years if necessary to  
 47 achieve or maintain such system of staggered terms.

48 (4) In odd-numbered years, the district school board may  
 49 change the boundaries of the residence areas at any meeting of  
 50 the district school board.

51 (a) The changes in boundaries shall be shown by resolution  
 52 spread upon the minutes of the district school board, shall be  
 53 recorded in the office of the clerk of the circuit court, and  
 54 shall be published at least once in a newspaper published in the  
 55 district within 30 days after the adoption of the resolution,  
 56 or, if there is no newspaper published in the district, shall be

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57 posted at the county courthouse door for 4 weeks after the  
 58 adoption of the resolution. A certified copy of the resolution  
 59 shall be transmitted to the Department of State.

60 (b) A change in a residence area that affects the  
 61 residence qualifications of an incumbent member does not  
 62 disqualify the incumbent member during the term for which he or  
 63 she is elected.

64 Section 2. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 307 (2011)

Amendment No. #1

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Government Operations  
2 Subcommittee

3 Representative Logan offered the following:

4  
5 **Amendment**

6 Remove lines 33-36 and insert:

7 school board. The ballot for the office of chair shall state:  
8 "Chair of the School Board" followed by a list of candidates who  
9 have qualified for that office. The ballot for the office of  
10 vice chair shall state: "Vice Chair of the School Board"  
11 followed by a list



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 331 Firesafety  
**SPONSOR(S):** Weinstein  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 534

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Thompson	Williamson
2) K-20 Competitiveness Subcommittee			
3) Rulemaking & Regulation Subcommittee			
4) Government Operations Appropriations Subcommittee			
5) State Affairs Committee			

**SUMMARY ANALYSIS**

The bill clarifies the role of the State Fire Marshal in firesafety inspections of Florida's educational facilities, and streamlines the inspection and enforcement practices at the state and local levels. Specifically, the bill:

- Coordinates laws governing the State Fire Marshal with educational law governing firesafety inspections on educational property;
- Abolishes the classification of the special state firesafety inspector, leaves intact the classification of firesafety inspector, and provides for a contingent grandfathering of existing special state firesafety inspectors;
- Requires uniform firesafety standards and an alternate system to be governed by firesafety inspectors certified by the State Fire Marshal;
- Reduces the number of mandatory annual inspections at educational facilities from two to one, and provides for the inspection report to be distributed at the local level only;
- Clarifies the firesafety inspection process for charter schools and for public postsecondary institutions;
- Requires all public education boards to use only certified firesafety inspectors and other inspectors who have been certified by the State Fire Marshal in monitoring compliance with the Florida Building Code, the Florida Fire Prevention Code, and the State Requirements for Educational Facilities; and
- Requires a public education board to submit for approval the site plan for new construction to the local entity providing fire-protection services to the facility, and outlines the compliance process.

Reducing redundancy regarding firesafety inspections for Florida's education facilities may reduce related expenditures for state and local governments. See "Fiscal Analysis" for details.

The bill takes effect July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

###### Division of the State Fire Marshal

The Chief Financial Officer, as the State Fire Marshal, operates through the Division of the State Fire Marshal (Division) within the Department of Financial Services (DFS) to implement and enforce state law on fire prevention and control. Pursuant to this authority, the State Fire Marshal regulates, trains and certifies fire service personnel; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; develops firesafety standards; provides facilities for the analysis of fire debris; and operates the Florida State Fire College.<sup>1</sup> Additionally, the State Fire Marshal adopts by rule the Florida Fire Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.<sup>2</sup>

The Division consists of the following four bureaus: fire and arson investigations, fire standards and training, forensic fire and explosives analysis, and fire prevention. The Florida State Fire College, part of the Bureau of Fire Standards and Training, trains over 4,000 students per year. The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities.<sup>3</sup> Over 1.8 million fire and emergency reports are collected every year. These reports are entered into a database to form the basis for the State Fire Marshal's annual report.<sup>4</sup>

###### Firesafety Inspections of Florida's Educational Facilities

Safety requirements for educational facilities are provided in Chapter 1013, F.S. The State Fire Marshal is required to develop firesafety criteria for educational facilities in conjunction with the Florida Building Commission and the Department of Education.<sup>5, 6</sup>

Currently, public schools are required to be inspected by both the local fire official and the fire inspector for each school board.<sup>7</sup> Multiple inspections are duplicative and, as a consequence, may generate conflicting interpretations of code requirements and jurisdictional authority.

The State Fire Marshal is required to adopt and administer rules regarding health and safety standards for educational and ancillary facilities. Additionally, the State Fire Marshal must assume the duties of the local fire official for counties that do not employ or appoint an official.<sup>8</sup>

###### Firesafety Inspectors

Current law distinguishes between the different types of firesafety inspectors. A general "firesafety inspector" is defined as:

[A]n individual officially assigned the duties of conducting firesafety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district....<sup>9</sup>

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<sup>1</sup> Section 633.01, F.S.

<sup>2</sup> Section 633.0215(1), F.S.

<sup>3</sup> Section 633.081, F.S.

<sup>4</sup> State Fire Marshal website: <http://www.myfloridacfo.com/sfm/index.htm> (last visited Mar. 22, 2011).

<sup>5</sup> Section 1013.37(1)(c), F.S.

<sup>6</sup> Chapter 633, F.S., governing the Division of the State Fire Marshall, does not contain similar language for the cooperative development of standards.

<sup>7</sup> Rule 69A-58.004(1), F.A.C.

<sup>8</sup> Section 633.01(7), F.S.

<sup>9</sup> Section 633.021(11), F.S.

A “special state firesafety inspector” is defined as:

[A]n individual officially assigned to the duties of conducting firesafety inspections required by law on behalf of or by an agency of the state having authority for inspections other than the Division of State Fire Marshal.<sup>10</sup>

A 2010 survey, by the State College of Florida, found a total of 44 special firesafety inspectors employed in the 67 school districts and 28 community colleges.<sup>11</sup> The current training requirement for this type of inspector is 120 hours, in contrast to the 200 hours of training required for full firesafety inspector status.<sup>12</sup> Every firesafety inspector or special state firesafety inspector certificate is valid for a period of 3 years from the date of issuance.<sup>13</sup>

#### Charter Schools

Charter schools are public schools that operate under a performance contract or charter with the local school board.<sup>14</sup> All charter schools in Florida are public schools.<sup>15</sup> The charter delineates unique requirements that the school must comply with in order to maintain charter status.<sup>16</sup> The law requires charter schools to meet annual inspection requirements of the Florida Fire Prevention Code, unless the charter adopts the State Requirements for Education Facilities.<sup>17</sup>

#### Annual Report on Firesafety

The State Fire Marshal is required to produce a statewide annual report on firesafety inspections of schools.<sup>18</sup> According to the DFS, this requires an annual compilation of district inspection reports into one format that documents the status of each board’s firesafety program. The law requires the report to be filed with the substantive committees of the House of Representatives and Senate having jurisdiction over education, the Commissioner of Education or his or her successor, the State Board of Education, the Board of Governors, and the Governor.<sup>19</sup>

#### **Proposed Changes**

##### State Fire Marshal

The bill revises the powers and duties of the State Fire Marshal to require the State Fire Marshal to consult with the Department of Education regarding the adoption of rules pertaining to safety and health standards at educational facilities. In the event that a county does not employ or appoint a certified firesafety inspector, the bill requires the State Fire Marshal to take the place of the county, municipality, or independent special fire control district regarding firesafety inspections of educational property.

The bill deletes the requirement for the State Fire Marshal to compile each local report into one document for submission to the Legislature, Governor, Commissioner of Education, State Board of Education, and Board of Governors.

##### Firesafety Inspectors

The bill abolishes the classification of “special state firesafety inspector” as of July 1, 2013, with all certifications set to expire at midnight on June 30, 2013. The bill prohibits a special state firesafety inspector certificate from being issued after June 30, 2011. Special state firesafety inspectors may, however, be grandfathered in as full firesafety inspectors under the following conditions:

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<sup>10</sup> Section 633.021(24), F.S.

<sup>11</sup> Susan Lehr, Vice Associate Vice-President of Facilities Planning and Government Relations, State College of Florida, Bradenton, Education Facilities Fire Safety Legislation: Q and A (on file with the Government Operations Subcommittee).

<sup>12</sup> Section 633.081(2)(g) and (3), F.S.

<sup>13</sup> Section 633.081(5), F.S.

<sup>14</sup> Section 1002.33, F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Section 1002.33(9), F.S.

<sup>17</sup> Section 1002.33(18)(a)-(b), F.S.

<sup>18</sup> Section 1013.12(8), F.S.

<sup>19</sup> *Id.*

- If the inspector has at least five years of experience as of July 1, 2011, and passes the firesafety inspection examination prior to July 1, 2013;
- If the inspector does not have five years of experience as a special state firesafety inspector as of July 1, 2011, but takes an additional 80 hours of courses and passes the examination prior to July 1, 2013; or
- If the inspector has at least five years of experience, fails the examination, but takes 80 additional hours of courses, retakes, and passes the examination prior to July 1, 2013.

The bill prohibits a person who fails the course of study or the examination from performing any firesafety inspections required by law on or after July 1, 2013.

The bill redefines the term “firesafety inspector” as a person who is certified by the State Fire Marshal, pursuant to s. 633.081, F.S. Consequently, the bill requires all administration and enforcement of uniform firesafety standards to be conducted by firesafety inspectors certified by the State Fire Marshal under s. 633.081, F.S.

#### Firesafety Inspections by District School Board

The bill requires a board<sup>20</sup> to appoint certified firesafety inspectors to conduct annual inspections on educational and ancillary plant property. The bill requires inspections to begin no sooner than one year after a building certificate of occupancy is issued. The applicable board must submit a copy of the report to the county, municipality, or independent special fire control district providing fire protection services within 10 business days after the inspection, unless immediate corrective action is required, due to life-threatening deficiencies. The entity conducting the fire safety inspection is required to certify to the State Fire Marshal that the annual inspection has occurred.

#### Inspections of Educational Property by Other Public Agencies

The bill authorizes annual firesafety inspections to be conducted on educational and ancillary plant property operated by a school board or public college. Such inspections are allowed to begin no sooner than one year after a building certificate of occupancy is issued and annually thereafter. Immediate corrective action is required by the county, municipality, or independent special fire control district in conjunction with the appointed fire official where life-threatening deficiencies are noted.

#### Inspection of Charter Schools Not Located on Board-owned or Leased Property

The bill authorizes a safety or sanitation inspection of any educational or ancillary plant to be conducted at any time by a state or local agency authorized or required to conduct such inspections by general or special law. The agency is required to submit a copy of the inspection report to the charter school sponsor.

The bill requires a firesafety inspection to be conducted each fiscal year on educational facilities not owned or leased by the board or a public college, in accordance with State Fire Marshal standards. Upon request, the inspecting authority is required to provide a copy of each firesafety report to the board in the district in which the facility is located. The inspector must include a corrective plan of action in the report, with prompt response for life-threatening deficiencies. If corrective action is not taken, the county, municipality, or independent special fire control district must immediately report the deficiency to the State Fire Marshal and the charter school sponsor. The bill also expressly extends the State Fire Marshal’s enforcement authority to charter school educational facilities and property.

#### Inspection of Public Postsecondary Education Facilities

The bill requires inspections of public college facilities, including charter schools located on board-owned or board-leased facilities or otherwise operated by public college boards, to comply with the Florida Fire Prevention Code, as adopted by the State Fire Marshal. Local amendments to the provisions of the code relating to such inspections are prohibited. An annual inspection by an inspector certified under s. 633.081, F.S., and a corrective plan of action are required by the bill. After the required firesafety inspection, the inspecting authority is required to develop a plan of action to correct

<sup>20</sup> Section 1013.01(3), F.S., defines “board” to mean “district school boards, community college boards of trustees, university boards of trustees and the Board of Trustees for the School for the Deaf and Blind.”



each deficiency identified. The public college must provide a copy of the report to the appropriate county, municipality, or independent special fire control district. Firesafety inspections of state universities must comply with the Florida Fire Prevention Code. If a school board, public college board, or charter school does not take corrective action, the bill requires the inspecting authority to immediately report the deficiency to the State Fire Marshal.

Each board must provide for periodic inspection of proposed educational plants to ensure that the construction complies with the Florida Building Code and the Florida Fire Prevention Code, in addition to the currently mandated State Requirements for Educational Facilities. Also, to administer and enforce such codes, the bill allows each board to employ a fire official and such other inspectors who have been certified by the State Fire Marshal, in addition to the currently authorized chief building official and such other inspectors who have been certified pursuant to chapter 468, F.S.

#### Construction Site Plans of Proposed Education Facilities

The bill requires local boards to submit for approval new facility site plans to the county, municipality, or independent special fire control district, and outlines the process for compliance and informal appeal. A minimum of one copy of the site plan for each new facility or addition exceeding 2,500 square feet must be provided to the county, municipality, or independent special fire control district providing fire-protection services to the facility. The county, municipality, or independent special fire control district is allowed to review each site plan for compliance with Florida Fire Prevention Code relating to fire department access roads, fire-protection system connection locations, and fire hydrant spacing. The bill makes clear that such site plans are not subject to local amendments, and that these reviews must be performed at no charge to the school board or public college. The bill requires that the site plan be deemed approved within 15 days of receipt unless the local county, municipality, or independent special fire control district submits in writing, to the board appointed fire official, the deficiencies identified with reference to the Florida Fire Prevention Code. If there is disagreement between the board appointed inspector and the local county, municipality, or independent special fire control district official, then either party may refer it to the State Fire Marshal who has final authority.

Before the commencement of any new construction, renovation, or remodeling, the bill requires the school board to approve, or cause to be approved, construction documents for compliance with the Florida Building Code and the Florida Fire Prevention Code. Additionally, the school board must ensure compliance with all firesafety codes by contracting with a firesafety inspector certified by the State Fire Marshal. Furthermore, a certificate of occupancy may not be issued until the board, through its designated certified building official, has determined that the building or structure and its site conditions comply with all applicable statutes and rules. The method of compliance as chosen by the board must be documented and maintained as part of the construction record file. Upon request by the local county, municipality, or independent special fire control district, the board must provide reasonable access to all construction documents.

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

Section 1: Amends s. 633.01, F.S., revising the rulemaking authority and responsibilities of the State Fire Marshal; providing that if a county does not employ or appoint a certified firesafety inspector, the State Fire Marshal is to perform firesafety inspections of educational property.

Section 2: Amends s. 633.021, F.S., clarifying the definition of "firesafety inspector" to include certification under s. 633.081, F.S.

Section 3: Amends s. 633.081, F.S., revising requirements and procedures for inspections of buildings and equipment; abolishing special state firesafety inspector classifications and certifications; providing criteria, procedures, and requirements for special state firesafety inspectors to be certified as firesafety inspectors.

Section 4: Amends s. 1013.12, F.S., revising procedures and requirements for certain standards and inspection of educational property; providing procedures, criteria, and requirements for inspections of charter schools; providing reporting requirements; revising requirements for inspections of public

postsecondary education facilities; deleting a provision requiring that the State Fire Marshal publish an annual report.

Section 5: Amends s. 1013.371, F.S., revising firesafety inspection requirements for educational institution boards to conform to the Florida Building Code and the Florida Fire Prevention Code; revising certain code enforcement authority of such boards certified pursuant to chapter 633, F.S.

Section 6: Amends s. 1013.38, F.S., requiring educational institution boards to submit certain facility site plans to a local county, municipality, or independent special fire control district for review; authorizing such entities to review site plans for compliance with certain provisions of the Florida Fire Prevention Code; specifying that site plans are not subject to local ordinances or local amendments to the Florida Fire Prevention Code; providing criteria for approving site plans and correcting firesafety compliance deficiencies; providing for referral of disputes to the State Fire Marshal; authorizing public education boards to use firesafety inspectors for compliance with the Florida Building Code and the Florida Fire Prevention Code; imposing additional requirements for such boards relating to construction, renovation, or remodeling of educational facilities.

Section 7: 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:

The bill likely will create an insignificant reduction in expenditures. The bill deletes the Division of State Fire Marshal's annual state-level report requirement. This will save the Division of State Fire Marshal's office funds and resources that were formerly used to generate the report. According to the DFS, savings will be in the \$5000 range unless the contract with the University of Florida to operate the database is cancelled. If the contract is cancelled, savings will be closer to \$9,000.<sup>21</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill authorizes the annual inspection of school facilities by county, municipal, or special fire control districts. This reduces the number of mandatory annual inspections from two to one, which may reduce expenditures for local entities required to conduct inspections.

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

Individuals currently classified as special state firesafety inspectors who do not have five years of experience or fail the firesafety inspection examination will have to undergo the new training requirements to become certified as a general fire safety inspector. Individuals who fail the course of study or firesafety inspection examination will not be permitted to perform firesafety inspections on or after July 1, 2013.

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<sup>21</sup> Department of Financial Services HB 331 Analysis (Feb. 2, 2011), at 1 and 2 (on file with the Government Operations Subcommittee).

#### D. FISCAL COMMENTS:

According to the Department of Financial Services:

This bill should provide some cost savings to local government by reducing duplicative inspections, and to school boards and the Department of Financial Services by reducing the need for an Annual statewide compilation of inspection reports.<sup>22</sup>

DFS' savings will be small, probably in the \$5000 dollar range in actual dollars; any staff time saved by the change would those hours to be redirected to other critical areas and would not result in a real savings to DFS. The \$5000 will come in the modifications to the contract with the University of Florida (UF) and the cost of printing the report which is near \$1000. This assumes that we are required to maintain the database, as has been suggested. The only cost under that scenario would be to pay UF to keep the database active. However, they will not have to manipulate the data to produce the report. If the database also goes away, it will be closer to \$9,000 as the contract with the UF can be cancelled in its entirety.<sup>23</sup>

According to an unofficial survey conducted by the Department of Education (DOE), the total estimated annual cost savings for colleges and school districts will be approximately \$515,210.<sup>24</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill requires the State Fire Marshal to consult with the DOE regarding the adoption of rules pertaining to safety and health standards at educational facilities. Consequently, the DOE rules related to education facilities<sup>25</sup> and the State Fire Marshal rules for education facilities<sup>26</sup> adopted pursuant to Chapter 120, F.S., may need amending.

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

None.

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<sup>22</sup> Department of Financial Services HB 331 Analysis (Feb. 10, 2011), at 3 and 4 (on file with the Government Operations Subcommittee).

<sup>23</sup> Department of Financial Services HB 331 Updated Analysis (March 7, 2011), at 1 and 2 (on file with the Government Operations Subcommittee).

<sup>24</sup> Department of Education HB 331 Analysis (Feb. 17, 2011), at 5 (on file with the Government Operations Subcommittee).

<sup>25</sup> Rule 6A-2.0010, F.A.C., State Requirements for Educational Facilities (SREF).

<sup>26</sup> Rule Chapter 69A-58, F.A.C., Firesafety in Education Facilities.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1                                   A bill to be entitled  
 2           An act relating to firesafety; amending s. 633.01, F.S.;  
 3           revising the rulemaking authority and responsibilities of  
 4           the State Fire Marshal relating to educational and  
 5           ancillary plants; amending s. 633.021, F.S.; revising the  
 6           definition of the term "firesafety inspector"; amending s.  
 7           633.081, F.S.; revising requirements and procedures for  
 8           inspections of buildings and equipment; abolishing special  
 9           state firesafety inspector classifications and  
 10          certifications; providing criteria, procedures, and  
 11          requirements for special state firesafety inspectors to be  
 12          certified as firesafety inspectors; amending s. 1013.12,  
 13          F.S.; revising procedures and requirements for certain  
 14          standards and inspection of educational property;  
 15          providing procedures, criteria, and requirements for  
 16          inspections of charter schools; providing reporting  
 17          requirements; revising requirements for inspections of  
 18          public postsecondary education facilities; deleting a  
 19          provision requiring that the State Fire Marshal publish an  
 20          annual report; amending s. 1013.371, F.S.; revising  
 21          firesafety inspection requirements for educational  
 22          institution boards to conform to certain codes; revising  
 23          certain code enforcement authority of such boards;  
 24          amending s. 1013.38, F.S.; requiring educational  
 25          institution boards to submit certain facility site plans  
 26          to certain local governmental entities for review;  
 27          authorizing such entities to review site plans for  
 28          compliance with certain provisions of the Florida Fire

29 Prevention Code; specifying that site plans are not  
 30 subject to local ordinances or local amendments to the  
 31 Florida Fire Prevention Code; providing criteria for  
 32 approving site plans and correcting firesafety compliance  
 33 deficiencies; providing for referral of disputes to the  
 34 State Fire Marshal; authorizing such boards to use certain  
 35 firesafety inspectors for certain compliance reviews;  
 36 imposing additional requirements for such boards relating  
 37 to construction, renovation, or remodeling of educational  
 38 facilities; providing an effective date.

39  
 40 Be It Enacted by the Legislature of the State of Florida:

41  
 42 Section 1. Subsection (7) of section 633.01, Florida  
 43 Statutes, is amended to read:

44 633.01 State Fire Marshal; powers and duties; rules.—

45 (7) The State Fire Marshal, in consultation with the  
 46 Department of Education, shall adopt and administer rules  
 47 prescribing standards for the safety and health of occupants of  
 48 educational and ancillary facilities pursuant to ss. 633.022,  
 49 1013.12, 1013.37, and 1013.371. In addition, in any county that  
 50 does not employ or appoint a firesafety inspector certified  
 51 under s. 633.081 ~~local fire official~~, the State Fire Marshal  
 52 shall assume the duties of the local county, municipality, or  
 53 independent special fire control district as defined in s.  
 54 191.003 ~~fire official~~ with respect to firesafety inspections of  
 55 educational property required under s. 1013.12(3)(b), and the  
 56 State Fire Marshal may take necessary corrective action as

57 | authorized under s. 1013.12(7)~~(6)~~.

58 |       Section 2. Subsection (11) of section 633.021, Florida  
59 | Statutes, is amended to read:

60 |           633.021 Definitions.—As used in this chapter:

61 |           (11) A "firesafety inspector" is an individual certified  
62 | by the State Fire Marshal under s. 633.081 who is officially  
63 | assigned the duties of conducting firesafety inspections of  
64 | buildings and facilities on a recurring or regular basis ~~on~~  
65 | ~~behalf of the state or any county, municipality, or special~~  
66 | ~~district with firesafety responsibilities.~~

67 |       Section 3. Section 633.081, Florida Statutes, is amended  
68 | to read:

69 |           633.081 Inspection of buildings and equipment; orders;  
70 | firesafety inspection training requirements; certification;  
71 | disciplinary action.—The State Fire Marshal and her or his  
72 | agents shall, at any reasonable hour, when the State Fire  
73 | Marshal has reasonable cause to believe that a violation of this  
74 | chapter or s. 509.215, or a rule promulgated thereunder, or a  
75 | minimum firesafety code adopted by the State Fire Marshal or a  
76 | local authority, may exist, inspect any and all buildings and  
77 | structures which are subject to the requirements of this chapter  
78 | or s. 509.215 and rules promulgated thereunder. The authority to  
79 | inspect shall extend to all equipment, vehicles, and chemicals  
80 | which are located on or within the premises of any such building  
81 | or structure.

82 |           (1) Each county, municipality, and special district that  
83 | has firesafety enforcement responsibilities shall employ or  
84 | contract with a firesafety inspector. Except as provided in s.

85 633.082(2), the firesafety inspector must conduct all firesafety  
 86 inspections that are required by law. The governing body of a  
 87 county, municipality, or special district that has firesafety  
 88 enforcement responsibilities may provide a schedule of fees to  
 89 pay only the costs of inspections conducted pursuant to this  
 90 subsection and related administrative expenses. Two or more  
 91 counties, municipalities, or special districts that have  
 92 firesafety enforcement responsibilities may jointly employ or  
 93 contract with a firesafety inspector.

94 (2) Except as provided in s. 633.082(2), every firesafety  
 95 inspection conducted pursuant to state or local firesafety  
 96 requirements shall be by a person certified as having met the  
 97 inspection training requirements set by the State Fire Marshal.  
 98 Such person shall:

99 (a) Be a high school graduate or the equivalent as  
 100 determined by the department;

101 (b) Not have been found guilty of, or having pleaded  
 102 guilty or nolo contendere to, a felony or a crime punishable by  
 103 imprisonment of 1 year or more under the law of the United  
 104 States, or of any state thereof, which involves moral turpitude,  
 105 without regard to whether a judgment of conviction has been  
 106 entered by the court having jurisdiction of such cases;

107 (c) Have her or his fingerprints on file with the  
 108 department or with an agency designated by the department;

109 (d) Have good moral character as determined by the  
 110 department;

111 (e) Be at least 18 years of age;

112 (f) Have satisfactorily completed the firesafety inspector



113 certification examination as prescribed by the department; and  
 114 (g)1. Have satisfactorily completed, as determined by the  
 115 department, a firesafety inspector training program of not less  
 116 than 200 hours established by the department and administered by  
 117 agencies and institutions approved by the department for the  
 118 purpose of providing basic certification training for firesafety  
 119 inspectors; or

120 2. Have received in another state training which is  
 121 determined by the department to be at least equivalent to that  
 122 required by the department for approved firesafety inspector  
 123 education and training programs in this state.

124 (3)(a)1. Effective July 1, 2013, the classification of  
 125 special state firesafety inspector is abolished and all special  
 126 state firesafety inspector certifications shall expire at  
 127 midnight June 30, 2013.

128 2. Any person who is a special state firesafety inspector  
 129 on June 30, 2013, and who has failed to comply with paragraph  
 130 (b) or paragraph (c) may not perform any firesafety inspection  
 131 required by law.

132 3. A special state firesafety inspector certificate may  
 133 not be issued after June 30, 2011.

134 (b)1. Any person who is a special state firesafety  
 135 inspector on July 1, 2011, and who has at least 5 years of  
 136 experience as a special state firesafety inspector as of July 1,  
 137 2011, may take the firesafety inspection examination as provided  
 138 in paragraph (2)(f) for firesafety inspectors before July 1,  
 139 2013, to be certified as a firesafety inspector under this  
 140 section.

141 2. Upon passing the examination, the person shall be  
 142 certified as a firesafety inspector as provided in this section.

143 3. A person who fails to become certified must comply with  
 144 paragraph (c) to be certified as a firesafety inspector under  
 145 this section.

146 (c)1. To be certified as a firesafety inspector under this  
 147 section, any person who:

148 a. Is a special state firesafety inspector on July 1,  
 149 2011, and who does not have 5 years of experience as a special  
 150 state firesafety inspector as of July 1, 2011; or

151 b. Has 5 years of experience as a special state firesafety  
 152 inspector but has failed the examination taken as provided in  
 153 paragraph (2) (f),

154  
 155 must take an additional 80 hours of the courses described in  
 156 paragraph (2) (g).

157 2. After successfully completing the courses described in  
 158 this paragraph, such person may take the firesafety inspection  
 159 examination as provided in paragraph (2) (f), if such examination  
 160 is taken before July 1, 2013.

161 3. Upon passing the examination, the person shall be  
 162 certified as a firesafety inspector as provided in this section.

163 4. A person who fails the course of study or the  
 164 examination described in this paragraph may not perform any  
 165 firesafety inspection required by law on or after July 1, 2013.

166 ~~Each special state firesafety inspection which is required by~~  
 167 ~~law and is conducted by or on behalf of an agency of the state~~  
 168 ~~must be performed by an individual who has met the provision of~~

169 ~~subsection (2), except that the duration of the training program~~  
 170 ~~shall not exceed 120 hours of specific training for the type of~~  
 171 ~~property that such special state firesafety inspectors are~~  
 172 ~~assigned to inspect.~~

173 (4) A firefighter certified pursuant to s. 633.35 may  
 174 conduct firesafety inspections, under the supervision of a  
 175 certified firesafety inspector, while on duty as a member of a  
 176 fire department company conducting inservice firesafety  
 177 inspections without being certified as a firesafety inspector,  
 178 if such firefighter has satisfactorily completed an inservice  
 179 fire department company inspector training program of at least  
 180 24 hours' duration as provided by rule of the department.

181 (5) Every firesafety inspector ~~or special state firesafety~~  
 182 ~~inspector~~ certificate is valid for a period of 3 years from the  
 183 date of issuance. Renewal of certification is ~~shall be~~ subject  
 184 to the affected person's completing proper application for  
 185 renewal and meeting all of the requirements for renewal as  
 186 established under this chapter or by rule adopted under this  
 187 chapter promulgated thereunder, which shall include completion  
 188 of at least 40 hours during the preceding 3-year period of  
 189 continuing education as required by the rule of the department  
 190 or, in lieu thereof, successful passage of an examination as  
 191 established by the department.

192 (6) The State Fire Marshal may deny, refuse to renew,  
 193 suspend, or revoke the certificate of a firesafety inspector ~~or~~  
 194 ~~special state firesafety inspector~~ if the State Fire Marshal ~~it~~  
 195 finds that any of the following grounds exist:

196 (a) Any cause for which issuance of a certificate could

197 | have been refused had it then existed and been known to the  
 198 | State Fire Marshal.

199 |       (b) Violation of this chapter or any rule or order of the  
 200 | State Fire Marshal.

201 |       (c) Falsification of records relating to the certificate.

202 |       (d) Having been found guilty of or having pleaded guilty  
 203 | or nolo contendere to a felony, whether or not a judgment of  
 204 | conviction has been entered.

205 |       (e) Failure to meet any of the renewal requirements.

206 |       (f) Having been convicted of a crime in any jurisdiction  
 207 | which directly relates to the practice of fire code inspection,  
 208 | plan review, or administration.

209 |       (g) Making or filing a report or record that the  
 210 | certificateholder knows to be false, or knowingly inducing  
 211 | another to file a false report or record, or knowingly failing  
 212 | to file a report or record required by state or local law, or  
 213 | knowingly impeding or obstructing such filing, or knowingly  
 214 | inducing another person to impede or obstruct such filing.

215 |       (h) Failing to properly enforce applicable fire codes or  
 216 | permit requirements within this state which the  
 217 | certificateholder knows are applicable by committing willful  
 218 | misconduct, gross negligence, gross misconduct, repeated  
 219 | negligence, or negligence resulting in a significant danger to  
 220 | life or property.

221 |       (i) Accepting labor, services, or materials at no charge  
 222 | or at a noncompetitive rate from any person who performs work  
 223 | that is under the enforcement authority of the certificateholder  
 224 | and who is not an immediate family member of the

225 certificateholder. For the purpose of this paragraph, the term  
 226 "immediate family member" means a spouse, child, parent,  
 227 sibling, grandparent, aunt, uncle, or first cousin of the person  
 228 or the person's spouse or any person who resides in the primary  
 229 residence of the certificateholder.

230         (7) The Division of State Fire Marshal and the Florida  
 231 Building Code Administrators and Inspectors Board, established  
 232 pursuant to s. 468.605, shall enter into a reciprocity agreement  
 233 to facilitate joint recognition of continuing education  
 234 recertification hours for certificateholders licensed under s.  
 235 468.609 and firesafety inspectors certified under subsection  
 236 (2).

237         (8) The State Fire Marshal shall develop by rule an  
 238 advanced training and certification program for firesafety  
 239 inspectors having fire code management responsibilities. The  
 240 program must be consistent with the appropriate provisions of  
 241 NFPA 1037, or similar standards adopted by the division, and  
 242 establish minimum training, education, and experience levels for  
 243 firesafety inspectors having fire code management  
 244 responsibilities.

245         (9) The department shall provide by rule for the  
 246 certification of firesafety inspectors.

247         Section 4. Section 1013.12, Florida Statutes, is amended  
 248 to read:

249         1013.12 Casualty, safety, sanitation, and firesafety  
 250 standards and inspection of property.—

251         (1) FIRESAFETY.—The State Board of Education shall adopt  
 252 and administer rules prescribing standards for the safety and

253 health of occupants of educational and ancillary plants as a  
 254 part of State Requirements for Educational Facilities or the  
 255 Florida Building Code for educational facilities construction as  
 256 provided in s. 1013.37, except that the State Fire Marshal in  
 257 consultation with the Department of Education shall adopt  
 258 uniform firesafety standards for educational and ancillary  
 259 plants and educational facilities, as provided in s.  
 260 633.022(1)(b), and a firesafety evaluation system to be used as  
 261 an alternate firesafety inspection standard for existing  
 262 educational and ancillary plants and educational facilities. The  
 263 uniform firesafety standards and the alternate firesafety  
 264 evaluation system shall be administered and enforced by ~~local~~  
 265 fire officials certified by the State Fire Marshal under s.  
 266 633.081. These standards must be used by all public agencies  
 267 when inspecting public educational and ancillary plants, and the  
 268 firesafety standards must be used by county, municipal, or  
 269 independent special ~~local~~ fire control district inspectors  
 270 ~~officials~~ when performing firesafety inspections of public  
 271 educational and ancillary plants and educational facilities. In  
 272 accordance with such standards, each board shall prescribe  
 273 policies and procedures establishing a comprehensive program of  
 274 safety and sanitation for the protection of occupants of public  
 275 educational and ancillary plants. Such policies must contain  
 276 procedures for periodic inspections as prescribed in this  
 277 section or chapter 633 and for withdrawal of any educational and  
 278 ancillary plant, or portion thereof, from use until unsafe or  
 279 unsanitary conditions are corrected or removed.

280 (2) PERIODIC INSPECTION OF PROPERTY BY DISTRICT SCHOOL

281 BOARDS.—

282 (a) Each board shall provide for periodic inspection,  
 283 other than firesafety inspection, of each educational and  
 284 ancillary plant at least once during each fiscal year to  
 285 determine compliance with standards of sanitation and casualty  
 286 safety prescribed in the rules of the State Board of Education.

287 (b) Each school cafeteria must post in a visible location  
 288 and on the school website the school's semiannual sanitation  
 289 certificate and a copy of its most recent sanitation inspection  
 290 report.

291 (c) Under the direction of the fire official appointed by  
 292 the board under s. 1013.371(2), firesafety inspections of each  
 293 educational and ancillary plant located on property owned or  
 294 leased by the board, or other educational facilities operated by  
 295 the board, must be made no sooner than 1 year after issuance of  
 296 a certificate of occupancy and annually thereafter. Such  
 297 inspections shall be made by persons certified by the Division  
 298 of State Fire Marshal under s. 633.081 ~~to be eligible to~~ conduct  
 299 firesafety inspections in public educational and ancillary  
 300 plants. The board shall submit a copy of the firesafety  
 301 inspection report to the county, municipality, or independent  
 302 special fire control district providing fire protection services  
 303 to the school facility within 10 business days after the date of  
 304 the inspection. Alternate schedules for delivery of reports may  
 305 be agreed upon between the school district and the county,  
 306 municipality, or independent special fire control district  
 307 providing fire protection services to the site in cases in which  
 308 delivery is impossible due to hurricanes or other natural

309 disasters. Regardless, if immediate life-threatening  
 310 deficiencies are noted in the report, the report shall be  
 311 delivered immediately ~~State Fire Marshal and, if there is a~~  
 312 ~~local fire official who conducts firesafety inspections, to the~~  
 313 ~~local fire official.~~ In addition, the board and any other  
 314 authority conducting the fire safety inspection shall certify to  
 315 the State Fire Marshal that the annual inspection has been  
 316 completed. The certification shall be made electronically or by  
 317 such other means as directed by the State Fire Marshal.

318 (d) In each firesafety inspection report, the board shall  
 319 include a plan of action and a schedule for the correction of  
 320 each deficiency ~~which have been formulated in consultation with~~  
 321 ~~the local fire control authority.~~ If immediate life-threatening  
 322 deficiencies are noted in any inspection, the board shall ~~either~~  
 323 take action to promptly correct the deficiencies or withdraw the  
 324 educational or ancillary plant from use until such time as the  
 325 deficiencies are corrected.

326 (3) INSPECTION OF EDUCATIONAL PROPERTY BY OTHER PUBLIC  
 327 AGENCIES.—

328 (a) A safety or sanitation inspection of any educational  
 329 or ancillary plant may be made at any time by the Department of  
 330 Education or any other state or local agency authorized or  
 331 required to conduct such inspections by either general or  
 332 special law. Each agency conducting inspections shall use the  
 333 standards adopted by the Commissioner of Education in lieu of,  
 334 and to the exclusion of, any other inspection standards  
 335 prescribed either by statute or administrative rule. The agency  
 336 shall submit a copy of the inspection report to the board.



337 (b) One firesafety inspection of each educational or  
 338 ancillary plant located on the property owned or leased by the  
 339 board, or other educational or ancillary plants operated by the  
 340 school board, and each public college may ~~must~~ be conducted no  
 341 sooner than 1 year after the issuance of the certificate of  
 342 occupancy and annually thereafter ~~each fiscal year~~ by the  
 343 county, municipality, or independent special fire control  
 344 district in which the plant is located using the standards  
 345 adopted by the State Fire Marshal. The board or public college  
 346 shall cooperate with the inspecting authority when a firesafety  
 347 inspection is made by a governmental authority under this  
 348 paragraph.

349 (c) In each firesafety inspection report prepared pursuant  
 350 to this subsection, the county, municipality, or independent  
 351 special ~~local~~ fire control district, ~~official~~ in conjunction  
 352 with the board, shall include a plan of action and a schedule  
 353 for the correction of each deficiency. If immediate life-  
 354 threatening deficiencies are noted in any inspection, the local  
 355 county, municipality, or independent special fire control  
 356 district, in conjunction with the fire official appointed by the  
 357 board, shall ~~either~~ take action to require the board to promptly  
 358 correct the deficiencies or withdraw the educational or  
 359 ancillary plant ~~facility~~ from use until the deficiencies are  
 360 corrected, subject to review by the State Fire Marshal who shall  
 361 act within 10 days to ensure that the deficiencies are corrected  
 362 or withdraw the plant ~~facility~~ from use.

363 (4) CORRECTIVE ACTION; DEFICIENCIES OTHER THAN FIRESAFETY  
 364 DEFICIENCIES.—Upon failure of the board to take corrective

365 | action within a reasonable time, the agency making the  
 366 | inspection, other than a local fire official, may request the  
 367 | commissioner to:

368 |       (a) Order that appropriate action be taken to correct all  
 369 | deficiencies in accordance with a schedule determined jointly by  
 370 | the inspecting authority and the board; in developing the  
 371 | schedule, consideration must be given to the seriousness of the  
 372 | deficiencies and the ability of the board to obtain the  
 373 | necessary funds; or

374 |       (b) After 30 calendar days' notice to the board, order all  
 375 | or a portion of the educational or ancillary plant withdrawn  
 376 | from use until the deficiencies are corrected.

377 |       (5) INSPECTIONS OF CHARTER SCHOOLS NOT LOCATED ON BOARD-  
 378 | OWNED OR LEASED PROPERTY OR OTHERWISE OPERATED BY A SCHOOL  
 379 | BOARD.-

380 |       (a) A safety or sanitation inspection of any educational  
 381 | or ancillary plant may be made at any time by a state or local  
 382 | agency authorized or required to conduct such inspections by  
 383 | general or special law. The agency shall submit a copy of the  
 384 | inspection report to the charter school sponsor.

385 |       (b) One firesafety inspection of each charter school that  
 386 | is not located in facilities owned or leased by the board or a  
 387 | public college must be conducted each fiscal year by the county,  
 388 | municipality, or independent special fire control district in  
 389 | which the charter school is located using the standards adopted  
 390 | by the State Fire Marshal. Upon request, the inspecting  
 391 | authority shall provide a copy of each firesafety report to the  
 392 | board in the district in which the facility is located.

393        (c) In each firesafety inspection report and formulated in  
 394 consultation with the charter school, the inspecting authority  
 395 shall include a plan of action and a schedule for the correction  
 396 of each deficiency. If any immediate life-threatening deficiency  
 397 is noted in any inspection, the inspecting authority shall take  
 398 action to require the charter school to promptly correct each  
 399 deficiency or withdraw the educational or ancillary plant from  
 400 use until such time as all deficiencies are corrected.

401        (d) If the charter school fails to take corrective action  
 402 within the period designated in the plan of action to correct  
 403 any firesafety deficiency noted under paragraph (c), the county,  
 404 municipality, or independent special fire control district shall  
 405 immediately report the deficiency to the State Fire Marshal and  
 406 the charter school sponsor. The State Fire Marshal has  
 407 enforcement authority with respect to charter school educational  
 408 and ancillary plants and educational facilities as provided in  
 409 chapter 633 for any building or structure.

410        (6)-(5) INSPECTIONS OF PUBLIC POSTSECONDARY EDUCATION  
 411 FACILITIES.—

412        (a) Firesafety inspections of public ~~community~~ college  
 413 facilities, including charter schools located on board-owned or  
 414 board-leased facilities or otherwise operated by public college  
 415 boards, shall be made in accordance ~~comply~~ with the Florida Fire  
 416 Prevention Code, as adopted by the State Fire Marshal.  
 417 Notwithstanding s. 633.0215, provisions of the code relating to  
 418 inspections of such facilities are not subject to any local  
 419 amendments as provided by s. 1013.371. Each public college  
 420 facility shall be inspected annually by persons certified under

421 s. 633.081 Board of Education rules.

422 (b) After each required firesafety inspection, the  
 423 inspecting authority shall develop a plan of action to correct  
 424 each deficiency identified. The public college shall provide a  
 425 copy of each firesafety inspection report to the county,  
 426 municipality, or independent special fire control district in  
 427 which the facility is located.

428 (c)(b) Firesafety inspections of state universities shall  
 429 comply with the Florida Fire Prevention Code, as adopted by the  
 430 State Fire Marshal under s. 633.0215 regulations of the Board of  
 431 Governors.

432 (7)(6) CORRECTIVE ACTION; FIRESAFETY DEFICIENCIES.—If a  
 433 school Upon failure of the board, public college board, or  
 434 charter school fails to correct any firesafety deficiency noted  
 435 under this section take corrective action within the time  
 436 designated in the plan of action to correct any firesafety  
 437 deficiency noted under paragraph (2)(d) or paragraph (3)(c), the  
 438 inspecting authority local fire official shall immediately  
 439 report the deficiency to the State Fire Marshal, who has ~~shall~~  
 440 ~~have~~ enforcement authority with respect to educational and  
 441 ancillary plants and educational facilities as provided in  
 442 chapter 633 for any other building or structure.

443 (8)(7) ADDITIONAL STANDARDS.—In addition to any other  
 444 rules adopted under this section or s. 633.022, the State Fire  
 445 Marshal in consultation with the Department of Education shall  
 446 adopt and administer rules prescribing the following standards  
 447 for the safety and health of occupants of educational and  
 448 ancillary plants:

449 (a) The designation of serious life-safety hazards,  
 450 including, but not limited to, nonfunctional fire alarm systems,  
 451 nonfunctional fire sprinkler systems, doors with padlocks or  
 452 other locks or devices that preclude egress at any time,  
 453 inadequate exits, hazardous electrical system conditions,  
 454 potential structural failure, and storage conditions that create  
 455 a fire hazard.

456 (b) The proper placement of functional smoke and heat  
 457 detectors and accessible, unexpired fire extinguishers.

458 (c) The maintenance of fire doors without doorstops or  
 459 wedges improperly holding them open.

460 ~~(8) ANNUAL REPORT. The State Fire Marshal shall publish an~~  
 461 ~~annual report to be filed with the substantive committees of the~~  
 462 ~~state House of Representatives and Senate having jurisdiction~~  
 463 ~~over education, the Commissioner of Education or his or her~~  
 464 ~~successor, the State Board of Education, the Board of Governors,~~  
 465 ~~and the Governor documenting the status of each board's~~  
 466 ~~firesafety program, including the improvement or lack thereof.~~

467 Section 5. Paragraph (a) of subsection (1) and subsection  
 468 (2) of section 1013.371, Florida Statutes, are amended to read:  
 469 1013.371 Conformity to codes.—

470 (1) CONFORMITY TO FLORIDA BUILDING CODE AND FLORIDA FIRE  
 471 PREVENTION CODE REQUIRED FOR APPROVAL.—

472 (a) Except as otherwise provided in paragraph (b), all  
 473 public educational and ancillary plants constructed by a board  
 474 must conform to the Florida Building Code and the Florida Fire  
 475 Prevention Code, and the plants are exempt from all other state  
 476 building codes; county, municipal, or other local amendments to

477 the Florida Building Code and local amendments to the Florida  
 478 Fire Prevention Code; building permits, and assessments of fees  
 479 for building permits, except as provided in s. 553.80;  
 480 ordinances; road closures; and impact fees or service  
 481 availability fees. Any inspection by local or state government  
 482 must be based on the Florida Building Code and the Florida Fire  
 483 Prevention Code. Each board shall provide for periodic  
 484 inspection of the proposed educational plant during each phase  
 485 of construction to determine compliance with the Florida  
 486 Building Code, the Florida Fire Prevention Code, and the State  
 487 Requirements for Educational Facilities.

488 (2) ENFORCEMENT BY BOARD.—It is the responsibility of each  
 489 board to ensure that all plans and educational and ancillary  
 490 plants meet the standards of the Florida Building Code and the  
 491 Florida Fire Prevention Code and to provide for the enforcement  
 492 of these codes in the areas of its jurisdiction. Each board  
 493 shall provide for the proper supervision and inspection of the  
 494 work. Each board may employ a chief building official ~~or~~  
 495 ~~inspector~~ and such other inspectors, who have been certified  
 496 pursuant to chapter 468, and a fire official and such other  
 497 inspectors, who have been certified pursuant to chapter 633, and  
 498 such personnel as ~~are~~ necessary to administer and enforce the  
 499 provisions of such codes ~~this code~~. Boards may also use local  
 500 building department inspectors who are certified by the  
 501 department to enforce the Florida Building Code and the State  
 502 Requirements for Educational Facilities ~~this code~~. Boards may  
 503 also use local county, municipal, or independent special fire  
 504 control district firesafety inspectors who are certified by the

505 State Fire Marshal to conduct reviews of site plans and  
 506 inspections and to enforce the Florida Fire Prevention Code.  
 507 Plans or facilities that fail to meet the standards of the  
 508 Florida Building Code or the Florida Fire Prevention Code may  
 509 not be approved. When planning for and constructing an  
 510 educational, auxiliary, or ancillary facility, a board must use  
 511 construction materials and systems that meet standards adopted  
 512 pursuant to s. 1013.37(1)(e)3. and 4. If the planned or actual  
 513 construction of a facility deviates from the adopted standards,  
 514 the board must, at a public hearing, quantify and compare the  
 515 costs of constructing the facility with the proposed deviations  
 516 and in compliance with the adopted standards and the Florida  
 517 Building Code. The board must explain the reason for the  
 518 proposed deviations and compare how the total construction costs  
 519 and projected life-cycle costs of the facility or component  
 520 system of the facility would be affected by implementing the  
 521 proposed deviations rather than using materials and systems that  
 522 meet the adopted standards.

523 Section 6. Section 1013.38, Florida Statutes, is amended  
 524 to read:

525 1013.38 Boards to ensure that facilities comply with  
 526 building codes and life safety codes.—

527 (1) Boards shall ensure that all new construction,  
 528 renovation, remodeling, day labor, and maintenance projects  
 529 conform to the appropriate sections of the Florida Building  
 530 Code, Florida Fire Prevention Code, or, where applicable as  
 531 authorized in other sections of law, other building codes, and  
 532 life safety codes.

533        (a) For each proposed new facility and each proposed new  
 534 facility addition exceeding 2,500 square feet, the board shall  
 535 submit for review a minimum of one copy of the site plan to the  
 536 local county, municipality, or independent special fire control  
 537 district providing fire-protection services to the facility.

538        (b) The local county, municipality, or independent special  
 539 fire control district may review each site plan for compliance  
 540 with the applicable provisions of the Florida Fire Prevention  
 541 Code relating to fire department access roads, fire-protection  
 542 system connection locations, and fire hydrant spacing. Such site  
 543 plans are not subject to local amendments to the Florida Fire  
 544 Prevention Code or local ordinances as provided in s. 1013.371.  
 545 Site plan reviews conducted pursuant to this section shall be  
 546 performed at no charge to the school board or public college  
 547 board.

548        (c) The site plan shall be deemed approved unless the  
 549 local county, municipality, or independent special fire control  
 550 district submits to the fire official appointed by the board, in  
 551 writing, any deficiencies identified with reference to specific  
 552 provisions of the Florida Fire Prevention Code within 15 days  
 553 after receipt of the site plan. The fire official shall  
 554 incorporate such comments into his or her review and subsequent  
 555 inspections.

556        (d) If the local county, municipality, or independent  
 557 special fire control district and the fire official appointed by  
 558 the board do not agree on the requirements or application of the  
 559 Florida Fire Prevention Code, either party may refer the matter  
 560 to the State Fire Marshal, who shall have final administrative



561 authority in resolving the matter.

562 (2) In addition to the submission of site plans, boards  
563 may provide compliance as follows:

564 (a) Boards or consortia may individually or cooperatively  
565 provide review services under the insurance risk management  
566 oversight through the use of board employees or consortia  
567 employees, registered pursuant to chapter 471, chapter 481, or  
568 part XII of chapter 468 and firesafety inspectors certified  
569 under s. 633.081.

570 (b) Boards may elect to review construction documents  
571 using their own employees registered pursuant to chapter 471,  
572 chapter 481, or part XII of chapter 468 and firesafety  
573 inspectors certified under s. 633.081.

574 (c) Boards may submit phase III construction documents for  
575 review to the department.

576 (d) Boards or consortia may contract for plan review  
577 services directly with engineers and architects registered  
578 pursuant to chapter 471 or chapter 481 and firesafety inspectors  
579 certified under s. 633.081.

580 (3) The Department of Management Services may, upon  
581 request, provide facilities services for the Florida School for  
582 the Deaf and the Blind, the Division of Blind Services, and  
583 public broadcasting. As used in this section, the term  
584 "facilities services" means project management, code and design  
585 plan review, and code compliance inspection for projects as  
586 defined in s. 287.017(5).

587 (4) (a) Before the commencement of any new construction,  
588 renovation, or remodeling, the board shall:

589 1. Approve or cause to be approved the construction  
 590 documents and evaluate such documents for compliance with the  
 591 Florida Building Code and the Florida Fire Prevention Code.

592 2. Ensure compliance with all applicable firesafety codes  
 593 and standards by contracting with a firesafety inspector  
 594 certified by the State Fire Marshal under s. 633.081.

595 (b) A certificate of occupancy may not be issued until the  
 596 board, through its designated certified building official, has  
 597 determined that the building or structure and its site  
 598 conditions comply with all applicable statutes and rules.

599 (c) The method of compliance as chosen by the board  
 600 pursuant to subsection (2) shall be documented and maintained as  
 601 part of the construction record file.

602 (d) Upon request by the local county, municipality, or  
 603 independent special fire control district, the board shall  
 604 provide reasonable access to all construction documents.

605 Section 7. This act shall take effect July 1, 2011.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 409 Pub. Rec./Criminal Intelligence Information or Criminal Investigative Information

**SPONSOR(S):** Perry and others

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1168

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Williamson <i>Raw</i>	Williamson <i>Raw</i>
2) Criminal Justice Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

Current law provides a public record exemption for any criminal intelligence information or criminal investigative information that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses, regardless of whether it identifies the victim. The bill expands the exemption to include victims of the sexual offense of video voyeurism.

Under current law, the public record exemption is scheduled to repeal on October 2, 2013. The bill extends the repeal date to October 2, 2016. It also provides a statement of public necessity as required by the State Constitution.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

###### Public Records Law

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

###### Public Record Exemptions for Certain Victim Information

Current law provides a public record exemption for any criminal intelligence information<sup>3</sup> or criminal investigative information<sup>4</sup> that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses,<sup>5</sup> regardless of whether it identifies the victim.<sup>6</sup>

Current law also provides that the confidential and exempt status of the criminal investigative information and the criminal intelligence information must be maintained in court records and in court proceedings. If a petition for access to such confidential and exempt information is filed with the trial court having jurisdiction over the alleged offense, the confidential and exempt status must be maintained by the court if the state or the victim demonstrates that certain criteria are met.<sup>7</sup>

In addition, information or records that have been made part of a court file and that may reveal the identity of a person who is a victim of a sexual offense is exempt from public records requirements as provided in s. 119.071(2)(h), F.S.<sup>8</sup>

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

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

<sup>3</sup> Section 119.011(3)(a), F.S., defines "criminal intelligence information" to mean "information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity."

<sup>4</sup> Section 119.011(3)(b), F.S., defines "criminal investigative information" to mean "information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance."

<sup>5</sup> This exemption specifies sexual offenses prohibited under chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S.

<sup>6</sup> Section 119.071(2)(h)c., F.S.

<sup>7</sup> See s. 92.56, F.S.

<sup>8</sup> Section 119.0714(1)(h), F.S.

## **Effect of Bill**

The bill expands the current exemption for any criminal intelligence information or criminal investigative information that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses, regardless of whether it identifies the victim, to include victims of the sexual offense of video voyeurism.

Under current law, the exemption is scheduled to repeal on October 2, 2013. The bill extends the repeal date to October 2, 2016. It also provides a statement of public necessity as required by the State Constitution.<sup>9</sup>

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

Section 1 amends s. 119.071, F.S., to expand the public record exemption for certain victim information to include victims of the sexual offense of video voyeurism.

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.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

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<sup>9</sup> Section 24(c), Art. I of the State Constitution.  
STORAGE NAME: h0409.GVOPS.DOCX  
DATE: 3/22/2011

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; 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; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The exemption provided in the bill is cross-referenced in ss. 92.56, 119.0714, and 794.024, F.S. As such, the sponsor may want to include in the bill reenactment of those sections in order to ensure that the revisions to the current public record exemption apply with regard to certain court records.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

1                                   A bill to be entitled  
 2           An act relating to public records; amending s. 119.071,  
 3           F.S.; expanding the exemption from public records  
 4           requirements for criminal intelligence information and  
 5           criminal investigative information to include photographs,  
 6           videotapes, or images of any part of the body of a victim  
 7           of the sexual offense of video voyeurism; providing for  
 8           future review and repeal of the exemption; providing a  
 9           statement of public necessity; providing an effective  
 10          date.

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

13  
 14           Section 1. Paragraph (h) of subsection (2) of section  
 15   119.071, Florida Statutes, is amended to read:

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

18           (2) AGENCY INVESTIGATIONS.—

19           (h)1. The following criminal intelligence information or  
 20   criminal investigative information is confidential and exempt  
 21   from s. 119.07(1) and s. 24(a), Art. I of the State  
 22   Constitution:

23           a. Any information, including the photograph, name,  
 24   address, or other fact, which reveals the identity of the victim  
 25   of the crime of child abuse as defined by chapter 827.

26           b. Any information which may reveal the identity of a  
 27   person who is a victim of any sexual offense, including a sexual  
 28   offense proscribed in chapter 794, chapter 796, chapter 800,



29 chapter 827, or chapter 847.

30 c. A photograph, videotape, or image of any part of the  
 31 body of the victim of a sexual offense prohibited under chapter  
 32 794, chapter 796, chapter 800, s. 810.145, chapter 827, or  
 33 chapter 847, regardless of whether the photograph, videotape, or  
 34 image identifies the victim.

35 2. Criminal investigative information and criminal  
 36 intelligence information made confidential and exempt under this  
 37 paragraph may be disclosed by a law enforcement agency:

38 a. In the furtherance of its official duties and  
 39 responsibilities.

40 b. For print, publication, or broadcast if the law  
 41 enforcement agency determines that such release would assist in  
 42 locating or identifying a person that such agency believes to be  
 43 missing or endangered. The information provided should be  
 44 limited to that needed to identify or locate the victim and not  
 45 include the sexual nature of the offense committed against the  
 46 person.

47 c. To another governmental agency in the furtherance of  
 48 its official duties and responsibilities.

49 3. This exemption applies to such confidential and exempt  
 50 criminal intelligence information or criminal investigative  
 51 information held by a law enforcement agency before, on, or  
 52 after the effective date of the exemption.

53 4. This paragraph is subject to the Open Government Sunset  
 54 Review Act in accordance with s. 119.15, and shall stand  
 55 repealed on October 2, 2016 ~~2013~~, unless reviewed and saved from  
 56 repeal through reenactment by the Legislature.

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57           Section 2. The Legislature finds that it is a public  
58 necessity that criminal intelligence information or criminal  
59 investigative information that is a photograph, videotape, or  
60 image of any part of the body of a victim of the sexual offense  
61 of video voyeurism prohibited under s. 810.145, Florida  
62 Statutes, be made confidential and exempt from public records  
63 requirements. The Legislature finds that such photographs,  
64 videotapes, or images often depict the victim in graphic  
65 fashion, frequently nude. Such highly sensitive photographs,  
66 videotapes, or images of a victim of the sexual offense of video  
67 voyeurism, if viewed, copied, or publicized, could result in  
68 trauma, sorrow, humiliation, or emotional injury to the victim  
69 and the victim's family.

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

Amendment No. #1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations  
 2 Subcommittee

3 Representative(s) Perry offered the following:  
 4

5 **Amendment (with title amendment)**

6 Remove line 70 and insert:

7 Section 3. For the purpose of incorporating the amendment  
 8 made by this act to section 119.071, Florida Statutes, in a  
 9 reference thereto, paragraph (a) of subsection (1) of section  
 10 92.56, Florida Statutes, is reenacted to read:

11 92.56 Judicial proceedings and court records involving  
 12 sexual offenses.—

13 (1)(a) The confidential and exempt status of criminal  
 14 intelligence information or criminal investigative information  
 15 made confidential and exempt pursuant to s. 119.071(2)(h) must  
 16 be maintained in court records pursuant to s. 119.0714(1)(h) and  
 17 in court proceedings, including testimony from witnesses.

18 Section 4. For the purpose of incorporating the amendment  
 19 made by this act to section 119.071, Florida Statutes, in a

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 409 (2011)

Amendment No.

20 reference thereto, paragraph (h) of subsection (I) of section  
21 119.0714, Florida Statutes, is reenacted to read:

22 119.0714 Court files; court records; official records.—

23 (1) COURT FILES.—Nothing in this chapter shall be  
24 construed to exempt from s. 119.07(1) a public record that was  
25 made a part of a court file and that is not specifically closed  
26 by order of court, except:

27 (h) Criminal intelligence information or criminal  
28 investigative information that is confidential and exempt as  
29 provided in s. 119.071(2)(h).

30 Section 5. For the purpose of incorporating the amendment  
31 made by this act to section 119.071, Florida Statutes, in a  
32 reference thereto, subsection (1) of section 794.024, Florida  
33 Statutes, is reenacted to read:

34 794.024 Unlawful to disclose identifying information.—

35 (1) A public employee or officer who has access to the  
36 photograph, name, or address of a person who is alleged to be  
37 the victim of an offense described in this chapter, chapter 800,  
38 s. 827.03, s. 827.04, or s. 827.071 may not willfully and  
39 knowingly disclose it to a person who is not assisting in the  
40 investigation or prosecution of the alleged offense or to any  
41 person other than the defendant, the defendant's attorney, a  
42 person specified in an order entered by the court having  
43 jurisdiction of the alleged offense, or organizations authorized  
44 to receive such information made exempt by s. 119.071(2)(h), or  
45 to a rape crisis center or sexual assault counselor, as defined  
46 in s. 90.5035(1)(b), who will be offering services to the  
47 victim.

Amendment No.

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

49

50

51

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52

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

53

Remove line 9 and insert:

54

statement of public necessity; reenacting s. 92.56(1)(a), F.S.,

55

relating to judicial proceedings and court records involving

56

sexual offenders, to incorporate the amendment made to s.

57

119.071, F.S., in a reference thereto; reenacting s.

58

119.0714(1)(h), F.S., relating to court files and records, to

59

incorporate the amendment made to s. 119.071, F.S., in a

60

reference thereto; reenacting s. 794.024(1), F.S., relating to

61

the unlawful disclosure of identifying information, to

62

incorporate the amendment made to s. 119.071, F.S., in a

63

reference thereto; providing an effective



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 485 Pub. Rec./Dental Workforce Surveys

SPONSOR(S): Patronis and others

TIED BILLS: HB 483 IDEN./SIM. BILLS: CS/SB 314

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Williamson	Williamson
2) Health & Human Services Quality Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

House Bill 483 requires all Florida licensed dentists and dental hygienists to complete a workforce survey as a part of their licensure renewal, beginning in 2012. In 2012, licensure renewal is not contingent upon the completion and submission of the dental workforce survey; however, the Board of Dentistry may not renew the license of any dentist or dental hygienist for subsequent renewals until the survey is completed and submitted by the licensee.

House Bill 485 creates a public record exemption for personal identifying information contained in records provided by dentists or dental hygienists, in response to a dental workforce survey that is required as a condition of license renewal. Such information must be disclosed:

- With the express written consent of the individual to whom the information pertains or to the individual's legally authorized representative.
- By court order upon a showing of good cause.
- To a research entity, provided certain requirements are met.

The bill provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution, and provides an effective date that is contingent upon the passage of House Bill 483 or similar legislation.

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 creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Public Records Law

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

##### Workforce Surveys

House Bill 483 requires all Florida licensed dentists and dental hygienists to complete a workforce survey as a part of their licensure renewal, beginning in 2012. In 2012, licensure renewal is not contingent upon the completion and submission of the dental workforce survey; however, the Board of Dentistry may not renew the license of any dentist or dental hygienist for subsequent renewals until the survey is completed and submitted by the licensee.

Medical physicians and osteopathic physicians are required to respond to physician workforce surveys required as a condition of license renewal.<sup>3</sup> All personal identifying information contained in records provided by physicians in response to these physician workforce surveys are confidential and exempt from public records requirements.<sup>4</sup>

#### Effect of Bill

The bill creates a public record exemption for certain information held by the Department of Health (department) in response to dental workforce surveys. Personal identifying information contained in records provided by dentists or dental hygienists, in response to a dental workforce survey that is required as a condition of license renewal, is confidential and exempt<sup>5</sup> from public records requirements.

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

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

<sup>3</sup> Section 381.4018, F.S.

<sup>4</sup> Section 458.3193, F.S.

<sup>5</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA



Such information must be disclosed:

- With the express written consent of the individual to whom the information pertains or to the individual's legally authorized representative.
- By court order upon a showing of good cause.

In addition, such information must be disclosed to a research entity, if the entity seeks the record or data pursuant to a research protocol approved by the department. The research entity must maintain the records or data in accordance with the approved research protocol, and enter into a purchase and data-use agreement with the department. The agreement must restrict the release of information that would identify individuals, limits the use of records or data to the approved research protocol, and prohibit any other use of the records or data. Copies of records or data remain the property of the department.

In addition, the department may deny a research entity's request if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit.

The bill provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution,<sup>6</sup> and provides an effective date that is contingent upon the passage of House Bill 483 or similar legislation.

#### B. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law that creates a public record exemption for personal identifying information of dentists or dental hygienists contained in a response to a dental workforce survey.

Section 2 provides a public necessity statement.

Section 3 provides a contingent effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

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

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

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1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985).

<sup>6</sup> Section 24(c), Art. I of the State Constitution.

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:

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 creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

1                                   A bill to be entitled  
 2           An act relating to public records; providing an exemption  
 3           from public records requirements for information contained  
 4           in dental workforce surveys submitted by dentists or  
 5           dental hygienists to the Department of Health as a  
 6           condition for license renewal; providing exceptions to the  
 7           exemption; providing for future legislative review and  
 8           repeal of the exemption under the Open Government Sunset  
 9           Review Act; providing a statement of public necessity;  
 10          providing a contingent effective date.

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

13  
 14           Section 1. Confidentiality of certain information  
 15           contained in dental workforce surveys.—

16           (1) All personal identifying information that is contained  
 17           in records provided by dentists or dental hygienists licensed  
 18           under chapter 466, Florida Statutes, in response to dental  
 19           workforce surveys required as a condition of license renewal and  
 20           held by the Department of Health is confidential and exempt from  
 21           s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 22           State Constitution, except such information shall be disclosed:

23           (a) With the express written consent of the individual to  
 24           whom the information pertains or the individual's legally  
 25           authorized representative.

26           (b) By court order upon a showing of good cause.

27           (c) To a research entity, if the entity seeks the records  
 28           or data pursuant to a research protocol approved by the

29 Department of Health, maintains the records or data in  
30 accordance with the approved protocol, and enters into a  
31 purchase and data-use agreement with the department, the fee  
32 provisions of which are consistent with s. 119.07(4), Florida  
33 Statutes. The department may deny a request for records or data  
34 if the protocol provides for intrusive follow-back contacts,  
35 does not plan for the destruction of confidential records after  
36 the research is concluded, is administratively burdensome, or  
37 does not have scientific merit. The agreement must restrict the  
38 release of information that would identify individuals, limit  
39 the use of records or data to the approved research protocol,  
40 and prohibit any other use of the records or data. Copies of  
41 records or data issued pursuant to this paragraph remain the  
42 property of the department.

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

47 Section 2. The Legislature finds that it is a public  
48 necessity that personal identifying information concerning a  
49 dentist or dental hygienist licensed under chapter 466, Florida  
50 Statutes, who responds to a dental workforce survey as a  
51 condition of licensure renewal be made confidential and exempt  
52 from disclosure. Candid and honest responses by licensed  
53 dentists or dental hygienists to the workforce survey will  
54 ensure that timely and accurate information is available to the  
55 Department of Health. The Legislature finds that the failure to  
56 maintain the confidentiality of such personal identifying

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57 information would prevent the resolution of important state  
58 interests to ensure the availability of dentists or dental  
59 hygienists in this state.

60 Section 3. This act shall take effect on the same date  
61 that House Bill 483 or similar legislation takes effect, if such  
62 legislation is adopted in the same legislative session, or an  
63 extension thereof, and becomes law.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 579 Pub. Rec./Regional Autism Centers

SPONSOR(S): Coley and others

TIED BILLS: IDEN./SIM. BILLS: SB 1192

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Williamson	Williamson
2) K-20 Innovation Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law designates seven regional autism centers (center) throughout the state to provide nonresidential resource and training services for persons of all ages and all levels of intellectual functioning who have autism, a pervasive developmental disorder that is not otherwise specified, an autistic-like disability, a dual sensory impairment, or a sensory impairment with other handicapping conditions. Each center must be operationally and fiscally independent, provide services within its geographical region of the state, and coordinate services within and between state and local agencies provided by those agencies or school districts.

The bill creates a public record exemption for all records relating to the following persons who receive the services of a center or participate in center activities:

- A client of a center.
- The client's family.
- A teacher.
- Any other professional.

The bill authorizes release of the confidential and exempt records under certain circumstances.

The bill provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### Public Records Law

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

###### Regional Autism Centers

Current law designates seven regional autism centers (center) throughout the state to provide nonresidential resource and training services for persons of all ages and all levels of intellectual functioning who have autism, a pervasive developmental disorder that is not otherwise specified, an autistic-like disability, a dual sensory impairment, or a sensory impairment with other handicapping conditions. Each center must be operationally and fiscally independent, provide services within its geographical region of the state, and coordinate services within and between state and local agencies provided by those agencies or school districts.<sup>3</sup> The seven centers are located at the:

- College of Medicine at Florida State University;<sup>4</sup>
- College of Medicine at the University of Florida;<sup>5</sup>
- University of Florida Health Science Center;<sup>6</sup>
- Louis de la Parte Florida Mental Health Institute at the University of South Florida;<sup>7</sup>
- Mailman Center for Child Development and the Department of Psychology at the University of Miami;<sup>8</sup>

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

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

<sup>3</sup> Section 1004.55(1), F.S.

<sup>4</sup> The College of Medicine at Florida State University serves Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington Counties. Section 1004.55(1)(a), F.S.

<sup>5</sup> The College of Medicine at the University of Florida serves Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Levy, Marion, Putnam, Suwannee, and Union Counties. Section 1004.55(1)(b), F.S.

<sup>6</sup> The University of Florida Health Science Center at Jacksonville serves Baker, Clay, Duval, Flagler, Nassau, and St. Johns Counties. Section 1004.55(1)(c), F.S.

<sup>7</sup> The Louis de la Parte Florida Mental Health Institute at the University of South Florida serves Charlotte, Collier, DeSoto, Glades, Hardee, Hendry, Highlands, Hillsborough, Lee, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties. Section 1004.55(1)(d), F.S.



- College of Health and Public Affairs at the University of Central Florida;<sup>9</sup> and
- Department of Exceptional Student Education at Florida Atlantic University.<sup>10</sup>

Each center must provide expertise in autism, autistic-like behaviors, and sensory impairments; individual and direct family assistance; technical assistance and consultation services; professional training programs; public education programs; coordination and dissemination of local and regional information regarding available resources; and support to state agencies in the development of training for early child care providers and educators with respect to developmental disabilities.<sup>11</sup>

### **Effect of Bill**

The bill creates a public record exemption for all records relating to the following persons who receive the services of a center or participate in center activities:

- A client of a center.
- The client's family.
- A teacher.
- Any other professional.

Such records are made confidential and exempt<sup>12</sup> from public records requirements. In essence, the entire record associated with the client, the client's family, a teacher, or other professional is confidential and exempt.

As drafted, it is unclear who is included in the term "client" since the term refers to persons participating in center activities in addition to receiving services. Also, it is unclear who is included in the term "other professional."

Upon request, a client who receives services from the center, if competent, or the client's parent or legal guardian, if the client is incompetent, must be provided with a copy of the client's individual record.

Confidential and exempt records may be released to physicians, attorneys, and governmental entities having need of the record in order to aid a client, as authorized by the client if competent, or as authorized by the client's parent or legal guardian if the client is incompetent. The bill does not require the center to release such records to a physician, attorney, or governmental entity if authorized by the client or the client's parent or legal guardian; it merely provides the center with the option.

The center must produce the confidential and exempt records in response to a subpoena or as authorized by court order.

The bill further provides that information from the confidential and exempt records may be used for statistical and research purposes by the director of the center or designee; however, personal identifying information must be removed. In addition, a record may be disclosed to a qualified researcher, the State Board of Education, or the Florida Board of Governors if the director of the center

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<sup>8</sup> The Mailman Center for Child Development and the Department of Psychology at the University of Miami serves Broward, Miami-Dade, and Monroe Counties. Section 1004.55(1)(e), F.S.

<sup>9</sup> The College of Health and Public Affairs at the University of Central Florida serves Brevard, Lake, Orange, Osceola, Seminole, Sumter, and Volusia Counties. Section 1004.55(1)(f), F.S.

<sup>10</sup> The Department of Exceptional Student Education at Florida Atlantic University serves Palm Beach, Martin, St. Lucie, Okeechobee, and Indian River Counties. Section 1004.55(1)(g), F.S.

<sup>11</sup> Section 1004.55(4), F.S.

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

deems it necessary for the treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation of programs.

The bill provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>13</sup>

**B. SECTION DIRECTORY:**

Section 1 amends s. 1004.55, F.S., to create a public record exemption for certain records held by a regional autism center.

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.

**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.

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<sup>13</sup> Section 24(c), Art. I of the State Constitution.

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 creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

Overly Broad

Article I, s. 24(c) of the State Constitution, requires that an exemption be drafted as narrowly as possible. The exemption, as drafted, could raise concerns regarding its breadth when compared with other similar exemptions.

Teachers and professionals providing services to the center are performing a service on behalf of government. Under current law, information regarding teachers in the public school system is a public record as is information regarding other government professionals who do not work in high risk jobs. As such, the need to protect all records regarding teachers and professionals associated with the center is unclear, especially if such information is publicly available elsewhere.

Further, current law provides a public record exemption for client information held by the Agency for Persons with Disabilities.<sup>14</sup> A similar exemption for the center would ensure that client information is protected while also meeting the constitutional requirement that an exemption be drafted as narrowly as possible.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

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<sup>14</sup> Section 393.13(4)(i), F.S. The exemption provided for client records held by the Agency for Persons with Disabilities appears to be an exemption created prior to 1993. As such, it was grandfathered in under Article I, s. 24(d) of the State Constitution. Essentially, the exemption did not have to meet the same constitutional requirements as the exemption created in this bill.

1                                   A bill to be entitled  
 2           An act relating to public records; amending s. 1004.55,  
 3           F.S.; providing an exemption from public records  
 4           requirements for all records that relate to a client of a  
 5           regional autism center, the client's family, or a teacher  
 6           or other professional who receives the services of a  
 7           center or participates in center activities; providing for  
 8           release of specified confidential and exempt information  
 9           by a center under certain circumstances; providing for  
 10          review and repeal of the exemption; providing a statement  
 11          of public necessity; providing an effective date.

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

14  
 15           Section 1. Subsection (6) is added to section 1004.55,  
 16   Florida Statutes, to read:

17           1004.55   Regional autism centers; public records  
 18   exemption.-

19           (6)(a)1. All records that relate to a client of a regional  
 20   autism center, the client's family, or a teacher or other  
 21   professional who receives the services of a center or  
 22   participates in center activities are confidential and exempt  
 23   from s. 119.07(1) and s. 24(a), Art. I of the State  
 24   Constitution.

25           2. A client who receives the services of a center, if  
 26   competent, or the client's parent or legal guardian if the  
 27   client is incompetent shall be provided with a copy of the  
 28   client's individual records upon request.

29 (b) A regional autism center may release records or  
 30 information contained in records made confidential and exempt  
 31 under paragraph (a) as follows:

32 1. Records may be released to physicians, attorneys, and  
 33 governmental entities having need of the record to aid a client,  
 34 as authorized by the client, if competent, or the client's  
 35 parent or legal guardian if the client is incompetent.

36 2. Records shall be produced in response to a subpoena or  
 37 released to persons authorized by order of court.

38 3. A record or any part thereof that is abstracted in such  
 39 a way as to remove any personally identifiable information may  
 40 be disclosed to a qualified researcher, the State Board of  
 41 Education, or the Florida Board of Governors when the director  
 42 of the center deems it necessary for the treatment of the  
 43 client, maintenance of adequate records, compilation of  
 44 treatment data, or evaluation of programs.

45 4. Information from the records may be used for  
 46 statistical and research purposes by the director of the center  
 47 or designee; provided, however, that any personally identifiable  
 48 information is removed in the reporting of such statistical or  
 49 research data.

50 (c) This subsection is subject to the Open Government  
 51 Sunset Review Act in accordance with s. 119.15 and shall stand  
 52 repealed on October 2, 2016, unless reviewed and saved from  
 53 repeal through reenactment by the Legislature.

54 Section 2. The Legislature finds that it is a public  
 55 necessity that all records that relate to a client of a regional  
 56 autism center, the client's family, or a teacher or other

57 | professional who receives the services of a center or  
 58 | participates in center activities be held confidential and  
 59 | exempt from public records requirements. Matters of personal  
 60 | health are traditionally private and confidential concerns  
 61 | between the patient and the health care provider. The private  
 62 | and confidential nature of personal health matters pervades both  
 63 | the public and private health care sectors. For these reasons,  
 64 | the individual's expectation of and right to privacy in all  
 65 | matters regarding his or her personal health necessitates this  
 66 | exemption. The Legislature further finds that it is a public  
 67 | necessity to protect records regarding clients of a regional  
 68 | autism center, the client's family, or a teacher or other  
 69 | professional who receives the services of a center or  
 70 | participates in center activities because the release of such  
 71 | records could be defamatory to the client or could cause  
 72 | unwarranted damage to the name or reputation of that client or  
 73 | the client's family. Information contained in records and  
 74 | communications of a regional autism center relating to the  
 75 | condition of autism or related disorders contain sensitive  
 76 | personal information that, if released, could cause harm to a  
 77 | client of the center or his or her family. Protecting such  
 78 | records and the identity of a teacher or professional who  
 79 | receives the services of a center or participates in center  
 80 | activities ensures an environment in which the discussion of the  
 81 | condition of autism or related disorders can be conducted in a  
 82 | free and open manner, thus enabling individuals with autism and  
 83 | their families to receive appropriate diagnostic and treatment  
 84 | information and cope more effectively with the enormous

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85 | challenges posed by neurodevelopmental disorders and sensory  
86 | impairments.

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

Amendment No. (#1)

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations  
 2 Subcommittee  
 3 Representative(s) Coley offered the following:  
 4

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
 7 Section 1. Subsection (6) is added to section 1004.55,  
 8 Florida Statutes, to read:

9 1004.55 Regional autism centers; public record  
 10 exemptions.--

11 (6) (a) CLIENT RECORDS.--

12 1. All records that relate to a client of a regional  
 13 autism center who receives the services of a center or  
 14 participates in center activities, and all records that relate  
 15 to the client's family, are confidential and exempt from s.  
 16 119.07(1) and s. 24(a), Art. I of the State Constitution.

17 2. A client who receives the services of a center, if  
 18 competent, or the client's parent or legal guardian if the



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19 client is incompetent, shall be provided with a copy of the  
20 client's individual record upon request.

21 3. A regional autism center may release the confidential  
22 and exempt records as follows:

23 a. To physicians, attorneys, or governmental entities  
24 having need of the confidential and exempt information to aid a  
25 client, as authorized by the client, if competent, or the  
26 client's parent or legal guardian if the client is incompetent.

27 b. In response to a subpoena or to persons authorized by  
28 order of court.

29 c. To the State Board of Education or the Florida Board of  
30 Governors when the director of the center deems it necessary for  
31 the treatment of the client, maintenance of adequate records,  
32 compilation of treatment data, or evaluation of programs.

33 4. Provided personal identifying information of a client  
34 or the client's family has been removed, a regional autism  
35 center may release information contained in the confidential and  
36 exempt records as follows:

37 a. To a person engaged in bona fide research if that  
38 person agrees to sign a confidentiality agreement with the  
39 regional autism center, agrees to maintain the confidentiality  
40 of the information received, and to the extent permitted by law  
41 and after the research has concluded, destroy any confidential  
42 information obtained.

43 b. For statistical and research purposes by the director  
44 of the center or designee provided that any confidential and  
45 exempt information is removed in the reporting of such  
46 statistical or research data.

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47 (b) DONOR INFORMATION.-- Personal identifying information  
48 of a donor or prospective donor to a regional autism center who  
49 desires to remain anonymous is confidential and exempt from s.  
50 119.07(1) and s. 24(a), Art. I of the State Constitution.

51 (c) REVIEW AND REPEAL.--This subsection is subject to the  
52 Open Government Sunset Review Act in accordance with s. 119.15  
53 and shall stand repealed on October 2, 2016, unless reviewed and  
54 saved from repeal through reenactment by the Legislature.

55 Section 2. (1) The Legislature finds that it is a public  
56 necessity that all records that relate to a client of a regional  
57 autism center who receives the services of a center or  
58 participates in center activities, and all records that relate  
59 to the client's family, be made confidential and exempt from  
60 public records requirements. Matters of personal health are  
61 traditionally private and confidential concerns between the  
62 patient and the health care provider. The private and  
63 confidential nature of personal health matters pervades both the  
64 public and private health care sectors. For these reasons, the  
65 individual's expectation of and right to privacy in all matters  
66 regarding his or her personal health necessitates this  
67 exemption. The Legislature further finds that it is a public  
68 necessity to protect records regarding clients of a regional  
69 autism center or the client's family, because the release of  
70 such records could be defamatory to the client or could cause  
71 unwarranted damage to the name or reputation of that client or  
72 the client's family. Information contained in records and  
73 communications of a regional autism center relating to the  
74 condition of autism or related disorders contain sensitive

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75 personal information that, if released, could cause harm to a  
76 client of the center or his or her family. Protecting such  
77 records ensures an environment in which the discussion of the  
78 condition of autism or related disorders can be conducted in a  
79 free and open manner, thus enabling individuals with autism and  
80 their families to receive appropriate diagnostic and treatment  
81 information and cope more effectively with the enormous  
82 challenges posed by neurodevelopmental disorders and sensory  
83 impairments.

84 (2) The Legislature also finds that it is a public  
85 necessity that personal identifying information of a donor or  
86 prospective donor to a regional autism center be made  
87 confidential and exempt from public records requirements if such  
88 donor or prospective donor desires to remain anonymous. If the  
89 identity of prospective or actual donor who desires to remain  
90 anonymous is subject to disclosure, there is a chilling effect  
91 on donations because donors are concerned about disclosure of  
92 personal information leading to theft and, in particular,  
93 identity theft, including personal safety and security.  
94 Therefore, the Legislature finds that it is a public necessity  
95 to make confidential and exempt from public records requirements  
96 information that would identify a donor or prospective donor to  
97 a regional autism center if such donor or prospective donor  
98 wishes to remain anonymous.

99 Section 3. This act shall take effect July 1, 2011.  
100  
101  
102 -----

Amendment No.

**T I T L E   A M E N D M E N T**

Remove the entire title and insert:

A bill to be entitled

An act relating to public records; amending s. 1004.55, F.S.; providing an exemption from public records requirements for all records that relate to a client of a regional autism center who receives the services of a center or participates in center activities and the client's family; providing for release of specified confidential and exempt information by a center under certain circumstances; providing an exemption from public records requirements for personal identifying information of a donor or prospective donor to a regional autism center if such donor or prospective donor wishes to remain anonymous; providing for review and repeal of the exemption; providing a statement of public necessity; providing an effective date.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 597 Pub. Rec./Agency Emergency Notification Information

SPONSOR(S): Taylor

TIED BILLS: IDEN./SIM. BILLS: SB 874

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Williamson	Williamson
2) State Affairs Committee			

SUMMARY ANALYSIS

Current law provides a public record exemption for persons requesting emergency assistance through E911. The exemption applies to the name, address, telephone number, or personal information about or information that may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services.

The bill creates a public record exemption for any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency. The exemption includes the person's name, address, telephone number, e-mail address, or other electronic communication address.

The bill provides for retroactive application of the public record exemption. It also provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### Public Records Law

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

###### Emergency Notifications

State agencies are required to have emergency plans in place in case of a natural disaster. The emergency plans are not required to have any sort of associated notification system.

The Department of Health has taken steps to keep the public health community informed of public health emergencies using the Florida Department of Health Emergency Notification System or FDENS.<sup>3</sup>

Sheriff's offices, universities, public utilities and other entities throughout Florida have in place emergency notification systems. For example, the Sumter County Sheriff's Office uses the CodeRED Emergency Notification System. It is a high-speed telephone communication service for emergency notifications that works off of a database compiled from the phone database maintained for the Sheriff's office by the purveyors of the CodeRED system. The system allows the Sumter County Sheriff's Office to telephone all or targeted areas of the County in case of an emergency situation that requires immediate action.<sup>4</sup>

Brevard County has in place a similar emergency alert notification system for natural emergencies.<sup>5</sup> Florida State University has a more comprehensive alert system that includes text messages, voice-mail messages, email messages, facebook messages, indoor and outdoor sirens, and a hotline.<sup>6</sup>

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

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

<sup>3</sup> See <http://www.doh.state.fl.us/fdens/index.html> (last visited March 22, 2011).

<sup>4</sup> Examples include a boil-water notice, missing child notice, or evacuation notice. See <http://www.sumtercountysheriff.org/emergencymanagement/codered.asp> (last visited March 22, 2011).

<sup>5</sup> See <http://embrevard.com/> (last visited March 22, 2011).

<sup>6</sup> See <http://www.safety.fsu.edu/emergencymanagement/fsualert.html> (last visited March 22, 2011).

Current law provides a public record exemption for persons requesting emergency assistance through E911. The exemption applies to the name, address, telephone number, or personal information about or information that may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services.<sup>7</sup>

### **Effect of Bill**

The bill creates a public record exemption for any information furnished by a person to an agency<sup>8</sup> for the purpose being provided with emergency notification by the agency. The exemption includes the person's name, address, telephone number, e-mail address, or other electronic communication address. Such information held by an agency before, on, or after<sup>9</sup> the effective date of the exemption is made exempt<sup>10</sup> from public records requirements.

The bill provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>11</sup>

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

Section 1 amends s. 119.071, F.S., to create a public record exemption for certain information provided by a person to an agency for purposes of receiving emergency notifications.

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:**

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<sup>7</sup> Section 365.171(12), F.S.

<sup>8</sup> 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."

<sup>9</sup> The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

<sup>10</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

<sup>11</sup> Section 24(c), Art. I of the State Constitution.



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:

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 creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1                   A bill to be entitled  
 2           An act relating to public records; amending s. 119.071,  
 3           F.S.; providing an exemption from public records  
 4           requirements for information furnished by a person to an  
 5           agency for the purpose of being provided with emergency  
 6           notification by the agency; providing for retroactive  
 7           effect of the exemption; providing for future legislative  
 8           review and repeal of the exemption; providing a statement  
 9           of public necessity; providing an effective date.

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

12  
 13           Section 1. Paragraph (j) is added to subsection (5) of  
 14           section 119.071, Florida Statutes, to read:

15           119.071 General exemptions from inspection or copying of  
 16           public records.—

17           (5) OTHER PERSONAL INFORMATION.—

18           (j)1. Any information furnished by a person to an agency  
 19           for the purpose of being provided with emergency notification by  
 20           the agency, including the person's name, address, telephone  
 21           number, e-mail address, or other electronic communication  
 22           address, is exempt from s. 119.07(1) and s. 24(a), Art. I of the  
 23           State Constitution. This exemption applies to information held  
 24           by an agency, before, on, or after the effective date of this  
 25           exemption.

26           2. This paragraph is subject to the Open Government Sunset  
 27           Review Act in accordance with s. 119.15, and shall stand

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28 repealed on October 2, 2016, unless reviewed and saved from  
29 repeal through reenactment by the Legislature.

30       Section 2. The Legislature finds that it is a public  
31 necessity to exempt from public records requirements any  
32 information furnished by a person to an agency for the purpose  
33 of being provided with emergency notification by the agency.  
34 Through the use of current technology, agencies may contact  
35 members of the public by a variety of electronic means,  
36 including cellular telephones and electronic mail, to alert them  
37 of imminent natural and manmade disasters, medical emergencies,  
38 criminal emergencies, and other dangerous conditions. Public  
39 safety is significantly enhanced through the use of such  
40 emergency notification programs, and expansion of such programs  
41 further increases public safety. A public records exemption for  
42 information furnished to an agency for this purpose will  
43 encourage greater participation in emergency notification  
44 programs by alleviating concerns about disclosure of information  
45 that could be used for criminal purposes. For these reasons, the  
46 public records exemption provided in this act is necessary for  
47 the effective implementation of and broad participation in  
48 emergency notification programs conducted by agencies.

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



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 667 Pub. Rec./Investigative and Audit Reports of an Inspector General  
**SPONSOR(S):** Clemens  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 828

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Williamson <i>Law</i>	Williamson <i>Law</i>
2) Community & Military Affairs Subcommittee			
3) State Affairs Committee			

**SUMMARY ANALYSIS**

Current law provides a limited public record exemption for an audit report prepared for or on behalf of a unit of local government. It also provides a public record exemption for audit work papers and notes related to the audit until the audit report becomes final.

The bill expands the current public record exemption for audit reports of an internal auditor prepared on behalf of a unit of local government.

The exemption is expanded to include an investigative or audit report of an inspector general prepared for or on behalf of a unit of local government. The exemption expires when the audit or investigation becomes final. An audit or investigation becomes final when the audit or investigative report is presented to the unit of local government.

The exemption is further expanded to provide that audit work papers and notes and information received, produced, or derived as a result of an investigation conducted by an inspector general are confidential and exempt from public records requirements. The exemption expires when the audit or investigation is completed and the audit or investigative report becomes final; or when the audit or investigation is no longer active.

The bill provides for repeal of the exemptions on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### Public Records Law

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

###### Local Government Auditing

Current law requires local governments to submit to the Department of Financial Services (DFS) an Annual Financial Report covering their operations for the preceding fiscal year.<sup>3</sup> DFS makes available to local governments an electronic filing system that accumulates the financial information reported on the annual financial reports in a database.

Current law provides that if a local government will not be audited by the Auditor General, then the local government must provide for an annual financial audit to be completed within 12 months after the end of the fiscal year.<sup>4</sup> The audit must be conducted by an independent certified public accountant retained by the entity and paid for from public funds.

The audit report of an internal auditor prepared for or on behalf of a unit of local government becomes a public record when the audit becomes final. Audit work papers and notes related to the audit are confidential and exempt from public records requirements until the audit report becomes final.<sup>5</sup>

###### Current Public Record Exemptions for Local Government Investigations

If certified pursuant to statute, an investigatory record<sup>6</sup> of the Chief Inspector General within the Executive Office of the Governor or of the employee designated by an agency head as the agency inspector general is exempt from public records requirements until:

---

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

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

<sup>3</sup> Section 218.32(1), F.S.

<sup>4</sup> Section 218.39, F.S.

<sup>5</sup> Section 119.0713(2), F.S.

<sup>6</sup> Investigatory records are those records that are related to the investigation of an alleged, specific act or omission or other wrongdoing, with respect to an identifiable person or group of persons, based on information compiled by the Chief Inspector General

- The investigation ceases to be active;
- A report detailing the investigation is provided to the Governor or the agency head; or
- Sixty days from the inception of the investigation for which the record was made or received.<sup>7</sup>

An investigation is considered active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.<sup>8</sup> At the local government level there is concern that 60 days is too little time to carry out an investigation, particularly if it is a criminal investigation.<sup>9</sup>

Current law also provides a public record exemption for inspectors general in whistle blower cases. Certain specified information is confidential and exempt from public records requirements until the conclusion of an investigation if the investigation is related to whether an employee or agent of an agency or independent contractor:

- Has violated or is suspected of having violated any federal, state, or local law, rule, or regulation, thereby creating and presenting a substantial and specific danger to the public's health, safety, or welfare; or
- Has committed an act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty.<sup>10</sup>

Information, other than the name or identity of a person who discloses certain types of incriminating information about a public employee, may be disclosed when the investigation is no longer active.

In addition, current law provides a public record exemption for ethics investigations.<sup>11</sup> A recent Florida Attorney General's Opinion responded to the following question:

Do the public records and meeting exemptions provided for in Chapter 2010-130, Laws of Florida, apply to the investigatory process of the Palm Beach County Inspector General?<sup>12</sup>

The opinion concluded that, to the extent the inspector general is investigating complaints involving the violation of ethics codes, the exemption would apply. The public record exemption does not extend beyond ethics investigations; however, the Attorney General Opinion did note that similar investigations would be covered under s. 112.3188, F.S., as previously discussed.

### **Effect of Bill**

The bill expands the current public record exemption for audit reports of an internal auditor prepared on behalf of a unit of local government.

The exemption is expanded to include an investigative or audit report of an inspector general prepared for or on behalf of a unit of local government. The exemption expires when the audit or investigation becomes final. An audit or investigation becomes final when the audit or investigative report is presented to the unit of local government.

The exemption is further expanded to provide that audit work papers and notes and information received, produced, or derived as a result of an investigation conducted by an inspector general are confidential and exempt<sup>13</sup> from public records requirements. The exemption expires when the audit or

or by an agency inspector general, as named under the provisions of s. 112.3189, F.S., in the course of an investigation. Section 112.31901(1), F.S.

<sup>7</sup> Section 112.31901(1), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> For example, the Palm Beach County Inspector General is an independent entity responsible for the county, 38 municipalities (by referendum), and the Solid Waste Authority (by interlocal agreement). As a result, there is no single agency head to certify the investigation as exempt. *See* Senate Bill Analysis and Fiscal Impact Statement, SB 828 (March 6, 2011), at 4.

<sup>10</sup> Section 112.3188, F.S.

<sup>11</sup> Section 112.324, F.S.

<sup>12</sup> Attorney General Opinion 2010-39 (September 16, 2010).

<sup>13</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain

investigation is completed and the audit or investigative report becomes final; or when the audit or investigation is no longer active. Unlike other similar exemptions, the bill does not provide a definition for what constitutes an active investigation.

The bill provides for repeal of the exemptions on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>14</sup>

**B. SECTION DIRECTORY:**

Section 1 amends s. 119.0713, F.S., to expand the current exemption for local government audit reports.

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.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

<sup>14</sup> Section 24(c), Art. I of the State Constitution.



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 public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

1                                   A bill to be entitled  
 2           An act relating to public records; amending s. 119.0713,  
 3           F.S.; providing an exemption from public records  
 4           requirements for information received, produced, or  
 5           derived as the result of an investigation conducted by an  
 6           inspector general on behalf of a unit of local government;  
 7           providing for limited duration of the exemption;  
 8           specifying when investigative and audit reports of an  
 9           inspector general become final; providing for future  
 10          review and repeal of the exemption; providing a statement  
 11          of public necessity; providing an effective date.

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

14  
 15           Section 1. Subsection (2) of section 119.0713, Florida  
 16   Statutes, is amended to read:

17           119.0713 Local government agency exemptions from  
 18   inspection or copying of public records.—

19           (2) (a) The audit report of an internal auditor and the  
 20   investigative and audit reports of an inspector general prepared  
 21   for or on behalf of a unit of local government become ~~becomes~~ a  
 22   public record when the audit or investigation becomes final. As  
 23   used in this subsection, the term "unit of local government"  
 24   means a county, municipality, special district, local agency,  
 25   authority, consolidated city-county government, or any other  
 26   local governmental body or public body corporate or politic  
 27   authorized or created by general or special law. An audit or  
 28   investigation becomes final when the audit or investigative

29 | report is presented to the unit of local government. Audit  
 30 | workpapers and notes related to such audit report and  
 31 | information received, produced, or derived as the result of an  
 32 | investigation conducted by an inspector general are confidential  
 33 | and exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 34 | Constitution until the audit or investigation is completed and  
 35 | the audit or investigative report becomes final, or when the  
 36 | audit or investigation is no longer active.

37 | (b) Paragraph (a) is subject to the Open Government Sunset  
 38 | Review Act in accordance with s. 119.15 and shall stand repealed  
 39 | on October 2, 2016, unless reviewed and saved from repeal  
 40 | through reenactment by the Legislature.

41 | Section 2. The Legislature finds that it is a public  
 42 | necessity that all investigative and audit reports, including  
 43 | audit workpapers and notes related to such audit, and  
 44 | information received, produced, or derived as the result of an  
 45 | investigation conducted by an inspector general, prepared for or  
 46 | on behalf of a unit of local government in a county or  
 47 | municipality that has established a local investigatory process  
 48 | to enforce more stringent standards of conduct and disclosure  
 49 | requirements as provided in s. 112.326, Florida Statutes, be  
 50 | made exempt from public record requirements until the audit or  
 51 | investigation is completed and the audit or investigative report  
 52 | becomes final, or when the audit or investigation is no longer  
 53 | active. This exemption is necessary because the release of such  
 54 | information could potentially be defamatory to an individual  
 55 | under investigation, cause unwarranted damage to the good name  
 56 | or reputation of the individual, or significantly impair the

HB 667

2011

57 | investigation. The exemption creates a secure environment in  
58 | which an inspector general may conduct an investigation.

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

Amendment No. #1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations  
2 Subcommittee  
3 Representative Clemens offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Section 119.0713, Florida Statutes, is amended to read:

119.0713 Local government agency exemptions from inspection or copying of public records.—

(1) All complaints and other records in the custody of any unit of local government which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, marital status, sale or rental of housing, the provision of brokerage services, or the financing of housing are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the

## COMMITTEE/SUBCOMMITTEE AMENDMENT

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20 official record of any hearing or court proceeding. This  
21 provision does ~~shall~~ not affect any function or activity of the  
22 Florida Commission on Human Relations. Any state or federal  
23 agency that is authorized to ~~have access to~~ such complaints or  
24 records by any provision of law shall be granted such access in  
25 the furtherance of such agency's statutory duties. This  
26 subsection does ~~shall~~ not ~~be construed to~~ modify or repeal any  
27 special or local act.

28 (2) (a) The audit report of an internal auditor and the  
29 investigative report of the inspector general prepared for or on  
30 behalf of a unit of local government becomes a public record  
31 when the audit or investigation becomes final. As used in this  
32 subsection, the term "unit of local government" means a county,  
33 municipality, special district, local agency, authority,  
34 consolidated city-county government, or any other local  
35 governmental body or public body corporate or politic authorized  
36 or created by general or special law. An audit or investigation  
37 becomes final when the audit report or investigative report is  
38 presented to the unit of local government. Audit Workpapers and  
39 notes related to such audit and information received, produced,  
40 or derived from an investigation ~~report~~ are confidential and  
41 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
42 Constitution until the audit or investigation is complete  
43 ~~completed~~ and the audit report becomes final or when the  
44 investigation is no longer active. An investigation is active if  
45 it is continuing with a reasonable, good faith anticipation of  
46 resolution and with reasonable dispatch.

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47 (b) Paragraph (a) is subject to the Open Government Sunset  
48 Review Act in accordance with s. 119.15, and shall stand  
49 repealed on October 2, 2016, unless reviewed and saved from  
50 repeal through reenactment by the Legislature.

51 (3) Any data, record, or document used directly or solely  
52 by a municipally owned utility to prepare and submit a bid  
53 relative to the sale, distribution, or use of any service,  
54 commodity, or tangible personal property to any customer or  
55 prospective customer is exempt from s. 119.07(1) and s. 24(a),  
56 Art. I of the State Constitution. This exemption commences when  
57 a municipal utility identifies in writing a specific bid to  
58 which it intends to respond. This exemption no longer applies  
59 after ~~when~~ the contract for sale, distribution, or use of the  
60 service, commodity, or tangible personal property is executed, a  
61 decision is made not to execute such contract, or the project is  
62 no longer under active consideration. The exemption in this  
63 subsection includes the bid documents actually furnished in  
64 response to the request for bids. However, the exemption for the  
65 bid documents submitted no longer applies after the bids are  
66 opened by the customer or prospective customer.

67 Section 2. The Legislature finds that a public necessity  
68 exists to exempt from public-records requirements audit reports  
69 and investigative reports and related workpapers and notes and  
70 information received, produced, or derived from an audit or  
71 investigation by an auditor or inspector general of a local  
72 government until the audit or investigation is completed and the  
73 audit report becomes final or the investigation is no longer  
74 active. The exemption is necessary because the release of such

Amendment No.

75 information could potentially be defamatory to an individual or  
76 entity under audit or investigation, causing unwarranted damage  
77 to the good name or reputation of an individual or company, or  
78 could significantly impair an administrative or criminal  
79 investigation.

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

81

82

83

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

84

Remove the entire title and insert:

85

A bill to be entitled

86

An act relating to public records; amending s. 119.0713,

87

F.S.; expanding an exemption from public-records

88

requirements to include certain records relating to

89

investigations in the custody of an inspector general of a

90

local government; providing for future repeal and

91

legislative review of such revisions to the exemption

92

under the Open Government Sunset Review Act; providing a

93

statement of public necessity; providing an effective

94

date.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 677 Pub. Rec./Office of Financial Regulation  
**SPONSOR(S):** Pilon  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1328

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Williamson	<i>haw</i> Williamson <i>haw</i>
2) Insurance & Banking Subcommittee			
3) State Affairs Committee			

**SUMMARY ANALYSIS**

Current law provides public record exemptions for the Office of Financial Regulation (OFR or office) for certain information obtained or created by OFR pursuant to its involvement in the charter, examination, or investigation of financial institutions. The exemptions vary among OFR's regulatory programs. Currently, the office does not have a public record exemption that would allow it to receive information from another state or federal government that is confidential or exempt pursuant to the laws of that state or pursuant to federal law.

The bill creates a public record exemption for information provided to OFR by a state or federal regulatory, administrative, or criminal justice agency on a confidential or similarly restricted basis. It also provides that information that is developed as part of a joint or multiagency investigation or examination is confidential and exempt from public records requirements.

The bill authorizes OFR to obtain and use information in accordance with the conditions imposed by the agency providing the information, or in accordance with the requirements imposed as a condition of participating in a joint or multiagency examination or investigation.

The bill provides for retroactive application of the exemption. It provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Public Records Law

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

##### Office of Financial Regulation

The Office of Financial Regulation (OFR or office) has regulatory oversight of banks, credit unions, trust companies, securities brokers, investment advisers, mortgage loan originators, money services businesses, retail installment sellers, consumer finance companies, debt collectors, and other financial service providers. The office has licensing authority and the authority to conduct examinations and investigations.

Other states and federal agencies also have regulatory oversight of many of these entities and individuals. In addition, many of the regulated entities operate in multiple states, thus, making inter-state cooperation essential to achieving comprehensive, efficient, and effective regulatory oversight.<sup>3</sup>

##### Current Public Record Exemptions

Current law provides public record exemptions for certain information obtained or created by OFR pursuant to its involvement in the charter, examination, or investigation of financial institutions.<sup>4</sup> The exemptions vary among OFR's regulatory programs.

Currently, the office does not have a public record exemption that would allow it to receive information from another state or federal government that is confidential or exempt pursuant to the laws of that state or pursuant to federal law. As such, OFR is limited in its capacity to participate in out-of-state or federal investigations due to its limited public record exemptions.

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

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

<sup>3</sup> Office of Financial Regulation Bill Analysis of HB 677, at 1.

<sup>4</sup> See ss. 560.129, 494.00125, 517.2015, 520.9965, and 655.057, F.S.

## Effect of Bill

The bill creates a public record exemption for information provided to OFR by a state or federal regulatory, administrative, or criminal justice agency on a confidential or similarly restricted basis. It also provides that information that is developed as part of a joint or multiagency investigation or examination is confidential and exempt<sup>5</sup> from public records requirements.

The bill authorizes OFR to obtain and use information in accordance with the conditions imposed by the agency providing the information, or in accordance with the requirements imposed as a condition of participating in a joint or multiagency examination or investigation.

The bill provides for retroactive application of the public record exemption.<sup>6</sup> It provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.<sup>7</sup>

### B. SECTION DIRECTORY:

Section 1 amends s. 119.0712, F.S., to create a public record exemption for the office.

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.

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

<sup>6</sup> The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

<sup>7</sup> 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 creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

1                   A bill to be entitled  
 2           An act relating to public records; amending s. 119.0712,  
 3           F.S.; providing an exemption from public records  
 4           requirements for information held by a state or federal  
 5           regulatory, administrative, or criminal justice agency  
 6           that is made available to the Office of Financial  
 7           Regulation only on a confidential or similarly restricted  
 8           basis or that is developed as part of a joint or  
 9           multiagency investigation or examination; specifying  
 10          conditions under which the Office of Financial Regulation  
 11          may obtain and use such information; providing for  
 12          retroactive effect of the exemption; providing for future  
 13          review and repeal of the exemption; providing a statement  
 14          of public necessity; providing an effective date.

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

17  
 18           Section 1. Subsection (3) is added to section 119.0712,  
 19           Florida Statutes, to read:

20           119.0712 Executive branch agency-specific exemptions from  
 21           inspection or copying of public records.—

22           (3) OFFICE OF FINANCIAL REGULATION.—

23           (a)1. Information held by a state or federal regulatory,  
 24           administrative, or criminal justice agency that is made  
 25           available to the Office of Financial Regulation only on a  
 26           confidential or similarly restricted basis or that is developed  
 27           as part of a joint or multiagency investigation or examination

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

30 2. The Office of Financial Regulation may obtain and use  
 31 the information in accordance with the conditions imposed by the  
 32 agency providing the information or in accordance with the  
 33 requirements imposed as a condition of participating in a joint  
 34 or multiagency examination or investigation.

35 3. This exemption applies to information held by the  
 36 office before, on, or after the effective date of this  
 37 exemption.

38 (b) This subsection is subject to the Open Government  
 39 Sunset Review Act in accordance with s. 119.15 and shall stand  
 40 repealed on October 2, 2016, unless reviewed and saved from  
 41 repeal through reenactment by the Legislature.

42 Section 2. It is the finding of the Legislature that it is  
 43 a public necessity that information held by any state or federal  
 44 regulatory, administrative, or criminal justice agency that is  
 45 made available to the Office of Financial Regulation only on a  
 46 confidential or similarly restricted basis or is developed as  
 47 part of a joint or multiagency investigation or examination be  
 48 held confidential and exempt from public records requirements.  
 49 This exemption is necessary to ensure the effective and  
 50 efficient administration of the regulatory programs administered  
 51 by the Office of Financial Regulation, which programs would be  
 52 significantly impaired by the absence of the exemption. The  
 53 exemption is necessary to facilitate the Office of Financial  
 54 Regulation's access to information that could assist it in  
 55 pursuing violations of the laws and regulations under its

56 jurisdiction. Without this exemption, the Office of Financial  
 57 Regulation's ability to access information held by the Financial  
 58 Crimes Enforcement Network and other governmental agencies could  
 59 be compromised. The exemption is necessary to enable the Office  
 60 of Financial Regulation to participate in joint or multiagency  
 61 investigations and examinations. Without the exemption, the  
 62 office would be unable to participate in these activities, which  
 63 would impair the office's ability to leverage its limited  
 64 resources. Because the exemption stipulates that the use of  
 65 information obtained by the office will be in accordance with  
 66 the conditions imposed by the agency providing the information  
 67 or in accordance with the requirements imposed as a condition of  
 68 participating in a joint or multiagency examination or  
 69 investigation, an agency providing information to the office or  
 70 participating in a joint or multiagency investigation can do so  
 71 with the knowledge that such information, examination, or  
 72 investigation will not be compromised. The ability to share  
 73 information and coordinate examinations and investigations with  
 74 other governmental agencies also benefits the regulated persons  
 75 and entities. Without information sharing and coordination,  
 76 governmental agencies may be required to conduct duplicative  
 77 independent investigations or examinations to meet their  
 78 regulatory responsibilities. With this exemption, that burden  
 79 can be reduced or eliminated through joint, concurrent, or  
 80 alternating examinations, or with offsite reviews of the other  
 81 governmental agency's investigation or examination results. For  
 82 these reasons, the Legislature finds that it is a public



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83 necessity that such information be held confidential and exempt  
84 from public records requirements.

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

Amendment No. ~~#1~~ 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations  
2 Subcommittee

3 Representative(s) Pilon offered the following:

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (3) is added to section 119.0712,  
8 Florida Statutes, to read:

9 119.0712 Executive branch agency-specific exemptions from  
10 inspection or copying of public records.-

11 (3) OFFICE OF FINANCIAL REGULATION.-

12 (a) The following information held by the Office of  
13 Financial Regulation before, on, or after July 1, 2011, is  
14 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
15 of the State Constitution:

16 1. Any information received from another state or federal  
17 regulatory, administrative, or criminal justice agency that is  
18 otherwise confidential or exempt pursuant to the laws of that  
19 state or pursuant to federal law.

Amendment No.

20 2. Any information that is received or developed by the  
21 office as part of a joint or multi-agency examination or  
22 investigation with another state or federal regulatory,  
23 administrative, or criminal justice agency. The office may  
24 obtain and use the information in accordance with the conditions  
25 imposed by the joint or multi-agency agreement. This exemption  
26 does not apply to information obtained or developed by the  
27 office that would otherwise be available for public inspection  
28 if the Office had conducted an independent examination or  
29 investigation under Florida law.

30 (b) This subsection is subject to the Open Government  
31 Sunset Review Act in accordance with s. 119.15 and shall stand  
32 repealed on October 2, 2016, unless reviewed and saved from  
33 repeal through reenactment by the Legislature.

34 Section 2. (1) The Legislature finds that it is a public  
35 necessity that information held by the Office of Financial  
36 Regulation before, on, or after July 1, 2011, and that is  
37 received from another state or federal regulatory,  
38 administrative, or criminal justice agency that is confidential  
39 or exempt pursuant to the laws of that state or pursuant to  
40 federal law, be made confidential and exempt from public records  
41 requirements. Without the exemption, the office will be unable  
42 to obtain information that could assist it in pursuing  
43 violations of law under its jurisdiction. Without this  
44 exemption, the effective and efficient administration of the  
45 regulatory programs administered by the office of Financial  
46 Regulation would be significantly impaired.

Amendment No.

47       (2) The Legislature finds that it is a public necessity  
48 that information held by the Office of Financial Regulation  
49 that is received or developed by the office as part of a joint  
50 or multi-agency examination or investigation with another state  
51 or federal regulatory, administrative, or criminal justice  
52 agency, be made confidential and exempt from public records  
53 requirements. The exemption is necessary to enable the office to  
54 participate in joint or multi-agency investigations and  
55 examinations. Without the exemption, the office will be unable  
56 to participate in these activities, which impairs its ability to  
57 leverage its limited resources. Without the sharing and  
58 coordination of information, governmental agencies may be  
59 required to conduct duplicative independent investigations or  
60 examinations in order to meet their regulatory responsibilities.  
61 With the exemption, that burden can be reduced or eliminated  
62 through joint or alternating investigations or examinations, or  
63 by off-site reviews of other governmental agency investigations  
64 or examinations.

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

66  
67  
68       -----  
69                   **T I T L E   A M E N D M E N T**

70       Remove the entire title and insert:

71                   A bill to be entitled

72       An act relating to public records; amending s. 119.0712,  
73       F.S.; providing an exemption from public records  
74       requirements for information held by the Office of

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 677 (2011)

Amendment No.

75 Financial Regulation, which is received from another state  
76 or federal regulatory, administrative, or criminal justice  
77 agency and that is otherwise confidential or exempt  
78 pursuant to the laws of that state or pursuant to federal  
79 law; providing an exemption from public records  
80 requirements for information held by the office that is  
81 received or developed by the office as part of a joint or  
82 multi-agency examination or investigation with another  
83 state or federal regulatory, administrative, or criminal  
84 justice agency; specifying conditions under which the  
85 Office of Financial Regulation may obtain and use such  
86 information; providing for retroactive application;  
87 providing for future review and repeal of the exemption;  
88 providing a statement of public necessity; providing an  
89 effective date.

90



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 913 Public Records/Records Held by Public Airports

**SPONSOR(S):** Horner and others

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 994

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Williamson	<i>Law</i> Williamson <i>Raw</i>
2) Transportation & Highway Safety Subcommittee			
3) State Affairs Committee			

**SUMMARY ANALYSIS**

Current law provides several public record exemptions for proprietary confidential business information. However, it does not provide a public record exemption for proprietary confidential business information held by a public airport.

The bill creates a public record exemption for proprietary confidential business information submitted to or held by a public airport. The exemption expires when the confidential and exempt information is no longer considered to be proprietary confidential business information by the proprietor.

The bill also creates a public record exemption for a proposal or counterproposal exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport land or airport facilities. The public record exemption expires 10 days after the proposal or counterproposal is approved by the governing body of a public airport. If a proposal or counterproposal is not submitted to the governing body for approval, then the public record exemption for the proposal or counterproposal expires 90 days after the cessation of negotiations between the public airport and the nongovernmental entity.

The bill provides for repeal of the exemptions on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Finally, the bill provides definitions for the terms airport facilities, governing body, proprietor, proprietary confidential business information, and public airport.

**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 creates new public record exemptions; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### Public Records Law

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

###### Proprietary Confidential Business Information

Current law provides several public record exemptions for proprietary confidential business information.<sup>3</sup> However, it does not provide a public record exemption for proprietary confidential business information held by a public airport.

##### **Effect of Bill**

The bill creates a public record exemption for proprietary confidential business information submitted to or held by a public airport. The exemption expires when the confidential and exempt<sup>4</sup> information is no longer considered to be proprietary confidential business information by the proprietor. The bill defines proprietary confidential business information to mean information that has been designated as confidential by the proprietor and includes:

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

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

<sup>3</sup> Public record exemptions for proprietary confidential business information are provided as it relates to the following: electric utility interlocal agreements (s. 163.01, F.S.); communications services tax (s. 202.195, F.S.); alternative investments for state funds (s. 215.44, F.S.); economic development agencies (s. 288.075, F.S.); Institute for Commercialization of Public Research and the Opportunity Fund (s. 288.9626, F.S.); telephone companies (s. 364.183, F.S.); emergency communications number E911 system (s. 365.174, F.S.); public utilities (s. 366.093, F.S.); natural gas transmission companies (s. 368.108, F.S.); Sunshine State One-Call of Florida, Inc. (s. 556.113, F.S.); tobacco companies (s. 569.215, F.S.); prison work program corporation records (s. 946.517, F.S.); and H. Lee Moffitt Cancer Center and Research Institute (s. 1004.43, F.S.).

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



- Business plans;
- Internal auditing controls and reports of internal auditors;
- Reports of external auditors for privately held companies;
- Trade secrets as defined in the Uniform Trade Secrets Act;<sup>5</sup>
- Client and customer lists;
- Potentially patentable material;
- Business transactions; or
- Financial information of the proprietor or projections of financial results for the proprietor or the airport facilities project for which the information is provided.

It is unclear whether the inclusion of business transactions would include those transactions between the proprietor and the public airport. In addition, the public necessity for protecting financial information associated with the airport facilities project is unclear. It is unknown whether this includes projects paid for with tax payer money.

The bill also creates a public record exemption for a proposal or counterproposal exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport land or airport facilities. The public record exemption expires 10 days after the proposal or counterproposal is approved by the governing body of a public airport. It is unclear why an approved proposal or counterproposal would need to retain its confidential and exempt status for up to 10 days after receiving approval.

The bill provides that if a proposal or counterproposal is not submitted to the governing body for approval, then the public record exemption for the proposal or counterproposal expires 90 days after the cessation of negotiations between the public airport and the nongovernmental entity.

The bill provides for repeal of the exemptions on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution;<sup>6</sup> however, the public necessity statement only provides the justification for creating the public record exemption for proprietary confidential business information. It does not provide a public necessity statement for the public record exemption for proposals or counterproposals exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport land or airport facilities.

Finally, the bill provides definitions for the terms airport facilities, governing body, proprietor, and public airport.

## B. SECTION DIRECTORY:

Section 1 creates s. 332.16, F.S., to create public record exemptions for public airports.

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:

<sup>5</sup> Section 688.002(4), F.S., defines "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that: derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

<sup>6</sup> Section 24(c), Art. I of the State Constitution.

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:

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 creates new public record exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new public record exemptions; thus, it includes a public necessity statement. However, the public necessity statement is deficient in that it only provides justification for the public record exemption for proprietary confidential business information. The public necessity statement should be amended to include the justification for protecting proposals or counterproposals exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport land or airport facilities.

Overly Broad

Article I, s. 24(c) of the State Constitution, requires that an exemption be drafted as narrowly as possible. The exemption, as drafted, could raise concerns regarding its breadth when compared with another similar exemption.

Current law provides a public record exemption for a proposal or counterproposal exchanged between a deepwater port and a nongovernmental entity. However, that exemption expires 30 days before any such proposal or counterproposal is considered for approval by the governing body of the deepwater port.<sup>7</sup>

The exemption provided by this bill requires that the confidentiality be maintained for a period of 10 days after approval by the governing body of the public airport. The need to maintain such confidentiality after a proposal or counterproposal is approved by the governing body at a public meeting is unclear. As such, the exemption could be construed as overly broad.

**B. RULE-MAKING AUTHORITY:**

None.

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

Drafting Issues

The bill provides that certain proposals and counterproposals are confidential and exempt from public records requirements; however, it later refers to the same proposals and counterproposals as exempt only. The bill should be amended to clarify that the proposals and counterproposals are confidential and exempt from public records requirements.

In addition, the bill defines "airport facilities" to mean airports, buildings, structures, terminal buildings, parking garages and lots, hangars, *land*, warehouses, shops, hotels, other aviation facilities of any kind or nature, or any other facility of any kind or nature related to or connected with a public airport and other aviation facility that a public airport is authorized by law to construct, acquire, own, lease, or operate, together with all fixtures, equipment, and property, real or personal, tangible or intangible, necessary, appurtenant, or incidental thereto. The bill provides that the public record exemption for a proposal or counterproposal applies to the sale, use, development, or lease of airport land or airport facilities. Reference to airport land appears redundant as it is included in the definition of airport facilities.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

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<sup>7</sup> Section 315.18, F.S.

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1 A bill to be entitled  
 2 An act relating to public records; creating s. 332.16,  
 3 F.S.; providing definitions; providing an exemption from  
 4 public-records requirements for proprietary confidential  
 5 business information submitted to or held by a public  
 6 airport and for any proposal or counterproposal exchanged  
 7 between the governing body of a public airport and a  
 8 nongovernmental entity relating to the sale, use,  
 9 development, or lease of airport land or airport  
 10 facilities; providing for exceptions to the exemptions;  
 11 providing for future legislative review and repeal of the  
 12 exemptions under the Open Government Sunset Review Act;  
 13 providing a finding of public necessity; providing an  
 14 effective date.

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

17  
 18 Section 1. Section 332.16, Florida Statutes, is created to  
 19 read:

20 332.16 Exemption from public disclosure.—

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

22 (a) "Airport facilities" means airports, buildings,  
 23 structures, terminal buildings, parking garages and lots,  
 24 hangars, land, warehouses, shops, hotels, other aviation  
 25 facilities of any kind or nature, or any other facility of any  
 26 kind or nature related to or connected with a public airport and  
 27 other aviation facility that a public airport is authorized by  
 28 law to construct, acquire, own, lease, or operate, together with

29 all fixtures, equipment, and property, real or personal,  
 30 tangible or intangible, necessary, appurtenant, or incidental  
 31 thereto.

32 (b) "Governing body" means the board or body in which the  
 33 general legislative powers of a public airport is vested.

34 (c) "Proprietor" means a self-employed individual,  
 35 proprietorship, corporation, partnership, limited partnership,  
 36 firm, enterprise, franchise, association, trust, or business  
 37 entity, whether fictitiously named or not, authorized to do or  
 38 doing business in this state, including its respective  
 39 authorized officer, employee, agent, or successor in interest,  
 40 which controls or owns the proprietary confidential business  
 41 information provided to a public airport.

42 (d) "Proprietary confidential business information" means  
 43 information that has been designated as confidential by the  
 44 proprietor and includes:

- 45 1. Business plans;
- 46 2. Internal auditing controls and reports of internal  
 47 auditors;
- 48 3. Reports of external auditors for privately held  
 49 companies;
- 50 4. Trade secrets as defined in s. 688.002;
- 51 5. Client and customer lists;
- 52 6. Potentially patentable material;
- 53 7. Business transactions; or
- 54 8. Financial information of the proprietor or projections  
 55 of financial results for the proprietor or the airport  
 56 facilities project for which the information is provided.

57 (e) "Public airport" has the same meaning as provided in  
 58 s. 330.27 and includes areas defined in s. 332.01(3).

59 (2) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.—  
 60 Proprietary confidential business information submitted to or  
 61 held by a public airport is confidential and exempt from s.  
 62 119.07(1) and s. 24(a), Art. I of the State Constitution, until  
 63 such information is no longer considered to be proprietary  
 64 confidential business information by the proprietor.

65 (3) SALE, USE, DEVELOPMENT, OR LEASE OF AIRPORT LAND OR  
 66 AIRPORT FACILITIES.—

67 (a) A proposal or counterproposal exchanged between a  
 68 public airport and a nongovernmental entity relating to the  
 69 sale, use, development, or lease of airport land or airport  
 70 facilities is confidential and exempt from s. 119.07(1) and s.  
 71 24(a), Art. I of the State Constitution.

72 (b) Ten days after any such proposal or counterproposal is  
 73 approved by the governing body of a public airport, the proposal  
 74 or counterproposal shall cease to be exempt. If no proposal or  
 75 counterproposal is submitted to the governing body of the public  
 76 airport for approval, such proposal or counterproposal shall  
 77 cease to be exempt 90 days after the cessation of negotiations  
 78 between the public airport and the nongovernmental entity.

79 (4) LEGISLATIVE REVIEW.—This section is subject to the  
 80 Open Government Sunset Review Act in accordance with s. 119.15,  
 81 and shall stand repealed on October 2, 2016, unless reviewed and  
 82 saved from repeal through reenactment by the Legislature.

83 Section 2. The Legislature finds that it is a public  
 84 necessity that proprietary confidential business information,

85 including business plans, internal auditing controls and reports  
 86 of internal auditors, reports of external auditors for privately  
 87 held companies, trade secrets, client and customer lists,  
 88 potentially patentable material, business transactions, and  
 89 financial information of the proprietor or projections of  
 90 financial results for the proprietor or the airport facilities  
 91 project for which the information is provided, be made  
 92 confidential and exempt from s. 119.07(1), Florida Statutes, and  
 93 s. 24(a), Article I of the State Constitution. Proprietary  
 94 confidential business information derives independent economic  
 95 value, actual or potential, from not being generally known to,  
 96 and not being readily ascertainable by, other persons who could  
 97 obtain economic value from its disclosure or use. An airport, in  
 98 performing its lawful duties and responsibilities, may need to  
 99 obtain from a proprietor confidential business information.  
 100 Without an exemption from public-records requirements,  
 101 proprietary confidential business information that is received  
 102 or held by an airport becomes a public record and must be  
 103 divulged upon request. Divulging the proprietary confidential  
 104 business information would destroy the value of that property to  
 105 the proprietor, causing a financial loss not only to the  
 106 proprietor, but also to the airport and to the state and local  
 107 governments due to a loss of tax revenue and employment  
 108 opportunities for residents. Release of that information would  
 109 give business competitors an unfair advantage and would injure  
 110 the affected entity in the marketplace. Thus, the Legislature  
 111 finds that it is a public necessity that proprietary  
 112 confidential business information that is received or held by a

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113 | public airport be made confidential and exempt from public-  
114 | records requirements.

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



Amendment No. #1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations  
2 Subcommittee

3 Representative(s) Horner offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 332.16, Florida Statutes, is created to  
8 read:

9 332.16 Public record exemptions.-

10 (1) DEFINITIONS.-As used in this section, the term:

11 (a) "Airport facilities" means airports, buildings,  
12 structures, terminal buildings, parking garages and lots,  
13 hangars, land, warehouses, shops, hotels, other aviation  
14 facilities of any kind or nature, or any other facility of any  
15 kind or nature related to or connected with a public airport and  
16 other aviation facility that a public airport is authorized by  
17 law to construct, acquire, own, lease, or operate, together with  
18 all fixtures, equipment, and property, real or personal,

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19 tangible or intangible, necessary, appurtenant, or incidental  
20 thereto.

21 (b) "Governing body" means the board or body in which the  
22 general legislative powers of a public airport is vested.

23 (c) "Proprietor" means a self-employed individual,  
24 proprietorship, corporation, partnership, limited partnership,  
25 firm, enterprise, franchise, association, trust, or business  
26 entity, whether fictitiously named or not, authorized to do or  
27 doing business in this state, including its respective  
28 authorized officer, employee, agent, or successor in interest,  
29 which controls or owns the proprietary confidential business  
30 information provided to a public airport.

31 (d) "Proprietary confidential business information" means  
32 information that is owned or controlled by the proprietor  
33 requesting confidentiality under this section; that is intended  
34 to be and is treated by the proprietor as private in that the  
35 disclosure of the information would cause harm to the business  
36 operations of the proprietor; that has not been disclosed unless  
37 disclosed pursuant to a statutory provision, an order of a court  
38 or administrative body, or a private agreement providing that  
39 the information may be released to the public; and that is  
40 information concerning:

41 1. Business plans.

42 2. Internal auditing controls and reports of internal  
43 auditors.

44 3. Reports of external auditors for privately held  
45 companies.

46 4. Client and customer lists.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 913 (2011)

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47 5. Potentially patentable material.

48 6. Business transactions; however business transactions do  
49 not include those transactions between a proprietor and a public  
50 airport.

51 7. Financial information of the proprietor.

52 (e) "Public airport" has the same meaning as provided in  
53 s. 330.27 and includes areas defined in s. 332.01(3).

54 (f) "Trade secrets" has the same meaning as in s. 688.002.

55 (2) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.—

56 Proprietary confidential business information held by a public  
57 airport is confidential and exempt from s. 119.07(1) and s.  
58 24(a), Art. I of the State Constitution, until such information  
59 is otherwise publicly available or is no longer treated by the  
60 proprietor as proprietary confidential business information.

61 (3) TRADE SECRETS.—Trade secrets held by a public airport  
62 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
63 I of the State Constitution.

64 (4) SALE, USE, DEVELOPMENT, OR LEASE OF AIRPORT  
65 FACILITIES.—Any proposal or counterproposal exchanged between a  
66 public airport and a nongovernmental entity relating to the  
67 sale, use, development, or lease of airport facilities is exempt  
68 from s. 119.07(1) and s. 24(a), Art. I of the State  
69 Constitution. However, any such proposal or counterproposal  
70 shall cease to be exempt upon approval by the governing body of  
71 a public airport. If no proposal or counterproposal is submitted  
72 to the governing body for approval, such proposal or  
73 counterproposal shall cease to be exempt 90 days after the

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74 cessation of negotiations between the public airport and the  
75 nongovernmental entity.

76 (5) LEGISLATIVE REVIEW.—This section is subject to the  
77 Open Government Sunset Review Act in accordance with s. 119.15,  
78 and shall stand repealed on October 2, 2016, unless reviewed and  
79 saved from repeal through reenactment by the Legislature.

80 Section 2. (1) The Legislature finds that it is a public  
81 necessity that trade secrets and proprietary confidential  
82 business information, including business plans, internal  
83 auditing controls and reports of internal auditors, reports of  
84 external auditors for privately held companies, client and  
85 customer lists, potentially patentable material, certain  
86 business transactions, and certain financial information of the  
87 proprietor be made confidential and exempt from s. 119.07(1),  
88 Florida Statutes, and s. 24(a), Article I of the State  
89 Constitution. Trade secrets and proprietary confidential  
90 business information derive independent economic value, actual  
91 or potential, from not being generally known to, and not being  
92 readily ascertainable by, other persons who could obtain  
93 economic value from its disclosure or use. An airport, in  
94 performing its lawful duties and responsibilities, may need to  
95 obtain from a proprietor trade secrets or proprietary  
96 confidential business information. Without an exemption from  
97 public records requirements, trade secrets and proprietary  
98 confidential business information held by an airport become a  
99 public record and must be divulged upon request. Divulging the  
100 trade secret or proprietary confidential business information  
101 would destroy the value of that property to the proprietor,

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102 causing a financial loss not only to the proprietor, but also to  
103 the airport and to the state and local governments due to a loss  
104 of tax revenue and employment opportunities for residents.  
105 Release of that information would give business competitors an  
106 unfair advantage and would injure the affected entity in the  
107 marketplace. Thus, the Legislature finds that it is a public  
108 necessity that trade secrets and proprietary confidential  
109 business information held by a public airport be made  
110 confidential and exempt from public records requirements.

111 (2) The Legislature also finds that it is a public  
112 necessity that any proposal or counterproposal exchanged between  
113 a nongovernmental entity and any public airport listed in s.  
114 330.27, Florida Statutes, and includes areas defined in s.  
115 332.01(3), Florida Statutes, relating to the sale, use, or lease  
116 of land or airport facilities, be made exempt from public  
117 records requirements until approved by the governing body of the  
118 airport. Proposals and counterproposals submitted to an airport  
119 contain sensitive and confidential business and financial  
120 information. Competing entities can gain access to such  
121 proposals, and, in some instances, the affected nongovernmental  
122 entity has abandoned its contractual efforts with the airport,  
123 to the airport's financial detriment. Also, the Legislature  
124 finds that it is a public necessity that confidential business  
125 and financial records submitted to an airport for purposes of  
126 the sale, use, or lease of land or of airport facilities be made  
127 exempt because such information is sensitive, the release of  
128 which would give competitors an unfair economic advantage.  
129 Finally, such exemption is necessary in order for Florida

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130 airports to more effectively and efficiently negotiate contracts  
131 for the sale, use, or lease of airport facilities.

132 Section 3. This act shall take effect July 1, 2011.  
133  
134

135 -----

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

137 Remove the entire title and insert:

138 A bill to be entitled  
139 An act relating to public records; creating s. 332.16,  
140 F.S.; providing definitions; providing an exemption from  
141 public records requirements for proprietary confidential  
142 business information and trade secrets held by a public  
143 airport and for any proposal or counterproposal exchanged  
144 between the governing body of a public airport and a  
145 nongovernmental entity relating to the sale, use,  
146 development, or lease of airport land or airport  
147 facilities; providing for expiration of the exemptions;  
148 providing for future legislative review and repeal of the  
149 exemptions under the Open Government Sunset Review Act;  
150 providing a finding of public necessity; providing an  
151 effective date.  
152

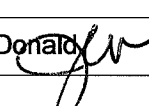



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4041 Department of Children and Family Services Employees

SPONSOR(S): Diaz and others

TIED BILLS: IDEN./SIM. BILLS: SB 1362

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	15 Y, 0 N	Batchelor	Schoolfield
2) Government Operations Subcommittee		McDonald 	Williamson 
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill deletes current language in s. 402.35, F.S. that prohibits a federal, state, county or municipal officer from serving as an employee of the Department of Children and Family Services.

The bill has no fiscal impact.

The bill provides an effective date of July 1, 2011.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

In 1969, s. 409.015(3)(a), F.S., established the State Board of Social Services, a nine-member board appointed by the Governor and confirmed by the Senate for four-year terms. The last sentence of the subparagraph prohibited a federal, state, county or municipal officer or employee from serving as a member of the board. The exact reason officers were not allowed to serve on the board is unknown.

Since 1969, several changes in statutes have occurred. The Department of Health and Rehabilitative Services (HRS) was created and many boards and councils were abolished or absorbed into the new department. In 1996, HRS was split into two agencies, the Department of Children and Family Services (DCF) and the Department of Health. Throughout these changes, the prohibition for a federal, state, county or municipal officer or employee to serve as a member of the state board was changed to a prohibition to serve as an employee of DCF.<sup>1</sup>

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

The bill eliminates the statutory provision preventing DCF from hiring employees that may be federal, state, county or municipal officers. Removal of the prohibition will allow persons who are currently employed at DCF to seek public office or serve as a local official without leaving DCF. The change will eliminate language from the statute that appears to be obsolete.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 402.35, F.S., removing language prohibiting a federal, state, county or municipal officer from working as an employee of DCF.

**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.

---

<sup>1</sup> Ch. 70-255, L.O.F., abolished the State Board of Social Services and provided for the creation of the Division of Children Services under the Department of HRS. The chapter law changed the prohibition on serving as a member of the board to serving as an employee of the Division of Children Services. It also was changed to address only officers. The language included in s. 409.135, F.S., was later transferred to s. 402.35, F.S., and amended to refer to the Department of Children and Family Services.

**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 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**

None.

HB 4041

2011

1                   A bill to be entitled  
 2           An act relating to Department of Children and Family  
 3           Services employees; amending s. 402.35, F.S.; removing a  
 4           provision prohibiting a federal, state, county, or  
 5           municipal officer from serving as an employee of the  
 6           department; providing an effective date.

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


9  
 10           Section 1.   Section 402.35, Florida Statutes, is amended to  
 11   read:

12           402.35   Employees.—All personnel of the Department of  
 13   Children and Family Services shall be governed by rules and  
 14   regulations adopted and promulgated by the Department of  
 15   Management Services relative thereto except the director and  
 16   persons paid on a fee basis. The Department of Children and  
 17   Family Services may participate with other state departments and  
 18   agencies in a joint merit system. ~~No federal, state, county, or~~  
 19   ~~municipal officer shall be eligible to serve as an employee of~~  
 20   ~~the Department of Children and Family Services.~~

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 4041 (2011)

Amendment No. 

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations  
2 Subcommittee  
3 Representative Diaz offered the following:

4  
5 **Amendment**

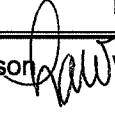

6 Remove line 21 and insert:

7 Section 2. This act shall take effect upon becoming a law.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 11-11 OGSR Audits or Investigations  
**SPONSOR(S):** Government Operations Subcommittee  
**TIED BILLS:** **IDEN./SIM. BILLS:** SPB 7074

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson 	Williamson 

**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 and public meeting exemption for records and meetings relating to an audit or investigation of a lobbying firm lobbying the executive branch or the Constitution Revision Commission. Records relating to an audit of the lobbying firm or relating to an investigation of violations of the lobbying compensation reporting laws are confidential and exempt from public records requirements. In addition, meetings of the Commission on Ethics (commission) that are held pursuant to such investigation or at which such audit is discussed are exempt from public meetings requirements.

The exemptions expire if the lobbying firm provides a written request for such investigation and associated records and meetings to be made public or, if the commission determines there is probable cause that an audit reflects a violation of the reporting laws.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2011, if this bill does not become law. It also reorganizes the exemptions and makes editorial changes.

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<sup>1</sup> 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.<sup>2</sup> 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<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Commission on Ethics

Article II, s. (8)(f) of the State Constitution provides for "an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission." As such, the Commission on Ethics (commission) was created to serve as guardian of the standards of conduct for officers and employees of the state, county, city, or other political subdivision of the state.<sup>4</sup>

The commission is composed of nine members; no more than five members may be from the same political party at any one time, and no member may hold any public employment or qualify as a lobbyist. A member of the commission may not lobby any state or local governmental entity.<sup>5</sup>

##### Lobbying before the Executive Branch or the Constitution Revision Commission

A person may not lobby an agency until he or she has registered as a lobbyist with the commission. Registration is due upon initially being retained to lobby and is renewable on a calendar year basis thereafter.<sup>6</sup> A lobbyist must promptly send a written statement to the commission canceling the registration for a principal upon termination of the lobbyist's representation.<sup>7</sup>

---

<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

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

<sup>4</sup> Section 112.320, F.S.

<sup>5</sup> Section 112.321(1), F.S.

<sup>6</sup> Section 112.3215(3), F.S.

<sup>7</sup> Section 112.3215(7), F.S.

Each lobbying firm must file a compensation report with the commission for each calendar quarter during which one or more of the firm's lobbyists were registered to represent a principal.<sup>8</sup> The reporting statements must be electronically filed no later than 45 days after the end of each reporting period.<sup>9</sup>

The commission must investigate:

- Every sworn complaint filed with it that alleges a person has failed to register, has failed to submit a compensation report, or has knowingly submitted false information in any required report or registration.<sup>10</sup>
- Any lobbying firm, agency, officer, or employee upon receipt of information from a sworn complaint or from a random audit of lobbying reports indicating a possible violation other than a late-filed report.<sup>11</sup>

#### Public Record and Public Meeting Exemptions under Review

In 2005, the Legislature created a public record exemption for records relating to an audit or investigation of a lobbying firm lobbying the executive branch or the Constitution Revision Commission.<sup>12</sup>

Records relating to an audit of the lobbying firm or relating to an investigation of violations of the lobbying compensation reporting laws are confidential and exempt<sup>13</sup> from public records requirements. In addition, commission meetings held pursuant to such investigation or at which such audit is discussed are exempt from public meetings requirements.

The exemptions expire if the lobbying firm provides a written request for such investigation and associated records and meetings to be made public or, if the commission determines there is probable cause that an audit reflects a violation of the reporting laws.<sup>14</sup>

Pursuant to the Open Government Sunset Review Act, the exemptions 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 and public meeting exemptions for records and meetings associated with such audits and investigations conducted by the commission. It also reorganizes the exemptions and makes editorial changes.

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

Section 1 amends s. 112.3215, F.S., to reenact the public record and public meeting exemptions for certain audits and investigations conducted by the Commission on Ethics.

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

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<sup>8</sup> Section 112.3215(5)(a)1., F.S.

<sup>9</sup> The reporting periods are as follows: January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Section 112.3215(5)(c), F.S.

<sup>10</sup> Section 112.3215(8)(a), F.S.

<sup>11</sup> Section 112.3215(8)(c), F.S.

<sup>12</sup> Chapter 2005-361, L.O.F.; codified as s. 112.3215(8)(d), F.S.

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

<sup>14</sup> Section 112.3215(8)(d), F.S.



## 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

Not applicable.

BILL

ORIGINAL

YEAR

1 A bill to be entitled  
 2 An act relating to a review under the Open Government  
 3 Sunset Review Act; amending s. 112.3215, F.S., which  
 4 provides an exemption from public records and public  
 5 meetings requirements for certain audits and  
 6 investigations conducted by the Commission on Ethics;  
 7 reorganizing the exemptions; making editorial changes;  
 8 removing the scheduled repeal of the exemptions; providing  
 9 an effective date.

10

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

12

13 Section 1. Paragraph (d) of subsection (8) of section  
 14 112.3215, Florida Statutes, is amended to read:

15 112.3215 Lobbying before the executive branch or the  
 16 Constitution Revision Commission; registration and reporting;  
 17 investigation by commission.—

18 (8)

19 (d)1. Records relating to an audit conducted pursuant to  
 20 this section or an investigation conducted pursuant to this  
 21 section or s. 112.32155 are confidential and exempt from s.  
 22 119.07(1) and s. 24(a), Art. I of the State Constitution, ~~and~~

23 2. Any portion of a meeting wherein ~~meetings held pursuant~~  
 24 ~~to~~ such an investigation or ~~at which such an~~ audit is discussed  
 25 is ~~are~~ exempt from s. 286.011 and s. 24(b), Art. I of the State  
 26 Constitution.

27 3. The exemptions no longer apply if ~~either until~~ the  
 28 lobbying firm requests in writing that such investigation and

BILL

ORIGINAL

YEAR

29 | associated records and meetings be made public or ~~until~~ the  
30 | commission determines there is probable cause that the audit  
31 | reflects a violation of the reporting laws. ~~This paragraph is~~  
32 | ~~subject to the Open Government Sunset Review Act in accordance~~  
33 | ~~with s. 119.15 and shall stand repealed on October 2, 2011,~~  
34 | ~~unless reviewed and saved from repeal through reenactment by the~~  
35 | ~~Legislature.~~



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



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 11-14 OGSR Concealed Weapons or Firearms  
**SPONSOR(S):** Government Operations Subcommittee  
**TIED BILLS:** IDEN./SIM. BILLS: SB 604

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson 	Williamson 

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**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 personal identifying information of an applicant for or recipient of a license to carry a concealed weapon or concealed firearm. Such information must be disclosed:

- With the express written consent of the applicant or licensee or his or her legally authorized representative.
- By court order upon a showing of good cause.
- Upon request by a law enforcement agency in connection with the performance of lawful duties, which includes access to any automated database containing such information maintained by the Department of Agriculture and Consumer Services.

The bill reenacts the public record exemption for personal identifying information of an applicant for or recipient of a license to carry a concealed weapon or concealed firearm, 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<sup>1</sup> 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.<sup>2</sup> 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<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Concealed Weapons and Concealed Firearms

Current law authorizes the Department of Agriculture and Consumer Services (department) to issue licenses to carry concealed weapons or concealed firearms<sup>4</sup> to qualified persons. The license is valid in Florida for seven years from the date of issuance. The license must include a color photograph of the licensee. The licensee must carry the license and valid identification at all times when in possession of the concealed weapon or firearm.<sup>5</sup>

An applicant for such license must submit to the department a completed application, a nonrefundable license fee, a full set of fingerprints, a photocopy of a certificate or an affidavit attesting to the applicant's completion of a firearms course, and a full frontal view color photograph<sup>6</sup> of the applicant.<sup>7</sup> The application must include:

- The name, address, place and date of birth, race, and occupation of the applicant.
- A statement that the applicant is in compliance with licensure requirements.
- A statement that the applicant has been furnished with a copy of chapter 790, F.S., relating to weapons and firearms.
- A warning that the application is executed under oath.

<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

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

<sup>4</sup> Section 790.06(1), F.S., defines "concealed weapons or concealed firearms" to mean a handgun, electronic weapon or device, tear gas gun, knife, or billie. It does not include a machine gun.

<sup>5</sup> Violation of s. 790.06(1), F.S., constitutes a noncriminal violation with a penalty of \$25. Section 790.06(1), F.S.

<sup>6</sup> The photograph must be taken within the preceding 30 days. The head, including hair, must measure 7/8 of an inch wide and 1 1/8 inches high. Section 790.06(5)(e), F.S.

<sup>7</sup> Section 790.06(5), F.S.

- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.<sup>8</sup>

From 2010 to 2011, the department received 74,980 new applications and 53,516 renewal applications. Of those, the department issued 74,092 new licenses and 53,104 renewal licenses. To date, there are 793,809 valid licenses for concealed weapons or concealed firearms.<sup>9</sup>

#### Public Record Exemption under Review

In late 2005, an Orlando television station published on its website application information regarding holders of a concealed weapon license. The television station along with members of the Florida Legislature received numerous complaints concerning the Internet publication of such information.<sup>10</sup>

As a result, in 2006, the Legislature created a public record exemption for personal identifying information of an applicant for or recipient of a license to carry a concealed weapon or concealed firearm.<sup>11</sup> Such information held by the Division of Licensing of the department before, on, or after July 1, 2006,<sup>12</sup> is confidential and exempt<sup>13</sup> from public records requirements. Such information must be disclosed:

- With the express written consent of the applicant or licensee or his or her legally authorized representative.
- By court order upon a showing of good cause.
- Upon request by a law enforcement agency in connection with the performance of lawful duties, which includes access to any automated database containing such information maintained by the department.<sup>14</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2011, unless reenacted by the Legislature.<sup>15</sup>

#### **Effect of Bill**

The bill removes the repeal date, thereby reenacting and saving from repeal the public record exemption for personal identifying information of an applicant for or recipient of a license to carry a concealed weapon or concealed firearm.

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

Section 1 amends s. 790.0601, F.S., to reenact the public record exemption for personal identifying information of an applicant for or recipient of a license to carry a concealed weapon or concealed firearm.

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

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<sup>8</sup> Section 790.06(4), F.S.

<sup>9</sup> *Concealed Weapon/Firearm Summary Report* at [http://licgweb.doacs.state.fl.us/stats/cw\\_monthly.html](http://licgweb.doacs.state.fl.us/stats/cw_monthly.html) (last viewed March 20, 2011).

<sup>10</sup> House of Representatives Staff Analysis, HB 687 CS (March 29, 2006), at 2.

<sup>11</sup> Chapter 2006-102, L.O.F.; codified as s. 790.0601, F.S.

<sup>12</sup> The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

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

<sup>14</sup> Section 790.0601(2), F.S.

<sup>15</sup> Section 790.0601(3), F.S.

## 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

Not applicable.



BILL

ORIGINAL

YEAR

1 A bill to be entitled  
2 An act relating to a review under the Open Government  
3 Sunset Review Act; amending s. 790.0601, F.S., which  
4 provides an exemption from public records requirements for  
5 personal identifying information of an applicant for or  
6 recipient of a license to carry a concealed weapon or  
7 firearm; removing the scheduled repeal of the exemption;  
8 providing an effective date.  
9

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

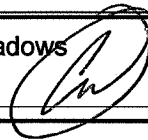
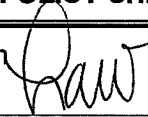
12 Section 1. Subsection (3) of section 790.0601, Florida  
13 Statutes, is repealed.

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



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 11-15 State Financial Matters  
**SPONSOR(S):** Government Operations Subcommittee  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Meadows 	Williamson 

**SUMMARY ANALYSIS**

The State Board of Administration (SBA or Board) is established by Article IV, Section 4(e) of the Florida Constitution, and is composed of the Governor, the Chief Financial Officer, and the Attorney General. The powers and duties of the Board include the management of 37 separate statutory investment portfolios, the largest one of which is the multi-employer Florida Retirement System. The SBA also manages a program for local government entities known as the Local Government Surplus Funds Trust Fund. This fund provides local government entities with a low-risk, low-cost opportunity to invest its funds.

The bill authorizes the SBA to invest the assets of government entities in the Local Government Surplus Funds Trust Fund upon the completion of enrollment materials supplied by the Board. A separate trust agreement is no longer needed to grant the Board the ability to invest the funds. The bill further provides that when there is a trust agreement the investments are only subject to the limitations or restrictions of the trust agreement.

In addition, the bill makes clarifying changes and corrects cross-references.

The bill has an effective date of July 1, 2011.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### State Board of Administration

The State Board of Administration (SBA or Board) is established by Article IV, Section 4(e) of the Florida Constitution, and is composed of the Governor as Chair, the Chief Financial Officer as Treasurer, and the Attorney General as Secretary. The Board members are commonly referred to as "Trustees." While the Florida Retirement System Pension Trust Fund represents about 80 percent of the assets under SBA management, the Board also manages 37 different funds, including the Florida Hurricane Catastrophe Fund, the Lawton Chiles Endowment Fund and the Local Government Surplus Funds Trust Fund.<sup>1</sup> The SBA must invest all the funds consistent with the cash requirements, trust agreements, and investment objectives of the fund.<sup>2</sup>

The SBA follows the Florida Statutes fiduciary standards of care while managing the Florida Retirement System (FRS) pension plan assets, subject to certain limitations. The SBA's ability to invest the FRS pension plan assets is subject to limitations imposed by a "legal list" of the types of investments and for how much of the total fund may be invested in each investment type.<sup>3</sup>

The Local Government Surplus Funds Trust Fund (Local Government Investment Pool or LGIP) was created by an act<sup>4</sup> of the Legislature, effective October 1, 1977. The SBA is charged with the powers and duties to administer and invest the eligible participant's<sup>5</sup> funds within the LGIP.<sup>6</sup> The LGIP is governed by Chapters 215 and 218, F.S., and Chapter 19-7, Florida Administrative Code.

The purpose of the LGIP is to help local governments maximize earnings on invested surplus funds and, with these earnings, reduce the need to impose additional taxes.<sup>7</sup> The primary objectives of the LGIP are "safety, liquidity, and competitive returns with minimization of risk."<sup>8</sup> This fund provides government entities with a low-risk, low-cost opportunity to invest its funds. To that end, the LGIP contains United States securities and money market instruments such as certificates of deposit,

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<sup>1</sup> State Board of Administration Investment Overview, January 12, 2011, at 3.

<sup>2</sup> Section 215.44(1), F.S.

<sup>3</sup> Section 215.47, F.S., provides the "legal list" of types of investments summarized as follows:

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

<sup>4</sup> Chapter 218, Part IV, F.S.

<sup>5</sup> *Eligible participants* include any county, municipality, school district, special district, clerk of the circuit court, sheriff, property appraiser, tax collector, supervisor of elections, state university, state college, community college, authority, board, public corporations, or any other political subdivision or direct support organization of the state. State Board of Administration Investment Overview, January 11, 2011, at 13.

<sup>6</sup> Section 215.47(9), F.S.

<sup>7</sup> *Local Government Surplus Funds Trust Fund*, Government Program Summaries, Office of Program Policy Analysis and Government Accountability, May 4, 2010.

<sup>8</sup> Section 218.405(2), F.S.

commercial paper, bankers' acceptances, repurchase agreements, and selected corporate short-term obligations.<sup>9</sup> The LGIP currently oversees the funds of 810 local governments and school districts.<sup>10</sup> The total current assets of the LGIP are \$7.02 billion, as of March 17, 2011.

The SBA is currently permitted to invest assets for other governmental entities if directed by law or through a trust agreement with the entity that outlines the investment agreement.<sup>11</sup>

### **Effect of Proposed Changes**

The bill authorizes the SBA to invest the assets of participating government entities in the Local Government Surplus Funds Trust Fund after the entity completes LGIP enrollment materials. A separate trust agreement is no longer needed by the SBA to manage and invest funds in the LGIP.

In addition, the bill provides that the investments that are made by trust agreement between the SBA and a government entity are not subject to the limitations contained in s. 215.44, F.S. The only restrictions or limitations that the investments are subject to are the restrictions and limitations contained in the trust agreement entered into between the government entity and the SBA.

The bill clarifies that officers and employees involved in the investment process must refrain from personal transactions with the individual employee at the broker-dealer firm involved in business conducted with the SBA. It also clarifies the conflict of interest provision applicable to the investment advisor and manager.

Finally, the bill corrects cross-references.

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

Section 1 amends s. 215.44, F.S., to revise provisions that authorize the SBA to invest specified funds pursuant to the enrollment requirements of a local government authority; to authorize the Board to invest specified funds in the Local Government Surplus Funds Trust Fund without a trust agreement upon completion of enrollment materials provided by the Board; to provide that investments made by the Board under a trust agreement are subject only to the restrictions and limitations contained in the trust agreement.

Section 2 amends s. 215.4755, F.S., to correct a cross-reference, and to clarify provisions with respect to an investment advisor's or manager's code of ethics.

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:**

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<sup>9</sup> *Local Government Surplus Funds Trust Fund*, Government Program Summaries, Office of Program Policy Analysis and Government Accountability, May 4, 2010.

<sup>10</sup> As of January 2011; State Board of Administration, Monthly Summary Report for January 2011, at 11.

<sup>11</sup> State Board of Administration SB 1182 (2011) Substantive Bill Analysis (March 2, 2011) at 1 (on file with the Government Operations Subcommittee).

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:

The bill does not provide any new grants of rule making authority and none is needed to implement the provisions therein.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.

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1                                   A bill to be entitled  
 2           An act relating to state financial matters; amending s.  
 3           215.44, F.S.; revising provisions which authorize the  
 4           State Board of Administration to invest specified funds  
 5           pursuant to the enrollment requirements of a local  
 6           government investment authority; authorizing the board to  
 7           invest specified funds in the Local Government Surplus  
 8           Funds Trust Fund without a trust agreement upon completion  
 9           of enrollment materials provided by the board; providing  
 10          that investments made by the board under a trust agreement  
 11          are subject only to the restrictions and limitations  
 12          contained in the trust agreement; amending s. 215.4755,  
 13          F.S.; correcting a cross-reference; clarifying provisions  
 14          with respect to an investment adviser's or manager's code  
 15          of ethics; providing an effective date.

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

18  
 19           Section 1. Subsections (1) and (3) of section 215.44,  
 20           Florida Statutes, are amended to read:

21           215.44 Board of Administration; powers and duties in  
 22           relation to investment of trust funds.—

23           (1) Except when otherwise specifically provided by the  
 24           State Constitution and subject to any limitations of the trust  
 25           agreement relating to a trust fund, the Board of Administration,  
 26           sometimes referred to in this chapter as "board" or "Trustees of  
 27           the State Board of Administration," composed of the Governor as  
 28           chair, the Chief Financial Officer, and the Attorney General,

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29 shall invest all the funds in the System Trust Fund, as defined  
 30 in s. 121.021(36), and all other funds specifically required by  
 31 law to be invested by the board pursuant to ss. 215.44-215.53 to  
 32 the fullest extent that is consistent with the cash  
 33 requirements, trust agreement, and investment objectives of the  
 34 fund. Notwithstanding any other law to the contrary, the State  
 35 Board of Administration may invest any funds of any state  
 36 agency, any state university or college, any unit of local  
 37 government, or any direct-support organization thereof pursuant  
 38 to the terms of a trust agreement with the head of the state  
 39 agency or the governing body of the state university or college,  
 40 unit of local government, or direct-support organization  
 41 thereof, ~~or pursuant to the enrollment requirements stated in s.~~  
 42 ~~218.407,~~ and may invest such funds in the Local Government  
 43 Surplus Funds Trust Fund created by s. 218.405 without a trust  
 44 agreement upon completion of enrollment materials provided by  
 45 the board. The board shall approve the undertaking of  
 46 investments subject to a trust agreement before execution of  
 47 such trust agreement by the State Board of Administration. The  
 48 funds and the earnings therefrom are exempt from the service  
 49 charge imposed by s. 215.20. As used in this subsection, the  
 50 term "state agency" has the same meaning as that provided in s.  
 51 216.011, and the terms "governing body" and "unit of local  
 52 government" have the same meaning as that provided in s.  
 53 218.403.

54 (3) Notwithstanding any law to the contrary, all  
 55 investments made by the State Board of Administration pursuant  
 56 to ss. 215.44-215.53 shall be subject to the restrictions and



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57 limitations contained in s. 215.47, except that investments made  
 58 by the State Board of Administration under a trust agreement  
 59 pursuant to subsection (1) shall be subject only to the  
 60 restrictions and limitations contained in the trust agreement.

61 Section 2. Subsections (1) and (2) of section 215.4755,  
 62 Florida Statutes, are amended to read:

63 215.4755 Certification and disclosure requirements for  
 64 investment advisers and managers.—

65 (1) An investment adviser or manager who has discretionary  
 66 investment authority for direct holdings and who is retained as  
 67 provided in s. 215.44(2) (b) ~~(e)~~ shall agree pursuant to contract  
 68 to annually certify in writing to the board that:

69 (a) All investment decisions made on behalf of the trust  
 70 funds and the board are made in the best interests of the trust  
 71 funds and the board and not made in a manner to the advantage of  
 72 such investment adviser or manager, other persons, or clients to  
 73 the detriment of the trust funds and the board.

74 (b) Appropriate policies, procedures, or other safeguards  
 75 have been adopted and implemented to ensure that relationships  
 76 with any affiliated persons or entities do not adversely  
 77 influence the investment decisions made on behalf of the trust  
 78 funds and the board.

79 (c) A written code of ethics, conduct, or other set of  
 80 standards, which governs the professional behavior and  
 81 expectations of owners, general partners, directors or managers,  
 82 officers, and employees of the investment adviser or manager,  
 83 has been adopted and implemented and is effectively monitored  
 84 and enforced. The investment advisers' and managers' code of

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85 ethics shall require that:

86 1. Officers and employees involved in the investment  
 87 process refrain from personal business activity that could  
 88 conflict with the proper execution and management of the  
 89 investment program over which the investment adviser or manager  
 90 has discretionary investment authority or that could impair  
 91 their ability to make impartial decisions with respect to such  
 92 investment program; and

93 2. Officers and employees refrain from undertaking  
 94 personal investment transactions with the same individual  
 95 employee at a broker-dealer firm with whom business is conducted  
 96 on behalf of the board.

97 (d) The investment adviser or manager has proactively and  
 98 promptly disclosed to the board, notwithstanding subsection (2),  
 99 any known circumstances or situations that a prudent person  
 100 could expect to create an actual or, ~~potential, or perceived~~  
 101 conflict of interest, including specifically:

102 1. Any material interests in or with financial  
 103 institutions with which officers and employees conduct business  
 104 on behalf of the trust funds and the board; and

105 2. Any personal financial or investment positions of the  
 106 investment adviser or manager that could be related to the  
 107 performance of an investment program over which the investment  
 108 adviser or manager has discretionary investment authority on  
 109 behalf of the board.

110 (2) At the board's request, an investment adviser or  
 111 manager who has discretionary investment authority over direct  
 112 holdings and who is retained as provided in s. 215.44(2) (b) ~~(e)~~

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113 shall disclose in writing to the board:

114 (a) Any nonconfidential, nonproprietary information or  
115 reports to substantiate the certifications required under  
116 subsection (1).

117 (b) All direct or indirect pecuniary interests that the  
118 investment adviser or manager has in or with any party to a  
119 transaction with the board, if the transaction is related to any  
120 discretionary investment authority that the investment adviser  
121 or manager exercises on behalf of the board.

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